

RFP 05/2020 - PROVISION OF ICT FACILITIES SERVICES FOR SARS OFFICES NATIONWIDE

SERVICES AGREEMENT

TERMS AND CONDITIONS

Notes to the Bidder:

1. This agreement and its appended documents comprise four structural layers:
 - a. At the highest level is the "Main Agreement" running from page 7 to page 48;
 - b. The next order of document in the hierarchy is a "Schedule";
 - c. Below a Schedule is an "Appendix";
 - d. Falling below an Appendix is the final and most subordinate layer which is an "Attachment".

2. Wherever "r" appears in the designation of any schedule, appendix or attachment, it should read such as referring to number "1" to "5" in line with the Region for which you are submitting a Proposal.

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TERMS AND CONDITIONS

This Agreement, effective as of _____, 20__ ("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, _____ (Proprietary) Limited, (Registration No. _____), a company incorporated under the laws of the Republic of South Africa, with its registered address located at _____, the Republic of South Africa ("**Service Provider**"). As used in this Agreement, "**Party**" means either SARS or Service Provider, as appropriate, and "**Parties**" means SARS and Service Provider. The Parties agree that the following are the terms and conditions under which SARS agrees to purchase and Service Provider agrees to provide, the Services. Capitalised terms have the meanings given to them in **Schedule A (Glossary)**.

[Note to the Bidder: the above fields will be completed on contract award]

1. BACKGROUND AND OBJECTIVES

1.1. Background

This Agreement is being made and entered into with reference to the following:

SARS requires the provision of:

- 1.1.1. inspection and maintenance of ICT Facilities and ICT Facilities Infrastructure;
- 1.1.2. Break-fix of ICT Facilities Infrastructure;
- 1.1.3. Incident, Problem and operational Change management relating to ICT Facilities Infrastructure;
- 1.1.4. provision of ICT Facilities Infrastructure and related consumables; and
- 1.1.5. delivery, installation and commissioning of ICT Facilities Infrastructure

as more fully described herein and in the schedules hereto. These Services will be provided in the Region(s) at the Supported Sites as listed in **Appendix B-3 (Site List)** and can be varied from time to time, in writing, in accordance with this Agreement.

[Note to the Bidder: Appendix B-3 (Site List) will have an attachment per Region should the Bidder be awarded more than one Region.]

- 1.2. The Service Provider warrants that it has and will continue throughout the Term to have, the resources, skills, qualifications and experience necessary to perform and manage the Services at whatever volumes SARS may from time to time require in accordance with the requirements of the Agreement and the Performance Standards.
- 1.3. In reliance on these statements and representations, SARS has selected and, subject to the terms of this Agreement, hereby appoints the Service Provider as its vendor to provide the Services described herein during the Term, which appointment the Service Provider accepts.

[Note to the Bidder: Detail of the Region(s) which have been awarded to the Bidder will be inserted in the final version of the Agreement. The Bidder is referred to the document: SARS RFP 05/2020 ICT Facilities Guidelines Instructions and Conditions.doc for details of the Regions, and the awards that may be made within each.]

1.4. Objectives

SARS and the Service Provider have agreed upon the following specific goals and objectives for this Agreement:

- 1.4.1. to provide SARS the Services in a manner that is intended to create and maintain a high level of user satisfaction in line with the Service Levels;
- 1.4.2. to appropriately contain SARS's risk, including with respect to: (i) sustained service delivery; (ii) cost containment; (iii) changes in law, the technology available to provide the Services, technology employed by SARS, SARS's processes and the like; (iv) SARS's ability to transition the services to itself or a third party at termination or expiration of this Agreement; and (v) security of Confidential Information, including validation and integrity protection;
- 1.4.3. to procure the Services under a flexible and scalable arrangement pursuant to which SARS's consumption reflects its needs from time to time;
- 1.4.4. throughout the Term, to procure the Services for Charges that: (i) reflect SARS's consumption; (ii) are predictable and controllable; and (iv) are at or below the South African market price for similar services therefore;
- 1.4.5. to establish a successful contractual relationship between the Parties that is flexible and highly responsive to SARS's changing requirements over the Term;
- 1.4.6. to provide SARS with expertise including that which is required to identify, analyse, recommend, provide and implement, among other things, new technologies and processes;
- 1.4.7. to provide SARS with services that improve over the Term;
- 1.4.8. to enable Service Provider and its Subcontractors to earn a reasonable return on their investment and a reasonable profit from the performance of the Services provided that: (i) the Service Provider meets its obligations under the Agreement, including performing the Services in terms of the Performance Standards; and (ii) the Agreement is not terminated prior to expiration; and
- 1.4.9. provide opportunities to small and medium-sized businesses which are compliant with the Broad-Based Black Economic Empowerment Act, 2003 (Act No 53 of 2003) its regulations and practice codes.

1.5. Construction

The provisions of this **Clause 1** are intended to be a general introduction to this Agreement and will not be used to expand the scope of either Party's obligations under this Agreement or to alter the plain meaning of the terms and conditions of this Agreement. However, to the extent the terms and conditions of this Agreement do not address a particular circumstance or are otherwise unclear or ambiguous, such terms and conditions are to be interpreted and construed so far as to give effect to the provisions in **Clause 1.4**. Certain other rules of construction are set out in **Schedule A (Glossary)**.

2. AGREEMENT STRUCTURE AND ORDER OF PRECEDENCE

2.1. **The BRS and the general terms and conditions of the RFP 05/2020 (including the summary, guidelines, conditions and instructions of the aforementioned RFP) are herein incorporated by reference.**

2.2. This **Main Agreement** provides a framework for, and the general terms applicable to, the Services that the Service Provider will provide to SARS under this Agreement. This **Main Agreement** is supplemented with schedules, attachments and appendices.

