

MASTER SERVICES AGREEMENT IN RESPECT OF RFP 0041-2019 A, B OR C

Between

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)

(hereinafter referred to as “**SARS**”)

and

(TO BE ADDED)

(Registration No: TO BE ADDED)

(herein represented by _____ who warrants that s/he is duly authorised to do so by virtue of a Resolution of the Directors)

(hereinafter referred to as “**the Service Provider**”)

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ANNEXURES:

- A - LIST OF THE SARS SITES AND PRICING
- B - SERVICE LEVELS AND FINANCIAL PENALTIES

1. DEFINITIONS

1.1 Unless inconsistent with the context, the words and expressions have the following meanings and similar expressions will have corresponding meanings-

1.1.1 **“Agreement”** means this master services agreement, the RFP, together with all schedules, appendices, attachments and other documents attached hereto or referenced herein;

1.1.2 **“Applicable Law”** means any of the following to the extent applicable to the Service Provider or its subcontractors and where applicable, to SARS or the Services-

(i) Any statute, regulation, policy, by-law, ordinance or subordinate legislation;

(ii) The common law;

(iii) Any binding court order, judgment or decree;

(iv) Any applicable industry code of conduct, policy or standard enforceable by law; or

(v) Any applicable direction, policy or order that is given by a regulatory authority;

1.1.3 **“Business Day(s)”** means any day between and including Monday and Friday, except public holidays in South Africa;

1.1.4 **“Confidential Information”** means non-public information or data of any nature, tangible or intangible, oral or in writing and in any format or medium, whether marked as ‘Confidential’ or with another similar legend or not, which-

(i) is received by the receiving Party from the furnishing Party;

(ii) is received by the receiving Party from a third party acting on behalf of the furnishing Party; or

(iii) comes to the knowledge of the receiving Party by any other means.

Without limitation, Confidential Information of the furnishing Party shall include the following-

- (i) this Agreement, provided that SARS may disclose any or all of the terms of this Agreement;
- (ii) in the case of SARS, Confidential Information shall also include SARS's financial information; information regarding employees and independent contractors of SARS; Personal Information of employees as contemplated in the Protection of Personal Information Act, 2013 (Act No. 4 of 2013); information rendered by SARS to the Service Provider for the purpose of executing the Services, any information over which the Service Provider is expected to, in its professional capacity, keep or ensure that such is kept discreet or confidential, processes and plans of SARS; intellectual property owned by or licensed to SARS or any other information of SARS which would be deemed by a reasonable person to be confidential or proprietary in nature; and
- (iii) further in the case of SARS, it includes SARS Confidential Information and Taxpayer Information as defined in Chapter 6 of the Tax Administration Act, 2011 (Act No. 28 of 2011), as well as any information required to be kept confidential by any other Act administered by the Commissioner for SARS.

“Confidential Information” shall not include information that-

- (i) is in or enters the public domain without breach of this Agreement; or
- (ii) the receiving Party receives from a third party without restriction on disclosure and without breach of a non-disclosure obligation.

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;

1.1.5 **“Contract Manager”** means an employee of the Service Provider, designated as such for the purposes of this Agreement;

- 1.1.6 “**Effective Date**” means 1 June 2020, irrespective of the signature date of this Agreement;
- 1.1.7 “**Parties**” means SARS and the Service Provider and “Party” as the context requires is a reference to any one of them;
- 1.1.8 “**Performance Failure**” means a failure to attain a prescribed Service Level, which will entitle SARS to levy a financial penalty or which may result in termination of this Agreement, immediate cancellation of Services to the affected Site or reallocation of the Services to the affected Site to another service provider;
- 1.1.9 “**PSIRA**” means the Private Security Industry Regulation Act, 2001 (Act No. 56 of 2001) or the authority established thereunder;
- 1.1.10 “**RFP**” subject to any contrary indication, is reference to SARS’s Request for Proposals No. 41-2019 A, B or C (**as may be applicable to a service provider post award**) for the provision of the services for various regions as allocated by SARS.
- 1.1.11 “**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;
- 1.1.12 “**SARS’s Authorised Representative**” means the SARS employee designated / appointed in terms of this Agreement as the person who will interface with the Service Provider on all matters relating to the general administration of this Agreement, or his/her appointed delegate;
- 1.1.13 “**Security Incident**” means any deviation from and/or any breach by a Security Officer of his/her duties or obligations in terms of this Agreement, irrespective of whether or not such deviation or breach results in SARS or a SARS employee or a third party suffering a loss or damage, as well as the triggering of an alarm at any SARS Site, which necessitates a response by the Service Provider’s Personnel;

