**GRAP MIGRATION AND RELATED PROJECTS CONSULTING SERVICES AGREEMENT**

**BETWEEN**

**SOUTH AFRICAN REVENUE SERVICE**

**“SARS”**

**AND**

**[SERVICE PROVIDER/CONSULTANT]**

**REGISTRATION / ID NUMBER: [*Note to drafter: update*]**

**“THE CONSULTANT”**

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**Annexes**

**ANNEXURE "A" rfP38/2016 (NOTE: this document may/shall be replaced by a work schedule containing specifications listed in the rfp 38/2016 document)**

**ANNEXURE "B" sars OATH / AFFIRMATION**

**ANNEXURE "C" Pricing Schedule**

**Annexure "C1" Subcontractor'(s) Tax verification consent**

**ANNEXURE "D" deliverables**

**annexure "e" form of a work order**

**annexure “F” tax clearance certificate**

THE PARTIES AGREE AS FOLLOWS –

1. INTRODUCTION
   1. SARS is legally required to ensure that its financial accounting policies and systems are GRAP compliant with GRAP Standards, directives and guidelines issued by the Accounting Standards Board (herein referred to as the **“ASB”**, as fully defined at clause 2.16.4 below). SARS is therefore in the process of implementing the GRAP Migration Project to ensure that its accounting systems and/or financial reporting framework and processes are aligned to the GRAP Standards.
   2. SARS has accordingly issued the RFP 38/2016 and wishes to appoint a consultant firm and/or sole proprietor accredited and approved by SAP for the provision of consulting Services for the implementation of the GRAP Migration and related projects.
   3. The RFP 38/2016 Document setting out SARS’s requirements in respect of the GRAP Migration Project (including related projects) as well as the general terms and conditions of the RFP 38/2016 (including the summary, guidelines, conditions and instructions of the aforementioned **RFP**) are herein incorporated by reference.
   4. **This Agreement shall form the basis upon which SARS shall conclude a comprehensive agreement for the provision of the Services with the successfully appointed bidder. SARS reserves the right to amend these terms and conditions, where necessary, prior to appointment of the successful bidder. For purposes of clarity, a valid Agreement between SARS and the successful bidder shall exist upon conclusion of successful negotiation of these terms and signature by both Parties of the Agreement.**
2. Definitions and INTERPRETATION
   1. In this Agreement (as hereinafter defined) -
      1. and clause headings are for convenience only and are not to be used in its interpretation;
      2. an expression which denotes –
         1. any gender includes the other genders;
         2. a natural person includes a juristic person and vice versa; and
         3. the singular includes the plural and vice versa.
   2. Any substantive provision, conferring rights or imposing obligations on a Party and appearing in any of the definitions in clause 2 or elsewhere in this Agreement, shall be given effect to as if it were a substantive provision in the body of this Agreement.
   3. Words and expressions defined in any clause shall, unless the application of any such word or expression is specifically limited to that clause, bear the meaning assigned to such word or expression throughout this Agreement.
   4. Terms other than those defined within this Agreement shall be given their plain English meaning, and those terms, acronyms, and phrases known in the information technology industry shall be interpreted in accordance with their generally accepted meanings.
   5. Subject to clauses 2.6, 2.11, 2.12 and 2.13, defined terms appearing in this Agreement in title case shall be given their meaning as defined, while the same terms appearing in lower case shall be interpreted in accordance with clause 2.4 above, and shall, unless the context otherwise requires, include the terms as defined.
   6. Reference to "**days**" shall be construed as calendar days unless qualified by the word "business", in which instance a "**business day**" shall be any day other than a Saturday, Sunday or public holiday as gazetted by the government of the Republic of South Africa from time to time. Any reference to "**business hours**" shall be construed as being the hours between 08h00 (eight hours) and 17h00 (seventeen hours) on any business day. Any reference to time shall be based upon South African Standard Time being Greenwich Mean Time plus 2 (two) hours.
   7. Unless specifically otherwise provided, any number of days prescribed shall be determined by excluding the first and including the last day or, where the last day falls on a Saturday, Sunday or public holiday as gazetted by the government of the Republic of South Africa from time to time, the next succeeding business day.
   8. Where figures are referred to in numerals and in words, and there is any conflict between the two, the words shall prevail, unless the context indicates a contrary intention.
   9. No provision herein shall be construed against or interpreted to the disadvantage of a Party by reason of such Party having or being deemed to have structured, drafted or introduced such provision.
   10. The expiration or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provided that they shall operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.
   11. The words "**include**" and "**including**" mean "include without limitation" and "including without limitation". The use of the words "**include**" and "**including**" followed by a specific example or examples shall not be construed as limiting the meaning of the general wording preceding it.
   12. Any reference in this Agreement to "this Agreement" or any other agreement or document shall be construed as a reference to this Agreement or, as the case may be, such other agreement or document, as amended, varied novated or supplemented from time to time.
   13. This Agreement incorporates the Annexures, which Annexures shall have the same force and effect as if set out in the body of this Agreement. In this Agreement the words "clause" or "clauses" and "Annexure" refer to clauses of and Annexures to this Agreement.
   14. To the extent that there may be any conflict between a provision in the Annexure and a provision contained in the body of this Agreement, the provision in the Annexure will prevail.
   15. Technical terms that are not contained in the definitions set out in clause 2 hereto have the meaning determined first by reference to ITIL, if used in ITIL, then ISO, if used in ISO and not ITIL, and finally, the generally understood meaning in the information technology and business process industries, if not used in either ITIL or ISO.
   16. In this Agreement, unless the context indicates a contrary intention, the following words and expressions bear the meanings assigned to them, and cognate expressions bear corresponding meanings-
       1. **“Acceptance Testing”,** means a testing technique performed to determine whether or not the SAPGRAP Migration and Related Projects Deliverables have met the SARS requirement specifications.;
       2. **“AFSA”** means the Arbitration Foundation of Southern Africa;
       3. **“Agreement”** means this GRAP Migration and Related Projects Consulting Services Agreement and any Annexures thereto;
       4. **“ASB”** means the Accounting Standards Board established in terms of section 87 of the Public Finance Management Act No 1 of 1999 responsible for, amongst others, developing and maintaining financial reporting standards in the public sector to ensure good corporate governance of the financial accounting systems and methods of national, provincial and local government;
       5. **“BAU”** means SARS’s Business As Usual;
       6. **“B-BBEE”** means broad-based black economic empowerment as defined in the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);
       7. **“BEE Codes”** means the Codes of Good Practice on Black Economic Empowerment gazetted by the Minister of Trade and Industry under section 9 of the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003), applicable to the Consultant, as amended from time to time;
       8. **“BEE Status”** means the BEE Status of the Consultant based on its generic scorecard as measured and certified by a verification agency in accordance with the applicable BEE Codes;
       9. **“BEE Verification Certificate”** means a certificate issued by a Verification Agency, verifying the Consultant's BEE Status level, the details of its scorecard performance, as may be applicable, and any other aspect of its BEE performance under the Codes;
       10. **“Bug(s)”** means any error, flaw or mistake in the GRAP Migration and Related Projects source code which in any way prevents the GRAP Migration and Related Projects Deliverable from functioning correctly;
       11. **“Business Requirements Specifications Document”** means the business requirements document prepared by SARS as per RFP (38/2016) documents;
       12. **“Charges”** means amounts payable by SARS to the Consultant for the Services rendered or Project completed in terms of this Agreement;
       13. **“Commercially Reasonable Efforts”** means taking such steps and performing in such a manner as a well-managed entity would undertake where such entity was acting in a determined, prudent, and reasonable manner to achieve the particular result for its own benefit provided always that such steps are within the reasonable control of the Party;
       14. **“Confidential Information”** means SARS’s confidential information and taxpayer information as defined in the Tax Administration Act, 2011 (Act No. 28 of 2011) and information considered confidential in terms of any tax act administered by the Commissioner of SARS, SARS Material and any information or data of any nature, tangible or intangible, oral or in writing and in any format or medium, which by its nature or content is or ought reasonably to be identifiable as confidential and/or proprietary to the Disclosing Party or which is provided or disclosed in confidence, and which the Disclosing Party or any person acting on behalf of the Disclosing Party may disclose or provide to the Receiving Party or which may come to the knowledge of the Receiving Party by whatsoever means. The Confidential Information of the Disclosing Party shall include information even if it is not marked as being ‘confidential’, restricted or proprietary (or any similar designation);

Confidential Information excludes information or data which-

* + - 1. is lawfully in the public domain at the time of disclosure thereof to the Receiving Party; or
      2. subsequently becomes lawfully part of the public domain by publication or otherwise; or
      3. is or becomes available to the Receiving Party from a source other than the Disclosing Party which is lawfully entitled without any restriction on disclosure to disclose such Confidential Information to the Receiving Party; or
      4. is disclosed pursuant to a requirement or request by operation of law, regulation or court order but then only to the extent so disclosed and then only in the specific instance and under the specific circumstances in which it is obliged to be disclosed; provided that-
         1. the onus shall at all times rest on the Receiving Party to establish that such information falls within such exclusions;
         2. the information disclosed shall not be deemed to be within the foregoing exclusions merely because such information is embraced by more general information in the public domain or in a Party's possession; and
         3. any combination of features shall not be deemed to be within the foregoing exclusions merely because individual features are in the public domain or in a Party's possession, but only if the combination itself is in the public domain or in a Party's possession.