2.3. Schedules, Appendices and Attachments

2.3.1. The schedules are the first level documents attached to the **Main Agreement**. The appendices are documents attached to the schedules. The attachments are documents attached to the appendices.

2.3.2. By written agreement, the Parties may, from time to time, include under the **Main Agreement**, schedules, attachments and appendices pertaining to New Services as well as amendments to particular Services provided by the Service Provider to SARS under the Agreement.

2.3.3. The provisions of the **Main Agreement** will apply to all schedules, appendices and attachments issued thereunder.

2.4. Order of precedence

Any conflict between the provisions of the various clauses of the **Main Agreement**, the schedules, appendices and attachments will be resolved in accordance with the following order of precedence (in descending order of priority): (a) the **Main Agreement**; (b) the schedules; (c) the appendices; and (d) attachments to the foregoing documents in the same order of precedence attaching to the documents to which they are annexed. A schedule, appendix or attachment may amend the terms and conditions of this **Main Agreement** only with respect to the subject matter of such schedule, appendix or attachment. Insofar as any schedule, appendix or attachment specifically amends the provisions of this **Main Agreement**, such amendment will prevail in respect of that schedule, appendix or attachment only. For the avoidance of doubt it is recorded that the terms of one schedule, appendix or attachment will not apply to any other schedule, appendix or attachment to the extent they are in conflict.

3. TERM

3.1. Term

The term of this Agreement will begin on the Effective Date and will expire on the 5th (fifth) anniversary of the Effective Date of the Services, unless: (i) the Agreement is terminated earlier in accordance with this **Main Agreement** in which case the Agreement will expire on such earlier termination date; or (ii) extended under **Clause 3.2** in which case the Agreement will expire at the end of such Renewal Term ("**Term**"). It is recorded that the term of a Work Order, Change Order or purchase order may extend beyond the Term in respect of such Work Order, Change Order or purchase order only and in such an event the Agreement will expire on the date of the expiration of the last Work Order, Change Order or purchase order.

No new Work Orders, Change Orders or purchase orders may be concluded beyond the Term.

3.2. Extension

Any extension to the Agreement will be subject to prior written agreement between the Parties. Any such renewal will be subject to the then-existing terms and conditions of this Agreement which will remain unchanged and in full force and effect during each such renewal term.

4. SERVICES

4.1. Definition and Scope of Services

4.1.1. The Services to be provided by the Service Provider are set forth in this Agreement (including the applicable schedules, appendices and attachments hereto) as amended from time to time, for the duration of the Term. The Services and the Supported Sites where such Services are to be provided are detailed in **Schedule B (SOW)** and may, subject to approval by SARS and inclusion in a schedule executed pursuant to this Agreement, include one or more of the following functional areas of scope:

4.1.1.1. Inspection and maintenance of ICT Facilities and ICT Facilities Infrastructure;

4.1.1.2. Break-fix of ICT Facilities Infrastructure;

4.1.1.3. Incident, Problem and operational Change management relating to ICT Facilities Infrastructure;

4.1.1.4. provision of ICT Facilities Infrastructure and related consumables; and

4.1.1.5. delivery, installation and commissioning of ICT Facilities Infrastructure.

4.1.2. The Services may also include the provision of New Services and/or Projects.

4.1.3. The Services will also include:

4.1.3.1. complying with SARS PPS&G;

4.1.3.2. cooperating, liaising with and/or managing Third Parties;

4.1.3.3. complying with the Performance Standards including Service Levels;

4.1.3.4. the provision of Services in relation to ICT Facilities and ICT Facilities Infrastructure not belonging to SARS; and

4.1.3.5. duties, services, activities, functions and responsibilities reasonably required for the proper performance and provision of the Services, even if not specifically described in this Agreement, other than the Dependencies.

4.1.4. In each case, the term "**Services**" will refer to and include such duties, services, activities, functions, infrastructure and responsibilities as they may evolve during the Term and as they may be supplemented, enhanced, modified or replaced including to keep pace with changes in SARS business and advances in technology and processes available to the Service Provider, all in accordance with and subject to the terms and conditions of this Agreement and as set out in either a Work Order as detailed in **Appendix E-4 (Form of a Work Order)** or in a Change

Order as detailed in **Appendix E-3 (Form of a Change Order)**, as the case may be.

4.2. Provision of Services

- 4.2.1. Subject to the provisions of **Clauses 4.9** and **4.10** below, the Service Provider will provide:
- 4.2.1.1. the Services detailed in **Clauses 1** and **2** of the **Appendix B-1 (Transition Service)** and the Transition Plan from the Effective Date; and
 - 4.2.1.2. the Services detailed in **Schedule B (SOW)** from the Commencement Date of the Agreement.
- 4.2.2. The Services will at all times be provided in accordance with and subject to the terms and conditions of the Agreement and the Performance Standards.
- 4.2.3. For the avoidance of doubt, the Service Provider will perform:
- 4.2.3.1. the Services and functions (including all steps and tasks) listed in the Agreement and detailed in **Schedule B (SOW)** and/or any other schedule issued in terms of the Agreement;
 - 4.2.3.2. in the Regions at the Supported Sites; and
 - 4.2.3.3. any steps and tasks required to perform the Services, even if such steps and tasks have not been listed or described in the Agreement
- so as to ensure that SARS receives and realises the benefit of the Services.
- 4.2.4. The Service Provider will perform the Services diligently, in a timely manner, and in accordance with the Performance Standards and time schedules set forth or referred to in the Agreement. The Service Provider will promptly notify SARS upon becoming aware of any incident or circumstances that may reasonably be expected to jeopardise the performance or timely performance of any part of the Services. Notwithstanding anything to the contrary contained in the Agreement, the Service Provider will not take or authorise any action that results in a reduction of the scope of or degradation in the quality and timeliness of the performance of the Services during the term of the Agreement.
- 4.2.5. The Service Provider will, for the duration of the Agreement: (a) use all Commercially Reasonable Efforts to improve the quality and efficiency of the provision of the Services; and (b) ensure that the Charges are such that the Services are cost effective to SARS. The Service Provider will be required to implement all necessary formal processes to facilitate improvement of the Services. The Service Provider will ensure that the Charges comply with the provisions of **Schedule D (Charges, Invoicing and Payments)**.
- 4.2.6. The manner in which the Services are developed and provided will be such that they are easily scalable to support any growth of or contraction in, SARS's business for the duration of the Agreement.
- 4.2.7. The Service Provider will continue to perform its obligations under the Agreement, including the performance of the Services, without any interruptions, including during any dispute between the Parties.
- 4.2.8. The Service Provider will perform the Services in accordance with and subject to the provisions of **Schedule E (Governance)**.