- 1.1.14 “**Security Officer(s)**” means a security officer as defined in Section 1 of the Private Security Industry Regulation Act, 2001 (Act No.56 of 2001);
- 1.1.15 “**Service Level**” means the minimum performance standard of compliance, which must be met by the Service Provider when rendering the Services;
- 1.1.16 “**Service Provider**” means **(TO BE ADDED)** incorporated in accordance with the Laws of South Africa with registration number **(TO BE ADDED)** and with its place of business at **(TO BE ADDED)**;
- 1.1.17 “**Service Provider’s Personnel**” means any staff employed by or on behalf of the Service Provider or the Service Provider’s subcontractors or joint venture partners dedicated to rendering the Services to SARS;
- 1.1.18 “**Services**” means the services as contemplated in RFP 41-2019 A, B or C, and this Agreement, and includes those services, functions or responsibilities not specifically mentioned herein but which are reasonably and necessarily required for the proper performance and provision of the Services; and
(NOTE: The services described in the final agreement will be as per specific award by SARS to the Service Provider, and will not include all Services listed in this definition)
- 1.1.19 “**Sites**” means SARS’s offices or premises listed in **Annexure A** of this Agreement, or **(where applicable)**, otherwise disclosed in writing and in confidence to the Service Provider as may be necessary, including premises prescribed by SARS from time to time for *ad hoc* services.

2. INTERPRETATION OF AGREEMENT

- 2.1 The headings are for reference purposes only and will not govern or affect the interpretation of nor modify nor amplify the terms of this Agreement.
- 2.2 Any reference in this Agreement to-
- 2.2.1 “**Clause**” shall, subject to any contrary indication, be construed as a reference to a Clause in this Agreement; and
- 2.2.2 “**Person**” refers to any person including juristic entities.

- 2.3 Unless inconsistent with the context or save where the contrary is expressly indicated-
- 2.3.1 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;
 - 2.3.2 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;
 - 2.3.3 no provision of this Agreement constitutes a stipulation for the benefit of any Person who is not a Party to this Agreement; and
 - 2.3.4 a reference to a Party includes that Party's successors-in-title and permitted assigns, including any other persons contemplated in **Clause 2.7** of this Agreement.
- 2.4 Unless inconsistent with the context, an expression which denotes-
- 2.4.1 any one gender includes the other gender; and
 - 2.4.2 the singular includes the plural and *vice versa*.
- 2.5 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.
- 2.6 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.
- 2.7 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.

2.8 Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.

2.9 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

3.1 SARS issued Request for Proposals 41-2019 A, B or C and the Service Provider submitted a proposal to SARS to render the Services. SARS accepted the proposal and hereby appoints the Service Provider.

3.2 The Parties now wish to record their respective rights and responsibilities, as well as the governing provisions pertaining to the Services, in writing.

3.3 The Service Provider represents that it has and warrants that throughout the contract term it shall have the resources skills, qualifications and experience necessary to perform the Services in a diligent manner and in accordance Applicable Law and industry best practice standards.

3.4 The Service Provider warrants that it will adhere to all SARS's security policies and procedures in the performance of the Services.

3.5 In reliance on these statements and representations, SARS has appointed the Service Provider to provide the Services on a non-exclusive basis, which appointment the Service Provider accepts.

4. DURATION

4.1 The Agreement will be effective from the Effective Date, and will run as contemplated in the RFP.

5. RELATIONSHIP BETWEEN THE PARTIES

5.1 The Service Provider is an independent contractor, and under no circumstances will it be considered a partner, joint venture partner, agent or employee of SARS in the

performance of its duties and responsibilities pursuant to this Agreement.

- 5.2 The entire management, direction and control of the Service Provider's Personnel will be the responsibility of the Service Provider.
- 5.3 It is expressly recorded that the provisions of section 197 of the Labour Relations Act, 1995 (Act No. 66 of 1995) ("LRA") will not apply to this Agreement. The Service Provider undertakes to take necessary steps as contemplated in section 197(6) of the LRA, to ensure that no employment relationship or employment contract of any of the Service Provider's Personnel is transferred to SARS upon termination of this Agreement.
- 5.4 Notwithstanding the above undertaking, however, in the event that SARS suffers any claim, damage, loss or expense in relation to and/or arising from the operation of section 197 of the LRA as aforementioned (collectively "Labour Claims"), the Service Provider hereby indemnifies and holds SARS harmless in respect of and/or against all and any such Labour Claims.

6. SCOPE OF SERVICES

- 6.1 The Service Provider undertakes to provide SARS with the Services, as contemplated in the RFP.
- 6.2 The Service Provider must comply with all Applicable Law when executing this Agreement.
- 6.3 For *ad hoc services*, the Service Provider will be provided with the necessary instructions by SARS's Authorised Representative in writing, and may not execute any such service without the written instructions of SARS's Authorised Representative.

7. PERFORMANCE FAILURES

- 7.1 The Service Provider shall maintain minimum standards of performance ("the Service Levels") as set out in **Annexure B** attached hereto.
- 7.2 Failure to attain a prescribed Service Level constitutes a Performance Failure and will entitle SARS to levy the corresponding financial penalty stipulated in Column 4 of **Annexure B**. The maximum percentage of the Service Provider's total invoice, which may be at risk due to any Performance Failures in any particular month, shall not exceed twenty percent (20%) of the total amount invoiced to SARS in respect of such month.

