

**MASTER SERVICES AGREEMENT IN RESPECT OF THE APPOINTMENT OF A
PANEL OF SERVICE PROVIDERS FOR INFORMATION TECHNOLOGY SERVICES**

Between

The **SOUTH AFRICAN REVENUE SERVICE**, an organ of state within the public administration but outside the public service established in terms of Section 2 of the South African Revenue Service Act, 1997 (Act No. 34 of 1997).
("SARS")

and

SERVICE PROVIDER, a company incorporated in accordance with the laws of South Africa with registration number: 0000/000000/00
("Service Provider")

THIS AGREEMENT DOES NOT CONSTITUTE A FINAL AGREEMENT BETWEEN THE PARTIES. SARS RESERVES THE RIGHT TO AMEND SAME, AT ITS OWN DISCRETION, AT ANY POINT PRIOR TO SIGNATURE HEREOF.

This Agreement, effective as of (XX/XX/ 2017) ("Effective Date"), is entered into by and between the South African Revenue Service, an organ of state established in terms of the South African Revenue Service Act, 1997 (act no 34 of 1997) with its registered address located at its Pretoria Head Office, 299 Bronkhorst Street, Nieuw Muckleneuk, 0181, the Republic of South Africa ("SARS") and, XXXXXXXXXXXXXXX, (registration no. 2006/018260/07), a company incorporated under the laws of the Republic of South Africa with its registered address located at _____ ("Service Provider").

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1. Interpretation

- 1.1 The headings in 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.
- 1.2 Unless inconsistent with the context, the words and expressions have the following meanings and similar expressions will have corresponding meanings:
- 1.2.1 “**Agreement**” means this Master Services Agreement, including all, annexures and/or schedules to this Agreement, as well as the Service Provider’s proposal to RFP 14/2017;
- 1.2.2 “**B-BBEE**” means broad-based black economic empowerment as defined in the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);
- 1.2.3 “**BEE Codes**” means the Codes of Good Practice on Black Economic Empowerment gazetted by the Minister of Trade and Industry under section 9 of the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003), applicable to the Consultant, as amended from time to time;
- 1.2.4 “**BEE Status**” means the BEE Status of the Consultant based on its generic scorecard as measured and certified by a verification agency in accordance with the applicable BEE Codes;
- 1.2.5 “**BEE Verification Certificate**” means a certificate issued by a Verification Agency, verifying the Consultant's BEE Status level, the details of its scorecard performance, as may be applicable, and any other aspect of its BEE performance under the Codes;
- 1.2.6 “**Service Provider Category**” means the classification applicable to a certain Service Provider based on its area of expertise and the requirements set out in RFP 14/2017.
- 1.2.7 “**Business Day**” means any day other than a Saturday, Sunday or public holiday in the Republic of South Africa;
- 1.2.8 “**Commencement Date**” in respect of this Agreement, means the date on which the appointment of the Service Provider to the Panel of

Service Providers for Information Technology Services shall be effective, irrespective of the date of the first specific agreement the Parties may enter into in respect of work to be carried out under any of the categories of work listed in RFP 14/2017;

1.2.9 “**Commercially reasonable efforts**” means taking such steps and performing in such a manner as a well-managed firm / consultancy would undertake where such firm / consultancy 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.

1.2.10 “**Confidential Information**” means SARS's confidential information and taxpayer information as defined in the Tax Administration Act, 2011 (Act No. 28 of 2011) and information considered confidential in terms of any tax act administered by the Commissioner of SARS, SARS Material and any information or data of any nature, tangible or intangible, oral or in writing and in any format or medium, which by its nature or content is or ought reasonably to be identifiable as confidential and/or proprietary to the Disclosing Party or which is provided or disclosed in confidence, and which the Disclosing Party or any person acting on behalf of the Disclosing Party may disclose or provide to the Receiving Party or which may come to the knowledge of the Receiving Party by whatsoever means. The Confidential Information of the Disclosing Party shall include information even if it is not marked as being 'confidential', restricted or proprietary (or any similar designation);

Confidential Information excludes information or data which-

- (a) is lawfully in the public domain at the time of disclosure thereof to the Receiving Party; or
- (b) subsequently becomes lawfully part of the public domain by publication or otherwise; or
- (c) is or becomes available to the Receiving Party from a source other than the Disclosing Party which is lawfully entitled without any restriction on disclosure to disclose such Confidential Information to the Receiving Party; or
- (d) is disclosed pursuant to a requirement or request by operation of law, regulation or court order but then only to the extent so disclosed and then only in the specific instance and under the

specific circumstances in which it is obliged to be disclosed;
provided that-

- (i) the onus shall at all times rest on the Receiving Party to establish that such information falls within such exclusions;
- (ii) the information disclosed shall not be deemed to be within the foregoing exclusions merely because such information is embraced by more general information in the public domain or in a Party's possession; and
- (iii) any combination of features shall not be deemed to be within the foregoing exclusions merely because individual features are in the public domain or in a Party's possession, but only if the combination itself is in the public domain or in a Party's possession.

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

1.2.11 "**Deliverable**" means any output, outcome or result produced by the Service Provider for, or on behalf of, SARS as part of the Services pursuant to this Agreement;

1.2.12 "**Force Majeure Event**" means any circumstances beyond a Party's reasonable control and includes, without limitation: (i) acts of God, public enemy, fire, explosion, earthquake, perils of the sea, flood, storm or other adverse weather conditions, war declared or undeclared, civil war, revolution, civil commotion or other civil disorder, sabotage, riot, strikes, lock-outs or other labour disputes, blockade, embargo, sanctions, epidemics, act of any Government or other Authority, compliance with law, regulations or demands of any Government or Governmental agency, limitations imposed by exchange control or foreign investment or other similar regulations or any other circumstances of like or different nature beyond the reasonable control of the Party so failing;