The determination of whether information is Confidential Information shall not be affected by whether or not such information is subject to, or protected by, common law or statute related to copyright, patent, trademarks or otherwise;

* + 1. **“Consultant”** means [***Drafter Note: update***] a company incorporated under the laws of the South Africa registered under company registration number **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** and which company is accredited by SAP as a SAP Consultant OR

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ identity number \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, whose residential address is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_;

* + 1. **“Deficiency”** means a flaw in a component or system that can cause the component or system to fail to perform its required function, e.g. an incorrect statement or data definition. A deficiency, if encountered during execution, may cause a failure of the component or system;
    2. **“Deliverables”** means any material that are provided by the Consultant to SARS as part of the Services pursuant to this Agreement, including the SAP GRAP Migration and Related Projects Tool, Documentation, specifications or other documentation and deliverables under a project;
    3. **“Designated Systems”** means SARS’ owned and operated systems and/or the systems of SARS’s **Third Party Supplier** relating to the Services**,** details of which SARS shall be made available to the Consultant when required subject to SARS’ internal policies and written agreements between SARS and such Third Party Supplier;
    4. **“Disclosing Party”** means the Party, other than the Receiving Party, that discloses any of the Confidential Information to the Receiving Party;
    5. **“Documentation”** means, project plans, functional specifications, technical specifications, designs and templates, technical manuals, training manuals, user manuals, flow diagrams, file descriptions, installation specifications and plans, and other information that describes the function and use, or is reasonably required for the efficient use, of the GRAP Migration and Related Projects including descriptions of the configuration of hardware required to use such Deliverables, whether written or electronic;
    6. **“Effective Date”** means the commencement date of this Agreement, which is [***Note to drafter: update***]**,** notwithstanding the date of signature;
    7. **“End User”** means SARS Staff and/or any person authorized by SARS to use or receive the benefit of the GRAP Migration and Related Projects from time to time**;**
    8. **“Force Majeure Event”** means any circumstances beyond a Party’s reasonable control and includes, without limitation: (i) acts of God, public enemy, fire, explosion, earthquake, perils of the sea, flood, storm or other adverse weather conditions, war declared or undeclared, civil war, revolution, civil commotion or other civil disorder, sabotage, riot, strikes, lock-outs or other labour disputes, blockade, embargo, sanctions, epidemics, act of any Government or other Authority, compliance with law, regulations or demands of any Government or Governmental agency, limitations imposed by exchange control or foreign investment or other similar regulations or any other circumstances of like or different nature beyond the reasonable control of the Party so failing;
    9. **“GRAP”** means Generally Recognised Accounting Practice;
    10. **“GRAP Standards”** means the Generally Recognised Accounting Practice standards aimed at ensuring financial accounting transparency for all public sector entities;
    11. **“GRAP Migration Project”** means the SARS project that entails, amongst others, ensuring that SARS’ financial reporting frameworks including its accounting systems, policies and processes are aligned to GRAP Standards;
    12. **“Initiatives”** means a project / a planned set of interrelated tasks/initiatives other than BAU which are initiated, approved and to be executed by SARS over a specific period for purposes of its daily operations; initiated by SARS;
    13. **“Intellectual Property“** means all computer programs, Software, source code, object code, programmer interfaces, specifications, operating instructions, compilations, lists, databases, systems, operations, processes, methodologies, technologies, algorithms, techniques, methods, designs, circuit layouts and mask-works, plans, reports, data, works protected under the Copyright Act 98 of 1978, works of authorship, video recordings, audio recordings, photographs, models, samples, substances, trade secrets, formulae, know-how, show-how, Confidential Information, concepts and ideas of any nature (including of a technical, scientific, engineering, commercial, strategic, financial, marketing or organisational nature), inventions, discoveries, drawings, notes, manuals, documentation, training materials, job aids, trademarks, service marks, logos, slogans, corporate, business and trade names, domain names, trade dress, brand names and other indicia of origin, regardless of whether Intellectual Property Rights actually inhere in any such items, and any other tangible or intangible items in which Intellectual Property Rights may inhere, as may exist anywhere in the world and any applications for registration of such intellectual property, and includes all Intellectual Property Rights in any of the foregoing;
    14. **“Intellectual Property Rights”** means all rights of whatever nature and how described in respect of Intellectual Property, including:
        1. all patents and other patent rights, including divisional and continuation patents, utility models;
        2. rights in and to inventions, whether patentable or not;
        3. rights in trademarks, service marks, logos, slogans, corporate, business and trade names, trade dress, brand names and other indicia of origin;
        4. rights in designs, topography rights, rights in circuit layouts and mask-works;
        5. copyright, including all copyright in and to computer programs;
        6. rights in internet domain names, reservations for internet domain names, uniform resource locators and corresponding internet sites; and
        7. rights in databases and data collections.

know-how, show-how, trade secrets and confidential information, in each case whether or not registered and including applications for the registration, extension, renewal and re-issuance, continuations, continuations in part or divisions of, any of these and the right to apply for any of the foregoing, all claims for past infringements, and all rights or forms of protection of a similar nature or having equivalent or similar effect to any of these which may subsist anywhere in the world;

* + 1. **“ISO“** means International Standards Organization, specifically in the implementation of quality standards and requirements in line with ISO 9001:2008 to increase and continually improve on operational efficiency;
    2. **“ITIL"** means the Information Technology Infrastructure Library published by the UK Office of Government Commerce, and any natural successor organisations to the OGC, from time to time together with the associated published codes of practice (including DISC PD005 and any updates and amendments thereto) and best practice guides published by the IT Service Management Forum from time to time, including any natural successor organisations to the ITSMF;
    3. **“Party/ies”** means SARS and the Consultant, individually and/or collectively as the context may indicate otherwise;
    4. **“Performance Criteria“** means, individually and collectively, the quantitative and qualitative obligations and commitments contained in SARS Business Requirements Specifications and the functional and technical specifications for each Deliverable contemplated in **Annexure “A”** of this Agreement;
    5. **“Project”** means a set of tasks and other work relating to the Services that is requested by SARS after the Effective Date and performed by the Consultant thereafter so long as:
       1. the work is discrete and non-recurring;
       2. the work requires start-up, planning, execution and closure;
       3. the completion of the work is likely to result in a change to the environment in which the Services are provided; and
       4. the work is not required for the Consultant to