7.3 Where a financial penalty becomes due to it as a result of a Performance Failure, SARS shall be entitled to deduct such financial penalties from the corresponding invoice rendered by the Service Provider, and shall be entitled to deduct and offset any applicable financial penalty against any subsequent payment due to the Service Provider.

7.4 The levying of a financial penalty shall not prejudice SARS's rights to-

7.4.1 terminate the Agreement for breach by the Service Provider as provided for in **Clause 14** below;

7.4.2 cancel with immediate effect the provision of the Services to the affected SARS Site;

7.4.3 reallocate with immediate effect the Services to the affected SARS Site to another service provider, appointed in terms of the RFP or such other service provider as may be appointed by SARS in its exclusive discretion. In such an event, the Service Provider shall be obliged, and for the Service Provider's own account, to assist in the seamless transition of the Services to the incoming service provider; or

7.4.4 invoke any of its rights in terms of Applicable Law.

7.5 Where SARS invokes the rights reserved in **Clauses 7.4.2** and **7.4.3**, the Service Provider shall be obliged to reduce the monthly fees for the affected region accordingly in the month following the adjustment.

7.6 Cancellation or reallocation of Services in terms of this Clause shall be without any liability to SARS, except for payment for the Services already rendered by the Service Provider less applicable financial penalties.

8. SITES

8.1 The Service Provider will perform the Services in the following region(s), as specified by SARS, at the appointed SARS's Sites, namely-

8.1.1 Region **(TO BE ADDED)**.

8.2 The Service Provider must predetermine and mark on a geographical map the location

of the relevant SARS Sites. Should the Service Provider encounter difficulties locating a SARS Site, it must immediately contact the SARS's Authorised Representative or his/her appointed delegate for directions.

- 8.3 SARS reserves the right to add to or reduce the number of SARS Sites or Security Officer complement **(dependant on RFP awarded)**. The fee per region will be adjusted accordingly in the month following the adjustment.

9. CONTRACT MANAGEMENT

- 9.1 As of the Effective Date, the Service Provider, at its own cost, designate amongst its personnel-

9.1.1 A Contract Manager;

9.1.2 A Grade A or B Security Officer, as determined by SARS, who will be in charge of the operations of the Services of a shift at a SARS Site **(where applicable)**; and

9.1.3 Supervisors and managers, who will conduct the inspections at a SARS Site **(where applicable)**, as required in terms of this Agreement.

- 9.2 The Service Provider shall, on or before the Effective Date furnish SARS with the names and telephone numbers of the personnel designated in terms of this Clause.

10. PRICING

- 10.1 The consideration that SARS will pay the Service Provider in respect of the rendering of the Services is stated in **Annexure A** to this Agreement.

10.2 It is specifically recorded that any price adjustment whatsoever will be managed strictly in accordance with the RFP, specifically the SARS notes appended to the pricing schedule.

10.3 The Service Provider shall give SARS written notice of the latest minimum statutory wage increase within five (5) Business Days of having knowledge of such minimum statutory wage increase.

10.4 The Parties shall meet within five (5) Business Days of SARS being so notified to discuss

and agree on the adjustment of the monthly fee payable in terms of this Agreement, provided that such adjustment shall not exceed the amount by which the minimum statutory wage payable to the Service Provider's Personnel has been increased.

10.5 If the Parties fail to reach an agreement on the increase as provided for in this Clause, the monthly fee payable to the Service Provider will remain the same as that which applied immediately before the requested monthly fee adjustment, provided that the Service Provider may terminate this Agreement by giving SARS thirty (30) days' written notice to that effect.

11. INVOICING

11.1 The Service Provider shall invoice SARS the total monthly fee payable per region on or before the fifth (5th) day of the month following the month in which the Service Provider performed the Services. Invoices rendered prior to the Services being rendered in any month will be rejected and returned to the Service Provider.

11.2 Each invoice shall contain-

11.2.1 A description of the Services rendered; and

11.2.2 Any such details as may reasonably be requested by SARS, from time to time.

11.3 The Service Provider shall verify that each invoice is complete and accurate, and that it conforms to the requirements of this **Clause 11** before issuing the invoice to SARS.

11.4 The Service Provider shall deliver all invoices to the SARS office designated by SARS from time to time.

11.5 SARS shall pay an invoice for Services already rendered within thirty (30) days of receipt thereof, less applicable financial penalties and disputed amounts, provided the invoice is accurate and meets the requirements of this Agreement.

11.6 Should SARS query an item in an invoice, the Service Provider shall within two (2) days after a written request by SARS, 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.

11.7 SARS shall not be obliged to pay any amounts that are invoiced more than one hundred

and twenty (120) days after the first (1st) day of the month in which the Service Provider was obliged to deliver such invoice, unless the amount or invoice is disputed in terms of **Clause 12** below.