1.2.13 "**Intellectual Property**" means all computer programs, Software, source code, object code, programmer interfaces, specifications, operating instructions, compilations, lists, databases, systems,

operations, processes, methodologies, technologies, algorithms, techniques, methods, designs, circuit layouts and mask-works, plans, reports, data, works protected under the Copyright Act 98 of 1978, works of authorship, video recordings, audio recordings, photographs, models, samples, substances, trade secrets, formulae, know-how, show-how, Confidential Information, concepts and ideas of any nature (including of a technical, scientific, engineering, commercial, strategic, financial, marketing or organisational nature), inventions, discoveries, drawings, notes, manuals, documentation, training materials, job aids, trademarks, service marks, logos, slogans, corporate, business and trade names, domain names, trade dress, brand names and other indicia of origin, regardless of whether Intellectual Property Rights actually inhere in any such items, and any other tangible or intangible items in which Intellectual Property Rights may inhere, as may exist anywhere in the world and any applications for registration of such intellectual property, and includes all Intellectual Property Rights in any of the foregoing;

1.2.14 **“Intellectual Property Rights”** means all rights of whatever nature and however described in respect of Intellectual Property, including:

- a) all patents and other patent rights, including divisional and continuation patents, utility models;
- b) rights in and to inventions, whether patentable or not;
- c) rights in trademarks, service marks, logos, slogans, corporate, business and trade names, trade dress, brand names and other indicia of origin;
- d) rights in designs, topography rights, rights in circuit layouts and mask-works;
- e) copyright, including all copyright in and to computer programs;
- f) rights in internet domain names, reservations for internet domain names, uniform resource locators and corresponding internet sites;
- g) rights in databases and data collections; and
- h) know-how, show-how, trade secrets and confidential information, in each case whether or not registered and including applications for the registration, extension, renewal

and re-issuance, continuations, continuations in part or divisions of, any of these and the right to apply for any of the foregoing, all claims for past infringements, and all rights or forms of protection of a similar nature or having equivalent or similar effect to any of these which may subsist anywhere in the world.

- 1.2.15 **"ITIL"** means the Information Technology Infrastructure Library published by the UK Office of Government Commerce, and any natural successor organisations to the OGC, from time to time together with the associated published codes of practice (including DISC PD005 and any updates and amendments thereto) and best practice guides published by the IT Service Management Forum from time to time, including any natural successor organisations to the ITSMF;
- 1.2.16 **"ISO"** means International Standards Organization, specifically in the implementation of quality standards and requirements in line with ISO 9001:2008 to increase and continually improve on operational efficiency;
- 1.2.17 **"Key Personnel"** means those members of staff of the Service Provider listed as such in the Service Provider's Proposal and who have been dedicated to the provision of the Services to SARS, and on the strength of whose expertise the Service Provider warrants the ability to provide the Services;
- 1.2.18 **"Master Services Agreement"** means the terms and conditions contained in this document and the **RFP 14/2017**, including any annexures hereto;
- 1.2.19 **"Parties"** means SARS and the Service Provider and "party" as the context requires, is a reference to any one of them;
- 1.2.20 **"Performance Criteria"** means, individually and collectively, the quantitative and qualitative obligations and commitments and the functional and technical specifications for each Deliverable contemplated;
- 1.2.21 **"Pricing Schedule"** means the Service Provider's schedule of tariffs;

1.2.22 **“Project”** means a set of tasks and other work relating to the Solution that is requested by SARS after the Effective Date and provided by the Consultant thereafter so long as:

- (a) the work is discrete and non-recurring;
- (b) the work requires start-up, planning, execution and closure;
- (c) the completion of the work is likely to result in a change to the environment in which the Solution is provided;
- (d) the work is not required for the Consultant to
 - (i) meet the Performance Standards;
 - (ii) implement changes to the environment required as a result of benchmarking under the Agreement; or
 - (iii) meet any other obligations of the Consultant under this Agreement.
- (e) Projects must be contained in a Work Order and
- (f) The Parties may agree to refer to other aggregations of work that do not meet the requirements of this definition of the term Projects as projects. In such case, such projects will be in scope and will not attract additional charges and will not necessarily be set out in a Work Order.

1.2.23 **“RFP 14/2017”**, subject to any contrary indication, refers to SARS’s invitation to tender to be appointed to the SARS Panel of Service Providers for Information Technology Services.

1.2.24 **“SANAS”** means the South African National Accreditation System and recognised by the South African Government as the national accreditation body;

1.2.25 **“SARS”** means the **SOUTH AFRICAN REVENUE SERVICE**, an organ of state within the public administration but outside the public service established in terms of Section 2 of the South African Revenue Service Act, 1997 (Act No. 34 of 1997), with its principal address at **299 Bronkhorst Street, Nieuw Muckleneuk, Pretoria**;

1.2.26 **“SARS Data”** means any information or data whether or not Confidential Information, being information of SARS relating to a taxpayer, its employees, independent contractors and Service Providers, information or data relating to SARS’s business operations, personal information as defined in the Electronic Communications Act, 2002 (Act No. 25 of 2002) and/or the

Protection of Personal Information Act, 2013 (Act No. 4 of 2013) or any other applicable legislation, including:

- (a) all reports, documentation, software or inventions in material form, irrespective of media on which they occur, entered into, contained in and/or stored, collected, accessed or processed by the Consultant for the purpose of providing the Solution to SARS; and
 - (b) all other records, data, files, input materials, reports, forms and other such items that may be received, computed, developed, used or stored by the Consultant or any of the Consultant's Staff/Personnel, contractors, or agents, for or on behalf of SARS, or in connection with the Solution.
- 1.2.27 **"SARS's Designated Representative"** means any SARS official who is authorised to enter into a specific agreement in respect of work to be carried out under any of the categories of work listed in RFP 14/2017;
- 1.2.28 **"Service Provider"** means an Information Technology firm, consultancy or any other Information Technology service provider appointed to the SARS's Panel of Service Providers for Information Technology Services;
- 1.2.29 **"Services"** means the provision of services by the Service Provider to SARS in accordance with the specific agreement in respect of work to be carried out under any of the categories listed in RFP 14/2017
- 1.2.30 **"Service Level"** means a quantitative standard of performance of the Services which will be agreed to between SARS and Service Provider and which Service Provider shall be required to satisfy in its performance of the Services;
- 1.2.31 **"Third Party Service Provider(s)"** means a third party who/which is a licensor of software, lessor of equipment, or Service Provider of other goods or services to SARS (or to a Governmental Entity that is receiving the Solution under this Agreement) from time to time, including such third party's employees, agents, affiliates, and third party Service Providers. Third Party Service Providers exclude any affiliate, (direct or indirect), or other agents of the Consultant to the extent involved

in providing or delivering the Solution under contract (direct or indirect) with the Consultant;

1.2.32 **“Training Services”** means the training, advisory and consultancy services provided by the Service Provider to End-Users to enable the End-Users to properly use the Deliverable.