4.3. **Enhance Capabilities and Effectiveness**

The Services will be provided in a manner that enhances SARS's ability to deliver high-quality, cost-effective services. The technology utilised by the Service Provider will provide SARS with industry leading levels of functionality and performance.

4.4. **Cost Predictability**

The Service Provider will ensure predictable charges with no unanticipated price increases over time, so that factors affecting the Service Provider's invoiced charges to SARS remain within SARS's control.

4.5. **Improve and Maintain Technology**

The Service Provider will recommend the implementation of new technologies to deliver the Services to SARS in order to maintain competitiveness in the quality and scope of Services available to SARS and to take advantage of market cost efficiencies. The Service Provider will, at its own cost, refresh all technology necessary to perform the Services in accordance with the terms of the Agreement and to meet the Service Levels.

4.6. **Improvement of ICT Facilities Infrastructure**

The Service Provider will timeously recommend to SARS the implementation of new ICT Facilities Infrastructure should such, in Service Providers opinion, become uneconomical or impossible to repair.

4.7. **Services to Governmental Entities**

4.7.1. At SARS's election, the Service Provider will make the Services, including New Services and/or Projects, available to other Governmental Entities within the Region under this Agreement (including at the Service Levels and for the Charges).

4.7.2. SARS will provide the Service Provider with 30 (thirty) days (or such other period as the Parties may mutually agree) prior notice if it wishes to have the Service Provider provide the Services to other Governmental Entities; provided, however, that the Service Provider will use Commercially Reasonable Efforts to commence performance of the Services to the other Governmental Entities as of the date requested by SARS.

4.8. **Transition Services**

The Service Provider will provide the Transition Services as detailed in **Appendix B-1 (Transition Services)** to **Schedule B (SOW)**.

4.9. **New Services**

4.9.1. The Service Provider will perform New Services upon request by SARS. SARS may decide to perform New Services itself, award New Services to the Service Provider, or award New Services to a Third Party Supplier at its sole discretion.

4.9.2. Where New Services are requested by SARS, the Service Provider will commence providing such services upon conclusion of a Work Order;

4.9.3. The Service Provider will charge for New Services only as provided in **Clause 6 of Schedule D (Charges, Invoicing and Payments)** or where applicable such

charges as may be agreed and set out in a Work Order.

4.10. **Projects**

- 4.10.1. The Service Provider will perform Projects only upon conclusion of a Work Order/Change Order.
- 4.10.2. The Service Provider will perform such Projects in terms of the SARS project methodology as designated by SARS from time to time.
- 4.10.3. SARS may decide to perform Projects itself, award Projects to Service Provider, or award Projects to a Third Party Supplier at its sole discretion.
- 4.10.4. The Service Provider will charge for Projects only as provided in **Clause 7 of Schedule D (Charges, Invoicing and Payments)** or where applicable such charges as may be agreed and set out in a Work Order signed by both Parties. For purposes of clarity, the fact that one or both of the Parties may refer to an aggregation of work as a project will not cause such aggregation to be treated as a Project. Such an aggregation will only be treated as a Project if it is a Project as defined in **Schedule A (Glossary)**.

4.11. **Proposals and Quotations**

- 4.11.1. Where SARS requests the Service Provider to provide a proposal or quotation in respect of any proposed New Services and/or Projects, the Service Provider will furnish SARS with a detailed written quotation or proposal upon which will be stated an all-inclusive price for such Services (with the components of the quoted pricing being specified), the technical specifications, additional warranties, maintenance and maintenance cost and checklists of all Deliverables, the details as to the date until which the quotation will be open for acceptance by SARS and any other information required by SARS.
- 4.11.2. Where SARS requests the Service Provider to provide a proposal or quotation in respect of any proposed Services, the Service Provider will, within 8 (eight) Business Hours, provide SARS, in writing or by email, with a committed date for the delivery of the proposal or quotation referred to in **Clause 4.11.1**. The Service Provider will deliver the proposal or quotation, complete in every respect on or before the committed date.
- 4.11.3. No contractual obligation is imposed on SARS by the acceptance of the Service Provider's quotation and it is specifically recorded that no terms and conditions contained in any proposal or quotation document will have any force and effect. It is the intention of the Parties that on acceptance of any proposal or quotation by SARS a Work or Change Order will be concluded in accordance with this Agreement.

4.12. **Non-exclusivity**

- 4.12.1. This Agreement is non-exclusive and SARS makes no commitment to purchase any part of the Services from Service Provider. The Service Provider is appointed to provide the Services to SARS on a non-exclusive basis and SARS will not be precluded from obtaining services that may be similar or identical to the Services from any other service provider.
- 4.12.2. Without restriction, SARS will have the right, upon 60 (sixty) days prior notice to the Service Provider, to provide itself, or retain Third Parties to provide, any or all of the Services during the Term. SARS may also provide itself, or retain Third Parties to provide, any or all of the Services during the Disengagement Assistance Period.