- 11.8 The Service Provider shall for the contract term 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.
- 11.9 The Service Provider shall provide SARS and SARS's auditors access at reasonable times to information, records, documentation and personnel 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.
- 11.10 All costs incurred in performing audits under this **Clause 11** will be borne by SARS unless audit findings reveal the Service Provider's non-compliance with the terms of this Agreement and/or Applicable Law.

12. DISPUTED CHARGES AND INVOICING ERRORS

- 12.1 SARS may withhold payment of monthly fees that SARS disputes in good faith or, if the disputed monthly fees have already been paid, SARS may withhold an equal amount from a later payment, including disputes in respect of an error in an invoice or an amount paid. If SARS withholds any such amount-
- 12.1.1 SARS shall promptly notify the Service Provider 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 12**;
- 12.1.2 If the dispute relates to (or equals in the case of disputed amounts that have already been paid) only a percentage of the invoiced amount, then SARS shall pay the undisputed amount in accordance with **Clause 11.5** above; and
- 12.1.3 If an invoice is identified as incorrect, then the Service Provider 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.
- 12.2 Any dispute arising in terms of **Clause 12.1** above and which remains unresolved for five

(5) Business Days after it has arisen, shall be referred by either Party to SARS's Head of Procurement and the Service Provider's Chief Executive Officer or their appointed delegates for resolution.

12.3 The SARS's Head of Procurement and the Service Provider's Chief Executive Officer or their appointed delegates shall meet to resolve such dispute within five (5) Business Days of the referral of the dispute.

12.4 In the event that the dispute remains unresolved after ten (10) days of its referral to the persons mentioned in **Clause 12.2** above, either Party shall be entitled to refer the dispute for resolution in accordance with the provisions of **Clause 16** below. Provided that **Clause 16.1** will not apply to disputes contemplated in this **Clause 12**.

13. CONFIDENTIALITY

13.1 Except as permitted by this Agreement neither Party shall disclose nor publish any Confidential Information in any manner, for any reason or purpose whatsoever without the prior written consent of the owner of the Confidential Information.

13.2 The Service Provider agrees that it will restrict the dissemination of SARS's Confidential Information to the Service Provider's Personnel who are actively involved in activities for which use of Confidential Information is authorised and then only on a 'need to know' basis. The Service Provider shall initiate, maintain and monitor internal security procedures reasonably acceptable to SARS to prevent unauthorised disclosure of SARS's Confidential Information by the Service Provider's Personnel.

13.3 Each Party shall maintain the confidentiality of the other Party's Confidential Information, using at least the same efforts as it uses to maintain the confidentiality of its own Confidential Information, and as otherwise required under Applicable Law, the terms of this Agreement and SARS's Oath / Affirmation of Secrecy.

13.4 Prior to giving any of the Service Provider's Personnel access to any Confidential Information, the Service Provider shall require that such personnel execute SARS's Oath / Affirmation of Secrecy. **The Service Provider may be required by SARS to, in respect of RFP 41-2019 A, cause the Service Provider's Personnel to sign a non-disclosure statement acceptable to SARS and furnish SARS a signed copy of such.**

13.5 In the event of SARS not being in receipt of a signed Oath / Affirmation of Secrecy from such personnel, SARS shall be entitled to deny the Service Provider's Personnel access

to SARS Sites or prevent such personnel from conducting any work in relation to the Services. The Service Provider will, however, in such event, not be excused from its service obligations. The Service Provider specifically indemnifies, holds harmless and agrees to defend SARS and its officers, employees, agents, successors and assigns, against all claims or losses arising from or in connection with SARS denying the Service Provider's Personnel access to SARS premises, where SARS finds any of the Service Provider's Personnel to be a security risk.

- 13.6 The Service Provider shall ensure that the Service Provider's Personnel do not remove any Confidential Information (irrespective of the media it is contained in) or SARS's property from SARS Sites without the written authority of SARS's Authorised Representative.

14. BREACH

- 14.1 If a Party (the "Defaulting Party") is in default or breach of any obligation which arises in terms of the Agreement and that Defaulting Party fails to remedy such default or breach within seven(7) Business Days after receipt of a written notice given by the other Party (the "Aggrieved Party") calling upon the Defaulting Party to remedy such default or breach, then the Aggrieved Party may, without prejudice to any other rights which it may have in terms hereof or at Law-

14.1.1 claim specific performance;

14.1.2 cancel this Agreement, such cancellation to be effective immediately on receipt by the Defaulting Party of a written notice to that effect; or

14.1.3 claim any money due and payable in terms of this Agreement and claim damages from the Defaulting Party.

- 14.2 The Service Provider acknowledges that it is a material term of this Agreement that the Service Levels prescribed in **Annexure B** must be maintained throughout the contract term. The Parties agree that multiple Performance Failures will constitute sufficient proof of persistent non-compliance by the Service Provider with SARS's prescribed Service Levels and that such persistent non-compliance will constitute a material breach of this Agreement.

- 14.3 The remedies set out in this Clause shall not be construed to be exhaustive of any other remedies available to the Parties.