1.2.33 **“Verification Agency”** means a BEE Verification Agency contemplated by the BEE Codes which, at the time of the issue of any certificate or confirmation of any aspect of the Consultant's BEE Status for purposes of this Agreement, is a verification agency accredited by SANAS, Independent Regulatory Board of Auditors (**“IRBA”**) or any other entity conferred with such powers by statute;

1.3 Any reference in this Agreement to:

1.3.1 **“Clause”** shall, subject to any contrary indication, be construed as a reference to a Clause in this Agreement.

1.3.2 **“Person”** refers to any person including juristic entities.

1.4 Unless inconsistent with the context or save where the contrary is expressly indicated:

1.4.1 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;

1.4.2 when any number of days is prescribed in this Agreement, such a period shall be computed by excluding the first and including 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;

1.4.3 no provision of this Agreement constitutes a stipulation for the benefit of any Person who is not a Party to this Agreement; and

- 1.4.4 a reference to a Party includes that Party's successors-in-title and permitted assigns, including any other persons contemplated in **Clause 1.8** of this Agreement.
- 1.5 Unless inconsistent with the context, an expression which denotes:
- 1.5.1 any one gender includes the other gender; and
- 1.5.2 the singular includes the plural and *vice versa*.
- 1.6 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.
- 1.7 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 termination, notwithstanding that the clauses themselves do not expressly provide for this.
- 1.8 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.
- 1.9 Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.
- 1.10 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.

2. Appointment

- 2.1 The Service Provider has submitted a proposal to SARS to form part of the Panel of Service Providers for Information Technology Services asset out in RFP 14/2017 and **Clause 4** below. SARS accepted the proposal and hereby appoints the Service Provider to the SARS Panel of Service Providers for Information Technology Services, which appointment the Service Provider accepts.
- 2.2 The Service Provider represents that it has, and warrants that throughout the duration of this Agreement it shall have the resources, skills, qualifications and experience necessary to provide the Services.
- 2.3 In reliance on these statements and representations, SARS has selected and appointed the Service Provider to the SARS Panel of Service Providers for Information Technology Services.
- 2.4 The Service Provider will be utilised on an ad-hoc basis, as and when required by SARS. SARS does not guarantee that the Service Provider will receive any work during the period of this Agreement or will enter it any specific agreement to carry out work under any category listed in RFP 14/2017.
- 2.5 In the event that the Service Provider merges with a service provider, who is not on the SARS Panel of Service Providers for Information Technology Services, the inclusion of such merged entity on the said panel will be subject to the written approval of SARS and such further conditions as prescribed by SARS.
- 2.6 SARS reserves the right, should it be deemed necessary in SARS's sole discretion, to enter into an an agreement with Service Providers or consultants who are not on the SARS Panel of Service Providers for Information Technology during the term of this Agreement.

3. Duration

- 3.1 This Agreement shall be deemed to have commenced on the Commencement Date and will endure for a period of seventy two (72) months.

4. Services

- 4.1 The Parties agree that the Service Provider has been appointed to render Services to SARS in Categories A to I as listed in paragraph 10.3 of **RFP 14/2017**.
- 4.2 SARS shall, as a vehicle of procurement, issue an RFQ to the Service Providers in any category listed in RFP 14/2017.
- 4.3 The Service Provider shall provide the Services utilising the requisite skills and expertise highlighted in the Service Provider's proposal, and in accordance with the highest professional standards generally acceptable in the Information Technology profession. In the event of any doubt regarding what constitutes generally acceptable standards, the Parties shall request a directive from the relevant regulatory authority.

5. Approach to the Services

- 5.1 This Agreement provides a framework for, and the general terms and conditions applicable to, the Services that the Service Provider will provide to SARS under this Agreement.
- 5.2 The Service Provider will provide the Services to SARS, subject to the general terms and conditions contained in this Agreement, as well as subject to the specific terms and conditions set forth in the specific Agreement. .
- 5.3 In the event of a conflict between the terms contained in this Agreement and those contained in the specific agreement, the terms of the specific agreement , shall prevail.

6. Service Provider's Undertakings and Obligations

6.1 The Service Provider undertakes to:

6.1.1 provide SARS with a list of Key Personnel who shall be responsible for receiving any communication from SARS in respect of each of the Service Provider Categories in which it has been appointed. Such Key Personnel will be required to liaise with the SARS's Designated Representative in respect of the performance of the Services;

6.1.2 advise SARS in writing of any new Key Personnel or professional staff members appointed to attend to SARS's instructions during the contract term. The Service Provider will further provide SARS with short curriculum vitae, including the new appointee's qualifications and skills.. Such information will be provided to SARS prior to the new appointee commencing work on a SARS matter;

6.1.3 charge fees for Services rendered to SARS in accordance with the Service Provider's Pricing Schedule.

6.1.4 carry out all work timeously, in a diligent manner and in good faith;

6.1.5 refrain from acting in bad faith, which include:

6.1.5.1 not assigning instructions and/or duties that can be attended to, or executed by junior staff members to senior staff members and then billing for such Services at senior staff members' rates; and

6.1.5.2 providing SARS with accounts that contain unrealistic time billing, taking into account the

nature (i.e. relative simplicity) of the Services rendered.