- 4.12.3. Nothing contained herein will in any way be construed or constitute a guarantee in favour of the Service Provider that the Service Provider will receive any work or contract for services from SARS in the future, whether under the Agreement or otherwise.

4.13. Co-operation with SARS and Third Parties

- 4.13.1. The Service Provider acknowledges that SARS may have outsourced certain of its services and business processes, related and/or ancillary to the Services, to Third Parties and that SARS may outsource certain other functions to other Third Parties. The Service Provider will, at no additional cost and as part of the Services, co-ordinate, co-operate and consult with such Third Parties and SARS regarding the performance of the Services so that the Service Provider and the Third Parties provide services to SARS in as seamless a manner as is reasonably possible.
- 4.13.2. The Service Provider will use Commercially Reasonable Efforts to ensure that all services, equipment, Software and other resources (including those provided by SARS) (collectively, the "**Resources**") utilised by the Service Provider or approved by the Service Provider for utilisation by SARS in connection with the Services, will be successfully integrated and interfaced, and will be compatible with, the services, equipment, networks, Software, enhancements, upgrades, modifications and other resources that are being provided or recommended by Third Party Suppliers (collectively, the "**Third Party Resources**"). Further, the Service Provider will use Commercially Reasonable Efforts to ensure that none of the Services or other items provided to SARS by the Service Provider will be adversely affected by any such Resources and/or Third Party Resources, whether as to functionality, speed, service levels, interconnectivity, reliability, availability, performance, response times or similar measures.
- 4.13.3. To the extent that SARS performs any of the Services or functions itself, or retains Third Parties to do so, the Service Provider will co-operate with SARS or any such Third Party Supplier, which co-operation will include:
- 4.13.3.1. providing reasonable access to any facilities and/or resources being used to provide the Services;
 - 4.13.3.2. providing such information regarding the Services as SARS and/or the Third Party Supplier may request;
 - 4.13.3.3. where applicable, and where required by SARS, providing the Services until completion of the successful transition of the Services from Service Provider to SARS and/or the Third Party Supplier;
 - 4.13.3.4. providing operational data (including documentation, schedules, and Service Level performance data); and
 - 4.13.3.5. providing such other services set out in **Schedule F (Disengagement Assistance)**.
- 4.13.4. When engaging a Third Party Supplier as contemplated in **Clause 4.12.2** above and this **Clause 4.13**, SARS will use reasonable efforts to require the Third Party Supplier: (i) to comply with the Service Provider's reasonable security requirements; and (ii) to the extent such Third Party Supplier will be performing work on Service Provider-owned, licensed or leased Software or hardware, to comply with Service Provider's reasonable work standards, methodologies and procedures; provided, however, that SARS may disclose to Third Party Supplier such Service Provider-owned, licensed or leased Software or hardware.

- 4.13.5. The Service Provider will immediately notify SARS if an act or omission of such a Third Party Supplier may cause a problem or delay in providing the Services and will co-operate with SARS to prevent or circumvent such problem or delay.

5. PERFORMANCE OF SERVICES BY SUBCONTRACTORS

- 5.1. The Service Provider warrants that it shall, in each Region, throughout the Term, subcontract no more than 49% (forty nine percent) of the Services, measured as the amount SARS will be required to pay annually for the Services under the Agreement. The Service Provider shall, provide a report on the utilisation of its Subcontractors in compliance with **Appendix B-6 (Reports)** including details of payments to Subcontractors for Services rendered. Non-compliance with the provisions of this **Clause 5.1** may be deemed to be a material breach by the Service Provider.

[Note to the Bidder: Appendix B-6 (Reports) will have an attachment per Region should the Bidder be awarded more than one Region.]

- 5.2. Excepting for the vendors listed in **Schedule L (Subcontractors to Service Provider)** as Subcontractors to the Service Provider, the Service Provider may not in any way (including by entering into a partnership, alliance or outsourcing arrangement for this purpose) subcontract its obligations under the Agreement without the prior written consent of SARS.
- 5.3. Notwithstanding the aforementioned, SARS will be entitled in its sole discretion to withhold approval in respect of the appointment of any Subcontractor to whom the Service Provider intends to delegate the performance of a material part of the Services.
- 5.4. Where SARS has consented to the appointment of a Subcontractor as contemplated in **Clause 5.1** above, the agreements between the Service Provider and its Subcontractors relating to the subcontracting of the Services ("**Subcontract**") will contain materially the same terms and conditions as this Agreement to the extent such terms and conditions are relevant to the services to be provided by the Subcontractor (including a restriction on the Subcontractor's right to further subcontract its obligations without SARS's prior written consent).
- 5.5. In no event will the Service Provider be relieved of its obligations under this Agreement as a result of its use of any Subcontractors. The Service Provider will at all times be responsible to SARS for fulfilment of all Service Provider's obligations under this Agreement and will remain SARS's sole point of contact regarding the Services, including with respect to payment.
- 5.6. The Service Provider will supervise the activities and performance of each Subcontractor and will be liable for any act or failure to act by such Subcontractor which causes any harm, loss or damage to SARS. Service Provider will supervise the activities and performance of each Subcontractor and will be jointly and severally liable with each such Subcontractor for any act or failure to act by such Subcontractor which causes any harm, loss or damage to SARS including the costs of any investigations (incurred by SARS) into the activities of such Subcontractor by relevant authorities.
- 5.7. The Subcontract will contain a provision stating that all obligations of the Subcontractor are also expressed as obligations owing by the Subcontractor to SARS and which are as such, irrevocable stipulations in favour of SARS which are capable of being accepted by SARS at any time by written notice given to the Subcontractor, such stipulation being acceptable by

SARS either collectively or individually, each being severable from the other.