1. meet the Performance Standards;
2. implement changes to the environment required as a result of benchmarking under the Agreement; or
3. meet any other obligations of the Consultant under this Agreement.
   * + 1. Projects must be contained in a Work Order in accordance with **Annexure E**- (Form of a Work Order).
       2. The Parties may agree to refer to other aggregations of work that do not meet the requirements of this definition of the term Projects as projects. In such case, such projects will be in scope and will not attract additional charges and will not necessarily be set out in a Work Order.
     1. **“Receiving Party**" means the Party, other than the Disclosing Party, that receives disclosure of any of the Confidential Information;
     2. **“Resource”** means the technical specialist/personnel employed by the Consultant and designated by the Consultant to perform Services in accordance with SARS’ Project plan in terms of this Agreement;
     3. **“RFP 38/2016”** means SARS’s Request for Proposal number 38/2016 for the appointment of a consulting firm and/or a SAP accredited consultant to render the Services, including ancillary services thereto, as detailed in this Agreement 38/2016;
     4. **“SANAS”** means the South African National Accreditation System and recognised by the South African Government as the national accreditation body;
     5. **“SAP”** means Systems Applications Products (Proprietary) Limited, a company incorporated in terms of the laws of the Republic of South Africa;
     6. **“SARS”** means the South African Revenue Service, an organ of State established in terms of the South African Revenue Service Act, 1997 (Act No. 34 of 1997);
     7. **“SARS Data”** means any information or data whether or not Confidential Information, being information of SARS relating to a taxpayer, its employees, independent contractors and suppliers, information or data relating to SARS’s business operations, personal information as defined in the Electronic Communications Act, 2002 (Act No. 25 of 2002) and/or the Protection of Personal Information Act, 2013 (Act No. 4 of 2013) or any other applicable legislation, including:
        1. all reports, documentation, software or inventions in material form, irrespective of media on which they occur, entered into, contained in and/or stored, collected, accessed or processed by the Consultant for the purpose of rendering the Services to SARS; and
        2. all other records, data, files, input materials, reports, forms and other such items that may be received, computed, developed, used or stored by the Consultant or any of the Consultant ’s Staff/Personnel, contractors (including sub-contractors), or agents, for or on behalf of SARS, or in connection with the Services.
     8. **“Services”** means, but is not limited to, the configuration, customisation and implementation of the **SAP** **GRAP Migration and Related Projects** to SARS’s Designated System, as well as support and training of SARS’s Staff and any other incidental services related thereto;
     9. **“Staff”** means any employee, independent contractor, agent, consultant or other representative of either;
     10. **“Team”** means the Consultant’s Staff and SARS Staff as contemplated in **clause 5.3** of this Agreement;
     11. **“Testing Stage”** means various stages of testing detailaing the specific mechanics of testing, annexures of testing activities and required resources, and proposed timelines to implement the objectives of the testing strategy document for each Deliverable;
     12. **“Third Party Supplier(s)”** means a third party who/which is a licensor of software, lessor of equipment, or supplier of other goods or services to SARS (or to a Governmental Entity that is receiving Services under this Agreement) from time to time, including such third party’s employees, agents, affiliates, subcontractors and third party suppliers. Third Party Suppliers exclude any affiliate, subcontractor (direct or indirect), or other agents of the Consultant to the extent involved in performing or delivering the Services under contract (direct or indirect) with the Consultant;
     13. **“Trainee”** means an individual employed by SARS and assigned to a Team for the purposes of such individual receiving training as contemplated in **clause 5.3** hereof;
     14. **“Training Services”** means the training, advisory and consultancy services provided by the Consultant to End-Users to enable the End-Users to properly use the GRAP Migration and Related Projects tool, to be provided by a specified number of employees of the Consultant but dedicated to SARS;
     15. **“VAT”** means the value added taxation as defined in the Value Added Tax Act, 1991 (Act No. 81 of 1991);
     16. **“Verification Agency”** means a BEE Verification Agency contemplated by the BEE Codes which, at the time of the issue of any certificate or confirmation of any aspect of the Consultant's BEE Status for purposes of this Agreement, is a verification agency accredited by SANAS, Independent Regulatory Board of Auditors (“**IRBA**”) or any other entity conferred with such powers by statute;
     17. **“Virus”** means any computer code, device, procedures, routines, mechanisms, method or means, including any virus, Trojan horse, worm, lock-up, time bomb, logic bomb or disabling code, that-
         1. causes the unplanned interruption, disruption, distortion (including aesthetic disruptions or distortions) of the Services or accessibility to, use or operation of -
4. the SAP GRAP Migration and Related Projects tool;
5. item of Intellectual Property forming part of or related to GRAP Migration and Related Projects;
6. item of Intellectual Property arising out of or pursuant to the rendering of any Services under this Agreement; or
7. systems, networks, software or computer hardware of the Consultant or SARS or SARS data contained therein (Sub-Clauses (a)(i) to (a)(iv) inclusive hereinafter for the purposes of this “Virus” definition collectively referred to as the “Components”), or is designed to interrupt, disrupt, distort (including aesthetically disrupt or distort) the aforementioned;
   * + 1. alters, disables, causes to cease functioning, harms, destroys, impedes or inhibits the use or operation of any of the Components or is designed to alter, disable, cause to cease functioning, harm, impede or inhibit (including aesthetically alter, harm, impede or inhibit) the aforementioned);
       2. otherwise blocks authorised access to any of the Components or is designed to block access to the aforementioned;
       3. interferes with, or is designed to interfere with, the delivery of the Services to SARS;
       4. would permit any party access to any of the Components to cause any of the effects described above (inclusive); or
       5. can cause damage or corrupt data, storage media, programs, equipment or communications, or otherwise interfere with operations thereof; and
     1. **“Work Order”** means a document substantially in the form and fulfilling the requirements of **Annexure E (Form of a Work Order)** and describing at least: (i) the details of the Project(s) to be performed under this Agreement; (ii) the amount, schedule and method of payment (subject to the provisions **of clause 9** (**Pricing Invoicing and Payment**); (iii) start and end date or where applicable to the timeframes for performance; (iv) where applicable the completion and acceptance criteria; and (v) any applicable service levels and service level credits, etc. A Work Order will only be binding on the Parties once the Work Order has been signed by duly authorised representatives of both Parties.
8. APPOINTMENT
   1. The Consultant warrants that it has been accredited and authorised by SAP to provide the Services.
   2. In reliance on the Consultant’s representations, the Consultant’s bid was accepted and SARS hereby appoints the Consultant for the duration of this Agreement, and the Consultant hereby accepts such appointment, to perform the Services for SARS, on the terms and conditions contained herein.
   3. The Consultant represents that it has the necessary expertise, skill, know-how, qualifications and ability to undertake the performance of the Services as envisaged in this Agreement and as required by SARS. The Consultant further represents in this regard that it has provided similar Services to at least 3 (three) customers.
   4. The Consultant acknowledges and accepts that its appointment to provide the Services to SARS as envisaged in this Agreement is on a non-exclusive basis and SARS shall not be precluded from obtaining services that may be similar or identical to the Services from any other consultant.
   5. Nothing contained herein shall in any way be construed or constitute a guarantee in favour of the Consultant that the Consultant shall receive any work or specific volumes of work for the duration of this Agreement or contract from SARS for the Services in the future after expiry hereof, whether under this Agreement or otherwise.
9. COMMENCEMENT and Duration
   1. This Agreement shall commence on the effective date and endure for a maximum period of 11 (eleven) months and/or such maximum period for a specific SAP Consultant referred to at Table 6A of the RFP Document (page 6 of 38) from the date of signature of this Agreement unless terminated earlier by either party in accordance with the terms of this Agreement (the “Initial Period”).
   2. Upon the expiry of the initial period, the Agreement shall (provided the necessary procurement approval has been obtained by SARS), at the discretion of SARS be extended on a month to month basis for a period not exceeding 4 (four) months or for such further period agreed to by the Parties (the “Renewal Period”) subject to the terms set out in this Agreement. **However, the aforementioned Renewal Period shall not apply in respect of a SAP PO Consultant; SAP Solution Architect and SAP FICO functional Consultant**.
   3. This Agreement shall automatically terminate at the expiry of the Renewal Period unless SARS has expressed its intention in writing to renew this Agreement further.
10. PROVISION OF THE SERVICES
    1. **GENERAL**
       1. The Services to be provided by the Consultant as envisaged in this Agreement involves the configuration, customisation and implementation of the SAP GRAP Migration and Related Projects to SARS’s Designated System in order that the GRAP Migration and Related Projects performs the functions specified in RFP 38/2016 document and **Annexure “D”** hereto.
       2. The Consultant shall perform the Services so that each Deliverable is compatible with the components of SARS’s technology infrastructure to which it shall interface as of date of commencement hereof. Without limiting the generality of the foregoing, the Consultant shall perform all of the Services in a manner that is consistent with SARS’s policies and procedures applicable to such Services.
       3. Throughout the term of this Agreement, SARS shall perform the Services, functions, and responsibilities described herein as well as any services, functions and responsibilities not described herein but required for the Deliverables to meet SARS business requirements, provide the functionality described in the functional specifications therefore, and otherwise perform in accordance with the technical specifications and Performance Criteria therefore.
       4. The Consultant shall at all times ensure that he possesses valid qualifications, training, experience and skill to deliver the Services in order to meet the requirements specified in this Agreement and/or each Work Schedule.
       5. Without limiting the generality of the foregoing, the Consultant specifically acknowledges and agrees that SARS may withdraw any of the Services mentioned in this **clause 5** on 40 (forty) business days’ notice to the Consultant without any payment or liability to the Consultant other than payment of the Consultant’s charges for Services actually and properly rendered prior to the Effective Date of the withdrawal. In such event, there shall be an equitable adjustment to the Consultant’s charges; and in the event the amounts already paid by SARS to the Consultant exceed such adjusted charges, the Consultant shall promptly refund such excess amounts.
       6. It is specifically recorded that the Consultant is aware that the provisions of the Compensation for Occupational Injuries & Diseases Act, No. 130 of 1993 (“COIDA”) are not applicable to the Consultant/him, and thus will not be covered for injuries that the Consultant may suffer while rendering the Services in terms of this Agreement. The Consultant shall therefore ensure that it has independent and adequate insurance in this regard.
    2. **RESOURCES**
       1. The Consultant(Resource) warrants that the Resource provided(he) has not in the last 5 (five) years prior to the Effective Date, had any contract of employment or consulting services with any client, terminated for reasons of dishonesty, fraud or any other basis for summary termination as recognised in South African labour legislation. The Consultant further warrants that he has never been convicted of a crime involving fraud or dishonesty.
       2. The Consultant and/or Resource undertakes that it shall not at any time, hold himself out as a SARS employee or as an agent of SARS. Notwithstanding the afore-going, the Consultant shall be furnished by SARS with those tools of trade necessary to render the Services.
       3. If the Consultant is unable to perform the functions or responsibilities assigned to him/her in connection with this Agreement, for whatever reason (including as a result of an event of force majeure of which SARS has been notified or temporary incapacity such as illness), then the Consultant shall promptly furnish SARS with notice thereof of his or her absence, **and if agreed upon by SARS,** shall then provide a temporary replacement for him or herself with another individual reasonably acceptable to SARS and who has comparable skills, experience and competencies as the Resource, save that during such temporary replacement period, the Consultant shall ensure that this temporary replacement is legally contracted to the Consultant to assume the same or similar obligations to SARS that the Resource is bound to comply with in terms of this Agreement, for the duration of the period that the appointed Resource is unable to render the Services him or herself. The Consultant shall assume all professional and technical responsibility for the performance of this temporary replacement and therefore, the Consultant shall remain legally responsible and liable for all Services rendered by such temporary replacement, as well as all other acts or omissions, as if the rendering of the Services or the acts and omissions thereof were committed by the Consultant himself.
       4. The Resource shall be furnished by SARS with all of SARS’s tools of trade required to execute the Services or perform in terms of the Project. The Resource shall comply with all of SARS’s policies in regards to the use of such tools, as well as all quality standards for the use thereof. The Resource consents to being searched while on SARS’ premises or on arriving at or leaving SARS premises in accordance with applicable SARS policy (which policies are attached to this Agreement). In this regard, it is recorded that SARS from time to time, makes use of electronic and other surveillance methods for such searches and may use such evidence to protect its business interests.
    3. **SUPPORT AND TRAINING SERVICES** 
       1. The Consultant **must** facilitate and ensure that there is knowledge transfer to SARS’s designated Staff at no additional cost. The Consultant shall provide the necessary training to the End Users as per its response to SARS RFP 38/2016 and shall ensure that in respect of its provision of Training Services:
          1. it utilises the Consultant Staff who are appropriately trained and sufficiently skilled on the use of the SAP GRAP tool;
          2. it utilises Staff who are appropriately trained and sufficiently skilled to train End-Users regarding their use of the SAP GRAP tool and providing training manuals and other relevant training materials for each Deliverable. Such training may be accomplished by means of a formal training programme or an "on the job” training programme. In either event, the Consultant shall develop, implement and maintain a regular and formal program pursuant to which the Consultant shall assess each End-User’s proficiency and progress, and inform SARS of such proficiency and progress; and
          3. at SARS’s request and subject to this **clause 5.3**, the Consultant shall utilize SARS Staff to perform some of the Services under this Agreement. In such event, the Services shall be performed by teams made up of the Consultant Staff and SARS Staff (‘Team(s)), with each Team managed by the Consultant.
       2. The Consultant shall be fully responsible for the performance of the Services by the Teams (including, for example any material errors or Deficiencies in any Deliverables produced by the Teams) notwithstanding the fact that most Teams comprises Staff from both SARS and the Consultant and certain functions and tasks are being performed by members of Teams who are employed by SARS. The Consultant shall however, report to SARS, any act of underperformance or non-performance by SARS Staff and substantiate such act and its bearing on the delivery of the project. SARS shall within a reasonable time and without causing any further interruptions to the Service, address such underperformance with the Staff member concerned.
       3. SARS may also designate its Staff as trainees in its sole discretion. The Parties acknowledge and agree that the trainees shall be materially less trained, skilled and experienced than other SARS Staff assigned to a Team. The Consultant shall use Commercially Reasonable Efforts to train such SARS Staff in the tasks and functions being performed by such Team in order to aid in SARS effort to provide opportunities for previously disadvantaged individuals and to enable SARS to support and maintain the Deliverables and to be able to provide the Services internally without resort to the Consultant:
11. engage with SARS Learning Academy to explore optimum training delivery mechanisms available at SARS, to enable knowledge transfer to SARS’s SAP GRAP Migration and Related Projects training team;
12. provide support to SARS for a period 3 (three) months post go-live, based on time and material; and
13. if the extent of training and support is not detailed in the Agreement, the Consultant shall provide adequate instruction for a sufficient number of SARS Staff to secure the satisfactory operation of the SAP GRAP Migration and Related Projects Tool.
    1. **TOOLS**
       1. SARS shall be responsible for procuring and providing all resources (e.g. hardware, software) and facilities necessary, appropriate or required to promptly and efficiently perform the Services in accordance with the requirements of this Agreement.
       2. The Consultant shall use SARS’s tools (if any are provided, including SARS Staff) in an efficient manner. The Consultant shall not use any SARS’s tools for any purpose other than providing Services to SARS.
       3. The Consultant shall ensure that all the Consultant Staff comply with all policies and procedures governing access to and use of SARS facilities, which policies and procedures SARS shall notify the Consultant of, in writing from time to time.
    2. **DOCUMENTATION**

The Consultant shall provide Documentation which accurately reflects the design, structure, operations, capabilities and use of the SAP GRAP Migration and Related Projects tool, and which (a) explains the technical details of the GRAP Migration and Related Projects tool at a level and in a fashion necessary to enable SARS Staff with a reasonable level of technical experience to modify, maintain and support the GRAP Migration and Related Projects tool; and (b) explains the operation and use of the SAP GRAP Migration and Related Projects tool at a level and in a fashion necessary to enable trained SARS Staff to use and operate such.