In this regard the Service Provider acknowledges that the aforesaid transgressions (or any other acts of bad faith) may lead to SARS electing not to make further use of the services of the Service Provider.

- 6.1.6 timeously inform SARS should the Service Provider disagree with the Service Provider Category prescribed by SARS in respect of any work;
- 6.1.7 provide SARS with feedback in the form of a Monthly Report, at no charge, setting out –
 - 6.1.7.1 any work received from SARS during a particular month (listed by date);
 - 6.1.7.2 all historic matters still being attended to by the Service Provider on behalf of SARS (also listed by date);
 - 6.1.7.3 the SARS division/s where the instruction/s originated from; and
 - 6.1.7.4 .
- 6.1.8 provide SARS with accurate and complete invoices, free from duplicated items and/or calculation errors;
- 6.1.9 for the duration of this Agreement and for 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 Service Provider shall provide SARS and SARS's auditors access at reasonable times to information, records and documentation relating to the Services for the purpose of performing audits, examinations and inspections in order to verify the Service Provider's compliance with the terms of this Agreement and/or to enable SARS to comply with the

requirements of any regulatory authority and/or regulators and governmental entities having jurisdiction. All costs incurred in performing audits under this clause will be borne by SARS, unless audit findings reveal the Service Provider's non-compliance with the terms of this Agreement and/or requirements of a regulatory authority or similar institution having jurisdiction over SARS and/or the Service Provider;

- 6.1.10 ensure that it performs security checks (vetting) on its Key Personnel and support staff involved with the performance of the Services, and immediately take steps to prevent any of its personnel found to be a security risk from performing the Services, which are the subject of this Agreement;
- 6.1.11 immediately inform SARS if any of its employees involved in the rendering of the Services to SARS are suspended or struck from the roll of attorneys, found guilty of misconduct by the Service Provider or any regulatory authority, or found guilty of a criminal act by a court;
- 6.1.12 ensure that it follows SARS's applicable security policies and procedures for the duration of this Agreement; and
- 6.1.13 comply with all legislation applicable to the Services.

7. Service Levels

- 7.1 The Service Provider shall perform the Services promptly, in a diligent, professional and courteous manner. The Service Provider shall execute the Services in accordance with generally acceptable practices applicable to the Information Technology profession, whilst at all times maintaining the highest professional standards.
- 7.2 Service Levels shall be agreed between the Service Provider and the SARS's Designated Representative on a case by case basis and reduced to writing.

7.3 The Service Provider recognises that its failure to meet agreed Service Levels may have a material and adverse impact on the operations of SARS, which impact may result in SARS suffering damages in an amount not necessarily capable of precise determination. Accordingly, in the event that the Service Provider fails to meet any prescribed Service Levels, then in addition to all other remedies available to SARS in law, SARS may report the Service Provider to National Treasury and request that such Service Provider be placed on National Treasury's List of Restricted Service Providers.

7.4 The Service Provider shall be excused from failing to comply with any prescribed Service Levels to the extent that non-performance or delayed performance is due to the acts or omissions of a SARS official, or if it occurs as a result of a Force Majeure Event.

8. Third Party Co-Operation

8.1 As part of the Services, where appropriate and when requested by SARS to do so, the Service Provider 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 any specific agreement..

8.2 It is, however, agreed that the relationship between the Service Provider and any third party will not constitute a partnership, and that neither the Service Provider nor the third party will be required to manage or monitor the other's performance.

8.3 Any complaints relating to a perceived lack of co-operation by the Service Provider from the third party must promptly be brought to SARS's attention.

9. SARS's Rights and Obligations

9.1 SARS undertakes to:-

9.1.1 Furnish the Service Provider with any relevant information necessary for the Service Provider to perform the Services in compliance with the terms and conditions of this Agreement or any specific agreement entered into between SARS and Service Provider; and

9.1.2 Issue an RFQ that contain clear and accurate instructions to the Service Provider in a timeous manner.

10. Performance Bond

SARS reserves the right to require of the Service Provider to furnish a performance bond to the value to be determined by SARS in any of the work to be carried out under any Service Provider Category.

11. Invoicing and Payment

All fees will be charged according to the Service Provider's Pricing Schedule in terms of the terms of the specific agreement entered into between the Parties.

12. Intellectual Property Rights

12.1 SARS Intellectual Property

SARS retains all right, title and interest in and to the SARS Intellectual Property. As of the Effective Date, Service Provider is granted a non-exclusive licence for the continued duration of this Agreement 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 to SARS. Service Provider will not be permitted to use SARS Intellectual

Property for the benefit of any entities other than SARS without the 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, Service Provider will cease all use of SARS Intellectual Property as of the termination or expiration date of this Agreement or the date of completion of the Deliverables where such date is earlier.

12.2 Intellectual Property developed during the Term

- 12.2.1 SARS will have all right, title and interest in all Intellectual Property developed or generated for SARS in the course of providing the Deliverables ("**Developed Intellectual Property**").
- 12.2.2 Service Provider hereby irrevocably assigns, transfers and conveys to SARS without further consideration all of its right, title and interest in such Developed Intellectual Property.
- 12.2.3 Service Provider agrees to execute any documents or take any other actions as may reasonably be necessary, or as SARS may reasonably request in writing, to perfect SARS's ownership of such Developed Intellectual Property, and further, hereby irrevocably grants to SARS its power of attorney in *rem suam* with the right on behalf of Service Provider to sign all such deeds and documents and to take all such actions as may be necessary for SARS to perfect its rights of ownership over such Developed Intellectual Property should Service Provider fail to comply with any such written request.
- 12.2.4 Unless otherwise agreed, where Developed Intellectual Property incorporates Service Provider Intellectual Property, systems, and processes that Service Provider did not develop in the course of providing Deliverables under the Agreement, Service Provider hereby grants SARS an irrevocable, perpetual, world-wide, fully paid-up, royalty-free, non-exclusive licence for SARS, SARS Personnel and agents to perform any lawful act, including the right to use, copy, maintain, modify, enhance and create derivative works of such Service Provider Intellectual Property insofar as it forms part of the Developed Intellectual Property.

