**note to bidders**

**This Agreement INCLUDING ITS SCHEDULES AND/or APPENDICES thereto do not constitute a final Agreement between the Parties. SARS reserves the right to amend same, at its own discretion, at any point in time prior to signature hereof.**

**YOUR SUBMISSION OF YOUR RESPONSE IS THEREFORE DEEMED TO BE AN ACKNOWLEDGEMENT AND ACCEPTANCE OF THE AFORESAID STATEMENT.**

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

**SERVICES AGREEMENT**

**IN RESPECT**

**OF**

**THE PROVISION OF Printing, PackAGing and Labelling of Communication Material Services AGREEMENT**

**BETWEEN**

**SOUTH AFRICAN REVENUE SERVICE**

**And**

**[DRAFTING NOTE: TO BE INSERTED POST AWARD]**

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1. **PARTIES**
   1. The Parties to this Agreement are:
      1. **SOUTH AFRICAN REVENUE SERVICE**, an organ of state established in terms of the South African Revenue Service Act, 1997 (Act No. 34 of 1997), with its principal address at 299 Bronkhorst Street, Nieuw Muckleneuk, Pretoria (“SARS”); and
      2. [**DRAFTING NOTE: TO BE INSERTED POST AWARD**] Registration Number: a private company incorporated in accordance with the company Laws of the Republic of South Africa with its registered address situated at [**DRAFTING NOTE: TO BE INSERTED POST AWARD**] (“**Supplier**").
      3. Collectively referred to herein as the “**Parties**” and individually as a “**Party**”.
2. **DEFINITIONS AND INTERPRETATION**
   1. The head notes to the Clauses of this Agreement are for reference purposes only and will not govern or affect the interpretation of nor modify nor amplify the terms of this Agreement.
   2. Unless inconsistent with the context, the words and expressions have the following meanings and similar expressions will have corresponding meanings:
      1. **"Acts of Insolvency"** means when a Party is unable to pay its debts, it becomes insolvent, and is going through a business rescue, the subject of any order made or a resolution passed for the administration, winding-up or dissolution (otherwise than for the purpose of a solvent amalgamation or reconstruction), has an administrative or other receiver, manager, trustee, liquidator, administrator, or similar officer appointed over all or any substantial part of its assets, enters into or proposes any composition or arrangement with its creditors generally or is the subject of any events or circumstances or analogous to the foregoing in the Republic of South Africa, as fully defined in the Insolvency Act, 1936 (Act No. 24 of 1936), as amended;
      2. “**Agreement**” means this Agreement and all annexures hereto. Also included are all amendments, variations, and/or substitutions to the Agreement, which have been reduced to writing and signed by both parties;
      3. **“Affiliate(s)”** means, with respect to any entity, any other entity Controlling, Controlled by or under common Control with such entity. The term "Affiliate" will also include:
         1. a subsidiary of such entity, as the term "subsidiary" is defined in section 3 of the Companies Act 71 of 2008, as amended; and
         2. any foreign company which, if it were registered under such Act, would fall within the ambit of such term;
      4. **“AFSA”** means the Arbitration Foundation of Southern Africa;
      5. **“Applicable Law(s)”** means any statute which includes without being limited thereto, Companies Act, PAIA, BBBEE and POPIA, including any regulation, directive, or subordinate legislation; the common law; any binding court order as between the Parties, judgment; any applicable securities industry code, standard enforceable by law; or any applicable direction, policy or order that is given by the Authority where there is an onus on the Parties to adhere to the aforesaid;
      6. **“Approved Pricing”** means the pricing submitted by the Supplier for each Deliverable required by SARS and approved by SARS as part of the RFP, which Approved Pricing shall remain binding on the Parties for the Term;
      7. **“Amount at Risk”** means a maximum of 25% (twenty five percent) of the Supplier’s total invoice in respect of a Purchase Order, which may be at risk in respect of Service Credits due to SARS resulting from any Service Level Failures;
      8. **“Authority”** means any agency, tribunal, commission, regulator, self-regulatory body or other similar body having jurisdiction over the Deliverables and/or Services activities or operations of any of the Parties in any territory that is applicable to this Agreement, including without limitation, Information Regulator, SARB and SARS;
      9. **“Authorised Representatives”** mean respective signatories authorised by SARS and the Supplier to sign the Agreement;
      10. **“B-BBEE”** means broad-based black economic empowerment as defined in the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003) as amended from time to time;
      11. **“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), as amended, applicable to and binding on the Supplier;
      12. **“BEE Status”** means the BEE Status of the Supplier based on its generic scorecard as measured and certified by a verification agency in accordance with the applicable BEE Codes;
      13. **“BEE Verification Certificate”** means a certificate issued by a Verification Agency, verifying the Supplier'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;
      14. **“Best Industry Practices”** means the best industry practice, quality standards and requirements applicable to the provision of the Services;
      15. **“Business Day”** means any day other than a Saturday, Sunday or public holiday in South Africa;
      16. **“Commencement Date”** means the commencement date of each Service Request, notwithstanding the Effective of this Agreement;
      17. **“Commercially Reasonable Efforts”** means taking such steps and performing in such a manner as a well-managed company would where such company was acting in a 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;
      18. **“Condition Precedent"** means suspensive condition set out in clause 0 below;
      19. **“Confidential Information”** means:
          1. means in relation to SARS, subject to sub-Clause 2.2.19.3 immediately below in this definition any information or data of any nature, whether provided orally or in writing or otherwise obtained and in any format or medium, which constitutes:
             1. SARS Information;
             2. SARS Data;
             3. Taxpayer Information;
             4. Information as defined in section 68 of the Tax Administration Act, 2011 (Act No. 28 of 2011) (hereinafter referred to as “**TAACT**”);
             5. information which by its nature, content, or circumstances of disclosure is or ought reasonably to be identifiable by the Supplier as confidential (including by reason of such information not being generally known to, or readily ascertainable by, third parties generally) and/or proprietary to SARS, including (i) information regarding SARS Personnel, independent contractors and suppliers of SARS; processes and plans of SARS and governmental entities; projections, manuals, forecasts, and analyses of SARS; Intellectual Property owned by or licensed to SARS; (ii) information relating to the knowledge, know-how, expertise, trade secrets and activities of SARS; (iii) any information which SARS (without creating a presumption that only so designated information is confidential), acting reasonably, may designate in writing, at the time of disclosure to the Supplier, as being confidential information; and (iv) and any other information of SARS which would be regarded by a reasonable person to be confidential or proprietary in nature;
             6. in terms of Applicable Laws or by its nature, content, or circumstances of disclosure is or ought reasonably to be identifiable by the Supplier as confidential (including by reason of such information not being generally known to, or readily ascertainable by, third parties generally) and/or proprietary to SARS, including: (i) data, financial information, information regarding taxpayers; information regarding employees, independent contractors and suppliers of SARS and Governmental Entities; processes and plans of SARS and Governmental Entities; projections, manuals, forecasts, and analysis of SARS and Governmental Entities; Intellectual Property owned by or licensed to SARS or a Governmental Entity; (ii) information relating to the knowledge, know-how, show-how, expertise, trade secrets and activities of SARS; (iii) any information which SARS (without creating a presumption that only so designated information is confidential), acting reasonably, may designate in writing, at the time of disclosure to the Supplier, as being confidential information; and (iv) any other information of SARS or Governmental Entities which would be regarded by a reasonable person to be confidential or proprietary in nature; SARS or any person acting on behalf of SARS discloses or provides (or has previously disclosed or provided) to the Supplier (including Supplier Personnel, Supplier affiliates, subcontractors, Third Party suppliers or agents, as applicable) or which the Supplier (including the Supplier’s Personnel, Affiliates, Subcontractors, Third Party suppliers or agents, as applicable), otherwise becomes aware of in connection with this Agreement or as a result of the provision or receipt of the Services under this Agreement, and which information will be included in this Agreement;
          2. means in relation to the Supplier, any information or data of any nature, whether provided orally or in writing and in any format or medium, which is clearly designated in writing by Supplier, at the time of disclosure to SARS, as being Confidential Information, and which written designation is, in each case acknowledged by SARS, by SARS initialling such designation, or which information by its nature could reasonably be expected to be confidential under the circumstances in which it is disclosed;
          3. Confidential Information does not include information that is lawfully publicly available to, or lawfully in the Receiving Party’s possession, at the time of disclosure thereof by the Disclosing Party (whether before or after the Effective Date) to the Receiving Party; or (ii) is independently developed or learned by the Receiving Party without reference to or use of the Confidential Information of the Disclosing Party; or (iii) is in or enters the public domain without breach of this Agreement or any other obligation owed by the Receiving Party to the Disclosing Party; or (iv) the Receiving Party receives from a Third Party without restriction on disclosure and without breach of a non-disclosure obligation; provided always that notwithstanding the foregoing:
             1. the onus will at all times rest on the Receiving Party to establish that such information falls within such exclusions;
             2. the information disclosed will not be deemed to be within the foregoing exclusions merely because such information is embraced by more general information that is publicly available or in a Party’s possession;
             3. any combination of features will not be deemed to be within the foregoing exclusions merely because individual features are publicly available or in a Party’s possession, but only if the combination itself is publicly available or in a Party’s possession; and
             4. the determination of whether information is Confidential Information will not be affected by whether such information is subject to, or protected by, common law or statute related to copyright, patent, trademarks or otherwise.
      20. **“Data Subject”** means the person to whom Personal Information relates;
      21. **“Data Protection Legislation”** means collectively, POPIA and any other legislation applicable to the protection of Personal Information in the Republic of South Africa;
      22. **“Data Protection Agreement”** mean the data protection agreement to be entered into by the Parties to regulate and manage the Processing of Personal Information, a copy of which is attached hereto as **Annexure “A”**;
      23. **"Deficiency**" means any quality error, non-conformity or defect in the Deliverables resulting from any deviation from the Specifications;
      24. “**Deliverable(s)”** means any output, outcome or result produced by the Supplier for or on behalf of SARS, as part of the Services pursuant to this Agreement which Deliverable(s) is as fully described in the Service Request;
      25. **“Designated Representative”** means each of the Parties’ designated employee assigned to the administration of activities of this Agreement;
      26. **"Disclosing Party"** means a Party disclosing the Confidential Information to the Receiving Party;
      27. **"Documentation**" means the Specification relating to a Deliverable(s) under this Agreement which will be furnished to the Supplier by SARS as envisaged in this Agreement;
      28. **“Fees**” means the fees and charges payable by SARS to the Supplier for the Deliverable(s) in terms of the provisions of this Agreement, which fees are as fully specified in each applicable Service Request and aligned to the Approved Pricing;
      29. **“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, pandemics, 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;
      30. **“Intellectual Property”** means all designs, layout, drawings, notes, manuals, **documentation**, content, training materials, job aids, all other records, data, files, input materials, reports, forms 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 that may be received, computed, developed, used or stored by the Supplier or any of the Supplier Personnel, Subcontractors, for or on behalf of SARS or in connection with the Services;
      31. **“Intellectual Property Rights”** means all rights of whatever nature and **however** described in respect of Intellectual Property, including:
          1. rights in trademarks, service marks, logos, slogans, corporate, business and trade names, trade dress, brand names and other indicia of origin;
          2. rights in designs, topography rights, rights in circuit layouts and mask-works;
          3. copyright, including all copyright in and to computer programs;
          4. rights in internet domain names, reservations for internet domain names, uniform resource locators and corresponding internet sites;