15. TERMINATION

15.1 Termination for cause by SARS

- 15.1.1 SARS may, by giving notice to the Service Provider, terminate this Agreement or the rendering of the Services in whole or in part, as of a date set out in the notice of termination, in the event that the Service Provider fails to comply with this Agreement, or Applicable Law, commits an act of insolvency as defined in the Insolvency Act, 1936 (Act No. 24 of 1936) or is placed under provisional liquidation or under business rescue proceedings or is finally liquidated. Notwithstanding the above, SARS may immediately terminate this Agreement without notice where the Service Provider breaches **Clauses 13 or 25**.
- 15.1.2 SARS shall have no liability to the Service Provider with respect to a termination under **Clause 15.1.1**.

15.2 Termination Upon Sale, Acquisition, Merger or Change of Control

- 15.2.1 In the event of a sale, acquisition, merger, or other change of control of the Service Provider (a "Change Event") where such Change Event is achieved, 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 the Service Provider in a single or series of related transactions, then, at any time after being notified by the Service Provider in terms of **Clause 15.2.2** of the last of such events to occur, SARS may terminate this Agreement by giving the Service Provider thirty (30) days' written notice designating a date upon which such termination shall become effective.
- 15.2.2 The Service Provider shall notify SARS if there is any Change Event within ten (10) Business Days after the Change Event is achieved.
- 15.2.3 No sale, acquisition, merger or other change of control shall be effective against and legally binding on SARS if the Service Provider failed to notify SARS, as required by **Clause 15.2.2** above, and SARS may upon discovery of the Change Event terminate the Agreement by giving the Service Provider thirty (30) days' written notice and designating a date upon which such termination shall be effective.
- 15.2.4 SARS shall have no liability to the Service Provider with respect to termination

of the Agreement in terms of this Clause.

15.2.5 “Control” in terms of this Clause shall mean, with regard to any entity, the right or power to dictate the management of and otherwise control such entity by any of the following-

15.2.5.1 holding directly or indirectly the majority of the issued share capital or stock (or other ownership interest if not a company) of such entity ordinarily having voting rights;

15.2.5.2 controlling the majority of the voting rights in such entity; or

15.2.5.3 having the right to appoint or remove directors holding a majority of the voting rights at meetings of the board of directors of such entity.

15.2.6 Any termination of this Agreement pursuant to the provisions of this **Clause 15.2** shall be without prejudice to any claim which either Party may have in respect of any prior breach of the terms and conditions of this Agreement by the other Party.

16. DISPUTE RESOLUTION

16.1 In the event of any dispute arising out of or in connection with this Agreement, the Parties shall try to resolve the dispute by negotiation. This entails that the one Party invites the other in writing to a meeting and attempts to resolve the dispute within seven (7) days from date of the written invitation.

16.2 If the dispute has not been resolved by negotiation as contemplated above or in **Clause 12**, the Parties shall submit the dispute to the Arbitration Foundation of Southern Africa (“AFSA”) administered mediation, failing which the dispute shall be determined as below.

16.3 Save in respect of those provisions in 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.

- 16.4 Neither Party shall be precluded from obtaining interim relief on an urgent basis or other conservatory relief from a court of competent jurisdiction pending the decision of the arbitrator.
- 16.5 This Clause 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.
- 16.6 Neither Party shall be entitled to withhold performance of any of their obligations in terms of this Agreement pending the settlement of, or decision in, any dispute arising between the Parties and each party shall, in such circumstances continue to comply with their obligations in terms of this Agreement: Provided that SARS shall not pay any invoice in respect of which there is a pending dispute.

17. FORCE MAJEURE

- 17.1 To the extent that, and for as long as either of the Parties (hereinafter referred to as the “the affected Party”) is rendered unable wholly or in part, to carry out any of its obligations under this Agreement, by reason of any *force majeure* event beyond its reasonable control, then subject to **Clause 17.5-**
- 17.1.1 The affected Party shall be released from the relevant obligation and shall incur no liability therefore during the continuance of the said *force majeure* event; and
- 17.1.2 The obligations not affected by the said *force majeure* event shall remain in force.
- 17.2 To the extent that the affected Party is not the cause of the *force majeure* event, such *force majeure* event may be deemed to include, but shall not be limited thereto, fire, storm, explosion, accidents, earthquake, an epidemic, floods, drought, war, revolution, riots, sabotage, sanctions, boycotts or the operation of any law or regulation under the law or any other cause beyond the reasonable control of that Party.
- 17.3 Should such *force majeure* event arise, the affected Party shall within seven (7) days notify the other Party of the estimated duration and extent of the disturbing circumstances with sufficient particulars to enable the other Party to assess the possibility of obtaining performance by another means not affected by the *force majeure* event.

- 17.4 The affected Party shall use its best efforts to remove the disturbance with the least possible delay so that its obligations can be fulfilled as soon as reasonably possible in the manner provided for in this Agreement.
- 17.5 Should the *force majeure* event last more than thirty (30) days from the date of receipt of notification by the other Party, the other Party shall be entitled to terminate this Agreement by giving not less than ten (10) days' written notice to the affected Party.
- 17.6 SARS shall be entitled to use the service of other parties during such period.