- 5.8. Prior to the conclusion and signature of any agreement between the Service Provider and Subcontractor relating to the subcontracting of the Services, a comprehensive draft of the agreement is to be submitted to SARS for review and approval. The Service Provider will be obliged to accommodate all reasonable requests of SARS for amendments to the Subcontract. The draft agreement will in any event only be signed upon approval by SARS and a certified copy of the signed Subcontract (which is to be identical to the final draft approved by SARS) will be submitted to SARS within 7 (seven) Business Days of signature.
- 5.9. If SARS determines that the performance or conduct of any Subcontractor is unsatisfactory or if it can be reasonably established or determined that concerns exist regarding the Subcontractor's ability to render future performance because of changes in the ownership, management, and/or financial condition of the Subcontractor, or there have been material misrepresentations regarding the Subcontractor on the strength of which SARS's consent was granted for the appointment of such Subcontractor, SARS may notify the Service Provider of its determination in writing, indicating the reasons therefore, in which event the Service Provider will promptly take all necessary actions to remedy the performance or conduct of such Subcontractor or, subject to the terms of this **Clause 5**, replace such Subcontractor with another Subcontractor.
- 5.10. The Service Provider will not disclose SARS's Confidential Information to a Subcontractor unless and until such Subcontractor or prospective Subcontractor has executed an agreement including provisions at least as rigorous and restrictive as the confidentiality provisions set out in **Clause 15** below.
- 5.11. SARS will be entitled in its sole discretion to waive compliance with the provisions of any one or more of, or of any part of the provisions of **Clause 5** by written notice given by SARS to the Service Provider.
- 5.12. If SARS determines that the performance or conduct of any Subcontractor is unsatisfactory or if it can be reasonably established or determined that concerns exist regarding the Subcontractor's ability to render future performance because of changes in the ownership, management, and/or financial condition of the Subcontractor, or there have been material misrepresentations regarding the Subcontractor on the strength of which SARS's consent was granted for the appointment of such Subcontractor, SARS may notify the Service Provider of its determination in writing, indicating the reasons therefor, in which event the Service Provider will promptly take all necessary actions to remedy the performance or conduct of such Subcontractor or replace such Subcontractor with another Subcontractor acceptable to SARS.

6. SERVICE LEVELS

The Service Provider will provide the Services in accordance with the Service Levels and Service Level Credits detailed in **Schedule C (Service Levels)**, a Work Order or a Change Order. The Service Provider's performance of the Services will be measured against these Service Levels.

7. REQUIRED RESOURCES

7.1. Service Provider Facilities

- 7.1.1. The Service Provider is responsible for providing (at its own expense) any space it

requires to provide the Services.

- 7.1.2. The Service Provider will permit SARS Personnel (including the personnel of any SARS agents and representatives) and SARS Third Party Suppliers to enter into those portions of the Service Provider Facilities used to provide the Services. Such SARS Personnel and SARS Third Party Suppliers will comply with Service Provider's reasonable security requirements.

7.2. Resources

- 7.2.1. The Service Provider will provide all resources including facilities, personnel, tools, hardware and the Software required for the Service Provider to perform the Services in terms of the Agreement (including the Performance Standards) at whatever volumes are from time to time required by SARS.
- 7.2.2. The Service Provider warrants that it has and shall for the Term of this Agreement have resources with the requisite skill, qualification, experience know-how and ability necessary to perform the Services in terms of the requirements of this Agreement. For purposes of clarity the replacement of any resource during the Term of the Agreement shall be of the same skill, qualification and experience as set out in the BRS document and/or RFP 05/2020 documents.

7.3. Use of Resources

The Service Provider will use all resources, facilities and/or services as are necessary to provide the Services in an efficient, cost-effective and non-wasteful manner.

7.4. No SARS Representations and Warranties Regarding Resources

- 7.4.1. SARS makes no representations and/or warranties regarding: (i) the SARS assets it owns, leases or licences from Third Parties; (ii) the SARS facilities, including any furnishings, telephonic hardware, and computer hardware; (iii) or Supported Sites (collectively the "**SARS Assets**"). Accordingly, should SARS make available the SARS Assets to the Service Provider such assets will be made available on an 'as is, where is' basis, with no warranties whatsoever, including with respect to the condition, state of repair, quality, fitness for a particular purpose or merchantability thereof.
- 7.4.2. SARS makes no representations and warranties regarding any Third Party Intellectual Property including with respect to the likelihood that the Service Provider will be able to obtain the Required Consent, the cost of obtaining the Required Consent, or the fitness of the Third Party licensor of Third Party Intellectual Property.
- 7.4.3. The Service Provider remains fully responsible for the performance of the Services in terms of this Agreement (including Performance Standards) without regard to: (i) the condition or suitability of any SARS Assets, SARS Intellectual Property and Third Party Intellectual Property; (ii) its ability to obtain one or more Required Consents; and (iii) the performance or non-performance by any of SARS's suppliers, licensors or lessors.

7.5. Managed SARS Third Party Contracts

[Note to the Bidder: No Managed SARS Third Party Contracts are envisaged at Effective Date, but may be required during the Term.]

- 7.5.1. When and to the extent that SARS requires the Service Provider to provide

Managed SARS Third Party contract management services and where SARS obtains the right to disclose the terms of a Managed SARS Third Party Contract to Service Provider, the Service Provider will manage the applicable Managed SARS Third Party's performance of services for SARS under such contract, including with respect to the Managed SARS Third Party's compliance with the terms of the contract addressing service levels and pricing.

- 7.5.2. If the Service Provider becomes aware of a breach of, or has a concern with a Third Party's performance under, a Managed SARS Third Party Contract, it will immediately: (i) notify SARS; (ii) provide recommendations to SARS regarding the appropriate course of action; and (iii) take such actions as SARS may direct in writing. The Service Provider will not take any action or communicate in any way with the applicable Managed SARS Third Party if there is reason to believe there is a breach of the Managed SARS Third Party Contract unless it obtains SARS's prior approval.
- 7.5.3. Subject to **Clause 7.5.2**, the Service Provider will use Commercially Reasonable Efforts to resolve any performance problems by the Managed SARS Third Party under each Managed SARS Third Party Contract.
- 7.5.4. Should SARS require Managed Third Party Services from the Service Provider, such services will be provided as a New Service.