          5. rights in databases and data collections; and
          6. 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 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.
      32. **“Losses”** means all losses, liabilities, costs, expenses, fines, penalties, damages and claims, and all related costs and expenses (including legal fees on the scale as between attorney and own client, tracing and collection charges, costs of investigation, interest and penalties);
      33. **“Material”** means SARS’s Intellectual Property shared with the Supplier for use in printing, labelling and packaging; [
      34. **“OHSA”** means the Occupational Health and Safety Act, 1993 (Act No. 85 of 1993) and regulations thereto, amended;
      35. **“Operator”** means a person who processes personal information for a responsible party in terms of a contract or mandate, but does not come under the direct authority or control of the Responsible Party and for the purposes of this Agreement, Operator means the Supplier;
      36. **“PAIA”** means the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000), as amended;
      37. **“PAJA**” means the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000;
      38. **“Parties”** means SARS and the Supplier and “party” as the context requires, is a reference to any one of them;
      39. **"Personal Information"** means information relating to an identifiable, living, natural or juristic person as fully defined in section 1 of POPIA;
      40. **“Personal Information Breach”** means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of or access to, Personal Information transmitted, stored or otherwise Processed;
      41. **“PFMA”** means the Public Finance Management Act, No. 1 of 1999;
      42. **“POPIA”** means Protection of Personal Information Act, 2013 (Act No. 4 of 2013);
      43. **"Pre-delivery Quality Assessment"** means the Supplier’s quality assessment of a Deliverable, which assessment is to be performed by the Supplier prior to submitting or delivering such Deliverable to SARS for SARS’s evaluation;
      44. **“Premises”** means the Supplier’s premises approved by SARS, from which the Services will performed including, storage, where required;
      45. **“Privacy and Data Protection Requirements”** means the 8 (eight) requirements for the lawful Processing of personal information contained in Chapter 3 of POPIA;
      46. **“Process" and "Processing”** means any operation or activity or any set of **operations**, whether or not by automatic means, concerning Confidential Information, including its collection, receipt, recording, organisation, collation, storage, updating or modification, merging, linking, blocking, degradation, erasure or destruction retrieval, alteration, consultation, testing or use, dissemination or distribution by any means as fully defined in Chapter 1 of POPIA;
      47. **“Responsible Party”** means the party who determines the purpose of and means for **Processing** Personal Information and for the purposes of this Agreement, Responsible Party shall mean SARS;
      48. “**RFP**”means RFP 28/2021issued by SARS inviting biddersto tender for the provision of printing, packing and labelling of communications material services to SARS;
      49. **“SANAS”** means the South African National Accreditation System established in terms of Section 3 (1) of the Accreditation for Conformity Assessment Calibration and Good Laboratory Practice Act, 2006 (Act No. 19 of 2006) and recognised by the South African Government as the national accreditation body;
      50. **“SARS Act”** means the South African Revenue Service Act, 1997 (Act No. 34 of 1997);
      51. **“SARS Data”** means any information and/or data including but not limited to data or any information owned and created by SARS, whether or not Confidential Information in any format, being information of SARS relating to SARS’s business operations, a taxpayer, its employees, contractors and Supplier which information and/or data includes without being limited thereto, personal information as defined in the Tax Acts, POPIA, or any other Applicable Legislation, including:
      52. **“SARS’s** Designated **Representative”** means any SARS official who is authorised to enter into this Agreement with the Supplier;
      53. **"SARS Information"** means— (a) any information (including Personal Information) about a current or former SARS official, whether deceased or not; (b) information that is subject to legal professional privilege vested in SARS; (c) information that was supplied in confidence by a third party to SARS, the disclosure of which could reasonably be expected to prejudice the future supply of similar information, or information from the same source; (d) information related to investigations and prosecutions described in section 39 of PAIA; (e) information related to the operations of SARS, including an opinion, advice, report, recommendation or an account of a consultation, discussion or deliberation that has occurred, if— (i) the information was given, obtained or prepared by or on behalf of SARS for the purpose of assisting to formulate a policy or take a decision in the exercise of a power or performance of a duty conferred or imposed by law; and (ii) the disclosure of the information could reasonably be expected to frustrate the deliberative process in SARS or between SARS and other organs of state by— (aa) inhibiting the candid communication of an opinion, advice, report or recommendation or conduct of a consultation, discussion or deliberation; or (bb) frustrating the success of a policy or contemplated policy by the premature disclosure thereof; (f) information about research being or to be carried out by or on behalf of SARS, the disclosure of which would be likely to prejudice the outcome of the research; (g) information about the disclosure of which could reasonably be expected to prejudice the economic interests or financial welfare of the Republic of South Africa or the ability of the government to manage the economy of the Republic of South Africa effectively in the best interests of the Republic of South Africa, including a contemplated change or decision not to charge a tax or a duty, levy, penalty, interest and similar moneys imposed under a Tax Act; (h) information supplied in confidence by or on behalf of another state or an international organization to SARS; (i) a computer program, as defined in section 1(1) of the Copyright Act, 1978 (Act No. 98 of 1978), owned by SARS; (j) financial, commercial, scientific or technical information, other than trade secrets, of SARS, the disclosure of which would be likely to cause harm to the financial interests of SARS; (k) information the disclosure of which could reasonably be expected to put SARS at a disadvantage in contractual or other negotiations; and (l) information relating to the security of SARS buildings, property, structures or systems;
      54. **“SARS Personnel”** means SARS’s staff, consultants and/or agent employed by SARS for the purposes of the Agreement;
      55. **“SARS PPS&G”** means the SARS’s policies, procedures, processes, **standards**, guidelines, and other similar issuances (including any updates, amendments or revisions) that are applicable to the Services or the Supplier from time to time as may be amended, updated and/or replaced by SARS;
      56. **“SARS Security Requirements and Safeguards”** means SARS’s physical and electronic security requirements which the Supplier must comply with for the provision of the Services, which requirements are as set out in business requirements specification contained in the RFP;
      57. **“Services”** means the provision by the Supplier to SARS of printing, packing and labelling of SARS Communications material services as contemplated in the RFP including functions or responsibilities not specifically mentioned herein but which are reasonably and necessarily required for the proper performance and provision of the Services;
      58. **“Service Credit(s)”** means a percentage of the Amount at Risk chargeable against a Service Level Failure that will be recoverable from the Supplier via credit note or otherwise at SARS’ discretion;
      59. **“Service Level”** means the minimum performance standard that the Supplier must adhere to in the provision of the Services;
      60. **“Service Level Failure”** means failure by the Supplier to meet a Service Level;
      61. **“Service Product(s)”** means any of the Deliverable(s) as contemplated in RFP;
      62. **“Service Request”** means a specific written service instruction issued to the Supplier to **render** the Services or part thereof, in terms of this Agreement, specifying the Services and/or Deliverables to be provided by the Supplier to SARS, and signed by the SARS Designated Representative;
      63. **“Specification”** means the document specifying the printing, labelling and packaging of SARS’s Deliverable(s) including the Material which document is annexed hereto and marked **Annexure (●)**;
      64. **“Signature Date”** means the date of signature of this Agreement by the last Party signing;
      65. **"Staff"** means collectively, SARS Personnel and Supplier Personnel;
      66. **“Supplier** Personnel**”** means the Supplier’s staff, be they permanent, temporary or contractors, performing the Services on behalf of the Supplier;
      67. **“Tax Act”** means an Act, or a portion thereof, referred to in section 4 read with Schedule 1 to the SARS Act, as well as the Tax Administration Act No. 28 of 2011; the Mineral and Petroleum Resources Royalty Act No 28 of 2008 and the Mineral and Petroleum Resources Royalty Administration Act No. 29 of 2008 as amended;
      68. **“Term”** means the term of this Agreement defined in 7 below;
      69. **“Third Party”** means any person other than SARS, Affiliates, Supplier or Subcontractor;
      70. **“VAT”** means Value-Added Tax levied in terms of the Value-Added Tax Act, 1991 (Act No. 89 of 1991).
   3. Any reference in this Agreement to:
      1. a “**Clause**” shall, subject to any contrary indication, be construed as a reference to a Clause in this Agreement;
      2. “**Law**” shall be construed as any law (including common or customary Law), or statute, constitution, decree, judgment, treaty, regulation, directive, by-law, order or any other legislative measure of any government, local government, statutory or regulatory body or court; and
      3. a “**Person**” refers to any person, firm, company, corporation, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the foregoing.
   4. Unless inconsistent with the context or save where the contrary is expressly indicated:
      1. if any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that it appears only in the definition Clause, effect shall be given to it as if it were a substantive provision of this Agreement;
      2. when any number of days is prescribed in this Agreement, same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a day which is not a Business Day, in which case the last day shall be the next succeeding Business Day;
      3. in the event that the day for performance of any obligation to be performed in terms of this Agreement should fall on a day which is not a Business Day, the relevant day for performance shall be the subsequent Business Day;
      4. any reference in this Agreement to an enactment is to that enactment as at the signature date and as amended or re-enacted from time to time;
      5. 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 same may have been, or may from time to time be, amended, varied, negotiated or supplemented;
      6. no provision of this Agreement constitutes a stipulation for the benefit of any Person who is not a Party to this Agreement;
      7. references today/s, month/s or year/s shall be construed as calendar day/s, month/s or year/s; and
      8. a reference to a Party includes that Party’s successors-in-title and permitted assigns.
   5. Unless inconsistent with the context, an expression which denotes:
      1. any one gender includes the other gender; and
      2. the singular includes the plural and vice versa.
   6. Unless it is clear from a specific Clause in which a term has been defined that such definition has limited application to the relevant Clause, any term defined within the context of any particular Clause in this Agreement shall bear the same meaning as ascribed to it throughout the Agreement, notwithstanding that that term has been defined in a specific Clause.
   7. The termination of this Agreement will not affect the provisions of this Agreement which operate after any such 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.
   8. This Agreement is binding on the executors, administrators, trustees, permitted assigns or liquidators of the Parties as fully and effectually as if they had signed this Agreement in the first instance and reference to any Party is deemed to include such Party’s estate, heirs, executors, administrators, trustees, permitted assigns or liquidators, as the case may be.
   9. Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.
   10. None of the provisions hereof shall be construed against or interpreted to the disadvantage of the Party responsible for the drafting or preparation of such provision.
3. **Appointment and non-exclusivity**
   1. SARS hereby appoints the Supplier, on a non-exclusive basis, to provide the Services on the terms and conditions of this Agreement, and the Supplier hereby accepts such appointment.
   2. The Supplier will be utilised on an ad hoc basis, as and when required by SARS. SARS does not guarantee that the Supplier will receive Service Requests during the Term.
   3. Nothing contained herein will in any way be construed or constitute a guarantee in favour of the Supplier that the Supplier will receive any work or contract from SARS for the services in the future, whether under this Agreement or otherwise.
   4. SARS shall not be precluded from obtaining services that may be similar or identical to the Services from any other Supplier and nothing contained herein shall in any way be construed or constitute a guarantee in favour of the Supplier, that the Supplier will receive any work or contract for services in the future, whether under this Agreement or otherwise from SARS.