18. STEP IN RIGHTS

- 18.1 In addition to any other rights and remedies that it may have in terms of this Agreement or otherwise, including the right to terminate this Agreement, SARS may in its sole discretion elect to temporarily take over the Services as contemplated in **Clause 18.2** below, immediately upon SARS's identification or the Service Provider's notification of the occurrence of any event which SARS considers, in its sole discretion, to be an event which may affect the continuity of the Services.
- 18.2 For purposes of this **Clause 18** SARS may (at its option), either itself or by the procurement of an alternate third party service provider, temporarily take over the provision of the Services until such time as SARS is able to make permanent alternate arrangements for the provision of the Services, which right shall apply for a period of no more than one hundred and eighty (180) days from the date that SARS temporarily takes over the provision of the Services. The Service Provider shall, upon the request of SARS, fully co-operate with and assist SARS in the performance of the Services during any such temporary take-over of the Services by SARS.
- 18.3 To the extent that SARS exercises its rights to assume the rendering of the Services or part thereof itself, or procures that a third party service provider renders some or all of the Services pursuant to the provisions of **Clause 18.2** above, the Service Provider shall not be entitled to any fees and/or charges during the period for which SARS or the third party assumes the Services. SARS shall be obliged to also assume, for that period, any direct costs and expenses solely attributed to any such temporary rendering of part or all of the Services, incurred by SARS in accordance with this Clause, including the salary costs for Service Provider Personnel that SARS may require to assist it in so rendering the Services or part thereof. SARS shall not under any circumstances by virtue of such assumption, be obliged or deemed or required to also take over or assume responsibility

for the conduct of the Service Provider's business operations or the employment of any Service Provider Personnel, in terms of this Clause.

19. WARRANTIES

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

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

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

19.1.3 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;

19.1.4 it will provide the Services in a cost-effective and expedient manner, thereby ensuring that no unnecessary or extraordinary costs are incurred and passed on to SARS;

19.1.5 it has the requisite insurance to cover third party and professional indemnity claims that may be instituted against it; and

19.1.6 it has the necessary resources, skills, capacity and experience to render the Services to SARS.

19.2 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.

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

20. LIABILITY OF THE PARTIES

- 20.1 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.
- 20.2 Except in cases of any malicious, intentional, fraudulent, reckless or grossly negligent acts or a breach of Applicable Law or the confidentiality provisions of this Agreement by the Service Provider or the Service Provider's Personnel, the Service Provider shall not be liable to SARS for indirect and consequential or special damages and/or losses suffered by SARS.

21. INSURANCE

- 21.1 The Service Provider shall for the contract term, have and maintain in force third party liability insurance cover of at least three million rand (R3 000 000.00) against all actions, suits, claims or other expenses arising in connection with damages or loss (including death) suffered by a third party as a result of negligence on the part of the Service Provider, its employees, subcontractor or any person engaged by the Service Provider to provide the Services or component thereof.
- 21.2 The Service Provider shall for the contract term, have and maintain in force professional indemnity insurance cover to a minimum of five hundred thousand rand (R500 000.00) per Security Incident against all actions, suits, claims or other expenses arising in connection with damages or loss (including death) which may be suffered by SARS as a result of breach of the terms and conditions of this Agreement in providing the Services or component thereof.
- 21.3 The Service Provider shall provide SARS with certificates of insurance, evidencing that the covers and policy endorsements required under this Agreement are maintained in force, on the date of signing this Agreement and provide evidence of renewal of the insurance at least three (3) Business Days prior to expiration thereof.
- 21.4 The Service Provider shall provide SARS with at least thirty (30) days' notice prior to any material modification, cancellation or non-renewal of the policies.
- 21.5 In the case of loss or damage or other event that requires notice or other action under the terms of any insurance coverage set out in **Clauses 21.1** and **21.2** above, the Service Provider shall be solely responsible to take such action. The Service Provider shall

provide SARS with contemporaneous notice and with such other information as SARS may request regarding the event.

22. SARS'S RIGHT TO ACQUIRE INSURANCE IN CERTAIN CIRCUMSTANCES

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

23. INDEMNITY BY THE SERVICE PROVIDER

23.1 Subject to **Clause 21** above, the Service Provider hereby indemnifies, holds harmless and agrees to defend SARS and its officers, employees, agents, successors and assigns, against all claims or losses arising from or in connection with, any of the following-

23.1.1 Third party claims attributable to any breach of the provisions of this Agreement by the Service Provider;

23.1.2 Third party claims arising from the Service Provider's breach of an agreement between the Service Provider and a subcontractor (including claims by the subcontractor);

23.1.3 Third party claims attributable to theft, fraud or other unlawful activity or any negligent, wilful or fraudulent conduct by the Service Provider or the Service Provider's Personnel and claims attributable to errors and/or omissions;