* 1. **ACCEPTANCE TESTING** 
     1. The Consultant shall develop and prepare for SARS’s review and approval, a testing strategy document detailing the approach to testing and the associated plan to direct the test effort to ensure that each Deliverable and all of its related Deliverables provide the functionality described in SARS’s Business Requirements Document and in the functional specifications, satisfy the Performance Criteria, and operate consistently without material errors or Deficiencies (the ‘**Testing Strategy Document**’). Among other things, the Testing Strategy Document shall require that the Consultant maintain version control of software through the testing process, and contain user acceptance, data conversion and Performance Criteria.
     2. The Testing Strategy Document shall provide for multiple levels of testing including unit, integration, quality assurance, user testing; and other types of testing to assess functionality, usability, reliability and performance. Without limiting the generality of the foregoing, the Testing Strategy Document shall provide for testing that is sufficiently rigorous and complete so as to identify any material errors or Deficiencies that are reasonably discoverable.
     3. The initial draft of the Testing Strategy Document shall be provided to SARS on or before such date as is reasonably required to allow reasonable time for SARS to review and the Consultant to revise the Testing Strategy Document in accordance with SARS’s comments and complete a Testing Strategy Document that is acceptable to SARS by the date therefore under the project plan. If any Deliverables have been tested prior to SARS’s acceptance of the Testing Strategy Document, and the tests performed differ from that required under the Testing Strategy Document, the Consultant shall, at SARS’s request and Consultant’s expense, re-test in accordance with such Testing Strategy Document. All testing shall be performed in accordance with the Testing Strategy Document approved by SARS in writing.
     4. The Consultant shall develop and prepare, in accordance with the project plan, for SARS’s review and approval, test packs for each Testing Stage. The test packs shall include: (a) the data, which shall be subject to SARS’s review and approval, which shall be described in the Testing Strategy Document; (b) the test scripts; and (c) the expected results of the testing. If a Deliverable has been tested prior to SARS’s approval of the applicable test pack, and the test pack utilized for such test(s) differ from the test pack later approved by SARS, the Consultant shall, at SARS’s request and the Consultant’s expense, re-test the Deliverable using the approved test pack.
  2. **UNIT TESTING (Stage One Testing)**

In this stage, the Consultant shall test the functionality of the Deliverable and its related Deliverables and confirm that such Deliverables have the functionality described in SARS’s Business Requirements Document and in the functional specifications, and satisfy the Performance Criteria, by performing unit and integration testing in the Consultant’s development environment before promoting such Deliverables to the quality assurance environment. Such testing shall also test the conversion routines to ensure that they operate in accordance the specifications thereof.

* 1. **MOVE TO QUALITY ASSURANCE ENVIRONMENT (Stage two Testing)** 
     1. The Consultant shall test performance and functionality of the Deliverable(s) and its quality assurance environment to enable the Consultant to minimize to the extent possible, the prospect that (a) the functionality and performance shall degrade upon elevation to the production environment, and (b) elevation to production environment shall cause degradation in other SARS’s production systems. In addition, the Consultant shall perform stress testing in this environment to ascertain the extent to which a Deliverable(s) is scalable and confirm that it meets SARS’s workload requirements or otherwise as required under this Agreement. Such testing shall continue until (a) the Consultant establishes to SARS’s reasonable satisfaction that the testing was successful, and (b) the Documentation is up to date, complete and meets the standards set forth in **clause 5.5** of this Agreement. The Consultant shall perform such testing before a Deliverable(s) is promoted to SARS’s production environment;
     2. SARS shall provide and maintain the quality assurance environment, at its sole cost and expense. The quality assurance environment shall be a simulated production environment that is used for purposes of testing Deliverables and, throughout the term, shall mimic SARS’s production environment to the extent reasonably possible.
  2. **PRODUCTION TESTING** 
     1. SARS shall perform production testing by operating each Deliverable in its actual production until each of such Deliverable(s) operates without material errors or Deficiencies or Bugs for twenty 20 (twenty) consecutive business days and until the Consultant establishes to SARS’s reasonable satisfaction that the Deliverable performs materially in accordance with the functional and technical specifications therefore and is otherwise reasonably acceptable to SARS.
     2. Within a reasonable period following SARS’s confirmation that the Stage Two Testing has been successful, SARS shall elevate each Deliverable to the production environment for Stage Three Testing. The Consultant specifically acknowledges and agrees that it shall not be unreasonable for SARS to defer elevation of such Deliverables for (10) ten business days after the commencement of a generally applicable SARS’s freeze period.
     3. SARS shall commence Stage Three Testing for each Deliverable upon its elevation to production. If during this Stage Three Testing, SARS identifies a material error or Deficiency, the Consultant shall, at its sole cost and expense, promptly correct such material error or Deficiency in the development environment and, unless otherwise agreed by SARS, repeat all Testing Stages to ensure that such material error or Deficiency has been corrected and that the correction has not created any new material errors or Deficiencies.
  3. **REGRESSION TESTING**
     1. If at any time, the Consultant is of the view that each time a Deliverable is tested it is not in the best interests of SARS or the Services, the Consultant shall propose to SARS an alternative approach to that required testing that would reduce the amount of such regression testing required with respect to the Deliverable in question. Such proposal shall include a detailed description of the alternative, a comparison of it to the initial approach and a detailed explanation of the rationale for using the alternative approach. The Consultant may implement such alternative approach with SARS’s prior written consent.
     2. No Deliverable shall be elevated from Stage One Testing to Stage Two Testing unless prior testing has been successful or from Stage Two Testing to Stage Three Testing, unless prior testing has been successfully completed, provided, however, that SARS may elect to elevate any such Deliverable, despite the Consultant’s failure to successfully complete the prior stage of testing with respect to such Deliverables. Without limiting the generality of the foregoing, the Parties shall use Commercially Reasonable Efforts to timely complete each Testing Stage and, to the extent possible, make-up for delays through expediting subsequent Testing Stages.
     3. For purposes of **clause 5.6**, SARS shall authorize the appropriate SARS Staff to act on its behalf. The Consultant shall seek comments, approvals and acceptances through such authorised SARS Staff.
     4. The Consultant shall also provide such assistance as SARS or its Third Party Suppliers may reasonably request with respect to the installation by SARS or its Third Party Suppliers of systems software and/or equipment, any other applications software that may be relevant, and any required infrastructure components in the production environment. The Consultant shall coordinate the application of patches to SARS’s systems software as required to test the correction or update in the production environment.
  4. **ACCEPTANCE OF DELIVERABLES**
     1. SARS shall accept a Deliverable only when SARS successfully completes the Stage Three Testing of such Deliverable(s)
     2. In the event that any material errors or Deficiencies are revealed during the Acceptance Testing of a Deliverable, the Consultant shall utilise all Commercially Reasonable Efforts to correct such material errors or Deficiencies as soon as reasonably possible, at no additional cost to SARS. When the Consultant is satisfied that it has so corrected such material errors or Deficiencies, it shall reschedule Acceptance Tests for the failed Deliverable with SARS and shall again undertake such Acceptance Tests in accordance with **clause 5.6** The provisions of this **clause 5.10.2** shall again apply in respect of the Acceptance Tests for the failed Deliverable until such time as SARS successfully completes Stage Three Testing of such Deliverable(s) in accordance with **clause 5.6**. Deliverables that have failed their Acceptance Tests on 3 (three) occasions or not passed their Acceptance Tests prior to the agreed delivery date shall be deemed to constitute a material breach of this Agreement and SARS shall be entitled to immediately terminate and to enforce its rights in terms of the provisions of **clause 21**.
     3. Should SARS not accept the Deliverable, SARS shall provide the Consultant with written reasons for its non-acceptance. The Consultant shall work to overcome such reasons within an agreed timeframe where after the Deliverable will be resubmitted to SARS for review and evaluation in accordance with this clause.
     4. If the Consultant is still unable to correct the Deficiency within this period, then SARS may in its sole discretion elect to -

1. direct the Consultant to continue its efforts to make the Deliverable acceptable to SARS, in which case the Consultant shall continue such efforts; or
2. accept the Deficient Deliverable, in which event the charges (if any), with respect to such Deliverable shall be equitably reduced to reflect the presence of such Deficiency; or
3. without limiting the generality of SARS's right to terminate this Agreement for cause under **clause 21** or to claim damages, without any greater liability as per this Agreement or in law, by providing written notice to the Consultant, in which case the Consultant shall refund to SARS all amounts paid by SARS to the Consultant in respect of that Deliverable. Such refund shall be made within 14(fourteen) days of receiving SARS’s notice.
   * 1. As soon as the Services or any part thereof has been completed in accordance with the Agreement and has passed the Acceptance Tests, SARS shall issue an acceptance certificate which will state the acceptance date for the project or part thereof.

1. PROJECTS
   1. The Consultant shall perform Projects only upon conclusion of a Work Order from SARS signed by both Parties.
   2. The Consultant shall perform such Projects in terms of SARS’s project methodology as designated by SARS from time to time.
   3. SARS may decide to perform Projects itself, award Projects to the Consultant, or award Projects to a Third Party Supplier at its sole discretion.
   4. The Consultant will charge for Projects only as provided in **Clause 9** or where applicable such charges as may be agreed and set out in a Work Order signed by both Parties. For purposes of clarity, the fact that one or both of the Parties may refer to an aggregation of work as a project will not cause such aggregation to be treated as a Project. Such an aggregation will only be treated as a Project if it is a Project as defined in **clause 2** above.
   5. Projects Proposals and Quotations
      1. Where SARS requests the Consultant to provide a proposal or quotation in respect of any proposed Projects, the Consultant will furnish SARS with a detailed written quotation or proposal upon which will be stated an all-inclusive price for such Services (with the components of the quoted pricing being specified), the technical specifications, additional warranties, maintenance and maintenance cost and checklists of all Deliverables, the details as to the date until which the quotation will be open for acceptance by SARS and any other information required by SARS.
      2. Where SARS requests the Consultant to provide a proposal or quotation in respect of any proposed Services, the Consultant shall, within 8 (eight) business hours, provide SARS, in writing or by email, with a committed date for the delivery of the proposal or quotation referred to in **Clause 6.5.1** above. The Consultant will deliver the proposal or quotation, complete in every respect on or before the committed date.
      3. No contractual obligation is imposed on SARS by the acceptance of the Consultant's quotation and it is specifically recorded that no terms and conditions contained in any proposal or quotation document will have any force and effect. It is the intention of the Parties that on acceptance of any proposal or quotation by SARS, a Work Order will be concluded in accordance with this Agreement.
2. CO-OPERATION WITH SARS AND THIRD PARTIES
   1. The Consultant acknowledges that SARS may have outsourced certain of its services and business processes, related and/or ancillary to the Services, to third parties and that SARS may outsource certain other functions to other third parties. The Consultant shall, at no additional cost and as part of the Services, co-ordinate, co-operate and consult with such third parties and SARS regarding the performance of the Services so that the Consultant and third parties provide services to SARS in as seamless a manner as is reasonably possible.
   2. The Consultant shall use Commercially Reasonable Efforts to ensure that all services, equipment, software and other resources (including those provided by SARS) (collectively, the "Resources") utilised by the Consultant or approved by the Consultant for utilisation by SARS in connection with the Services, is successfully integrated and interfaced, and will be compatible with, the services, equipment, networks, software, enhancements, upgrades, modifications and other resources that are being provided or recommended by Third Party Supplier (collectively, the "Third Party Resources"). Further, the Consultant shall use Commercially Reasonable Efforts to ensure that none of the Services or other items provided to SARS by the Consultant is adversely affected by any such resources and/or Third Party Resources, whether as to functionality, speed, service levels, interconnectivity, reliability, availability, performance, response times or similar measures.
   3. To the extent that SARS performs any of the Services or functions itself, or retains third parties to do so, the Consultant shall co-operate with SARS or any such Third Party Supplier, which co-operation shall include:
      1. providing reasonable access to any facilities and/or resources being used to provide the Services;
      2. providing such information regarding the Services as SARS and/or the Third Party Supplier may request;
      3. where applicable, and where required by SARS, providing the Services until completion of the successful transition of the Services from the Consultant to SARS and/or the Third Party Supplier; and
      4. providing operational data (including Documentation, schedules, and service level performance data).
   4. When engaging a Third Party Supplier, SARS shall use reasonable efforts to require the Third Party Supplier: (i) to comply with the Consultant’s reasonable security requirements; and (ii) to the extent such Third Party Supplier will be performing work on the Consultant’s owned, licensed or leased software or hardware, to comply with the Consultant’s reasonable work standards, methodologies and procedures; provided, however, that SARS may disclose to the Third Party Supplier that the Consultant owned, licensed or leased software or hardware.
   5. The Consultant shall immediately notify SARS if an act or omission of such a Third Party Supplier may cause a problem or delay in providing the Services and shall co-operate with SARS to prevent or circumvent such problem or delay.
3. VIRUSES