1. **CONDITION PRECEDENT**
   1. Save for clauses 1 to 4 and clauses 21 to 34 and 37, 38, 42, 43 and 47 all of which shall become effective immediately on the Signature Date, this Agreement is subject to the fulfilment of the Condition Precedent that, within 30 (thirty) days from the Letter of Award, the Supplier has complied with SARS’s Security Requirement and Safeguards in respect of the Personnel, Premises and Network.
   2. Unless the Condition Precedent has been fulfilled by not later than the relevant date for fulfilment thereof set out in clause 4.1 (or such later date or dates as may be agreed in writing between the Parties) the provisions of this Agreement, *save* for clauses 1 to 4 and clauses 21 to 34 and 37, 38, 42, 43 and 47 which shall remain of full force and effect, shall never become of any force or effect and the status quo ante shall be restored as near as may be and neither of the Parties shall have any claim against the other in terms hereof or arising from the failure of the Condition Precedent, save for any claims arising from a breach of clause 21 to 24.
2. **NATURE OF RELATIONSHIP** 
   1. The Parties act for all purposes in terms of the Agreement as independent contractors. Without limiting the aforegoing:
      1. neither Party shall be entitled to contract on behalf of or bind the other Party in any manner whatsoever or to incur any liability or debt on behalf of the other Party; and
      2. the Supplier shall not publish or cause to be published any advertisement or other information relating to SARS or SARS’s business without the prior written approval of SARS; and
      3. neither Party’s Staff shall be deemed Staff of the other Party for any purpose whatsoever and for these purposes, where the Supplier has utilised the fixed term contractors, temporary employees and/or consultants either as Supplier Personnel, the Supplier undertakes to ensure that its contracts with the aforesaid Supplier Personnel, specifically states that the assignment to SARS is only for a project and is by no means a reflection of SARS as an intended employer of the Supplier Personnel or deemed employer in terms of the deeming provision introduced by section 198 the Labour Act, 1995 (Act No. 66 of 1995 as amended) (“**the Labour Relations Act**”), in the event of termination of this Agreement for any reason whatsoever.
   2. In the event that the Labour Act, deems the Supplier Personnel to be employees for the purposes of the aforesaid section 198, the Supplier undertakes to indemnify SARS in full against all costs, expenses (including legal expenses on an attorney own client scale), damages, loss (including loss of business or loss of profits), liabilities, demands, claims, actions or proceedings, which the Supplier may incur arising as a result of the aforesaid Labour Act.
3. **Subcontractors**
   1. The Supplier may not sub‑contract its obligations under this Agreement without the prior written consent of SARS which consent may be withheld by SARS in its sole discretion.
   2. Should SARS consent to such appointment, the Supplier will in no event be relieved of its obligations under this Agreement as a result of its use of any subcontractors. The Supplier will at all times be responsible to SARS for fulfilment of all the Supplier's obligations under this Agreement and will remain SARS’s sole point of contact regarding the Services, including with respect to payment.
   3. The Supplier will supervise the activities and performance of each subcontractor and will be jointly and severally liable with each such subcontractor for any act or failure to act by such subcontractor.
4. **COMMENCEMENT AND DURATION**
   1. The Agreement shall notwithstanding the Signature Date, commence on the Effective Date and shall (unless terminated earlier in terms hereof) continue for a period of [**DRAFTING NOTE: TO BE INSERTED POST AWARD**] (the “**Term**”) or until the expiry of the Service Request executed by the Parties prior to the expiry Term (the **“Termination Date”**).
5. **SCOPE OF WORK AND REQUIREMENTS**
   1. The Supplier shall for the Term, be required to provide and deliver the Deliverable(s) to SARS in line with the Service Requests.
   2. The Supplier shall for the Term, perform the Services as contemplated herein within the Service Levels and shall ensure that the Deliverable(s) meet SARS’s Specifications.
   3. The Supplier shall for the Term maintain and manage the Premises and Network in accordance with SARS’s Security Requirements.
   4. The Supplier shall for the Term, use its Commercial Reasonable Efforts to provide Services to SARS on the terms and conditions of this Agreement and subject to the Service Levels.
   5. The Supplier undertakes to ensure that the following Services are provided in accordance with the Best Industry Practice and attaining the Service Level and Performance Criteria/Standards at all times.
6. **APPROACH TO THE DELIVERY OF THE SERVICES**
   1. **Supplier Obligations**:
      1. The Supplier shall, at the Effective Date:
         1. allocate a dedicated Key Contact to manage the business and service delivery and share such Key Contact’s information with SARS;
         2. ensure that the Key Contact signs the Oath of Secrecy including any Information Security Policies of SARS;
         3. set up a secure, dedicated email address for direct communication with the Supplier in connection with the Services and/or Deliverables;
         4. and if a subcontractor will be utilise, inform SARS of such subcontractor and ensure that the Subcontractor has executed and confidentiality and data protection agreement prior to the Processing of any SARS Information or Material to such Subcontractor.
   2. **Service Request**:
      1. As and when SARS requires a Deliverable, SARS will issue a Service Request to the Supplier via the dedicated email address, detailing amongst others, the:
         1. Deliverable required;
         2. Size;
         3. Quantity;
         4. Packaging and sorting instructions;
         5. required weight requirements of each package; (where necessary);
         6. address of the recipient of a Deliverable;
         7. applicable turnaround times for performance of the Services (the “**Timelines**”); and
         8. the name/s and signature the SARS Designated Representatives and/or their appointed delegates.
   3. **Quotations**:
      1. Upon receipt of a Service Request, the Supplier will provide SARS with a written quotation for the Deliverable and Services set forth in the Service Request within the Timelines set out in the Service Request.
      2. The Supplier acknowledges that the purpose of such quotation would only be to acquire a cumulative price, taking into account the quantities to be procured in relation to a specific Service Request, and that SARS reserves the right to extend such requests for quote to other parties should the need arise.
   4. **Quality Check:** 
      1. Prior to delivery of any Deliverable to SARS, the Suppler will carry out Product Quality Check in order to ensure that a Deliverable meets SARS’s Specification and Mock Ups.
      2. Notwithstanding the aforesaid, the Supplier shall where a Delivery fails Product Quality Check: (i) correct such a Deficiency to ensure that the Deliverables are delivered within the Timelines: (ii) inform SARS of a potential delay and agree on either part delivery or revised Timelines if any.
   5. **Application of the Agreement**:
      1. The provisions of this Agreement shall apply to each and every Service Request.
      2. The Supplier will provide the Services to SARS subject to the terms and conditions of this Agreement generally, and in particular, subject to the specifications set forth in the relevant Service Request.
      3. It is agreed that notwithstanding any purchase orders, order forms or the like which SARS may provide to the Supplier requesting any Services to be provided, such documents shall not be binding between the Parties unless they are preceded by a Service Request.
      4. SARS shall, after receipt of the written quotation peruse same and either reject or confirm the written quotation. Where SARS accepts the written quotation, SARS shall sign off on the quotation and give the Supplier a final artwork in print ready file format.
      5. The Supplier will provide SARS with print proofs of ordered Service Products as evidenced in the sign off quotation within twenty-four (24) hours of receipt of the final artwork for approval.
      6. The Supplier shall commence with print run of the ordered Service Products immediately upon receiving the approval contemplated in Clause 9.5.4 above.
      7. The Supplier specifically undertakes and agrees to package the Service Products in strict accordance with the instructions of SARS, particularly instructions relating to the mass weight of the Service Products, failing which the Supplier shall be solely responsible, and for its own account bear all extra collection and delivery charges which SARS may incur from other Suppliers as a result of the Supplier’s non-adherence to the mass weight packing instructions of SARS. In such event, SARS will be entitled to deduct and offset any such amount against monies due by SARS to the Supplier, in terms of the procedure contemplated in clause 16 below.
7. **PROVISION OF THE SERVICES**
   1. Without limiting the generality of the Supplier’s obligations detailed elsewhere in this Agreement, the Supplier undertakes as part of the Services for the Term:
      1. to comply with SARS’s information and data security standards as communicated in writing from time to time;
      2. at its own cost, provide, maintain and, where required, upgrade such security systems and data bases as may be necessary, and as required by SARS, for the provision of the Services. In particular, the Supplier shall ensure that all security systems are kept at the security standard prescribed by SARS to meet the Services, and secure SARS’s Material; and
      3. without limiting the generality of Clause 10.1.2 above, at its own cost, maintain its computer based security systems to counteract any unlawful access in as far as it is in accordance with the Best Industry Practice or security level that is no less secure than the security SARS provided as of the Effective Date or the security the Supplier then provides for its own systems and data, whichever is greater.
   2. The Supplier undertakes for the Term, to provide the Services as envisaged in this Agreement and in accordance with the Best Industry Standards.
   3. The Supplier shall perform the Services contemplated in this Agreement remotely. In instances, where SARS discloses Confidential Information for the provision of the Services, the Supplier shall not remove any of the so disclosed Confidential Information from the Premises without SARS’s express prior written permission, which SARS may, in its sole discretion, withhold. For these purposes, the Supplier Personnel shall sign SARS’s oath of secrecy and where applicable, without limiting Clauses 21, 22, 23, 24 below, as well as Data Protection Agreement, which documents will once signed by the Parties, be incorporated herein by reference.
   4. The Supplier shall provide all Services utilising security technologies and techniques in accordance with Best Industry Practice and SARS PPS&G including those relating to the prevention and detection of inappropriate use or access of the Supplier’s systems and Premises. For the avoidance of doubt, the Supplier will not be under any obligation to find such suitable software, systems or networks if it is not currently using it in the provision of Services to its other clients.
   5. The Supplier undertakes for the Term:
      1. to use industry leading levels of functionality and performance as prescribed by the Best Industry Practice in the provision of the Services to SARS;
      2. to implement such new technologies as it deems appropriate to deliver the Services to SARS in order to maintain competitiveness in the quality and scope of Services available to SARS and to take advantage of market cost efficiencies; and
   6. Without limiting the generality of the foregoing, the Supplier shall implement and/or use network management and maintenance applications and tools and appropriate intrusion detection, identity management, and encryption technologies when providing the Services.
   7. The Supplier shall maintain the security of the systems being used for the provision of the Services at a level that is generally acceptable in the marketplace and/or as prescribed by Best Industry Practice.
   8. The risk of and liability for any erroneous Deliverables or any errors which may occur due to fraud or unlawful activity on the part of the Supplier’s Personnel shall lie with the Supplier.
   9. In the event that any installation, connection and/or configuration of the systems is required for the performance of the Services, the Parties shall record and agree on the technical specification required for the installation, connection and configuration of such systems used for the provision of the Services in order to ensure Services performance and delivery.
   10. Without limiting the provisions of this Clause 10, the Parties undertake to do all reasonable things, perform all reasonable actions and take all reasonable steps and, where necessary, to procure the doing of same as may be open to them and necessary for or incidental to the putting into effect or maintenance of the terms, conditions and/or import of this Agreement where such things, actions, steps and procurement shall not materially and/or adversely affect such Party being expected to so perform.
8. **SUPPLIER PERSONNEL**
   1. The Supplier shall:
      1. ensure that the Supplier Personnel who perform the Services are appropriately skilled, experienced and qualified to render the specific services for which they are responsible, and that each of them strictly comply with this Agreement including the Service Level Agreement in the performance of the Service;
      2. duly comply with its contractual arrangements with all Supplier Personnel to ensure uninterrupted provision of Services.
      3. be liable for any criminal activity, delicts, misconduct, failure to comply with any law and/or wrongdoing on the part of a Supplier Personnel committed (or omitted) by a Supplier Personnel in the course of the Agreement and the Supplier hereby (in addition to any other indemnities recorded elsewhere in the Agreement), indemnifies SARS and holds SARS harmless against any costs, liabilities, expenses or damages of whatever nature suffered or incurred by SARS, and caused directly by any Supplier Personnel.
9. **THIRD PARTY CO-OPERATION** 
   1. As part of the Services, where appropriate and when requested by SARS to do so, the Supplier shall provide its full co-operation to any third party involved with, or contracted by SARS to assist with, a matter that forms the subject of a Service Request.
   2. It is, however, agreed that the relationship between the Supplier and any Third Party Service Provider will not constitute a partnership, and that neither the Supplier nor such Third Party Service Provider will be required to manage or monitor the other’s performance.
   3. The Supplier will be notified of any complaints received by SARS from the Third Party Service Provider relating to a perceived lack of co-operation with such Third Party Service Provider, upon which the Supplier must take immediate steps to remedy the situation.
10. **SERVICE LEVELS** 
    1. The Supplier shall perform the Services with promptness and diligence, where possible, and courtesy on a best effort basis and ensuring that all Service request logged are attended to during Business Hours and/or Support Hours as stated in the Service Level Agreement (**Annexure B**).
    2. **Service Levels List:**
       1. **Annexure B** lists Service Levels that will apply to the Service Level Failures. The Parties may from time to time add new Service Levels by mutual agreement. The Supplier shall comply with the prescribed Service Levels as of the Commencement Date.
    3. **Monitoring, Measuring and Reporting:**
       1. The Supplier shall:
          1. be responsible for monitoring, measuring and reporting on the Supplier’s compliance with the Service Levels;
          2. monitor its performance of the Services with respect to the Service Levels on a continuous basis and measure and provide SARS with a report on such performance (Status Report) together with its invoice on a Purchase Order;
          3. include the following information in each Status Report with respect to any Service Level Failure;
             1. the nature and date of the Service Level Failure;
             2. the cause of the Service Level Failure; and
             3. a summary of the steps taken by the Supplier to resolve the Service Level Failure and reduce, to the extent reasonably possible, the likelihood of such Service Level Failure happening in future.
    4. **Service Credits****:**
       1. Service Credits are not an estimate of the loss or damage that may be suffered by SARS as a result of the Service Level Failure.
       2. A price adjustment by means of a Service Credit due to SARS is without prejudice to and shall not limit any right SARS may have to terminate this Agreement and/or seek damages or other non-monetary remedies at Law resulting from, or otherwise arising in respect of, such Service Level Failure and any resulting termination.
       3. The Supplier shall together with the submission of its invoice under a Purchase Order issue SARS with a credit note reflecting the monetary value of any Service Credits that accrued to SARS.
    5. **Calculation of Service Credits:**
       1. For each Service Level Failure, the Supplier shall credit SARS with the amount indicated in **Column D** of **Annexure** **B**;
       2. If a single triggering event directly causes two (2) or more Service Level Failures under a Purchase Order and but for such event, none of such Service Level Failures would have occurred, then SARS shall be entitled to receive only a single Service Credit for a single Service Level Failure (which SARS may select in its sole discretion); and
       3. Service Credits arising in respect of the last month of the Agreement term shall be withheld out of the final payment due.
    6. **Excused** **Non-Performance:**
       1. Where the Supplier can establish to the reasonable satisfaction of SARS that:
          1. the cause of its failure to achieve a Service Level was a factor outside of the reasonable control of the Supplier (i.e., a force majeure event);