8. SERVICE PROVIDER PERSONNEL

8.1. Health, Safety and Security

- 8.1.1. The Service Provider will ensure that Service Provider Personnel will at all times, whilst on SARS's premises, adhere to the standard health, safety and security procedures and guidelines applicable to SARS Personnel, as such procedures and guidelines may be changed by SARS from time to time and which will be made available to the Service Provider on request, it being incumbent on the Service Provider to ensure that it regularly requests and obtains the latest versions of such procedures and guidelines. Should SARS at any time have reason to believe that any member of the Service Provider Personnel is failing to comply with such standard health, safety and security procedures and guidelines, SARS will be entitled to deny such member access to any or all of SARS's premises and require Service Provider to replace such member without delay.
- 8.1.2. The Service Provider will register with the Compensation Commissioner as required by the Compensation for Occupational Injuries and Diseases Act, 1993 (Act No 130 of 1993). Documentary proof of such registration and/or a letter of good standing from the Compensation Commissioner must be made available to SARS upon request.

[Note to the Bidder: Include this documentation as part of the Proposal.]

- 8.1.3. SARS's security requirements and regulations include, inter alia, the right to search: (i) the person of any member of Service Provider Personnel; (ii) any container in the possession of Service Provider Personnel; and (iii) any vehicle driven by Service Provider Personnel, whilst Service Provider Personnel are on-site at any premises of SARS. Service Provider will obtain an undertaking from Service Provider Personnel irrevocably agreeing to submit to such searches and consents to such searches by SARS or any person duly appointed by SARS to

undertake such searches.

8.1.4. The Service Provider hereby agrees and undertakes, in terms of section 37(2) of the Occupational Health and Safety Act, 1993 (Act No 85 of 1993), to ensure that the Service Provider and the Service Provider Personnel comply with the aforesaid Act. The Service Provider accepts sole responsibility for all health and safety matters relating to the provision of the Services, or in connection with, or arising out of such Services including:

8.1.4.1. providing for the health and safety of the Service Provider Personnel and ensuring that the Service Provider Personnel at all times adhere to the Occupational Health and Safety Act, 1993 (Act No 85 of 1993), and the terms and conditions of this Agreement; and

8.1.4.2. ensuring that neither SARS Personnel nor any Third Party's health and safety is endangered in any way by the Service Provider's activities or conduct in providing the Services.

8.2. **Key Service Provider Personnel and Key Service Provider Positions**

8.2.1. The Key Service Provider Positions and Key Service Provider Personnel are detailed in **Appendix E-1 (Key Service Provider Positions) to Schedule E (Governance)**.

[Note to the Bidder: The Bidder is required to populate Appendix E-1 (Key Service Provider Positions) in accordance with the notes to the Bidder in Appendix E-1 (Key Service Provider Positions) as a mark-up to the contract.]

8.2.2. Before assigning an individual to a Key Service Provider Position, the Service Provider will notify SARS of the proposed assignment, introduce the individual to the appropriate SARS representatives (and, upon request, provide such representatives with the opportunity to interview the individual) and provide SARS with a *curriculum vitae* and other information about the individual which may be reasonably requested by SARS. If SARS in good faith objects to the proposed assignment, the Parties will attempt to resolve SARS's concerns on a mutually agreeable basis. If the Parties are not able to resolve SARS's concerns within 5 (five) Business Days of SARS so objecting or such longer period as SARS may in writing agree, the Service Provider will not assign the individual to that position or to any other position on the SARS account and will propose to SARS the assignment of an alternative individual of suitable ability and qualifications for approval by SARS.

8.2.3. The Service Provider Personnel filling Key Service Provider Positions may not be removed from the SARS account until SARS has approved a suitable replacement and such replacement has been properly trained and made familiar with the SARS account.

8.2.4. In the case of an unforeseen Key Service Provider Position vacancy, the Service Provider will promptly fill the vacant Key Service Provider Position with an appropriately qualified and trained individual in accordance with **Clause 8.2.2** above.

8.3. **The Service Provider Service Delivery Manager and Transition Manager**

8.3.1. The Service Provider will appoint a Service Provider Service Delivery Manager who will have the full authority necessary to perform his or her functions pursuant to the Agreement, which includes the obligation to ensure that the full scale and scope of

the Service Provider's resources are brought to bear on the Services when necessary.

8.3.2. The Service Provider Transition Manager will report directly to the Service Provider Service Delivery Manager.

8.3.3. The Service Provider Service Delivery Manager and the Service Provider Transition Manager will be Key Service Provider Positions.

8.4. **Turnover of Service Provider Personnel**

The Service Provider agrees that it is in both Parties' best interests for the Service Provider to keep the turnover rate of the Service Provider Personnel at a low level, particularly in respect of the Service Provider Personnel performing important Service components. Accordingly, the Service Provider will use Commercially Reasonable Efforts to limit Service Provider Personnel turnover.

8.5. **Removal of Service Provider Personnel**

The Service Provider will promptly remove from the SARS account any Service Provider Personnel whose presence or involvement in the SARS account is determined by SARS and/or the Service Provider to be detrimental to the Services or to the SARS work environment. The Service Provider indemnifies SARS from any claims that may be brought by any Service Provider Personnel who may be affected as a result of SARS exercising its rights under this **Clause 8.5**.