The Consultant undertakes that it will use all Commercially Reasonable Efforts to ensure that no Bugs, Viruses or similar items are coded or introduced into the systems used to provide the Services, and/or into any SARS systems. In the event a Bug or a Virus is found, the Consultant will at no additional charge to the extent commercially reasonable, assist SARS to reduce the effects of such Bug or Virus.

1. PRICING INVOICING AND PAYMENT
   1. Except as expressly provided otherwise in this Agreement, the only amounts payable by SARS for any Service will be the Charges and applicable taxes as and to the extent the Consultant generally charges them to its customers of similar services, all provided that such amount is specified in **Annexure “C”** or **Annexure “E”**.
   2. In consideration for the Services rendered by the Consultant, SARS shall pay the Consultant the amounts as outlined more fully in the Pricing Schedule, the total of which amounts shall not exceed the total reflected therein, attached hereto as **Annexure “C”.**
   3. The Consultant will invoice SARS for the services rendered (other than for Projects) on a monthly basis in arrears on or before the 7th (seventh) business day of the month following the month in which the Services were performed. Projects will be invoiced in accordance with the agreed methodology for the Project, which may be: (i) monthly; (ii) upon SARS’s acceptance of delivery milestones; or (iii) upon completion of the Project and acceptance thereof by SARS.
   4. Each invoice will contain or have attached such information, and be in such form and on such media as SARS may reasonably request.
   5. Each invoice will consist of or have attached:
      1. a valid SARS purchase order number; and
      2. any additional details and information reasonably specified by SARS, in the format reasonably specified by SARS from time to time.
   6. The Consultant shall send the invoices to the department designated by SARS from time to time and provide copies of the invoices to other SARS contacts as may be designated by SARS from time to time.
   7. The Consultant shall maintain complete and accurate records of, and supporting documentation for, the amounts invoiced to and payments made by SARS in accordance with International Financial Reporting Standards (IFRS).
   8. Within 10 (ten) days after SARS’s request, the Consultant shall provide SARS with any other documentation or information reasonably required in order to verify: (i) the accuracy of the Charges on an invoice; and (ii) its compliance with the requirements of this Agreement.
   9. The Consultant shall verify that each invoice is complete and accurate and that it conforms to the requirements of this Agreement (including by carrying out detailed checks of each invoice) before issuing the invoice to SARS.
   10. The Consultant shall invoice all Charges within 60 (sixty) days after providing the Services giving rise to such Charges.
   11. Payment
       1. SARS shall pay undisputed Charges to the Consultant within 30 (thirty) days following receipt of each invoice provided such invoice is accurate and meets the requirements of this Agreement.
       2. SARS may set off any amounts due by the Consultant pursuant to this Agreement against any Charges payable by SARS pursuant to this Agreement. If the amounts payable by the Consultant to SARS exceed the Charges payable by SARS to the Consultant pursuant to an outstanding invoice under this Agreement then, at SARS’s option, the Consultant shall either: (i) issue a credit note for the net amount which SARS may set off against any other invoices rendered by the Consultant; or (ii) pay the amount to SARS.
   12. Disputed Charges and Invoicing Errors
       1. SARS may withhold payment of Charges which SARS disputes in good faith (or, if the disputed Charges have already been paid, SARS may withhold an equal amount from a later payment), including disputes in respect of an error in an invoice or an amount paid. If SARS withholds any such amount:
          1. SARS shall promptly notify the Consultant that it is disputing such Charges; and
          2. the Parties shall promptly address such dispute in accordance with **clause 24** of this Agreement.
       2. If the dispute relates to (or, in the case of disputed Charges that have already been paid, is equal to) only certain of the Charges included on an invoice, then SARS shall pay the undisputed amounts in accordance with **clause 9.11.1** above.
       3. If an invoice is identified by either Party as incorrect, then the Consultant shall either issue a correct invoice if the amount has not yet been paid, or make a correction on the next invoice if the amount has been paid; provided, however, that the Consultant shall refund any overpayments with interest (calculated at the prevailing prime rate) calculated from the date of SARS’s payment to the date of the refund both dates inclusive. SARS will not be responsible for paying interest on undercharged amounts, if any.
   13. Project (s)

In the event that any Project is requested by SARS, the Consultant will quote to SARS a reasonable fixed price for such Project and the Parties will promptly meet to discuss such quote and agree thereto.

1. REPORTS

The Consultant shall provide reports when requested by SARS, which shall be in the format requested by SARS and detail the information specified by SARS.

1. TRANSITION

The Consultant shall ensure that proper change management processes are incorporated in the plan and executed in order to ensure a smooth transition of information and Services to avoid any disruption of service to SARS.

1. AUDITS
   1. The Consultant shall allow SARS, its auditors (including internal audit personnel and external auditors) and inspectors, as SARS may from time to time designate in writing, access at all reasonable times to any facility or part of a facility at which either the Consultant or any of its authorised representatives is providing the Services, to the Consultant Staff, and to hardware, software, internet facilities, telecommunications facilities, network facilities, data and records relating to the Services for the purpose of performing audits and inspections of either the Consultant or any of the authorised representatives to-
      1. verify the accuracy of any information provided by the Consultant;
      2. verify the integrity of SARS data and examine the systems that process, store, support and transmit SARS data; and

examine the Consultant's performance of the Services including- (i) verifying compliance with the service levels; (ii) examining practices and procedures including security practices and procedures; (iii) verifying compliance with the terms of this Agreement; and (iv) verifying compliance with any legislative, judicial or regulatory provision to the extent that such provision is material to SARS.

* 1. The Consultant shall provide to SARS's auditors and inspectors such assistance and co-operation as they may reasonably require, including installing and operating audit software. SARS shall ensure that any such audit shall not unreasonably disrupt the Consultant's business operations and shall comply with the Consultant's reasonable security or confidentiality requirements.
  2. The Consultant shall promptly make available to SARS the findings of any review or audit conducted by it, its affiliates, or their Staff (including internal and external auditors), to the extent such findings reflect conditions and events which have a material impact on the Services or SARS.
  3. Promptly after the issuance of any audit report or findings issued under this **clause 12** the Parties shall meet to review such audit report or findings and to mutually agree upon the appropriate manner in which to address the risks raised in the audit report or findings.
  4. The Consultant shall maintain a complete audit trail resulting from this Agreement as is reasonably necessary to give effect to the provisions of this **clause 12**. The Consultant shall maintain and provide SARS access upon request to the records, documents and other information that make up such audit trail until the later of- (i) 3 (three) years after termination of this Agreement; (ii) all pending matters relating to this Agreement (e.g. disputes) are closed; or (iii) such other period as is required by applicable law in relation to those records, documents or other information.
  5. Notwithstanding the above, the Parties record and agree that SARS may, at its own cost and in its sole discretion, utilize the service of external auditors to audit all information provided by the Consultant in terms of this **clause 12**, provided that where such audit exercise reveals material discrepancies and material inaccuracies in the information provided by the Consultant to SARS (other than for minor or insubstantial discrepancies), the reasonable and necessary costs of such audit shall be agreed by the Parties and borne by the Consultant.