12.3 Service Provider Intellectual Property

Subject to Clause 12.2.4, Service Provider retains all right, title and interest in and to Service Provider Intellectual Property that is used in connection with the Deliverables. Service Provider grants to SARS an irrevocable, perpetual, fully paid-up, royalty-free, non-exclusive licence for SARS to receive and realise the benefit of the Deliverables during the Term and during the Disengagement Assistance Period.

12.4 Third Party Intellectual Property

Service Provider will neither, for the Term of this Agreement, incorporate any Third Party Intellectual Property into any Developed Intellectual Property nor introduce into SARS's environment any Third Party Intellectual Property without first obtaining SARS's written consent thereto. Service Provider will be responsible for obtaining a licence on behalf of SARS, at Service Provider's cost and in SARS's name, to use such Third Party Intellectual Property from the Third Party. Service Provider is required to perform the Deliverables in accordance with the Service Levels notwithstanding any decisions by SARS to withhold its consent to the use of Third Party Intellectual Property and/or failure to assist in procuring the required consents.

12.5 Use of Third Party Intellectual Property licensed to SARS

Service Provider will not, without SARS's express prior written consent, use any Third Party Intellectual Property licensed to SARS whether to provide the Deliverables to SARS or for any other purpose whatsoever. Service Provider acknowledges that such unauthorised use of Third Party Intellectual Property licensed to SARS may constitute a breach of the provisions of the licence agreement/s in terms of which such Third Party Intellectual Property is licensed to SARS. Should consent be granted to Service Provider to use Third Party Intellectual Property licensed to SARS, Service Provider undertakes that it will only use such Intellectual Property strictly in accordance with the provisions of the relevant consent. Service Provider is required to perform the Deliverables in accordance with the Service Levels notwithstanding any decisions by SARS to withhold its consent.

13. Confidentiality

- 13.1 The Parties shall ensure that prior to commencing the performance of the Services all the Service Provider's personnel involved in the rendering of such Services shall sign the SARS Oath of Secrecy and submit the original thereof to SARS for record keeping purposes.
- 13.2 The Service Provider 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 proprietary information, including any trade secrets and/or all information of a confidential nature which SARS from time to time communicates to the Service Provider, its agents and/or employees. This includes the knowledge acquired by the Service Provider, its agents and/or employees as a result of the work to be performed by the Service Provider in terms of this Agreement and which by its nature, is intended to be kept confidential.
- 13.3 For purposes of this Agreement, the expression "Confidential Information" shall include, but shall not be limited to SARS's operating procedures, internal policies, manuals, computer infrastructure, hardware, software, methods and techniques, know-how, operating costs, as well as the names of service providers and/or potential service providers with whom SARS has not yet contracted but intends contracting for purposes of establishing business relationships to which the Service Provider may become privy during the contract term.
- 13.4 The Service Provider further in particular undertakes to keep confidential all SARS Confidential Information, which shall have the meaning assigned to it in section 68 of the Tax Administration Act, 2011 (Act No. 28 of 2011) [hereinafter referred to as "TAACT"], as well as Taxpayer Information, which means any information provided by a taxpayer or obtained by SARS in respect of the taxpayer, including biometric information. In this regard the Service Provider is specifically referred to the Confidentiality of Information provisions contained in Chapter 6 of the TAACT.

- 13.5 The Parties agree that no trade and/or business secrets, Confidential Information or methods of work supplied by the one Party to the other shall be disclosed to any third party, without first obtaining the written consent of the other Party.
- 13.6 The Service Provider 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 Service Provider undertakes not to disclose such information without first obtaining the written consent of SARS.
- 13.7 If the Service Provider 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.
- 13.8 The Service Provider will protect the interests of SARS in its Confidential Information by :
- 13.8.1 making available such Confidential Information only to those of its personnel who are actively involved in the execution of its obligations under this Agreement and then only on a “need to know” basis;
 - 13.8.2 putting in place internal security procedures reasonably acceptable to SARS 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;
 - 13.8.3 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; and
 - 13.8.4 ensuring that all Confidential Information of SARS which has or will come into the possession of the Service Provider and its personnel, will at all times remain the sole and absolute property of SARS.

- 13.9 Confidential Information shall not include information that:
- 13.9.1 is lawfully in the public domain at the time of disclosure;
 - 13.9.2 subsequently and lawfully becomes part of the public domain by publication or otherwise;
 - 13.9.3 subsequently becomes available to a Party from a source other than the disclosing Party, which source is lawfully entitled without any restriction on disclosure to disclose such Confidential Information;
 - 13.9.4 is disclosed pursuant to a requirement or request by operation of law, regulation or court order;
 - 13.9.5 is independently developed or learned by a receiving Party without reference to or use of the Confidential Information of the other Party; and/or
 - 13.9.6 is disclosed by the receiving Party with the disclosing Party's prior written approval.
- 13.10 The provisions of this Clause shall survive the termination or cancellation of this Agreement for any reason whatsoever.

14. Liability of the Parties

- 14.1 A Party shall be liable to the other Party for any direct damages incurred by such Party as a result of the other Party's failure to perform its obligations in the manner required by this Agreement.
- 14.2 The Service Provider shall be liable to SARS for all indirect and consequential or special damages and/or losses suffered by SARS as a result of a breach of **Clause 13** above, infringement of third party intellectual property rights, or any criminal act committed by the Service Provider or its employees.

14.3 The Service Provider shall be liable for any negligent or wrongful acts relating to the Services, including fraud or unlawful activity, committed by any of its personnel.

15. Indemnity

15.1 The Service Provider shall indemnify and hold SARS harmless against all losses, claims, demands, proceedings, damages, costs, charges and expenses (including reasonable legal expenses) of whatsoever nature arising out of this Agreement or at Law in respect of the Service Provider's breach of the provisions of this Agreement, or injury or death of any person or loss of or damage to property occurring by reason of the Service Provider, its employees or agents' wilful conduct or negligence during or after the execution of the Services.