          2. the Supplier would have achieved such Service Level but for such factor;
          3. the Supplier used Commercially Reasonable Efforts to perform and achieve that Service Level notwithstanding the presence and impact of such factor; and
          4. the Supplier is without fault in causing such factor, then, no Service Credit shall be assessed against the Supplier for any resulting Service Level Failure and the Supplier shall otherwise be excused from achieving such Service Level for as long as the circumstances relating to such factor and preventing achievement of such Service Level prevail and the Supplier continues to use Commercially Reasonable efforts to prevent, overcome and mitigate the adverse effects of such factor to the extent required to achieve the applicable Service Level.
11. **SUPPLIER UNDERTAKINGS**
    1. The Supplier undertakes to-
       1. resolve all written queries by SARS within twelve (12) hours of receipt thereof;
       2. provide the Services in accordance with the highest professional standards;
       3. ensure that it has suitable staff and sufficient resources at all times in order to properly render the Services to SARS;
       4. at all times act in an ethical manner and refrain from any corrupt business practices;
       5. perform the Services on an emergency basis, if and when required by SARS. The Supplier shall in such situations, if specifically requested by SARS, provide the Services at no additional cost;
       6. ensure that it has sufficient contingency plans in place and agree that it shall at all times be responsible to SARS, for the fulfilment of its obligations under this Agreement. To this effect, the Supplier undertakes to SARS that it shall not be adversely affected by any labour issues of whatsoever nature that may arise between the Supplier and its employees, including any strike action or ‘go slow’ whether protected or unprotected;
       7. exercise reasonable care and diligence in the discharge of its obligations in terms of the Agreement;
       8. ensure its personnel observe and adhere to SARS’s security policies and procedures, especially those policies that relate to access to SARS’s premises; and
       9. appoint a Designated Representative.
12. **SARS UNDERTAKINGS**
    1. SARS undertakes to:
       1. subject to the provisions set out in clauses 16 and 19 below, pay the Supplier for the Services in South African Rand, within thirty (30) days of receipt of an accurate and complete invoice;
       2. where necessary and subject to SARS access Policies, give the Supplier access to SARS’s premises;
       3. cooperate with the Supplier at all times for purposes of facilitating the timeous and efficient supply and delivery of the Services; and
       4. appoint a Designated Representative.
13. **ESCALATION PROCEDURES** 
    1. Escalation of matters related to this Agreement will be in accordance with each Party's respective escalation procedure, which procedure is set forth in **Annexure B** hereto.
14. **Health, safety and security procedures and guidelines**
    1. SARS has in terms of OHS Act,
       1. established and provided a safe working environment for SARS’s Personnel and visitors to its Premises and further maintains the work environment, which is safe, without risks to the health of SARS’s Personnel and visitors, in as far as is reasonably practical to eliminate or mitigate any health and safety hazard or potential health and safety hazard; and
       2. controls in place required to respond to any health safety risk which controls are regularly updated in line with the applicable provisions of the OHSA and where required, standards and guides as published by the aforesaid prescript and/or National Institute for Communicable Diseases (NICD).
    2. The Supplier hereby agrees and undertakes:
       1. in terms of section 37(2) of the OHSA, to ensure that the Supplier and the Supplier’s Personnel comply in all respects, with the aforesaid OHSA and regulations and accept sole responsibility for all health and safety matters relating to the provision of the Services, or in connection with or arising out of such Services, for the Term of this Agreement, including with regard to the Supplier Personnel and ensuring that neither SARS’s Personnel nor any Third Party Suppliers staff’s health and safety is endangered in any way by the Supplier’s activities or conduct in providing the Services whilst at the Premises;
       2. to ensure that the Supplier Personnel will at all times and if required by SARS at its Premises, be in possession of the necessary PPE (Personal Protective Equipment) prescribed by the OHSA before entering SARS’s offices and Premises and shall when within SARS’s offices and/or Premises, adhere to SARS PPS&G applicable to SARS and SARS's Personnel and are available to the Supplier on request. Should SARS at any time have reason to believe that any member of the Supplier Personnel is failing to comply with SARS PPS&G, SARS will be entitled to deny such member of Supplier Personnel to any or all of Premises and require the Supplier to replace such member of Staff without delay.
    3. The Supplier undertakes and warrants to SARS that:
       1. it shall ensure that all Supplier Personnel are and remain adequately and validly insured in terms of the Compensation for Occupational Injury and Diseases Act, 1993 (“**COIDA**”), and shall deliver proof to that effect to SARS as and when required to do so. In addition, the Supplier shall, before commencement of the Services (notwithstanding the Effective Date), an Appointment, furnish to SARS a copy of a certificate of good standing issued by the Compensation Commissioner appointed in terms of COIDA;
       2. it shall at all times comply with the provisions of COIDA and the OHSA;
       3. it shall, at the request of SARS, furnish to SARS a copy of its own health, safety and environmental plan, policy and procedures pertaining to occupational health and safety, and amend such policy if SARS can reasonably demonstrate that the plan, policy and/or procedures are incomplete or inadequate;
       4. it shall ensure that no Supplier Personnel brings intoxicating drugs or liquor onto the Premises, and that no Supplier Personnel arrives at the Premises under the influence of intoxicating drugs or liquor;
       5. it shall supply all personal protective equipment and clothing, and other safety measures and equipment, as may be necessary in the circumstances (or as may be requested by SARS from time to time) in order to protect Supplier Personnel while they are at the Premises; and
       6. all equipment, tools and materials brought onto the Premises for use by the Supplier Personnel, are in good working order for the Term, and that they meet the requirements contemplated in the OHSA.
    4. SARS reserves (where applicable), the right to undertake audit(s) at any given time at the Supplier’s and its sub-contractor’s premises to assess the Supplier’s compliance with its health and safety plan.
    5. The Supplier hereby indemnifies and agrees to hold SARS harmless against any loss, damages, liability or expense suffered or incurred by SARS:
       1. as a result of any breach in terms of this clause 17.1.1;
       2. in terms of the OHSA as a result of any Supplier Personnel failing to comply with SARS PPS&G as contemplated in clause 17.2above; and
       3. as a result of any charge that may be brought against SARS in terms of Section 37 and related provisions of the OHSA, in the event that any of its personnel commit any offense in terms of the OHSA, while on the Premises.
    6. The indemnity referred to in clause 17.5 is in addition to the general indemnity contained elsewhere in this agreement and does not limit the ambit of the general indemnity in any way whatsoever.
15. **PRICE, INVOICING AND PAYMENT** 
    1. Subject to clauses 16 and 19 below, SARS shall pay the Supplier the prices set out in **Annexure C** hereto for the Services.
    2. The price is inclusive of VAT as well as all costs associated with the performance of the Services.
    3. The Supplier shall invoice SARS for the Services in arrears on or before the fifth (5th) Business Day of the month following the month in which the Services were rendered.
    4. Each invoice shall have attached to it such information, and be in such form and on such media, as SARS may reasonably request and at the minimum shall contain:
       1. a statement of the total amount due to the Supplier based on Service Products that were supplied and delivered to SARS; and
       2. a valid SARS purchase order number.
    5. The Supplier shall deliver all invoices to the Designated Representative.
    6. The Supplier shall maintain complete and accurate records of, and supporting documentation for, the amounts invoiced to and payments made by SARS hereunder.
    7. Within ten (10) days after SARS’s request, the Supplier shall provide SARS with any other documentation or information reasonably required by SARS in order to verify the accuracy of the amounts due on an invoice and the Supplier’s compliance with the requirements of this Agreement.
    8. The Supplier shall verify (by carrying out detailed checks of each invoice) that each invoice is complete and accurate, and that it conforms to the requirements of this Agreement before issuing the invoice to SARS.
    9. The Supplier shall for the duration of this Agreement and a period of five (5) years after the termination of this Agreement, maintain a complete audit trail of the Services performed under this Agreement sufficient to permit a complete audit thereof. The Supplier shall provide SARS and SARS auditors access at reasonable times to information, records and documentation relating to the Services for the purpose of performing audits, examinations and inspections of the Supplier in order to verify the Supplier’s compliance with the terms of this Agreement and/or to enable SARS to comply with the requirements of any regulatory authority, regulators and/or governmental entities having jurisdiction.
    10. All costs of the auditors incurred in performing audits under clause 18.10 will be borne by SARS, unless audit findings reveal the Supplier’s non-compliance with the terms of this Agreement and/or Applicable Law, in which event the costs shall be for the account of the Supplier.
    11. SARS may withhold, deduct or set off from any monies due and owing to the Supplier either in terms of this Agreement or otherwise, an amount equal to the amount of any outstanding claims that SARS may have against the Supplier for damages, costs or any other indebtedness arising out of this Agreement: Provided that SARS will provide the Supplier with written notice of its intention to offset, supported by reasonable details of the actual damages, costs or indebtedness incurred by SARS.
    12. A certificate of indebtedness signed by the Chief Financial Officer of SARS reflecting the amount due and payable under clause 18.10 above shall be sufficient and prima facie proof of the contents and correctness thereof for the purposes of with-holding, deduction or set off by SARS or for provisional sentence, summary judgment or any other proceedings against the Supplier in a court of law and shall be valid as a liquid document for such purposes.
16. **DISPUTED CHARGES AND INVOICING ERRORS**
    1. SARS may withhold payment that SARS disputes in good faith or, if the disputed payment has already been paid, SARS may withhold an equal amount from a later payment, including disputes in respect of an error on an invoice or an amount paid.
    2. If SARS withholds any such amount: -
       1. SARS shall within five (5) days notify the Supplier in writing that it is disputing such amount providing a reasonable explanation of the rationale therefore; and the Parties shall promptly first address such dispute in accordance with this Clause;
       2. If the dispute relates to only certain of the amounts included on an invoice (or equals in the case of disputed amounts that have already been paid), then SARS shall pay the undisputed amounts in accordance with clause 18.1 above; and
       3. If an invoice is identified as incorrect, then the Supplier 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.
    3. SARS shall not be responsible for paying interest on undercharged amounts.
    4. Any dispute arising in terms of clause 19.1 above and which remains unresolved for five (5) Business Days after it has arisen shall be referred by either Party to SARS’s Group Executive: Procurement and the office of the Supplier’s Managing Member or their duly delegated representatives for resolution.
    5. The Parties’ representatives, contemplated in clause 19.4 above, shall meet within five (5) Business Days of the referral of the dispute and aim to resolve the dispute.
    6. In the event that the dispute remains unresolved after ten (10) Business Days of its referral to the persons mentioned in clause 19.4 either Party shall be entitled to refer the dispute for resolution in accordance with the provisions of clause 38 below.
17. **Intellectual Property Rights**
    1. SARS retains all right, title and interest in and to the SARS Intellectual Property. As of the Effective Date, the Supplier is granted a non-exclusive licence for the Term, to perform any lawful act including the right to use, copy, maintain, modify, enhance and create derivative works of SARS Intellectual Property (including source code materials, programmer interfaces, available documentation, manuals and other materials to the extent necessary for the use, modification, or enhancement thereof) for the sole purpose of providing the Deliverables and/or Services to SARS.
    2. The Supplier will not be permitted to use SARS Intellectual Property for the benefit of any entities other than SARS without a signed written consent of SARS, which may be withheld at SARS’s sole discretion. Except as otherwise requested or approved by SARS, which approval will be at SARS’s sole discretion, the Supplier will cease all use of SARS Intellectual Property as of the termination or expiration date of this Agreement.
18. **CONFIDENTIAL UNDERTAKING**
    1. The Parties shall ensure that prior to commencing the performance of the Services all the Supplier Personnel involved in the rendering of the Services, sign the SARS Oath of Secrecy and submit the original thereof to SARS for record keeping purposes.
    2. The Supplier undertakes that for the duration of this Agreement and after the expiration or earlier termination of this Agreement for any reason, it will keep confidential all SARS’s Confidential Information. This includes the knowledge acquired by the Supplier Personnel as a result of the work performed by the Supplier in terms of this Agreement and which by its nature, is intended to be kept confidential.
    3. The Parties agree that no trade and/or business secrets, Confidential Information or methods of work supplied by one Party to the other shall be disclosed to any third party, without first obtaining the written consent of the other Party, unless required by law or competent court or Authority.
    4. The Supplier specifically acknowledges that all information relating to the Services, including and not limited to, literary works produced thereunder are of a sensitive nature and must be kept confidential. The Supplier undertakes not to disclose such information without first obtaining the written consent of SARS unless required by law or competent court.
    5. If the Supplier is uncertain about whether information is to be treated as confidential in terms of this Clause, it shall be obliged to treat it as such until advised otherwise, in writing, by SARS.
    6. The Supplier will protect the interests of SARS in its Confidential Information by:
       1. making available such Confidential Information only to the Supplier Personnel who are actively involved in the execution of its obligations under this Agreement and then only on a “need to know” basis;
       2. putting in place internal security procedures in accordance with current industry standards and/or Applicable Law to prevent unauthorised disclosure and taking all practical steps to impress upon those personnel who need to be given access to Confidential Information, the secret and confidential nature thereof;
       3. using the Confidential Information only for the purposes of and to the extent necessary for the Supplier to comply with its obligations under this Agreement. In particular, the Supplier shall not use the Confidential Information for the purpose of updating, supplementing or verifying its own data bases;
       4. not using any Confidential Information of SARS, or disclosing directly or indirectly any Confidential Information of SARS to third parties, whether during this Agreement or thereafter, unless required by law;
       5. notifying SARS promptly of any unauthorised or unlawful use, disclosure and/or Processing (as defined by POPIA) of the Confidential Information of which the Supplier becomes aware;
       6. deleting or returning (at the request of SARS) the Confidential Information as may be required by SARS, without keeping copies thereof, immediately upon first written demand for deletion or the return thereof by SARS, whether or not the Supplier has completed the provision of the Services in respect of any such Confidential Information, and in any event promptly after the use thereof in the provision of the Services;
       7. providing reasonable evidence of the Supplier’s compliance with its obligations under this Clause 21 to SARS on reasonable notice and request; and
       8. ensuring that all Confidential Information of SARS which has or will come into the possession of the Supplier and its personnel, will at all times remain the sole and absolute property of SARS.
       9. The unauthorised disclosure by the Supplier of the Confidential Information to a third party may cause irreparable loss, harm, and damage to SARS, and may lead to criminal sanction. As such, the Supplier indemnifies and holds SARS harmless against all Losses and any action, or damage, of whatever nature, suffered or sustained by the SARS pursuant to a breach by the Supplier of provisions of this Clause 21
    7. No announcements of any nature whatsoever will be made by or on behalf of a Party relating to this Agreement without the prior written consent of the other Party.
    8. The provisions of this Clause 21 shall survive the termination or cancellation of this Agreement for any reason whatsoever.