1. INTELLECTUAL PROPERTY RIGHTS
   1. SARS retains all right, title and interest in and to SARS's Intellectual Property, including in respect of SARS's Intellectual Property that is used in connection with Services.
   2. SARS shall have all right, title and interest in all Intellectual Property developed or generated for SARS by the Consultant as part of the Services provided under this Agreement.
   3. The Consultant retains all right, title and interest in and to the Consultant Intellectual Property that is used in connection with the Services.
   4. The Consultant shall not, without SARS's express prior written consent, use any third party Intellectual Property licensed to SARS whether to provide the Services to SARS or for any other purpose whatsoever and should SARS not consent to such use, the Consultant shall not be excused from performing the Services.
   5. The Consultant acknowledges that unauthorised use of third party Intellectual Property licensed to SARS may constitute a breach of the provisions of the license agreement in terms of which such third party Intellectual Property is licensed to SARS. Should consent be granted to the Consultant to use third party Intellectual Property licensed to SARS, the Consultant undertakes that it shall only use such Intellectual Property strictly in accordance with the provisions of the relevant consent.
2. DATA PRIVACY AND PROTECTION
   1. The Consultant shall not utilise SARS material for any purpose whatsoever. Notwithstanding anything contained to the contrary herein and/or elsewhere in the Agreement, the Consultant shall not, without prior written permission of a duly authorised SARS employee, be entitled to access any SARS material in any format whatsoever or to allow any access thereto by a third party.
   2. It is recorded by the Parties that the Consultant shall not possess or assert any lien or other right against or to SARS material.
   3. No SARS material, or any part thereof, shall be - (i) sold, assigned, leased, or otherwise disposed of to third parties by the Consultant; and/or (ii) commercially exploited by or on behalf of the Consultant, its employees or agents.
   4. SARS may at any time on written request to the Consultant require that the Consultant immediately return to SARS material or destroy any SARS material and may, in addition, require that the Consultant furnish a written certification to the effect that upon such return it has not retained in its possession or under its control, either directly or indirectly, any such SARS material. Notwithstanding this clause, and to the extent necessary to support any Consultant’s deliverable, opinion, report or advice, the Consultant shall retain one copy of all SARS’s material.
   5. The Consultant shall implement on or before the Effective Date, and thereafter maintain, appropriate safeguards against the unauthorised access to, and destruction, loss, or alteration of, SARS material in the Consultant’s possession which safeguards are - (i) acceptable to SARS, and (ii) no less rigorous than the most rigorous of the practices maintained by SARS or the Consultant as of the Effective Date.
   6. The Consultant, together with its Staff (assigned to perform the Services as envisaged this Agreement) shall be required to execute SARS's Oath / Affirmation Secrecy prior to performing any Services, a copy of which is attached hereto as **Annexure “B”.** The Consultant undertakes for the duration of this Agreement, to ensure compliance with the requirement of this **clause 14** and to deliver the signed Oath of Secrecy to SARS as and when same is signed by its Staff and/or sub-contractors.
3. CONFIDENTIALITY AND PUBLICITY
   1. The Consultant acknowledges that in providing the Services to SARS, it is exposed to SARS material and as such, such material shall constitute Confidential Information. The Consultant shall comply with all the provisions of clause 15.
   2. The Parties specifically record that all non-publicly available data provided by SARS to the Consultant or to which the Consultant may be exposed, shall constitute Confidential Information and as such, the Consultant shall comply with all the provisions of this **clause 15** with regard to such data.
   3. The Parties record further that any SARS Data which may be provided by SARS to the Consultant in any form or to which the Consultant may be exposed pursuant to the provision of the Services shall constitute Confidential Information and the Parties shall comply with the provisions of this **clause 15** with regard to such data.
   4. The Receiving Party acknowledges the great importance of the Confidential Information to the Disclosing Party and, where applicable, third party proprietors of such information, and recognises that the Disclosing Party and/or third party proprietors may suffer irreparable harm or loss in the event of such information being disclosed or used otherwise than in accordance with this Agreement. In this regard each Party shall maintain the confidentiality of the other Party’s Confidential Information, using at least the same efforts as it uses to maintain the confidentiality of its own Confidential Information, and as otherwise required under applicable law, the terms of this Agreement, and SARS's oath of secrecy.
   5. The Receiving Party agrees and undertakes-
      1. except as permitted by this Agreement, not to disclose or publish any Confidential Information in any manner, for any reason or purpose whatsoever without the prior written consent of the Disclosing Party and provided that in the event of the Confidential Information being proprietary to a third party, it shall also be incumbent on the Receiving Party to obtain the consent of such third party;
      2. except as permitted by this Agreement, not to utilise, employ, exploit or in any other manner whatsoever use the Confidential Information for any purpose whatsoever without the prior written consent of the Disclosing Party and provided that in the event of the Confidential Information being proprietary to a third party, it shall also be incumbent on the Receiving Party to obtain the consent of such third party;
      3. to restrict the dissemination of the Confidential Information to only those of its employees and contractors who are actively involved in activities for which use of Confidential Information is authorised and then only on a "need to know" basis and the Receiving Party shall initiate, maintain and monitor reasonably internal security procedures to prevent unauthorised disclosure by its employees and contractors Prior to giving any employees and contractors, access to any Confidential Information, the Consultant shall require that such employees and contractors execute SARS's standard oath of secrecy; and give a written undertaking in favour of SARS in regard to the Confidential Information containing substantially the same terms and conditions as those set forth herein; and
      4. to take all practical steps, both before and after disclosure, to impress upon its employees and contractors who are given access to Confidential Information the secret and confidential nature thereof.
   6. All Confidential Information disclosed by the Disclosing Party to the Receiving Party or which otherwise comes to the knowledge of the Receiving Party, is acknowledged by the Receiving Party to be proprietary to the Disclosing Party or where applicable, the relevant third party proprietor; and not to confer any rights of whatsoever nature in such Confidential Information on the Receiving Party.
   7. The Receiving Party shall protect the Confidential Information in the manner, and with the endeavour, of a reasonable person protecting their own Confidential Information. In no event shall the Receiving Party use less than reasonable efforts to protect the confidentiality of the Confidential Information.
   8. SARS may retain Confidential Information to the extent required by, and for the duration of, any Services performed for the Consultant in terms of agreements between the Parties, provided that the Consultant has not waived performance of such Services.
   9. The Consultant shall ensure that any member of its Staff who has access to the Confidential Information of SARS, give a written undertaking in favour of SARS in regard to the Confidential Information on substantially the same terms and conditions contained within this Agreement in a form prescribed by SARS. SARS shall be entitled to deny an employee or contractor access to its premises or prevent such employee or contractor from conducting any work in relation to the Services, should SARS not be in receipt of a signed undertaking from such Staff. The Consultant's failure to obtain receipt of the undertaking referred to in this clause 15 shall in no way detract from the Consultant's obligations in terms of this Agreement.
   10. The Parties record that this **clause 15** shall not be applicable where the Receiving Party discloses Confidential Information to attorneys or auditors, provided that such disclosure is reasonably required by the Receiving Party for the purposes of conducting its business activities.
   11. In the event that the Receiving Party is required to disclose the Confidential Information pursuant to any law, regulation or court order, the Receiving Party shall -
       1. advise the Disclosing Party thereof prior to disclosure, if possible;
       2. take such steps to limit the extent of the disclosure to the extent it lawfully and reasonably practically can;
       3. afford the Disclosing Party a reasonable opportunity, if possible, to intervene in the proceedings; and
       4. comply with the Disclosing Party's requests as to the manner and terms of any such disclosure.
4. WARRANTIES

The Consultant hereby indemnifies SARS against any liability as a result of the Consultant’s breach of the warranties, restrictions and undertakings set out in this Agreement:

* 1. Authority

The Consultant hereby warrants to and in favour of SARS that -

* + 1. it has the legal capacity and has taken all necessary corporate action required to empower and authorise it to enter into this Agreement;
    2. this Agreement constitutes an agreement valid and binding on it and enforceable against it in accordance with its terms;
    3. the execution of this Agreement and the performance of its obligations hereunder does not and shall not-
    4. contravene any law or regulation to which either Party is subject;
    5. contravene any provision of the Consultant's constitutional documents; or
    6. conflict with, or constitute a breach of any of the provisions of any other agreement, obligation, restriction or undertaking which is binding on it.
    7. The Consultant represents and warrants that it - (i) shall at all times be authorised to perform the Services under this Agreement; (ii) has all the necessary licences, certificates, authorisations and consents required under the laws of the Republic of South Africa; (iii) shall comply with all legal requirements and with the terms and conditions of all licences, certificates, authorisations and consents required for the provision of the Services; (iv) shall at all times maintain its accreditation with SAP.

* 1. Work Standards Warranties
     1. The Consultant represents and warrants that it shall perform its obligations under this Agreement with promptness and in accordance with the best industry practice.
     2. Without limiting the generality of the foregoing, the Consultant represents and warrants that it has and shall assign to perform the Services, the Staff having the skills, experience and expertise, capacity and knowledge reasonably required to perform the Services.
     3. The Consultant represents and warrants that it shall for the duration of this Agreement-

1. use adequate numbers of suitably qualified Staff to perform the Services;
2. use and adopt any standards and processes required under this Agreement as well as standards and procedures as may be communicated by SARS from time to time; and
3. provide the Services with promptness and diligence and in a workmanlike manner and in accordance with the practices and high professional standards used in well-managed operations performing services similar to the Services.
   * 1. SARS represents and warrants that it shall for the duration of this Agreement, with promptness and diligence:

(a) provide the necessary support and assistance to the Consultant in order for the Consultant to provide the Services;

(b) provide the Consultant access to resources, documentation and information required by the Consultant in order to provide the Services; and

(c) make decisions as required by the Consultant in order to provide the Services.

* 1. Intellectual Property warranties

The Consultant represents and warrants that it shall at all times perform its responsibilities under this Agreement in a manner that does not infringe, or constitute an infringement or misappropriation of, any Intellectual Property or other proprietary rights of any third party.

* 1. Regulatory requirements
     1. The Consultant warrants that it is and shall remain for the duration of this Agreement, fully cognisant of and compliant with any relevant legislative or regulatory requirements and/or rulings or codes of practice of any competent authority or industry body that has jurisdiction over the provision of or is relevant to the Services.
     2. The Consultant shall be responsible for any fines and penalties arising from any non-compliance with any law, legislative enactment or regulatory requirement, code or ruling of any competent authority or industry body relating to the delivery or use of the Services.
  2. Tax Compliance
     1. The Consultant warrants that as of the Effective Date it and its subcontractors are in full compliance, and throughout the Term will remain in full compliance, with all applicable Laws relating to taxation in South Africa.
     2. The Consultant undertakes that it will inform SARS should it become aware that Consultant and/or any of its subcontractors are not tax compliant.
     3. The Consultant hereby authorises SARS to verify its tax compliance status as and when necessary and has obtained the necessary written consent from its subcontractors and/or its undisclosed principal and/or its partners (as per Annexure “C1”) on behalf of SARS authorising SARS to verify the tax compliance status of such principal/subcontractors and/or partner(s) as and when it deems necessary.
     4. If SARS becomes aware of any such tax non-compliance of Consultant/Consultant’s partners and/or its subcontractors and should such non-compliance not be remedied within 3 (three) months (or such other shorter period as the applicable law may prescribe) after SARS has given notice to the Consultant or its subcontractors and/or partners to remedy such non-compliance, such non-compliance will be deemed to constitute a material breach of this Agreement by the Consultant.
     5. SARS will be entitled to all remedies (including termination for cause) provided for in this Agreement pursuant to a material breach hereof by the Consultant/its subcontractors and/or its partners or SARS may in the alternative (at its sole discretion) upon written notice, require the Consultant to remedy the material breach. In the case of non-compliance by any Subcontractor procure that the subcontractor immediately ceases providing Services pursuant to the subcontract and that the Consultant terminates the subcontract between the Consultant and that subcontractor. SARS will have no liability to the Consultant with respect to a termination under this clause 16.
     6. The Consultant further warrants that until such time that SARS ceases to issue paper based tax clearance certificates, it will deliver to SARS on the Effective Date and each anniversary thereof during the Term a valid tax clearance certificate issued for the then-current year in respect of the Consultant, its partners and each subcontractor. A copy of the Consultant’s tax clearance certificate valid as of the Effective Date is attached hereto as “Annexure F”) (Consultant Tax Clearance Certificate). If the Consultant fails to provide such certificates: (i) in respect of itself and not due to any failure by SARS in the production of the certificate, SARS may terminate the Agreement on 30 (thirty) days’ notice; and (ii) in respect of any subcontractor, and not due to any failure by SARS in the production of the certificate, SARS may direct the Consultant to: (a) procure that the Consultant immediately ceases providing Services pursuant to the subcontract; and (b) that Consultant terminates the subcontract. SARS will have no liability to the Consultant with respect to a termination under this clause 16.
     7. Further, the Consultant acknowledges and understands SARS’s legislative mandate under the South African Revenue Service Act, 1997 (Act No. 34 of 1997), is inter alia, the efficient and effective collection of revenue and to ensure compliance by taxpayers with this act and other tax (collectively referred to as the “Tax Acts”).
  3. Screening and Security clearance
     1. The Consultant represents and warrants that it shall ensure its Staff engaged in the provision of the Services is suitable and appropriately qualified, trained, experienced, skilled and available to render the Services in terms of this Agreement.
     2. As a confirmation that the Staff assigned to perform the Services is suitable and appropriately qualified, trained, experienced, skilled the Consultant shall conduct a background screening exercise on every member of Staff whom is assigned to SARS for the fulfilment of its obligations in terms of this Agreement.
     3. The Consultant shall provide SARS with a background screening report for each of its Staff members assigned to provide the Services prior to the Effective Date or where it is impossible to provide such report as aforesaid, the Consultant undertakes to provide the report prior to such Staff member commencing his/her duties as envisaged in this Agreement. The Consultant undertakes for the duration of the Agreement to ensure compliance with the provisions of this clause 16.6.3.
     4. In the event that SARS, in its sole and absolute discretion, agrees to sign the Agreement and/or commences the provision of the Services in the absence of the background screening report, the Consultant shall ensure that it provides SARS with such report within 10 (ten) working days of the date of signature. Should the Consultant fail to provide SARS with the background screening report within the aforementioned period, SARS shall be entitled to terminate this Agreement without attracting any costs and/or penalty within 30 (thirty) days.
     5. The report referred to in clause 16.6.4 above, shall be from a reputable screening agency which is recognised by SARS and shall include amongst others, the verification of the following-