8.6. **Continuing Obligation to Perform**

The Service Provider will remain fully responsible for the provision of the Services in terms of the Agreement (including the Performance Standards) notwithstanding, among other things: (i) SARS's unwillingness to approve one or more proposed assignments of individuals to Key Service Provider Positions; (ii) turnover of Service Provider Personnel including Key Service Provider Personnel; or (iii) the removal by SARS and/or the Service Provider of the Service Provider Personnel including under **Clause 8.5** above.

8.7. **Transition**

The Service Provider will provide the Transition Services as detailed in **Appendix B-1 (Transition Services)** to **Schedule B (SOW)**.

9. **SARS'S RESPONSIBILITIES**

9.1. **Responsibilities**

SARS's responsibilities under the Agreement ("**Dependencies**") are set out in **Appendix B-5 (Dependencies)**.

[Note to the Bidder: As part of your Proposal, you must identify any Dependencies by completion of Appendix B-5 (Dependencies). Appendix B-5 (Dependencies) will have an attachment per Region should the Bidder be awarded more than one Region.]

For the avoidance of doubt, SARS will not be responsible for any tasks, functions or the like under the Agreement other than the Dependencies.

9.2. Excused Performance

- 9.2.1. The Service Provider will promptly notify SARS upon becoming aware that SARS has failed to perform, or is reasonably likely to fail to perform, a Dependency.
- 9.2.2. The Service Provider's failure to perform any of its obligations under the Agreement (including a failure to perform an obligation within the timeframes required under this Agreement) will be excused if and to the extent that:
- 9.2.2.1. such failure by the Service Provider would not have occurred but for SARS's failure to perform its Dependencies;
 - 9.2.2.2. such failure by SARS directly and materially adversely affects the Service Provider's timely performance of its obligations under the Agreement;
 - 9.2.2.3. the Service Provider provides SARS with prompt written notice of such non-performance in accordance with **Clause 9.2.1** and uses Commercially Reasonable Efforts to perform notwithstanding SARS's failure to perform, including by way of Workarounds or other means; and
 - 9.2.2.4. the Service Provider demonstrates to SARS's reasonable satisfaction that SARS's failure had a direct, material adverse impact on the Service Provider's ability to perform its obligations in accordance with the Agreement.
- 9.2.3. To the extent any delay in performance by the Service Provider is excused under this **Clause 9.2**, the deadlines for its performance will be extended for a reasonable period of time to accommodate the delay actually and reasonably caused by SARS's failure to perform a Dependency in accordance with this Agreement.
- 9.2.4. The Service Provider will be excused from the assessment of a Service Level Credit to the extent set forth in **Clause 3.3 of Schedule C (Service Levels)**.

10. GOVERNANCE AND ETHICAL BUSINESS PRACTICES

- 10.1. The Parties will comply with their respective obligations set forth in **Schedule E (Governance)**.
- 10.2. 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 the Service Provider Personnel, Subcontractors, Primary Parties 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).
- 10.3. 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.
- 10.4. 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 relevant authority, to investigate all the relevant circumstances, to question any relevant of the Service Provider Personnel 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 or that the contract with such Sub-contractor be terminated.

- 10.5. SARS reserves the right to withdraw an award or to cancel this Agreement should it be established, at any time, that the Service Provider or its Personnel or, its Subcontractor or the personnel of its Subcontractor has been blacklisted by National Treasury or by another government institution.

11. CHARGES/PRICING

Charges for the Services, as well as invoicing and payment terms, are set out in **Schedule D (Charges, Invoicing and Payments)**.

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, the 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 Services 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, the 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 Services 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 Services ("**Developed Intellectual Property**").

12.2.2. The 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. The 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 the 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 the Service Provider fail to comply with any such written request.

12.2.4. Unless otherwise agreed, where Developed Intellectual Property incorporates the

Service Provider Intellectual Property, systems, and processes that the Service Provider did not develop in the course of providing the Services under the Agreement, the 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**, the Service Provider retains all right, title and interest in and to the Service Provider Intellectual Property that is used in connection with the Services. The 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 Services during the Term and during the Disengagement Assistance Period.

12.4. **Third Party Intellectual Property**

The 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. The 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. The Service Provider is required to perform the Services 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 as contemplated in **Clause 12.6.1** below.

12.5. **Use of Third Party Intellectual Property licensed to SARS**

The Service Provider will not, without SARS's express prior written consent, use any Third Party Intellectual Property licensed to SARS whether to provide the Services to SARS or for any other purpose whatsoever. The 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 the Service Provider to use Third Party Intellectual Property licensed to SARS, the Service Provider undertakes that it will only use such Intellectual Property strictly in accordance with the provisions of the relevant consent. The Service Provider is required to perform the Services in accordance with the Service Levels notwithstanding any decisions by SARS to withhold its consent.

12.6. **Required Consents and License Fees**

12.6.1. The Service Provider will, at its cost and expense, obtain all Required Consents with respect to any Third Party Intellectual Property required by it to provide the Services.

12.6.2. The Service Provider will be responsible for all financial liability related to licence and maintenance fees under SARS's agreements with Third Parties for the licence and maintenance of any Third Party Intellectual Property to the extent that such liability arises from the Service Provider's use, support, maintenance or access to such Third Party Intellectual Property.

12.6.3. The Service Provider will be financially responsible for any licence and maintenance fees under the Service Provider's agreements with Third Parties for

the licensing and maintenance of any Third Party Intellectual Property.

12.7. **Residual Knowledge**

Nothing contained in this Agreement will restrict either Party from the use in its business activities of any generic ideas, concepts, know-how, or techniques developed or learned by such Party pursuant to this Agreement, provided that in doing so such Party does not:

- 12.7.1. disclose Confidential Information to Third Parties;
- 12.7.2. infringe any Intellectual Property Rights of the other Party and/or Third Parties; or
- 12.7.3. use any such residual knowledge or assist or enable any Third Party to use such residual knowledge to the detriment of SARS.