16. Warranties

16.1 The Service Provider hereby represents and warrants to SARS that-

16.1.1 this Agreement has been duly authorised and executed by it and constitutes a legal, valid and binding set of obligations on it;

16.1.2 it is acting as a principal and not as an agent of an undisclosed principal;

16.1.3 the execution and performance of the terms and conditions of this Agreement does not constitute a violation of any statute, judgment, order, decree or regulation or rule of any court, competent authority or arbitrator or competent jurisdiction applicable or relating to the Service Provider, its assets or its business, or its memorandum of incorporation or any other documents or any binding obligation, contract or agreement to which it is a party or by which it or its assets are bound;

16.1.4 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;

16.1.5 it has the requisite insurance to cover professional liability claims that may be instituted against it;

16.1.6 it has the necessary resources, skills and experience to render the Service to SARS; and

16.1.7 It is expressly agreed between the Parties that each warranty and representation given by the Service Provider in this Agreement is material to this Agreement and induced SARS to conclude this Agreement.

16.2 The provisions of this Clause shall survive the termination of this Agreement.

17. Insurance and Risk of loss

17.1 Insurance

Service Provider will, at its own cost and expense, during the Term have and maintain in force, to the reasonable satisfaction of SARS, sufficient short-term insurance cover to cover all of its obligations and liabilities under this Agreement relevant to a particular Tower for which it is appointed, as stated in the RFQ, consistent with acceptable and prudent business practices including run-off cover identical for a period of two (2) years, subsequent to termination or expiration of the term of this Agreement.

17.2 SARS Right to Acquire Insurance in Certain Circumstances

Without limiting the generality of SARS's rights and remedies hereunder, in the event of a failure by Supplier to maintain any insurance required hereunder, or to provide evidence of renewal at least 3 (three) Business Days prior to expiration of the applicable insurance cover, on 3 (three) Business Days' notice to Service Provider, SARS may purchase the requisite insurance and deduct the costs thereof from any amounts owed to Service Provider under this Agreement.

17.3 Risk of Loss

Service Provider will be responsible for risk of loss of, and damage to, any hardware, Software or other assets of SARS that it may have in its possession or under its control. Any hardware or Software in the possession or control of Service Provider's Subcontractors or agents (including couriers, freight companies and the like) will be deemed to be under the control of the Service Provider.

18. Breach

18.1 A Party (the "Aggrieved Party") may terminate this Agreement with immediate effect if:

18.1.1 the other Party (the "Defaulting Party") commits a material breach of this Agreement and fails to remedy such breach within 10 (ten) Business Days (the "Notice Period") of being notified of the breach and, if the Aggrieved Party so elects, the steps required to remedy such breach.

18.1.2 For the purposes of **Clause 18.1.1**, a breach will be deemed to be a material breach if -

18.1.2.1 it is capable of being remedied, but is not so remedied within the Notice Period; or

18.1.2.2 it is incapable of being remedied within the Notice Period; or

18.1.2.3 if payment in money will compensate for such breach, but payment is not made within the Notice Period; or

18.1.2.4 the Service Provider commits numerous, repeated breaches even if cured; or

18.1.2.5 at any time, SARS experiences non-performance, alternatively mal-performance from the Service Provider relating to the execution of its duties and obligations in terms of this Agreement.

19. Termination for Cause

19.1 SARS may, by giving notice to the Service Provider, terminate this Agreement in whole or in part, as of a date set out in the notice of termination, in the event that the Service Provider commits a material breach of this Agreement or:

19.1.1 is placed under voluntary or compulsory liquidation (whether provisional or final) or business rescue proceedings are commenced against the Service Provider; and/or

19.1.2 commits any of the acts of insolvency set out in section 8 of the Insolvency Act, 1936 (Act No. 24 of 1936).

19.2 SARS may terminate this Agreement, in whole or in part, in the event that SARS is unable to obtain funding to procure the Services.

20. Termination for Convenience

SARS may terminate this Agreement in whole or in part for convenience and without cause at any time by giving the Service Provider at least 30 (thirty) days prior written notice. SARS will be obliged to pay the Service Provider's professional fees for Services rendered up to the date of the termination of this Agreement.

21. Termination upon Sale, Acquisition, Merger or Change of Control

In the event of a sale, acquisition, merger, or other change of Control of Service Provider where such Control is acquired, directly or indirectly, in a single transaction or series of related transactions, or in the event of a sale of all or substantially all of the assets of Service Provider in a single or series of related transactions, then SARS may terminate this Agreement by giving Service Provider at least 90 (ninety) days prior notice and designating a date upon which such termination will be effective. SARS will have no liability towards Service Provider with respect to such termination

22. Force Majeure

- 22.1 In the event of any act beyond the control of the Parties, strike, war, rebellion, riot, civil commotion, lockout, suspension of labour, fire, accident, or (without regard to the foregoing enumeration) of any circumstances arising or action taken beyond the reasonable control of the Parties hereto preventing them or any of them from the performance of any obligation hereunder (any such event hereinafter called "force majeure event") then the Party affected by such force majeure event shall be relieved of its obligations hereunder during the period that such force majeure continues (excluding payment obligations which fell due before the said force majeure).
- 22.2 The affected Party's relief is only to the extent so prevented and such Party shall not be liable for any delay or failure in the performance of any obligations hereunder or loss or damage which the other Party may suffer due to or resulting from the force majeure event, provided always that a written notice shall be promptly given of any such inability by the affected Party.
- 22.3 Any Party invoking force majeure shall upon termination of such force majeure give prompt written notice thereof to the other Party. Should a force majeure event continue for a period of more than thirty (30) days, then either Party has the right to cancel this Agreement.
- 22.4 Any strike, lock-out, interference by trade unions, suspension of labour or other industrial action directly related to a Party as employer and which could have been avoided by steps which such Party might reasonably have been expected to take acting as a reasonable prudent employer, does not constitute a force majeure event.