1. academic qualifications including matric certificate or equivalent record;
2. professional association memberships;
3. citizenship including residency status;
4. criminal activity report; and
5. credit record.
   * 1. The validity of such report shall not be older than 3 (three) months as at the Effective Date or as at the commencement of such Staff duties to SARS in terms of this Agreement, as the case may be, and shall be updated as required by SARS from time to time.
     2. In the event that the report reveals evidence that the Staff assigned to perform the Services are not qualified and/or do not possess the level of skills required for the performance of the Services, the Consultant shall ensure a replacement of such Staff member with one whose background screening meets the requirements of SARS.
     3. The Consultant shall further ensure that its Staff assigned to provide Services to SARS as envisaged in this Agreement shall for the duration of this Agreement, be subject to SARS’s “Anti-Corruption and Security Internal Policy- Security Vetting as amended from time to time, as well as other security legislation and policies applicable to the entities providing the services to the organs of State. The relevant SARS policy is available at SARS’s intranet at [http-//sarsportal/ProdQMS/Supp/SuppDocs/ACAS-PERSEC-02-02%20-%20Vetting%20-%20Internal%20Policy.pdf](http://sarsportal/ProdQMS/Supp/SuppDocs/ACAS-PERSEC-02-02%20-%20Vetting%20-%20Internal%20Policy.pdf)
     4. Any member of the Consultant’s Staff who is engaged, or is to be engaged, in providing the Services must, if requested by SARS, comply with SARS's internal security clearance requirements, including submitting a security clearance, where required by SARS, failing which SARS shall be entitled to require the Consultant to replace such member of the Consultant’s Staff with someone who does so comply.
6. INDEMNITY
   1. Notwithstanding the provisions of **clause 20** below and without in any manner detracting from the rights of SARS in terms of this Agreement, the Consultant hereby indemnifies and holds SARS harmless from any and all losses -
      1. arising from, or in connection with, any claim or action arising from the breach of any obligation with respect to Confidential Information;
      2. arising from, or in connection with any claim or action arising from the infringement of any Intellectual Property rights of any third party; and
      3. arising from or in connection with any of the following third party claims –
         1. the death or bodily injury of any agent, employee, business invitee, or business visitor or other person caused by the negligent conduct of the Consultant or its Staff;
         2. damage to property owned or leased by either Party or a Third Party caused by the acts or omissions of the other Party or its Staff; and
         3. demands, charges, actions causes of action, or other proceedings asserted against SARS but resulting from an act or omission of the Consultant in its capacity as an employer of its Staff.
7. TAX SET-OFF
   1. The Consultant acknowledges that it is aware of its obligations as a taxpayer under the Tax Acts and warrants that it will take all reasonable steps to comply with such obligations.
   2. Should the Consultant default in meeting any of its obligations in terms of any Tax Act which includes without being limited thereto the payment of tax as and when required under the aforesaid Tax Acts, the Consultant acknowledges that SARS may in terms of the provisions of section 179 of the Tax Administration Act, 2011 (Act No. 28 of 2011), withhold and/or set off any amount that is or may be due under this Agreement to the Consultant, in satisfaction of the outstanding tax debt.
   3. Notwithstanding the right of the Consultant to terminate this Agreement, the Consultant shall not be entitled to terminate this Agreement nor suspend and/or cease the provision of the Services to SARS solely as a result of the above-mentioned withholding and/or set-off by SARS. Should the Consultant attempt to terminate or suspend this Agreement and/or cease the provision of the Services in this regard, same shall constitute a material breach of this Agreement.
8. B-BBEE COMPLIANCE
   1. The Consultant warrants that as of the Effective Date it is in possession of a valid B-BBEE Certificate and shall for the duration of this Agreement use its best endeavours to maintain and/or improve on its current B-BBEE level as set out in the B-BBEE certificate.
   2. The Consultant shall be required to provide a Verification Certificate to SARS on an annual basis on each anniversary of the Effective Date and prior to the expiry of the Consultant's previous certificate submitted to SARS.
   3. SARS may, at its own cost and in its sole discretion, audit (whether by internal or external auditors) all information provided by the Consultant in terms of this **clause 19**, provided that where such audit exercise reveals material discrepancies and material inaccuracies in the information provided by the Consultant to SARS (other than for minor or insubstantial discrepancies), the reasonable and necessary costs of such audit shall be agreed by the Parties and borne by the Consultant.
   4. In the event that the Consultant, at any time during the term of this Agreement, undergoes any corporate or internal restructuring or change which has (or, is reasonably likely to have) a negative impact on its B-BBEE Status (as per the BEE Verification Certificate required to be lodged from time to time in terms of this Agreement) or, undertakes any contractual commitment to do so, the Consultant shall be required to notify SARS thereof forthwith, providing full details of the impact (or anticipated impact) of such restructuring or change (or proposed restructuring or change) shall have on each element of the Consultant's generic scorecard. Such notice shall be in a form of written confirmation to this effect from a Verification Agency and the steps that shall be taken by the Consultant to regain a B-BBEE status level in compliance with its obligations under **clause 19.1** above.
   5. A failure to provide a certified copy of its BEE rating status or a failure to comply with the provisions of this **clause 19** shall entitle SARS to terminate the Agreement with 1 (one) months’ notice to the Consultant.
9. LIMITATION OF LIABILITY
   1. The Parties agree that, in the event of a breach of any of the provisions of the Agreement, the defaulting Party shall be liable to the other Party for all losses which constitute direct damages, which losses shall not exceed the total contract price.
   2. Subject to **clause 21** below, the Parties agree that, in the event of a breach of any of the provisions of the Agreement, the defaulting Party shall not be liable to the other Party for any losses which constitute indirect, special and/or consequential damages.
   3. Notwithstanding anything to the contrary set forth in **clause 20.2** above or the Agreement in general, the Consultant shall be liable to SARS for losses which arise out of their dishonesty, fraud, or wilful misconduct regardless of whether such Losses arise out of contract or delict.
10. BREACH AND TERMINATION
    1. If a Party ("Defaulting Party") commits any breach of this Agreement and fails to remedy such breach within 14 (fourteen) business days ("Notice Period") of written notice requiring the breach to be remedied, then the Party giving the notice ("Aggrieved Party") shall be entitled, at its option –
       1. to claim immediate specific performance of any of the Defaulting Party's obligations under this Agreement, with or without claiming damages, whether or not such obligation has fallen due for performance and to require the Defaulting Party to provide security to the satisfaction of the Aggrieved Party for the Defaulting Party's obligations; or
       2. to cancel this Agreement, with or without claiming damages, in which case written notice of the cancellation shall be given to the Defaulting Party, and the cancellation shall take effect on the giving of the notice.
    2. The Consultant shall only be entitled to cancel this Agreement if the breach is a material breach. A breach shall be deemed to be a material breach if-
       1. it is capable of being remedied, but is not so remedied within the Notice Period; or
       2. it is incapable of being remedied or is not remedied within the Notice Period, and payment in money shall compensate for such breach but such payment is not made within the Notice Period.
    3. The Aggrieved Party's remedies in terms of this **clause 21** are without prejudice to any other remedies to which the Aggrieved Party may be entitled in law.
11. EFFECT OF TERMINATION
    1. The termination of this Agreement shall not relieve the Parties hereto of any liabilities, obligations, expenses or charges accruing up to date of such termination and all rights accruing to either Party up to the said date of termination shall likewise remain in full force and effect.
    2. In the event of termination of this Agreement for any reason whatsoever, the Consultant shall -
       1. return SARS Material to SARS in the same condition in which it was received; and
       2. confirm in writing to SARS the return of SARS Material.
    3. In the event of termination of this Agreement, SARS shall pay the Consultant fees and disbursement for Services rendered up to and including date of termination.
12. TERMINATION FOR CONVENIENCE

SARS and the Consultant may terminate this Agreement for convenience and without cause at any time by giving at least 30 (thirty) days prior written notice designating the termination date. The Parties shall have no liability to each other with respect to such termination save that SARS will pay the fees and disbursements for all work done up to and including date of termination.