1. **DATA PROTECTION**
   1. The Supplier acknowledges that in the course of the providing the Services it may become privy to SARS’s Confidential Information including Personal Information.
   2. To the extent that the SARS’s Confidential Information and/or Personal Information needs to be stored on the Supplier’s information technology systems, the Supplier shall take appropriate technical safeguards and organisational measures and/or measures prescribed by sections 19 to 22 of POPIA and/or applicable Data Protection Legislation (where applicable), SARS Act and/or Applicable Laws against unauthorised access to, unlawful Processing, accidental loss, destruction or damage of the SARS’s Confidential Information and shall provide SARS, with reasonable evidence of the Supplier’s compliance with its obligations under this Clause 22.2 on reasonable notice and request.
   3. The Supplier shall institute and operate all necessary back-up procedures to its information technology systems to ensure that, in the event of any information system malfunction or other loss of SARS’s Confidential Information and/or Personal Information, such information can be recovered promptly and that the integrity thereof and any database containing such material can be maintained.
   4. The Supplier shall ensure that all SARS’s Confidential Information and/or Personal Information provided to it by SARS in order to render the Services is stored separately and isolated from data and property relating to the Supplier or any third party (including any other entity with whom the Supplier may conduct business) in accordance with the Data Protection Legislation, SARS Act and the Applicable Laws.
   5. The security measures to be taken by the Supplier in terms of Clause 22.2 must –
      1. not be less rigorous than the security safeguards, measures and practices (i) generally maintained by SARS in respect of its data (and as communicated by SARS to the Supplier); (ii) maintained by the Supplier with respect to its own confidential information of a similar nature and/or (iii) prescribed by the Applicable Laws and/or Data Protection Legislation; and
      2. enable SARS and the Supplier to conform to Applicable Law, including, Data Protection Legislation, PAIA, Electronic Communications and Transactions Act, 2002 (Act No 25 of 2002); the Tax Acts.
   6. The Supplier hereby indemnifies and holds SARS harmless against all Losses incurred by SARS as a result of any breach by the Supplier of the provisions of this Clause 22.
2. **processing of personal information**
   1. Without limiting any other provision of this Agreement, the Supplier shall only store, copy or use any Personal Information disclosed to it by SARS pursuant to the Agreement to the extent necessary to perform its obligations under this Agreement and subject to the Privacy and Data Protection Requirements and/or Data Protection Legislation binding on SARS and/or Supplier.
   2. If at any time the Supplier suspects or has reason to believe that Personal Information disclosed to it by SARS pursuant to this Agreement has or may become lost or corrupted in any way for any reason then, the Supplier shall immediately notify SARS thereof what remedial action it proposes to take, if any, aligned with the relevant conditions of POPIA and/or where applicable the Data Privacy Legislation.
   3. The Supplier agrees that, in regard to the Personal Information, it shall –
      1. only Process the Personal Information subject to the Privacy and Data Protection Requirements and in accordance with written instructions from SARS and supported by written consent from a Data Subject, (which may be specific instructions or instructions of a general nature limited to the specific purpose (as prescribed by Condition 1 of POPIA “**the Lawful Purpose**”)), as set out in the Agreement or as otherwise notified by SARS to the Supplier from time to time);
      2. not otherwise modify, amend or alter the contents of the Personal Information or disclose or permit the disclosure of any of the Personal Information to any third party unless authorised in writing by SARS and where required, the Data Subject and limited to the Lawful Purpose, being carrying out duties in relation to the performance of the Services;
      3. not maintain records of the Personal Information for longer than is necessary in order for the Supplier to comply with its obligations under the Agreement, unless retention thereof for a longer period is required by the Applicable Laws or as requested in writing by SARS;
      4. implement appropriate technical safeguards and organisational measures to protect the Personal Information against unauthorised access or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure in accordance with Condition 7 of POPIA and/or relevant provisions of the Data Protection Legislation and shall further ensure Supplier Personnel in their role as sub-Operators, comply in all respect with the technical safeguard and organisation measures implemented by the Supplier or SARS to protect the Personal Information against unauthorised access or unlawful Processing, accidental loss, destruction, damage, alteration or disclosure as prescribed by the aforesaid Condition 7 of POPIA to Personal Information and to the nature of the Personal Information which is to be protected;
      5. keep all Personal Information and any analyses, profiles or documents derived therefrom separate from all other data and documentation of the Supplier;
      6. Process the Personal Information in accordance with Privacy and Data Protection Requirements and/or requirements prescribed by Data Protection Legislation where binding on SARS as the Responsible Party; and
      7. co-operate as requested by SARS to enable SARS to comply with or exercise rights of Data Subject under POPIA and/or Data Protection Legislation if binding of SARS in respect of Personal Information Processed by the Supplier and/or Supplier Personnel under the Agreement or comply with any assessment, enquiry, notice or investigation under the SARS Act, POPIA, PAIA or Applicable Law which shall include the provision of all data requested by SARS within the timescale specified by SARS in each case, subject to compliance by SARS with POPIA.
   4. The Supplier shall provide co‑operation in any investigation relating to security which is carried out by or on behalf of SARS, including providing any information or material in its possession or control, provided that SARS gives its reasonable notice of its intention to carry out such an investigation.
   5. The Supplier hereby indemnifies and holds SARS harmless against all Losses incurred by SARS as a result of any Personal Information Breach by the Supplier, Supplier Personnel and/or breach of any of the provisions of this Clause 23.
3. **PROTECTION OF PERSONAL INFORMATION**
   1. Each Party shall comply with its obligations under POPIA in respect of Personal Information collected and/or Processed in connection with the Agreement and the Services.
   2. Each Party shall only provide, collect and/or Process the Personal Information:
      1. in compliance with POPIA and where binding on a Party;
      2. as is necessary for the performance of the Services;
      3. for maintaining its internal administrative processes, including quality, risk, client or vendor management processes;
      4. for internal business-related purposes; and
      5. in accordance with the lawful Purpose and reasonable instructions of SARS as the Responsible Party.
   3. Both Parties shall:
      1. in dealing with the Personal Information either as the Responsible Party or Operator comply with the specific security safeguards or measures set out in Condition 7 of POPIA and data protection obligations imposed on them in terms of POPIA or Data Protection Legislation;
      2. where applicable, comply with the specific obligations imposed on them in terms of POPIA and/or where applicable, Data Protection Legislation in respect of the specific role they fulfil either as the Operator or Responsible Party in terms of providing the Services as agreed between the Parties; and/or
      3. take, implement and maintain all such technical and organisational security procedures and measures as prescribed by Condition 7 of POPIA and/or relevant articles of Data Protection Legislation where applicable, necessary or appropriate to preserve the security and confidentiality of the Personal Information in its possession and to protect such Personal Information against unauthorised or unlawful collection, disclosure, access or Processing, accidental loss, destruction or damage.
   4. No Personal Information shall be collected, Processed and/or shared with any other third party without obtaining written consent of the Responsible Party supported by the Data Protection Agreement signed with the Responsible Party.
   5. Neither the Supplier nor Supplier Personnel in line with their role as the Operator or sub Operator shall be entitled to Process the Personal Information with any other third party except for the Supplier Personnel (subject to signing of the Data Protection Agreement by Responsible Party), where necessary in order to protect the legitimate interests of any of the Parties, Data Subject or in connection with this Agreement and the Services.
   6. The Supplier may notify SARS about important developments, proposals and services which it thinks may be relevant to SARS for Service improvement etc., however, the Supplier undertakes for the Term, not to use or Process the Personal Information to send business offering to SARS and/or Data Subject including newsletters, invitations to seminars and similar marketing material or other communications from the Supplier.
   7. Electronic communications between the Supplier and SARS (limited only where the Supplier Personnel are using the Supplier’s resources), may be monitored by the Supplier to ensure compliance with its professional standards and internal compliance policies pertaining to this Agreement and not for any other purpose.
   8. Electronic communications between SARS and the Supplier and SARS Personnel (limited only where the Supplier Personnel are using SARS’s resources), may be monitored by SARS to ensure compliance with its professional standards and internal compliance policies pertaining to this Agreement and not for any other purpose.
   9. The Supplier shall not Process the Personal Information to:
      1. an outsourced information technology service provider; or
      2. another country, including the use of cloud-based solutions (unless those solution are approved by SARS in writing and compliant with POPIA or equivalent Data Protection Legislation); or
      3. an Affiliate unless approved by SARS in writing and provided a Data Protection Agreement has been signed by SARS;
      4. without prior written consent of SARS and the Data Subject or existing Data Protection Agreement.
   10. Where consent has been granted in terms of Clause 24.9 above, the Supplier undertakes in relation to Clauses 24.7 and 24.8 and for the Term as the Operator, to require that any third party, outsourced service provider, foreign legal entity or other Affiliate involved in the Processing or storage of Personal Information, to ensure that such Personal Information is protected with the same Best Industry Practices and/or protection as is required in terms of Clause 24.3 and the provision of the POPIA and/or Data Protection Legislation including the signature of the Data Protection Agreement between SARS and such Third Party.
   11. The Supplier in their role as Operator shall be held accountable for Personal Information further Processed by the Supplier Personnel for the purposes set out in the Agreement irrespective of whether a such Supplier Personnel performs such role under the instruction of SARS as a Responsible Party. It is understood by the Parties that, the role of Supplier Personnel is integral to the performance of the Services however, such role including the signing of the Data Protection Agreement by the Supplier Personnel does not and will not be deemed to absolve the Supplier from any liability whatsoever, suffered by SARS or Data Subject as a result of breach of this Agreement and/or Data Protection Agreement.
   12. SARS as the Responsible Party warrants that it has obtained written consent from Data Subjects for the Processing or transfer of such Data Subjects’ Personal Information whenever this is required for purposes of this Agreement and the Services.
   13. The Supplier represents and warrants in favour of SARS that:
       1. it has used reasonable measures to ensure POPIA compliance by the Supplier Personnel when at its offices or assigned to customers on a project basis which measures includes, POPIA training and awareness; and
       2. it has established POPIA compliance programme to manage and maintain POPIA compliance.
   14. For these purposes, and notwithstanding that a Supplier Personnel will be Processing Personal Information in terms of this Agreement and not the Supplier, the Supplier hereby indemnifies and holds SARS harmless against all Losses incurred by SARS as a result of any Personal Information Breaches by Supplier Personnel and/or breach of any of the provisions of this Clauses 24.
4. **Audits**
   1. **Audit Rights**:
      1. The Supplier will maintain a complete audit trail of financial and non-financial transactions resulting from the provision of the Services (the “**Transactional Information**”). Where SARS requires to audit the Transactional Information, the Supplier will provide SARS with access to such Transactional Information including personnel, data, records and documentation relating thereto for the purpose of performing audits and inspections of the Transactional Information to: (i) verify the accuracy of the Supplier’s Fees and invoices; (ii) verify the accuracy of payments by SARS or credits from the Supplier; (iii) verify the accuracy of price changes to the extent such changes are determined by reference to Supplier’s costs or changes thereto;