23. Audits

23.1 Audit Rights

23.1.1 Service Provider and its Subcontractors will maintain a complete audit trail of financial and non-financial transactions resulting from the Agreement. Service Provider will provide to SARS, its internal or external

auditors, inspectors and regulators access at all reasonable times to any facility or part of a facility at which either Service Provider or any of its Subcontractors is providing the Deliverables, to Service Provider Personnel, and to equipment, Software, personnel, data, records and documentation, including agreements between Service Provider and its Subcontractors, relating to the Deliverables for the purpose of performing audits and inspections of either Service Provider or its Subcontractors to: (i) verify the accuracy of Service Provider's Charges and invoices; (ii) verify the accuracy of payments by or credits from Service Provider; (iii) verify the accuracy of price changes to the extent such changes are determined by reference to Service Provider's costs or changes thereto; (iv) verify the integrity of, and examine the systems that process, store, support and transmit SARS data; (v) examine Service Provider's performance of the Deliverables, including verifying compliance with the Performance Standards; (vi) verify compliance with the terms of the Agreement; (vii) satisfy the requirements of any legislative, judicial or regulatory authority having jurisdiction; (viii) to the extent applicable to the Deliverables performed by Service Provider and/or the Charges therefore, examining: (a) practices and procedures, (b) systems, (c) general controls, and (d) the efficiency of Service Provider's operation; and (ix) any other audit reasonably required by SARS.

23.1.2 SARS reserves the right to appoint a third party to perform an audit under this Clause 23.

23.1.3 Service Provider will provide to the auditors, inspectors and regulators such assistance as they may require, including installing and operating audit Software. In the case of audits other than audits conducted by or on behalf of legislative, judicial or regulatory authorities, SARS's audits will not unreasonably interfere with Service Provider's normal course of business and will comply with the Service Provider's reasonable confidentiality requirements.

23.1.4 Unless SARS has a good faith suspicion of fraud, SARS will provide Service Provider with reasonable notice for audits other than security audits and audits conducted by or on behalf of legislative, judicial or regulatory authorities. Audits will take place during Business Hours, provided that security audits and audits conducted by or on behalf of legislative, judicial or regulatory authorities may take place outside normal business hours at SARS's sole discretion.

23.1.5 All costs incurred by SARS in performing audits of Service Provider will be borne by SARS unless any such audit reveals a material inadequacy or material deficiency in respect of the scope of the audit exercise conducted, in which event the cost of such audit will be borne by Service Provider.

23.1.6 If an audit reveals an overcharge, Service Provider will promptly refund the overcharge plus interest at the Agreement Interest Rate or 15% (fifteen percent) per annum, whichever is the highest, from the date of payment of the overcharge through the date the overcharge is refunded by Service Provider.

23.1.7 All Subcontractors will be obliged to comply with the provisions of this Clause 23. If Service Provider seeks to hire a Subcontractor, and such prospective Subcontractor does not grant SARS the audit rights described in this Clause 23, Service Provider will: (i) notify SARS of the prospective Subcontractor's refusal to grant such rights; (ii) identify the audit rights the prospective Subcontractor is willing to grant; and (iii) obtain SARS's review and approval of such subcontract. SARS reserves the right to withhold its approval of any subcontract at its sole discretion, and Service Provider will be obliged to continue providing the Deliverables in accordance with the Performance Standards, notwithstanding SARS's decision to withhold such approval.

23.2 **Audit Follow-Up**

23.2.1 Following an audit or examination, SARS or its external auditors will meet with Service Provider to obtain factual concurrence with issues identified in the audit or examination.

23.2.2 Within 10 (ten) Business Days following the provision to Service Provider 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 Service Provider's auditors, the Service Provider will provide SARS with a plan ("**Audit Response Plan**") to address shortcomings or deficiencies raised in such audit findings attributable to Service Provider. The Audit Response Plan will identify the steps that Service Provider 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, Service Provider will implement such Audit Response Plan at Service Provider's cost and expense. Service Provider 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.

23.2.3 Service Provider will promptly make available to SARS the results of any reviews or audits conducted by Service Provider, its Affiliates or their Subcontractors, agents or representatives (including internal and external auditors) to the extent such findings reflect conditions and events relating to the Deliverables.

23.2.4 Promptly after the issuance of any audit report or findings issued under Clause 23.2.3, the Parties will meet to review such report or findings and to agree on how to respond to the suggested changes.

24. Records Retention

Service Provider 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) 3 (three) 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.

25. Legal and Regulatory Compliance

- 25.1 Service Provider warrants that it and its Subcontractors are and will remain for the duration of this Agreement, fully cognisant of and compliant with any relevant legislative or regulatory requirements (as may be amended from time to time) 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 Deliverables under the Agreement.
- 25.2 Service Provider will, within 14 days of the Effective Date, furnish SARS with copies of all regulated licences and which are required by Service Provider for the provision of the Deliverables to SARS. The details of all licence terms and conditions and other obligations imposed on Service Provider which are not contained in Service Provider's licences must be furnished in writing by Service Provider to SARS.

26. Relationship between the Parties

- 26.1 The Service Provider is an independent contractor and under no circumstances will it be partner, joint venture partner, agent, or employee of SARS in the performance of its duties and responsibilities pursuant to the Agreement.
- 26.2 All personnel used by the Service Provider will be the Service Provider's employees, contractors, or agents, and the entire management, direction, and control of all such persons will be and remain the responsibility of the Service Provider.

27. Dispute Resolution

- 27.1 If a dispute between the Parties arises out of or is related to this Agreement, the Parties shall meet and negotiate in good faith to attempt to resolve the dispute. If, after twenty (20) Business Days from the date upon which the dispute was declared by a Party by written notice, the dispute is not resolved, the matter shall be determined in accordance with the provisions set out below.
- 27.2 Save in respect of those provisions of this Agreement which provide for their own remedies which would be incompatible with arbitration, or in the event of either Party instituting urgent action against the other in any court of competent jurisdiction, any dispute arising from, or in connection with, this Agreement will finally be resolved by arbitration in accordance with the Rules of the Arbitration Foundation of Southern Africa (the "Foundation") or its successor, by an arbitrator or arbitrators appointed by the Foundation.
- 27.3 This **Clause 27** will be severable from the rest of the provisions of this Agreement so that it will operate and continue to operate notwithstanding any actual or alleged voidness, voidability, unenforceability, termination, cancellation, expiry or accepted repudiation of this Agreement.
- 27.4 Neither Party shall be entitled to withhold performance of any of its obligations in terms of this Agreement pending the settlement of, or decision in, any dispute arising between the Parties. Each Party shall, in such circumstances, continue to comply with its obligations in terms of this Agreement.