1. DISPUTE RESOLUTION
   1. Any dispute between the Parties shall be resolved at the lowest organizational level possible. If the relevant Staff of the Parties are unable to resolve any dispute at the operational level at which it arose and within 14 (fourteen) days after it arose, then the dispute shall be referred to the senior organizational level possible. If the Parties are unable to resolve the dispute within 21 (twenty one) days of such referral, then, the said dispute or difference shall on written demand by either Party be submitted to arbitration in Johannesburg in accordance with the AFSA rules, which arbitration shall be administered by AFSA.
   2. Should AFSA, as an institution, not be operating at that time or not be accepting requests for arbitration for any reason, then the arbitration shall be conducted in accordance with the AFSA rules for commercial arbitration (as last applied by AFSA) before an arbitrator appointed by agreement between the parties to the dispute or failing agreement within 10 (ten) business days of the demand for arbitration, then any party to the dispute shall be entitled to forthwith call upon the chairperson of the Johannesburg Bar Council to nominate the arbitrator, provided that the person so nominated shall be an advocate of not less than 10 (ten) years standing as such. The person so nominated shall be the duly appointed arbitrator in respect of the dispute. In the event of the attorneys of the parties to the dispute failing to agree on any matter relating to the administration of the arbitration, such matter shall be referred to and decided by the arbitrator whose decision shall be final and binding on the parties to the dispute.
   3. Any party to the arbitration may appeal the decision of the arbitrator or arbitrators in terms of the AFSA rules for commercial arbitration.
   4. Nothing herein contained shall be deemed to prevent or prohibit a party to the arbitration from applying to the appropriate court for urgent relief or for judgment in relation to a liquidated claim.
   5. Any arbitration in terms of this clause 24 (including any appeal proceedings) shall be conducted in camera and the Parties shall treat as confidential details of the dispute submitted to arbitration, the conduct of the arbitration proceedings and the outcome of the arbitration.
   6. This clause 24 shall continue to be binding on the Parties notwithstanding any termination or cancellation of the Agreement.
   7. The Parties agree that the written demand by a Party to the dispute that the dispute or difference be submitted to arbitration is to be deemed to be a legal process for the purpose of interrupting extinctive prescription in terms of the Prescription Act, 1969 (Act No. 68 of 1969).
2. FORCE MAJEURE
   1. Delay or failure to comply with or breach of any of the terms and conditions of Agreement by either Party if occasioned by a Force Majeure event shall not be deemed to be a breach of this Agreement nor shall it subject either party to any liability to the other.
   2. It is understood that neither Party shall be required to settle any labour dispute against its will.
   3. Should either Party be prevented from carrying out any contractual obligation by any circumstance described above, such obligation shall be postponed provided the Party suffering such circumstance notifies the other Party to this Agreement within 7 (seven) days of becoming aware thereof. The Parties shall thereupon promptly meet to determine whether an equitable solution can be found.
   4. Should such Force Majeure event last continuously for a period of 14 (fourteen) days, and no mutually acceptable arrangement be arrived at within a period of 7 (seven) days thereafter, either Party shall be entitled to terminate the Agreement forthwith on written notice.
3. DOMICILIUM
   1. The Parties hereto choose domicilia citandi et executandi for all purposes -

|  |  |  |
| --- | --- | --- |
|  |  |  |
| Name | Physical Address | Telefax |
| SARS | LeHae La SARS | +27 422 4963 |
|  | 299 Bronkhorst Street |  |
|  | Brooklyn, Pretoria |  |
| Marked for the attention of: Group Executive: Corporate Legal Services | | |
|  |  |  |
| Name | Physical Address | Telefax |
| THE CONSULTANT | 102 Rivonia Road  Sandton |  |
| Marked for the attention of: | | |

* 1. Any Party hereto will be entitled to change its domicilium from time to time, provided that any new domicilium selected by it will be an address other than a box number in the Republic of South Africa, and any such change will only be effective upon receipt of notice in writing by the other Parties of such change.
  2. All notices, demands, communications or payments intended for any Party will be made or given at such Party’s domicilium for the time being.
  3. A notice sent by one Party to another Party will be deemed to be received -
     1. on the same day, if delivered by hand; and
     2. on the same day of transmission if sent by telex or telefax and if sent by telefax with receipt received confirming completion of transmission.
  4. Notwithstanding anything to the contrary herein contained a written notice or communication actually received by a Party will be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen *domicilium citandi et executandi*.
  5. The Parties record that whilst they may correspond via e-mail during the currency of this Agreement for operational reasons, no formal notice required in terms of this Agreement, nor any amendment or variation to this Agreement may be given or concluded via e-mail.

1. PUBLICITY

No announcements of any nature whatsoever shall be made by or on behalf of a Party relating to this transaction without the prior consent of the other Party.

1. CO-OPERATION

The Parties undertake at all times to co-operate with each other in good faith in order to carry out this Agreement.

1. GENERAL
   1. Whole Agreement

This Agreement constitutes the whole of the agreement between the Parties hereto relating to the matters dealt with herein and supersedes all other agreements, proposals, purchase orders, or representations, whether written or oral, relating to the subject matter hereof. The terms and conditions of any invoice or other instrument issued by the Consultant in connection with this Agreement that are in addition to or inconsistent with the terms and conditions of this Agreement are null and void and shall not be binding on SARS. Save to the extent otherwise provided herein, no undertaking, representation term or condition relating to the subject matter of this Agreement not incorporated in this Agreement shall be binding on any of the Parties.

* 1. Additions, variation, deletion and cancellation

No addition to or variation, deletion, or agreed cancellation of all or any clauses or provisions of this Agreement shall be of any force or effect unless in writing and signed by the Parties.

* 1. Waiver

No waiver of any of the terms and conditions of this Agreement shall be binding or effectual for any purpose unless in writing and signed by the Party giving the same. Any such waiver shall be effective only in the specific instance and for the purpose given. Failure or delay on the part of either Party in exercising any right, power or privilege hereunder shall not constitute or be deemed to be a waiver thereof, nor shall any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

* 1. Cession, assignment or delegation

Save as otherwise herein provided, neither this Agreement nor any part, share or interest therein nor any rights or obligations hereunder may be ceded, assigned, delegated or otherwise transferred without the prior written consent of the other Party, which consent shall not be unreasonably withheld.

* 1. Sub-contracting

The Consultant may not sub-contract any of its obligations under this Agreement, without obtaining SARS’s written prior consent, subject to any conditions which SARS may impose.

* 1. Severability

All provisions and the various clauses of this Agreement are, notwithstanding the manner in which they have been grouped together or linked grammatically, severable from each other. Any provision or clause of this Agreement which is or becomes unenforceable in any jurisdiction, whether due to voidness, invalidity, illegality, unlawfulness or for any other reason whatever, shall, in such jurisdiction only and only to the extent that it is so unenforceable, be treated as pro non scripto and the remaining provisions and clauses of this Agreement shall remain of full force and effect. The Parties declare that it is their intention that this Agreement would be executed without such unenforceable provision if they were aware of such unenforceability at the time of execution hereof.

* 1. Consent or approval

Any consent or approval required to be given by any Party in terms of this Agreement shall, unless specifically otherwise stated, not be unreasonably withheld.

* 1. Counterparts

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same Agreement as at the date of signature of the Party last signing one of the counterparts. The Parties undertake to take whatever steps may be necessary to ensure that each counterpart is duly signed by each of them without delay.

1. APPLICABLE LAW AND JURISDICTION

This Agreement shall in all respects be governed by and construed under the laws of the Republic of South Africa. The Parties hereto hereby consent and submit to the non-exclusive jurisdiction of the North Gauteng Division of the High Court of the Republic of South Africa in any dispute arising from or in connection with this Agreement.

1. COSTS

Save as may be otherwise provided herein, each Party shall bear and pay its own legal costs and expenses of and incidental to the negotiation, drafting, preparation and implementation of this Agreement.

1. SIGNATURE

The Parties agree that this Agreement shall not be valid unless signed by 2 (two) authorised signatories of SARS. The Consultant shall upon written request from SARS, furnish SARS with such documentation as may reasonably be required by SARS to establish the authority of the proposed authorised signatories of the Consultant. Signed on behalf of the Parties, each signatory hereto warranting that he or she has due authority to do so.

For and on behalf of the **SOUTH AFRICAN REVENUE SERVICE** signed at Pretoria

I warrant that I have been duly authorised to sign this Agreement

*\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

*Name*

*Designation*

*Date\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

I warrant that I have been duly authorised to sign this Agreement

*\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

*Name*

*Designation*

*Date\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

For and on behalf of the **THE CONSULTANT** signed at Sandton

I warrant that I have been duly authorised to sign this Agreement

*\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

*Name*

*Designation*

*Date\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

**ANNEXURE A - RFP 38/2016**

**ANNEXURE B - SARS OATH / AFFIRMATION**

**ANNEXURE C - PRICING SCHEDULE**

**ANNEXURE C1 - SUBCONTRACT TAX STATUS VERIFICATION CONSENT**

**ANNEXURE D - DELIVERABLES**

**ANNEXURE E – FORM OF WORK ORDER**

This Work Order No. \_\_\_\_\_\_\_\_\_\_\_\_\_\_ dated as of {\_\_\_\_\_\_\_\_\_\_\_\_} (the ‘**Work Order Commencement Date**’) is being executed pursuant to the SAP GRAP Migration and Related Projects Consulting Services Agreement (the “Agreement”) between South African Revenue Services ("**SARS**”) and XXX (Proprietary) Limited (Registration No. XXX) ("**Consultant**”) dated as of {***insert signature date***} (to which this Form of Work Order is **0E**), the terms of which are incorporated herein by reference (the ‘**Work Order**’). Capitalized terms used but not defined herein shall have the meanings given to them under clause 2 (Definitions) of the Agreement.

1. **DESCRIPTION OF THE SERVICES**
2. ***{Note to the Parties: Please insert a description of the Services under this Work Order.}***
3. **DELIVERABLES AND TIMELINE**

The Consultant shall procure, modify, plan, design, develop and/or implement the Deliverables that are identified and described in Table E-1.

1. ***{Note to the Parties: In Table E-1, please identify each Deliverable and provide the other information required to complete such Table.}***

|  |  |  |
| --- | --- | --- |
| **Table E-1** | | |
| **Name of Deliverable** | **Description** | **Key Milestones and Timeline** |
|  |  |  |
|  |  |  |
|  |  |  |

1. **CONSULTANT CHARGES**
2. Consultant’s Charges for Services under this Work Order shall be the amount of R {**Insert**} allocated to each of the Deliverables in accordance with Table E-2 below:

|  |  |
| --- | --- |
| **Table E-2** | |
| **Name of Deliverable** | **Allocated Portion of the Fixed Price** |
|  |  |
|  |  |
| **Total** |  |

1. **PAYMENT**
2. Payment shall be made in accordance with clause (invoicing and payment) of the Agreement.
3. **SUPPORT WINDOW**
4. The support window for each Work Order Deliverable is set forth below in Table E-3.
5. ***{Note to the Parties: In Table E-3, for each Work Order Deliverable, please list the support Window for such Deliverable.}***

|  |  |
| --- | --- |
| **Table E-3** | |
| **Work Order Deliverable** | **Support Window** |
|  |  |
|  |  |
|  |  |

**{Signature blocks appear on the next page.}**

IN WITNESS WHEREOF, the duly authorized representatives of the Parties hereto have caused this Work Order to be duly executed.

|  |  |
| --- | --- |
| XXX (Proprietary) Limited  By:  Printed:  Title:  Date:  XXX (Proprietary) Limited  By:  Printed:  Title:  Date: | South African Revenue Service  By:  Printed:  Title:  Date:  South African Revenue Service  By:  Printed:  Title:  Date: |