      2. The Supplier will maintain complete records of Servicer Provider accreditation including Key Contact and Supplier Personnel qualifications and security check (the “**Technical Information**”) submitted as proof of Supplier and/or Key Contact and/or Supplier Personnel’s ability to provide the Services. Where SARS requires to audit the Technical Information, the Supplier will provide SARS with access to such Technical Information including personnel, data, records and documentation relating thereto for the purpose of performing audits and inspections of the Technical Information to: (i) verify the accuracy of the Supplier and/or Key Contact’s accreditation, qualification and/or experience; (ii) examine the Supplier’s performance of the Services, including verifying compliance with the Best Industry Standards; (vi) verify compliance with the terms of the Agreement; (vii) satisfy the requirements of any Applicable Law.
      3. SARS reserves the right to appoint a third party to perform an audit under this Clause 25.1 and the Supplier will provide to the auditors, inspectors and regulators such assistance as they may require. Unless SARS has a good faith suspicion of fraud, SARS will provide the Supplier with reasonable notice for audits.
      4. All costs incurred by SARS in performing audits of the Supplier will be borne by SARS unless any such audit reveals a material inadequacy or material deficiency in respect of the Services including compliance with the relevant Applicable Laws, in which event the cost of such audit will be borne by Supplier.
      5. If an audit reveals an overcharge, the Supplier will promptly refund the overcharge plus interest at Repo Rate, from the date of payment of the overcharge through the date the overcharge is refunded by Supplier.
   2. **Audit Follow-Up**:
      1. Following an audit or examination, SARS or its external auditors will meet with the Supplier to obtain factual concurrence with issues identified in the audit or examination.
      2. Within 10 (ten) Business Days following the provision to the Supplier of the findings of an audit, whether by way of a meeting or the delivery of the audit report by the auditors, or an audit report by the Supplier’s auditors, the Supplier will provide SARS with a plan ("**Audit Response Plan**") to address shortcomings or deficiencies raised in such audit findings attributable to the Supplier. The Audit Response Plan will identify the steps that the Supplier will take to remedy such shortcomings and deficiencies and include a completion date for such steps detailed in the Audit Response Plan. With SARS approval, the Supplier will implement such Audit Response Plan at the Supplier’s cost and expense. If required and agreed between the Supplier and SARS, the Supplier will report monthly to SARS on the status of the implementation of any Audit Response Plan. Failure to complete the Audit Response Plan on or before the completion date included in such Audit Response Plan will be deemed to be a material breach of the Agreement.
      3. The Supplier will promptly make available to SARS the results of any reviews or audits conducted by the Supplier, its Affiliates agents or representatives (including internal and external auditors) to the extent such findings reflect conditions and events relating to the Services.
      4. Promptly after the issuance of any audit report or findings issued under Clause 25.2.3 the Parties will meet to review such report or findings and to agree on how to respond to the suggested changes.
5. **SECURITY VETTING OF THE SUPPLIER’S PERSONNEL, PREMISES AND NETWORK**
   1. SARS reserves the right at its sole and absolute discretion to conduct do a security check:
      1. on the Supplier’s Personnel involved with the performance of the Services to test if such personnel does not pose any security risk to SARS;
      2. Premises where the Services are conducted and/or Material stored to test if such Premises comply with SARS’s physical security safeguards and requirements; and/or;
      3. Network used by the Supplier to communicate with SARS and/or to Process SARS Information or Material to test if such network compliance with SARS’s network security measures and/or safeguards.
   2. Where SARS finds the Supplier’s Personnel, Premises and/or Network to be a security risk, SARS will inform the Supplier accordingly and the Supplier shall forthwith (i) replace such employee, or agent with another employee, or agent with equal skill and experience and has passed SARS’s security clearance; repair such Premises and/or Network to meet SARS’s security requirements, safeguard and measures.
   3. To avoid any security risk to SARS, the Supplier undertakes to maintain and manage its compliance with the provisions of this clause 26 and shall on a quarterly basis submit a security report to SARS in order to confirm its compliance with the aforementioned requirements. A failure by the Supplier to submit the security report is a material breach of this Agreement entitling SARS to terminate same with immediate effect.
6. **INDEMNITY**
   1. The Supplier indemnifies and holds SARS harmless against all losses, claims, demands, proceedings, damages, costs, charges and expenses (including legal expenses) of whatsoever nature arising out of this Agreement or at Law in respect of the Supplier’s breach of the provisions of this Agreement, or any injury or death of any person, or loss of or damage to property occurring by reason of the wilfulness or negligence of the Supplier, its employees or agents during or after the execution of the Services.
7. **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 will be liable to the other Party for all Losses which constitute direct and/or general damages.
   2. Subject to Clauses 28.3 and 28.4, the Parties agree that, in the event of a breach of any of the provisions of the Agreement, the Defaulting Party will 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 29.2 above or the Agreement in general, the Parties agree that they will not be liable to the other for -
      1. Losses which constitute indirect, special and/or consequential damages where such damages are caused by a breach of any Intellectual Property and/or Confidential Information undertaking contained in the Agreement; and
      2. all Losses which arise out of their dishonesty or gross negligence regardless of whether such Losses arise out of contract or delict; and/or
      3. any third-party claims arising from or related to the death or bodily injury of any agent, employee, customer, business invitee, or other person caused by the delictual conduct of such Party.
   4. Notwithstanding anything to the contrary set forth in Clauses 28.1, 28.2 and 28.3 or the Agreement in general, the Supplier agrees that it remains liable to SARS for all Losses including special, indirect or consequential, and/or general damages and which will not be subject to any limitation of liability, where the Losses including special, indirect or consequential, and/or general damages incurred by SARS are occasioned by a misconduct of the Supplier Personnel and/or breach by the Supplier of the provisions of Clauses 21, 22; 23 and 24 above.
8. **BREACH AND EARLY TERMINATION**
   1. Where a party (the “**Defaulting Party**”) breaches any of the provisions herein, the other party (the “Aggrieved Party”) may give notice to the Defaulting Party and request it to remedy the breach within a period of seven (7) days, or within such further period as may be agreed upon by the Parties.
   2. If the Defaulting Party fails to remedy the breach within the specified time, then the Aggrieved Party may claim specific performance, or terminate the agreement forthwith and claim damages from the Defaulting Party.
   3. Notwithstanding clause 29.2 above, the Aggrieved Party shall be entitled to any other remedies at law, as may be applicable.
   4. The Supplier acknowledges that it is a material term of this Agreement that the Service Levels prescribed in **Annexure B**, must be maintained throughout the duration of this Agreement. The parties agree that multiple Service Level Failures will constitute sufficient proof of persistent non-compliance by the Supplier with SARS’s prescribed Service Levels and that such persistent non-compliance will constitute a material breach of this Agreement.
9. **TERMINATION**
   1. This Agreement will terminate on Termination Date.
   2. SARS may, by giving written notice to the Supplier, terminate this Agreement should the Supplier –
      1. commit Service Level Failure(s) which have either exclusively or cumulatively, during any twelve-month period, attracted Service Credits aggregating the maximum 25% Amount at Risk threshold; or
      2. commit the same Service Level Failures during execution of any consecutive Service Requests.
   3. SARS shall bear no liability towards the Supplier, in the event of termination of the Agreement pursuant to clause 18.2 above, with the exception of payment of amounts that are actually due and payable in respect of Services rendered.
   4. In the event that the Supplier is unable to pay its debts or has an administrator, judicial manager, liquidator or similar person or officer appointed, or where it becomes the subject of business rescue proceedings, compromises generally with its creditors, is unable to pay any judgment granted against it within 10 (ten) days, cease for any other reason to carry on business, or in the reasonable opinion of SARS, any of these events appear likely, SARS may terminate this Agreement without any liability to the Supplier.
   5. SARS may, by giving notice to the Supplier, terminate the Agreement, in respect of the Services (in whole or in part), as of a date specified in the notice of termination in the event that the Supplier, without SARS’s prior written consent –
      1. sells all or substantially all of its assets; or
      2. undergoes a change of ownership/management. For this purpose a change of ownership/management shall be deemed to have occurred in circumstances where any natural or legal person acquires the ability, by virtue of ownership, rights of appointment, voting rights, management agreement, or agreement of any kind, to control or direct, directly or indirectly, the board or executive body or decision-making process or management of the Supplier.
10. **Force Majeure**
    1. Delay or failure to comply with or breach of any of the terms and conditions of this Agreement by either Party if occasioned by or resulting from a Force Majeure Event or any other circumstances of like or different nature beyond the reasonable control of the Party so failing, will not be deemed to be a breach of this Agreement nor will it subject either party to any liability to the other. It is understood that neither Party will be required to settle any labour dispute against its will.
    2. Should either Party be prevented from carrying out any contractual obligation by any circumstance described above, such obligation will 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 will thereupon promptly meet to determine whether an equitable solution can be found. If the event continues or is likely to continues for more than 30 (thirty) days, then SARS shall be entitled to terminate the Services by delivering a written notice to that effect to the Supplier.
    3. Should such Force Majeure Event last continuously for a period of 14 (fourteen) days, and no mutually acceptable arrangement is arrived at by the parties within a period of 7 (seven) days thereafter, either Party will be entitled to terminate the Agreement with immediate effect.
11. **Records Retention**
    1. The Supplier will maintain and provide SARS with access to the records, documents and other information required to meet SARS's audit rights under the Agreement until the later of: (i) 5 (five) years after expiration or termination of the Agreement; (ii) all pending matters related to the Agreement are closed; or (iii) such other period as required by Applicable Law.
12. **Consents and Approvals**
    1. Any approval, acceptance, consent or similar action required to be given by either Party in terms of this Agreement will, unless specifically otherwise stated or stated to be at the discretion of a Party, not be unreasonably withheld.
    2. An approval, acceptance, consent or similar action by a Party (including of a plan or deliverable) under this Agreement will not relieve the other Party from responsibility for complying with the requirements of this Agreement, nor will it be construed as a waiver of any rights under this Agreement, except as and to the extent otherwise expressly provided in such written approval or consent. For example, where this Agreement sets forth a standard by which a plan is to be developed, the Supplier will be responsible for complying with such requirement and will not be deemed to be relieved of it merely because SARS has approved such plan.
13. **Applicable Law and Jurisdiction**
    1. This Agreement will be governed by and construed in accordance with the Law of the Republic of South Africa and all disputes, actions and other matters relating thereto will be determined in accordance with such law.
    2. The Parties hereby irrevocably and unconditionally consent to the non-exclusive jurisdiction of the North Gauteng High Court, Pretoria in regard to all matters arising from this Agreement.