28. Addresses

- 28.1 Each Party chooses the addresses set out below its name as its addresses to which all notices and other communications must be delivered for the purposes of this Agreement and its *domicilium citandi et executandi* ("*domicilium*") at which all documents in legal proceedings in connection with this Agreement must be served.

28.2 SARS's physical address for service of notices and legal processes-

28.2.1 **Chief Officer: Legal Counsel**

299 Bronkhorst Street

Block A, Le Hae La SARS

Nieuw Muckleneuk

PRETORIA

28.3 The Service Provider's physical address for service of notices and legal processes shall be as follows:

...

...

...

28.4 Any notice or communication required or permitted to be given to a Party pursuant to the provisions of this Agreement shall be valid and effective only if in writing and sent to a Party's chosen address.

28.5 Any Party may by written notice to the other Party, change its chosen address to another address, provided that-

28.5.1 the change shall become effective on the tenth (10th) Business Day after the receipt or deemed receipt of the notice by the addressee; and

28.5.2 any change in a Party's *domicilium* shall only be to an address in South Africa, which is not a post office box or a *poste restante*.

28.6 Any notice to a Party contained in a correctly addressed envelope and sent by prepaid registered post to it at a Party's chosen address shall be deemed to have been received on the fifth (5th) Business Day after posting.

28.7 Any notice to a Party in a correctly addressed envelope and which is delivered by hand to a Party's chosen address shall be deemed to have been received on the day of delivery, unless the contrary is proved.

29. General

29.1 No Assignment Without Consent

Neither Party shall 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 the other Party, which consent shall not be unreasonably withheld.

29.2 Severability

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.

29.3 Advertising and Marketing

The Service Provider shall not make or issue any formal or informal announcement (with the exception of Stock Exchange 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.

29.4 Waiver

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.

29.5 **Authorised Signatories**

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.

29.6 **Counterparts**

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

29.7 **Applicable Law and Jurisdiction**

29.7.1 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.

29.7.2 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.

29.8 **Whole Agreement And Amendment**

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.

29.9 **Covenant of Good Faith**

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.

29.10 **Costs**

Each Party shall bear and pay its own costs of or incidental to the drafting, preparation and execution of this Agreement.

30. Broad-Based Black Economic Empowerment ("BBBEE")

30.1 The Service Provider 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.

30.2 In pursuance of this objective the Service Provider commits and warrants to comply in all respects with the requirements of the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003) (hereafter referred to as the BBBEE Act) as amended from time to time, and the Codes of Good Practice issued in terms of the BBBEE Act.

30.3 Upon signature of this Agreement and one (1) calendar month after the expiry of a current certificate for a particular year, the Service Provider shall provide SARS with a certified copy of its BEE rating status from an agency accredited by the South African National Accreditation System ("SANAS") or the Independent Regulatory Board of Auditors ("IRBA").

30.4 During the currency of this Agreement (including any extension or renewal hereof which may apply), the Service Provider shall use reasonable endeavours to maintain and improve its current BEE rating status.

30.5 A failure to provide a certified copy of its BEE rating status or a failure to comply with provisions of this clause will entitle SARS to terminate the Agreement by giving the Service Provider one (1) month's written notice.

31. Tax Compliance

31.1 The Service Provider warrants that as of the Commencement Date it is in full compliance with, and throughout the term of this Agreement (including any Renewal Period) shall remain in full compliance with all applicable laws relating to taxation in the Republic of South Africa.

- 31.2 If SARS becomes aware of any non-compliance by the Service Provider and such non-compliance is not remedied within sixty (60) days after SARS has given notice to this effect, such non-compliance shall be deemed to constitute a material breach of this Agreement by the Service Provider and SARS shall be entitled to terminate the Agreement forthwith.
- 31.3 The Service Provider further warrants that it shall deliver to SARS on the Commencement Date and each anniversary thereof during the term of this Agreement, a valid tax clearance certificate issued for the then-current year in respect of the Service Provider. Should the Service Provider fail to provide such certificate within twenty one (21) days of the contract anniversary date, SARS may terminate the Agreement on 30 (thirty) days' notice. SARS shall have no liability to the Service Provider with respect to a termination under this Clause.

32. Ethical Business Practices

- 32.1 SARS has a policy of zero tolerance regarding corrupt activities. The Service Provider will promptly report to SARS and the relevant authorities any suspicion of corruption on the part of their personnel, as well as any behaviour by any of those persons that is likely to constitute a contravention of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004).
- 32.2 Neither Party will offer, promise or make any gift, payment, loan, reward, inducement benefit or other advantage to any of the other Party's personnel.
- 32.3 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 will, after allowing the Service Provider 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, to question any relevant personnel of the Service Provider or a third party and the Service Provider will 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 will be entitled, on written notice to the Service Provider, to immediately terminate this Agreement

33. Conflict of Interest

33.1 The Service Provider undertakes to immediately notify SARS in the event that a conflict of interest is identified, pursuant to a specific agreement being entered into between the Service Provider and SARS.

33.2 The Service Provider further warrants that it will not disclose any Confidential Information it obtained in rendering the Services to SARS to any client or third party.

As Authorised Representatives for the South African Revenue Service:

SIGNED AT PRETORIA

1. _____ Chief Officer: DIST: Date of signature:	2. _____ Group Executive: Procurement Date of signature:
--	--

As Authorised Representative for the Service Provider:

SIGNED AT _____ ON THIS _____ DAY OF _____ 20__.

SIGNATURE: _____
FULL NAMES AND SURNAME: _____
CAPACITY: _____