23.1.4 Third party claims arising from or related to the death or bodily injury of any agent, employee, customer, business invitee, business visitor or other person caused by the delictual conduct of the Service Provider or the Service Provider's Personnel;

23.1.5 Claims arising from damage to property owned or leased by SARS or belonging to a third party caused by the acts or omissions of the Service Provider or the Service Provider's Personnel; or

23.1.6 Claims arising from a Security Incident.

24. DOMICILIUM CITANDI ET EXECUTANDI

24.1 Any notice in terms of this Agreement may be hand delivered to a responsible person during business hours at the physical addresses of the Parties, in which event proof of acknowledgment shall be endorsed upon a copy of the notice together with the name of the recipient and date of receipt, or may be sent by registered post to the nominated postal addresses of the Parties, in which event a proof of postage issued by the relevant postal authority will serve as proof, or may be sent per telefax. In the case of hand delivery, receipt shall be deemed to have been on the day of delivery; in the case of postage, receipt shall be deemed to be the fifth (5th) Business Day after posting (unless the contrary is proved) and in the case of telefax, receipt shall be deemed to have been on the first Business Day after the date of transmission (unless the contrary is proved).

24.2 The Service Provider chooses for the purpose of service of documents in legal proceedings its *domicilium citandi et executandi* as follows-

24.2.1 Street Address: _____

24.2.2 Postal Address: _____

24.3 SARS chooses for the purpose of service of documents in legal proceedings its *domicilium citandi et executandi* as follows-

24.3.1 Street Address: **Lehae La SARS**
299 Bronkhorst Street
Nieuw Muckleneuk
Pretoria
0181

24.3.2 Postal Address: Private Bag X923, Pretoria, 0001

24.4 Any Party to this Agreement may change its *domicilium citandi et executandi* by giving the other Party thirty (30) days' notice, as prescribed in **Clause 24.1** above.

24.5 The Parties record that whilst they may correspond via email during the currency of this Agreement for operational reasons, no formal notice required in terms of this Agreement, nor any amendment or variation to this Agreement may be given or concluded via email.

25. TAX COMPLIANCE

- 25.1 The Service Provider warrants that, as of the Effective Date, it is and will for the duration of the Agreement remain compliant with all Applicable Laws relating to taxation in the Republic of South Africa.
- 25.2 A failure to comply with the provisions of this Clause will constitute a material breach and will entitle SARS to terminate the Agreement forthwith. SARS will have no liability to the Service Provider with respect to such termination.

26. BROAD-BASED BLACK ECONOMIC EMPOWERMENT

- 26.1 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 "B-BBEE Act"] as will be amended from time to time, and the Codes of Good Practice issued in terms of the B-BBEE Act.
- 26.2 During the currency of this Agreement, the Service Provider shall remain BEE compliant and maintain or improve the minimum B-BBEE status level of contributor it had when it submitted the RFP.
- 26.3 SARS may, in writing, from time to time call upon the Service Provider to provide proof of its B-BBEE Status.
- 26.4 A failure to comply with the provisions of **Clause 26.2** above is a material breach and will entitle SARS to terminate the Agreement.

27. ANTI-CORRUPTION AND GOOD FAITH

- 27.1 In implementing this Agreement and in all further dealings with each other, the Parties undertake to observe the utmost good faith and to give effect to the intent and purpose of this Agreement.
- 27.2 The Service Provider will not make or cause to be made any offer, gift, payment, consideration, or benefit of any kind, which would or could be construed as an illegal or corrupt practice, either directly or indirectly to any party, as an inducement or reward in relation to the execution of this Agreement. Any such practice will be grounds for termination of this Agreement.

28. CONFLICT OF INTEREST

28.1 Neither the Service Provider nor the Service Provider's Personnel shall have any interest or receive any remuneration in connection with the performance of the Services, except as provided for in this Agreement.

28.2 The Service Provider shall not engage in any other activity, which may conflict with its obligations to SARS in terms of this Agreement.

29. GENERAL

29.1 Advertising and Marketing

Except in so far as herein expressly provided, 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 media 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.

29.2 Additions, Variations, Cancellation and Novation

No addition to or variation, consensual cancellation or novation of this Agreement and no waiver of any rights arising from this Agreement or its breach or termination shall be of any force and effect unless reduced into writing and signed by both Parties or their duly authorised representatives.

29.3 Cession and Assignment

Subject to Applicable Law, the Service Provider shall not cede, assign, transfer or otherwise alienate this Agreement without the prior written consent of SARS, which shall not be unreasonably withheld.

29.4 Costs

Each Party shall bear its own costs in respect of the negotiation, preparation and finalisation of this Agreement.

29.5 Counterparts

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

29.6 Governing Law and Jurisdiction

29.6.1 This Agreement will be governed by and construed in accordance with the Applicable Law of the Republic of South Africa and all disputes, actions and other matters relating thereto will be determined in accordance with such Applicable Law.

29.6.2 The Service Provider hereby consents to the jurisdiction of the High Court of the Republic of South Africa (Gauteng Division, Pretoria) in regard to all matters arising from this Agreement.