1. **Legal and Regulatory Compliance**
   1. The Supplier warrants that it is and will for the duration of this Agreement remain fully cognisant of and compliant with any relevant Applicable Laws (as may be amended from time to time in writing) 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 Deliverables and/or Services under this Agreement.
   2. The Supplier will, within 14 days (or any other period agreed by the Parties in writing) from the Effective Date, furnish SARS with copies of all regulated licences and/or accreditation (as specified in the RFP), and which are required by the Supplier for the provision of the Services to SARS. The details of all licence terms and conditions and other obligations imposed on the Supplier which are not contained in the Supplier's licences must be furnished in writing by the Supplier to SARS.
2. **Warranties by the supplier**
   1. **The Supplier Personnel:**
      1. The Supplier warrants that it will for the duration of this Agreement: (i) use adequate numbers of qualified staff with suitable training, accreditation, education, experience and skill to perform the Services; (ii) use and adopt any standards and processes required under this Agreement; and (iii) 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.
   2. **Intellectual Property warranties:**
      1. The Supplier warrants that it will 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.
   3. **The Service Delivery**:
      1. The Supplier represents and warrants that it shall for the duration of this Agreement: (i) use adequate numbers of qualified Supplier Personnel with suitable training, education, experience and skill to perform the Services; (ii) use and adopt any standards and processes required under this Agreement; (iii) 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; and (iv) provide and maintain such documentation as is authored by or on behalf of the Supplier so that it: (a) accurately reflects the operations and capabilities of the Software; (b) is accurate, complete and written in a manner easily understood by SARS; and (c) is promptly updated from time to time to reflect any changes.
   4. **Security Clearance:**
      1. Without limiting the generality of the aforegoing, the Supplier represents and warrants that it will ensure that the Supplier Personnel engaged in the provision of the Services are suitable and pose no risk to SARS. Any member of the Supplier Personnel 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 certificate, failing which SARS shall be entitled to require the Supplier to replace such member of the Supplier Personnel with someone who does so comply. The Supplier undertakes to indemnify SARS against any claims that may be brought by any of the Supplier Personnel who may be affected as a result of SARS exercising its rights under this Clause.
      2. As a confirmation that the Supplier Personnel engaged to provide the Services are suitable and appropriately qualified, trained, experienced, skilled and available to render such services in terms of this Agreement including confirmation of such Supplier Personnel’s citizenship, criminal record status and/or credit worthiness, the Supplier represents and warrants that it has conducted a background screening exercise on every member of the Supplier Personnel whom is assigned to SARS for the fulfilment of its obligations in terms of this Agreement and shall if requested by SARS provide the report from a reputable screening agency which shall verify the following:
         1. Citizenship including residency status;
         2. Criminal activity report; and
         3. Credit worthiness.
      3. The Supplier shall ensure that the validity of such report shall not be older than 3 (three) months as at the date of request or as at the commencement of such Supplier Personnel 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.
      4. In the event that the report reveals evidence that the Supplier Personnel 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 Supplier shall ensure a replacement of such member of the Supplier Personnel with one whose background screening meets the requirements of SARS. The Supplier undertakes to indemnify SARS against any claims that may be brought by any of the Supplier’s Staff who may be affected as a result of SARS exercising its rights under this Clause.
      5. The Supplier shall further ensure that its Staff assigned to provide the 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.
      6. A breach by the Supplier of any warranty, representation or other provision of this Clause 36 or of any express or implied warranty or representation contained elsewhere in this Agreement, shall be a material breach of this Agreement which shall confer on SARS the right, in its sole discretion, to utilise any remedy created in this Agreement for the enforcement of SARS’s rights, including termination in terms of Clause 30 above.
   5. **POPIA Compliance:**
      1. The Supplier warrants that it is and will remain for the duration of this Agreement, fully cognisant of and compliant with POPIA including any other Data Protection Legislation applicable to the Services.
      2. The Supplier warrants that it has implemented POPIA compliance programme within its organisation and further that, the Service Personnel in their role as Processors, have been trained on POPIA compliance and are aware of the importance of Protection of Personal Information and commit to ensure compliance thereof when at SARS in their role as Processors.
      3. The Supplier warrants that all Supplier Personnel who will be exposed to the Personal Information has agreed to comply with POPIA and completed all required agreements for the safeguard of Personal Information.
   6. **Regulatory requirements:**
      1. The Supplier warrants that it is and will 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 and/or Software. The Supplier will 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.
   7. **Documentation:**
      1. The Supplier warrants that it will provide and maintain Documentation so that it: (i) accurately reflects the operations and capabilities of any and all Software and training courses; (ii) is accurate, complete and written in a manner easily understood by SARS; and (iii) is promptly updated from time to time to reflect any change.
3. **WARRANTIES**
   1. The Supplier hereby represents and warrants that:
      1. It is acting as the principal and not an agent of an undisclosed principal;
      2. It has the necessary skills, expertise, experience and resources that are required for the rendering of the Services in terms of this Agreement;
      3. It has the capacity to timeously deliver the Services, time being of the essence;
      4. It will provide the Services in a cost-effective manner, thereby ensuring that no unnecessary or extraordinary costs are incurred and passed on to SARS;
      5. The execution and performance of the terms and conditions of this Agreement is legal and binding and does not constitute a violation of any law, judgment, its founding documents or binding agreements to which it is party or by which it or its assets are bound; and
      6. It is expressly agreed between the Parties that each warranty and representation given by the Supplier in this Agreement is material to this Agreement and induced SARS to conclude this Agreement.
4. **DISPUTE RESOLUTION**
   1. In the event of there being a dispute, but save where otherwise provided in this Agreement, such dispute will be resolved in accordance with the rules of the AFSA as provided for below.
   2. In the event of any such dispute arising between the Parties relating to or arising out of this Agreement, including a dispute as to the validity, implementation, execution, interpretation, rectification, termination or cancellation of this Agreement, the Parties will forthwith meet to attempt to settle such dispute, and failing such settlement within a period of 14 (fourteen) days of first meeting, the said dispute will on written demand by either Party be submitted to arbitration in Johannesburg in accordance with the rules of AFSA.
   3. Should the Parties fail to agree in writing on an arbitrator within 10 (ten) days after arbitration has been demanded, the arbitrator will be nominated at the request of a disputant by AFSA.
   4. The decision of the arbitrator will be binding on the Parties to the arbitration after the expiry of the period of 20 (twenty) days from the date of the arbitrator's ruling if no appeal has been lodged by any Party. A decision which becomes final and binding in terms of this Clause 28 may be made an order of court at the instance of any Party to the arbitration.
   5. Nothing herein contained will be deemed to prevent or prohibit a disputant from applying to the appropriate Court for urgent relief or for judgment in relation to a liquidated claim.
   6. Any arbitration in terms of this Clause 28 will be conducted in camera and the Parties will treat as confidential and not disclose to any Third-Party details of the dispute submitted to arbitration, the conduct of the arbitration proceedings or the outcome of the arbitration, without the written consent of all the disputants.
   7. The provisions of this Clause 28 will continue to be binding on the Parties notwithstanding any termination or cancellation of the Agreement.
5. **RISK OF LOSS**
   1. Each Party will be responsible for risk of loss of, and damage to, any hardware or other asset of the other in its possession or under its control. Any hardware in the possession or control of the Supplier’s subcontractors or agents (including couriers, freight companies and the like) will be deemed to be under the control of the Supplier.
6. **Broad-Based Black Economic Empowerment ("BBBEE")**
   1. The Supplier acknowledges that Broad-Based Black Economic Empowerment is a business and social imperative in order to achieve a non-racial, non-sexist and equitable society in South-Africa.
   2. In pursuance of this objective the Supplier commits and warrants to comply in all respects with the requirements of the BBBEE and BBBEE Codes issued in terms of the BBBEE.
   3. Upon signature of this Agreement and one (1) calendar month after the expiry of a current certificate for a particular year, the Supplier shall provide SARS with a certified copy of its BEE Status from an agency accredited by SANAS or IRBA.
   4. During the currency of this Agreement (including any extension or renewal hereof which may apply), the Supplier shall use reasonable endeavours to maintain and improve its current BEE Status.
   5. A failure to provide a certified copy of its BEE Status or a failure to comply with provisions of this Clause will entitle SARS to terminate the Agreement by giving the Supplier one (1) month's written notice.
7. **Tax Compliance** 
   1. The Supplier warrants that as of the Effective Date it is in full compliance with and shall throughout the Term of this Agreement (including any Extended Period) shall remain in full compliance with Tax Act.
   2. Notwithstanding Clause 41.1 above, the Supplier acknowledges and agrees that to be appointed as the preferred Supplier, compliance with the Tax Act is required and as such, the Supplier is encouraged to monitor and maintain its Tax Act compliance status during the Term.
8. **Ethical Business Practices**
   1. SARS has a policy of zero tolerance regarding the engagement in corrupt activities or business. The Parties shall promptly report to each other and the relevant authorities any suspicion of corruption on the part of their agents, Staff, suppliers, taxpayers, or any other person or entity related to them, as well as any behaviour by any of the persons that may constitute a contravention of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004) (“PRECCA”) or the Prevention of Organised Crime Act, 1998 (Act No. 121 of 1998) (“POCA”) as amended from time to time.
   2. Neither Party shall conspire to or offer, promise or make any gift, payment, loan, reward, inducement benefit or other advantage to any of the other Party's Staff, suppliers or any third party in return for a benefit to itself or for the benefit of another person.
   3. If the results of any audit of the Services conducted by or on behalf of SARS indicates the possibility of corrupt activities, improper or fraudulent practices or theft, SARS shall, after allowing the Supplier reasonable opportunity to investigate that possibility, have the right either by itself, or by its agents, or by requesting the police, to investigate all the relevant circumstances, on reasonable notice to the Supplier as the circumstances allow, to question any relevant Staff of the Supplier or a third party and the Supplier shall use all reasonable efforts to facilitate any such investigation or enquiry. In the event that an act of corruption, fraud or theft is proven, SARS shall be entitled, on written notice to the Supplier, to immediately terminate this Agreement and either assume the provision of the Services itself, or appoint a third party to render the Services. The Supplier acknowledges that as the Services are a matter of national importance, it is crucial that SARS shall be entitled, without penalty, to ensure continued provision of the Services if for whatever reason this Agreement is terminated pursuant to the breach thereof by the Supplier or its Staff, as the case may be.
   4. If SARS at any stage during the subsistence of this agreement suspects the possibility of corrupt activities, improper or fraudulent practices, theft or any other offence in terms of PRECCA or POCA by the Supplier, SARS shall be entitled to:
      1. on written notice immediately suspend this Agreement and at its sole and absolute discretion appoint a third party to render the Services should SARS deem it necessary; and/or
      2. either by itself, or by its agents, or by requesting the police, to investigate all the relevant circumstances giving rise to the suspicion and to question any relevant Staff of the Supplier or a third party; and the Supplier shall use all reasonable efforts to facilitate any such investigation or enquiry.
   5. Withhold payment of the Supplier’s invoices until such time as SARS have concluded its investigations, which period shall be reasonable.
   6. In the event that an act of corruption, fraud, theft or any other offence in terms of PRECCA or POCA is proven, SARS shall be entitled to immediately terminate this Agreement on written notice to the Supplier and either assume the provision of the Services itself, or appoint a third party to render the Services. The Supplier acknowledges that as the Services are a matter of national importance, it is crucial that SARS shall be entitled, without penalty, to ensure continued provision of the Services if for whatever reason this Agreement is terminated pursuant to the breach thereof by the Supplier or its Staff, as the case may be.
9. **Conflict of Interest**
   1. The Supplier undertakes to immediately notify SARS in the event that a conflict of interest is identified, upon entering of the Agreement by SARS and the Supplier.
   2. The Supplier further warrants that it will not disclose any Confidential Information it obtained in rendering the Services to SARS to any client or third party unless required by law.
10. **new laws and inability to perform**
    1. It is recorded that the Parties are aware of various new Bills that are to be presented to Parliament which, if passed into law, may have an effect on the provisions of this Agreement and the Services. Therefore, the Parties record and agree that, if any law comes into operation subsequent to the signature of this Agreement which law affects any aspect or matter or issue contained in this Agreement, the Parties undertake to comply with such laws as if they had been in force on the Effective Date; provided that if such compliance renders it impossible to comply with the letter and spirit of this Agreement, the Parties undertake to enter into negotiations in good faith regarding a variation of this Agreement in order to ensure that neither this Agreement nor its implementation constitutes a contravention of such law.
    2. If any law comes into operation subsequent to the commencement of the Services notwithstanding the Effective Date, which law affects any aspect or matter or issue contained in this Agreement and/or performance of the Services, the Parties undertake to enter into negotiations in good faith regarding a variation of the Services in order to ensure that neither the Services nor implementation constitutes a contravention of such law by either Party.
11. **BUSINESS CONTINUITY MANAGEMENT** 
    1. To mitigate the effects of any disaster incident, the Supplier shall implement and maintain a proven business continuity plan that is satisfactory to SARS which ensure continuity of the Services in the event of early termination of this Agreement for any reason whatsoever, which business plan shall when acceptance by SARS, be attached to this Agreement as **Annexure “F**”. For the avoidance of doubt the cost of implementing and maintaining the business continuity plan shall be for the account of the Supplier.
    2. On an annual basis, SARS, or its nominated appointee, shall have the right to review and assess the Supplier’s business continuity plan in respect of the Services.
    3. The Supplier shall immediately, or as soon as is reasonably or practically possible, inform SARS in writing of any internal or external incidents that impact on, or may impact on, or prevent it from providing the Services and how it plans to resolve such incidents to ensure a sustained Service provision in line with the Service Level Agreement.
12. **Relationship between the Parties**
    1. The Supplier is an independent contractor and under no circumstances will it be a partner, joint venture partner, agent, or employee of SARS in the performance of its duties and responsibilities pursuant to the Agreement.
    2. All personnel used by the Supplier will be the Supplier’s employees, contractors, Subcontractors or agents, and the entire management, direction, and control of all such persons will be and remain the responsibility of the Supplier.
13. **General**
    1. **Whole Agreement and Amendment:**
       1. This Agreement constitutes the whole of the Agreement between the Parties relating to the subject matter hereof and no amendment, alteration, addition, variation or consensual cancellation will be of any force or effect unless reduced to writing and signed by the Parties hereto or their duly Authorised Representatives. Any document executed by the Parties purporting to amend, substitute or revoke this Agreement or any part hereof, shall be titled an "Addendum" to the applicable Service Agreement and assigned a sequential letter to be included in the title.
    2. **No Assignment Without Consent:** 
       1. The Supplier shall not be entitled to assign, cede, sub-contract, delegate or in any other manner transfer any benefit, rights and/or obligations in terms of this Agreement, without the prior written consent of SARS which consent shall if approved by SARS in its sole discretion, be in compliance with the provisions of the PFMA and SARS’s procurement policies and procedures.
    3. **Severability:**
       1. Should any of the terms and conditions of this Agreement be held to be invalid, unlawful or unenforceable, such terms and conditions shall be severable from the remaining terms and conditions which shall continue to be valid and enforceable. If any term or condition held to be invalid is capable of amendment to render it valid, the Parties agree to negotiate an amendment to remove the invalidity.
    4. **Advertising and Marketing:**
       1. The Supplier shall not make or issue any formal or informal announcement (with the exception of Authority announcements), advertisement or statement to the press in connection with this Agreement or otherwise disclose the existence of this Agreement or the subject matter thereof to any other person without the prior written consent of SARS.
    5. **Waiver:**
       1. No change, waiver or discharge of the terms and conditions of this Agreement shall be valid unless in writing and signed on behalf of the Party against which such change, waiver or discharge is sought to be enforced, and any such change, waiver or discharge will be effective only in the specific instance and for the purpose given. No failure or delay on the part of either Party hereto in exercising any right, power or privilege under this Agreement will operate as a waiver thereof, nor will 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.
14. **Covenant of Good Faith**
    1. Each Party agrees that, in its respective dealings with the other Party under or in connection with this Agreement, it shall act in good faith.
15. **Costs**
    1. Each Party shall bear and pay its own costs of or incidental to the drafting, preparation and execution of this Agreement.
16. **Authorised Signatories**
    1. The Parties agree that this Agreement and any contract document concluded in terms hereof shall not be valid unless signed by all authorised signatories of SARS.
    2. This Agreement is signed by the Parties on the dates and at the places indicated below.
    3. This Agreement may be executed in 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.
    4. The persons signing this Agreement in a representative capacity warrant their authority to do so.
17. **ADDRESSES**
    1. All notices forming part of legal proceedings must be served at the physical address of a Party, whilst any other communication (including, without limitation, any approval, consent, demand, query or request) may be sent by registered post, delivered by hand, transmitted by facsimile or electronic mail to the recipient Party at its relevant address/numbers set out below:
       1. For SARS:

[**DRAFTING NOTE: TO BE INSERTED POST AWARD**]

* + 1. For Supplier:

[**DRAFTING NOTE: TO BE INSERTED POST AWARD**]

* 1. Either Party may, by written notice to the other Party, change any of the addresses or numbers at which, or the designated persons for whose attention legal notices or other communications should be given, provided that such change/s will not become effective until 7 (seven) days after notice to this effect was given.
  2. Any notice or other communication given by any Party to the other Party which:
     1. Is sent by registered post to the addressee at its specified address shall be rebuttably presumed to have been received by the addressee on the seventh (7th) day after the date of posting; or
     2. Is delivered by hand during the normal business hours of the addressee at its specified address shall be rebuttably presumed to have been received by the addressee at the time of delivery; or
     3. Is transmitted by fax to the addressee at the addressee’s specified fax number shall be rebuttably presumed to have been received by the addressee on the date of transmission as indicated on the sender’s facsimile report; or
     4. Is transmitted by electronic mail to the addressee at the addressee’s specified electronic mail address shall be rebuttably presumed to have been received by the addressee on the date of transmission as reflected on the sender’s electronic mail records.
  3. The provisions of this clause 51 shall not invalidate any notice or other communication actually received by a Party, even if not given in the manner prescribed.
  4. The Parties choose their respective addresses in clause 51.1 above as their respective domicilia citandi et executandi at which all documents relating to any legal proceedings to which they are Party must be served.

1. **SIGNATURE OF THE PARTIES IN THE NEXT PAGE**

**SIGNED at\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_2021 FOR AND ON BEHALF OF SARS**

**SOUTH AFRICAN REVENUE SERVICE**

|  |
| --- |
| Signature |
| Name of Signatory |
| Designation of Signatory |

**SIGNED at\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_2021 FOR AND ON BEHALF OF SARS**

**SOUTH AFRICAN REVENUE SERVICE**

|  |
| --- |
| Signature |
| Name of Signatory |
| Designation of Signatory |

**SIGNED at\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_2021 FOR AND ON BEHALF OF THE SERVICE PROVIDER**

**SERVICE PROVIDER**

|  |
| --- |
| Signature |
| Name of Signatory |
| Designation of Signatory |

**Annexure a**

**data protection agreement**

**Annexure B**

**Service Levels**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| 1. **REPORTING AND COMMUNICATION** | | | | |
| **COLUMN A** | COLUMN B | COLUMN C | COLUMN C |
| **Service Level Description** | Service Level | Service Level Failure | Service Credit (s) |
| * 1. Acknowledgement of Service Request. | As per requirements of the Service Request.    [Clause 6.3 of the Services Agreement] | Respond 2 hours after the deadline | 10% of the Amount at Risk. |
| Respond between 2 to 4 hours after the deadline | 15% of the Amount at Risk. |
| Respond hours after the deadline | 20% of the Amount at Risk |
| * 1. Resolution of any written queries by SARS, including all types of queries connection with ordered Service Products. | Resolve within twelve (12) hours after receipt of the query.  [Clause 8.1.1 of the Services Agreement] | Respond 2 hours after the deadline | 10% of the Amount at Risk. |
| Respond between 2 to 4 hours after the deadline | 15% of the Amount at Risk. |
| Respond hours after the deadline | 20% of the Amount at Risk |
| * 1. Submission of a written quotation. | Submit twelve (12) hours after the receipt of the Service Request  [Clause 6.4 of the Services Agreement] | Respond 2 hours after the deadline | 10% of the Amount at Risk. |
| Respond between 2 to 4 hours after the deadline | 15% of the Amount at Risk. |
| Respond hours after the deadline | 20% of the Amount at Risk |
| * 1. Collection of the print-ready file format /or USD device in connection therewith. | Collect with twelve (12) hours after the receipt of the sign-off written quotation from SARS.  [Clause 6.4 of the Services Agreement] | Respond 2 hours after the deadline | 10% of the Amount at Risk. |
| Respond between 2 to 4 hours after the deadline | 15% of the Amount at Risk. |
| Respond hours after the deadline | 20% of the Amount at Risk |
| * 1. Submission of print proofs. | 24 hours after receipt of print ready file format / US device.  [Clause 6.5 of the Services Agreement] | Respond 2 hours after the deadline | 10% of the Amount at Risk. |
| Respond between 2 to 4 hours after the deadline | 15% of the Amount at Risk. |
| Respond hours after the deadline | 20% of the Amount at Risk |
| * 1. Progress reports on delays in delivery. | Provide a written report everyday | Respond a Business Day late | 10% of the Amount at Risk |
| Respond 2 to 3 Business Days | 15% of the Amount at Risk. |
| Respond after 4 Business Days | 20% of the Amount at Risk. |
| * 1. Submit Status Report | Submit within 5 Business Days after the end of the month following the completion of a Purchase Order  [Clause 7.2.1.2 of the Services Agreement] | Respond 4 to 5 Business Days after the deadline | 5% of the Amount at Risk |
| Respond 6 to 10 Business Days after the deadline | 10% of the Amount at Risk. |
| Respond 11 Business Days after the deadline | 15% of the Amount at Risk. |
| * 1. Adherence to the mass weight requirements | Supplier to package Service products strictly in accordance with SARS requirements  [Clause 6.7 of the Services Agreement] |  | Supplier to bear costs of excess mass weight. |

1. **SUPPLIER PERFORMANCE REVIEWS**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| REVIEW PARAMETERS |  |  | SERVICE LEVEL TARGET | THRESHOLD | NON-ADHERENCE\* |
| Performance Monitoring by supplier | | | Every order | 100% | Possible termination |
| Status Reports from supplier | | | As and when required | 100% | Possible termination |
| Attendance of Meetings with SARS | | | As and when required | 100% | Possible termination |
| Attendance of Contract Reviews by SARS | | | Quarterly | 100% | Possible termination |

**annexure C**

Form of a SERVICE REQUEST

1. INTRODUCTION
   1. This Service Request Number. \_\_\_\_\_\_\_\_\_\_\_\_\_\_ dated as of [\_\_\_\_\_\_\_\_\_\_\_\_] (the ‘**Service Request Commencement Date’**) is being executed pursuant to the Printing Packing and Labelling Services Agreement between South African Revenue Service ("**SARS**”) and [\_\_\_\_\_\_\_\_\_\_\_\_] (Proprietary) Limited, (Registration No. [\_\_\_\_\_\_\_\_\_\_\_\_]) ("the **Supplier**”) (the “**Agreement**”) dated as of [\_\_\_\_\_\_\_\_\_\_\_\_], the terms of which are incorporated herein by reference (the “**Service Request**”).
   2. Capitalised terms used but not defined herein shall have the meanings given to them under to the aforesaid Agreement.
2. DESCRIPTION OF THE deliverable(s)
   1. **[Note to the Parties: Please insert a description of the Deliverable(s) under this Agreement. Identify Hardware to be provided by the Supplier]**
3. specifications and quantity

| Table -1 | | |
| --- | --- | --- |
| **Deliverable Type** | **Specifications** | **Quantity** |
|  |  |  |
|  |  |  |
|  |  |  |

1. applicable TIMELINEs
   1. **[Note to the Parties: delete whichever is not applicable]**
   2. The Supplier shall procure the delivery of the Deliverables within [**Drafting Note: to be inserted**] of Service Request and shall inform SARS of any other printing, labelling and packaging requirements.

| Table -1 | | | | |
| --- | --- | --- | --- | --- |
| Deliverable Type | Supplier Requirements | Timeline | | |
|  |  | Mock-ups | Sign-off By SARS | Delivery |
|  |  |  |  |  |
|  |  |  |  |  |

1. fees
   1. The Supplier ’s Fees for Deliverable(s) of this Service Request under the Hardware Supply and Support Services Agreement shall be the amount specified in the table below:

|  |  |  |  |
| --- | --- | --- | --- |
| Table-2 | | | |
| Deliverable | Quantity | Price Per Unit | Total |
|  |  |  |  |
|  |  |  |  |
| Total: | |  |  |

**[**Signature blocks appear on the next page.]

The Parties’ duly authorised representatives hereby confirm their acceptance of this Service Request.

|  |  |
| --- | --- |
| [Bidder Name]  By:  Printed:  Title:  Date:  [Bidder Name]  By:  Printed:  Title:  Date: | South African Revenue Service  By:  Printed:  Title:  Date:  South African Revenue Service  By:  Printed:  Title:  Date: |