29.7 No Withholding of Consents

Except where expressly provided as being in the sole discretion of a Party, where agreement, approval, acceptance, consent, or similar action by either Party is required under this Agreement, such action shall not be unreasonably delayed or withheld. An approval, acceptance, consent or similar action by a Party under this Agreement shall not relieve the other Party from the responsibility of complying with the requirements of this Agreement, nor shall it be construed as a waiver of any rights under this Agreement.

29.8 Severability of the Clauses or Provisions

If any Clause or provision of this Agreement is found to be invalid, illegal or unenforceable in any way, such Clause or provision shall be deemed to be separate and severable from the remaining provisions of this Agreement, and the validity and enforceability of those provisions shall not be affected.

29.9 **Subcontracting (WHERE APPLICABLE)**

29.9.1 **RFP 41-2019 C**

29.9.1.1 The Service Provider shall subcontract the Services to the subcontractor indicated in its bid proposal submitted in response to RFP 41-2019 C, and in the manner contemplated in RFP 41-2019 C (a minimum of 30% of the value of the contract).

29.9.1.2 Notwithstanding the provisions of this **Clause 29.9.1**, the Service Provider shall remain the only Party wholly responsible for the due performance of its obligations in terms of this Agreement and compliance with the terms and conditions thereof.

29.9.1.3 The Service Provider shall ensure that a subcontracting agreement entered into between the Service Provider and the subcontractor binds the subcontractor to the terms and conditions of this Agreement.

29.9.1.4 The Service Provider shall be responsible for all acts, omissions, defaults and negligence of its subcontractors and their experts, agents or employees as if they were those of the Service Provider, and shall not be absolved from its responsibility in terms of this Agreement on the basis that such persons were acting outside the scope of their engagement by the Service Provider.

29.9.1.5 The Service Provider may not replace the subcontractor contemplated in **Clause 29.9.1.1** above without the prior written consent of SARS, which consent shall not be unreasonably withheld: Provided both the Service Provider and the then proposed subcontractor satisfy the subcontracting conditions and criteria stipulated in RFP 41/2019 C.

29.9.1.6 Nothing contained herein shall create a contractual relationship between SARS and the subcontractor.

29.9.2 **RFP 41-2019 A and B**

29.9.2.1 Subject to Applicable Law, the Service Provider shall not without

the prior written consent of SARS, which consent shall not be unreasonably withheld, subcontract any of the Services required in terms of this Agreement to any third party. It is expressly recorded that SARS will not approve a proposed subcontracting if, in the exclusive judgment of SARS, the subcontracting will result in prejudice or potential prejudice to other service providers.

29.9.2.2 Whenever the Service Provider wishes to subcontract any part of the Services in terms hereof, the Service Provider shall submit, together with its request as set out in **Clause 29.9.2.1** above, a complete written proposal for SARS's approval containing-

29.9.2.2.1 Full details and business references of the subcontractor;

29.9.2.2.2 A full description of the part of the Services it proposes for subcontracting;

29.9.2.2.3 Full details of how the Service Provider will manage the performance of the Services by the subcontractor;

29.9.2.2.4 The value of the contract proposed to be subcontracted, expressed as a percentage;

29.9.2.2.5 The B-BBEE status and certificate of the subcontractor; and

29.9.2.2.6 Confirmation of tax compliance of the subcontractor.

29.9.2.3 Notwithstanding the provisions of this **Clause 29.9.2**, the Service Provider shall remain the only Party wholly responsible for the due performance of its obligations in terms of this Agreement and compliance with the terms and conditions thereof.

29.9.2.4 Subject to the provisions of **Clause 29.9.2.1** above, the Service Provider shall ensure that a subcontracting agreement entered into between the Service Provider and the subcontractor binds the subcontractor to the terms and conditions of this Agreement.

29.9.2.5 Nothing contained herein shall create a contractual relationship between SARS and the subcontractor.

29.10 Waiver

No latitude, extension of time or other indulgence which may be given or allowed by either Party in respect of the performance of any obligation hereunder, and no delay or forbearance in the enforcement of any right of such Party arising from this Agreement, and no single or partial exercise of any right by a Party under this Agreement, shall in any circumstances be construed to be implied consent or election by a Party or operate as a waiver or novation of or otherwise affect any of that Party's rights in terms of or arising from this Agreement or estop or preclude that Party from enforcing at any time and without notice, strict punctual compliance with each and every provision or term hereof.

29.11 Whole Agreement

This Agreement constitutes the whole Agreement between the Parties as to the subject matter hereof and no contracts, undertakings, representations or warranties given, made or concluded between the Parties regarding the subject matter hereof other than those set out herein are binding on the Parties.

30. SIGNATORIES

As Representatives for the South African Revenue Service

For: Group Executive responsible for Physical Security Matters
Date signed:

For: Group Executive responsible for Procurement Matters
Date signed:

As Authorised Representative for the Service Provider

Full names: _____

Designation: _____

Date signed: _____