12.8. **Licence Limitations**

Except for the licence rights contained in this **Clause 12**, neither this Agreement nor any disclosure made hereunder grants any licence to either Party or any Third Party in respect of any Intellectual Property Rights of the other Party.

13. **CHANGE CONTROL**

The Service Provider will control and manage changes to all aspects of the Services and to the environment in which it provides the Services in accordance with SARS's change management standards and procedures detailed in **Schedule B (SOW)** and **Schedule E (Governance)**.

14. **REVIEW AND ACCEPTANCE OF DELIVERABLES**

All Deliverables delivered by the Service Provider to SARS pursuant to this Agreement will be subject to SARS's review, approval and acceptance requirements as may be detailed in **Schedules B (SOW)** and **Schedules C (Service Levels)** hereto.

15. **SAFEGUARDING OF CONFIDENTIAL INFORMATION**

15.1. **Acknowledgment of Importance of Confidential Information**

The Receiving Party acknowledges:

- 15.1.1. the great importance of the Confidential Information to the Furnishing Party and, where applicable, Third Party proprietors of such information, and recognises that the Furnishing Party and/or Third Party proprietors may suffer irreparable harm or loss in the event of such information being disclosed or used otherwise than in terms of this Agreement; and
- 15.1.2. that all Confidential Information of the Furnishing Party that comes to the knowledge of the Receiving Party is proprietary to the Furnishing Party or, where applicable, the relevant Third Party proprietor. The Receiving Party also acknowledges that nothing in this Agreement confers any rights or licence to Confidential Information on the Receiving Party.

15.2. Non-Disclosure

The Receiving Party agrees:

- 15.2.1. except as permitted by this Agreement, not to disclose or publish any Confidential Information in any manner, for any reason or purpose whatsoever without the prior written consent of the Furnishing Party;
- 15.2.2. notwithstanding the foregoing, the Service Provider may, subject to **Clause 16.5**, disclose such information to one or more Third Parties performing services required hereunder where:
 - 15.2.2.1. such Third Party is performing services in terms of this Agreement;
 - 15.2.2.2. such disclosure is necessary or otherwise naturally occurs in that entity's scope of responsibility; and
 - 15.2.2.3. the Third Party agrees or has agreed in writing to assume the obligations described in this **Clause 15**;
- 15.2.3. except as permitted by this Agreement, not to utilise, employ, exploit or in any other manner whatsoever use the Confidential Information for any purpose whatsoever without the prior written consent of the Furnishing Party and, in the event that the Confidential Information is proprietary to a Third Party, it will also be incumbent on the Receiving Party to obtain the consent of such Third Party;
- 15.2.4. to restrict the dissemination of the Confidential Information only to those of its personnel who are actively involved in activities for which use of Confidential Information is authorised and then only on a 'need to know' basis and the Receiving Party will initiate, maintain and monitor internal security procedures reasonably acceptable to the Furnishing Party to prevent unauthorised disclosure by its personnel;
- 15.2.5. to take all practical steps, both before and after disclosure, to impress upon its personnel who are given access to Confidential Information the secret and confidential nature thereof; and
- 15.2.6. notwithstanding the foregoing, SARS may disclose to Third Parties the Confidential Information of the Service Provider to the extent required to exercise its rights under this Agreement (including **Schedule F (Disengagement Assistance)**) provided SARS obtains the written agreement of such Third Party to a confidentiality agreement materially consistent with the confidentiality provisions set out in this **Clause 15**.

15.3. Standard of Care

- 15.3.1. The Receiving Party will protect the Confidential Information of the Furnishing Party in the manner that it employs to protect its own Confidential Information. In no event will the Receiving Party use less than Commercially Reasonable Efforts to protect the confidentiality of the Confidential Information of the Furnishing Party.
- 15.3.2. The Service Provider will ensure that no Service Provider Personnel, agents and Subcontractors or unauthorised parties to access any data, files or programs unless it must do so to perform the Services.
- 15.3.3. In addition, the Service Provider will implement on or before the Effective Date, and thereafter maintain, appropriate safeguards against the unauthorised access to, and destruction, loss, or alteration of, SARS data in the Service Provider's possession and to which the Service Provider may have access. Such safeguards

must be acceptable to SARS and in accordance with all policies and procedures of SARS regarding data access, privacy and security and no less rigorous than the most rigorous of the practices maintained by SARS or the Service Provider as of the Effective Date.

- 15.3.4. In the event that SARS grants the Service Provider permission to remotely access SARS's hardware, Software, internet facilities, data, telecommunication facilities and/or network facilities, the Service Provider will adhere to all SARS's policies applicable to remote access, which are available to the Service Provider on request.

15.4. **Procure Undertakings from Personnel**

- 15.4.1. The Service Provider will ensure that each of the Service Provider Personnel, agents and Subcontractors execute the SARS Oath of Secrecy/Solemn Declaration, prior to performing any of the Services under this Agreement or being given access to any facilities used to perform the Services.
- 15.4.2. The Service Provider will ensure that the Service Provider Personnel, agents and Subcontractors who have access to Confidential Information of SARS give a written undertaking in favour of SARS in regard to the Confidential Information on substantially the same terms and conditions contained within this Agreement in a form prescribed by SARS prior to access to any Confidential Information.
- 15.4.3. SARS will be entitled to deny the Service Provider Personnel, agents and Subcontractors access to SARS Facilities or prevent the Service Provider Personnel, agents and Subcontractors from conducting any work in relation to the Services should SARS not be in receipt of the SARS Oath of Secrecy/Solemn Declaration and a signed undertaking on such terms and conditions as determined by SARS.
- 15.4.4. The Service Provider's failure to provide the undertaking and the SARS Oath of Secrecy/Solemn Declaration, referred to in this **Clause 15.4** and/or SARS's failure to receive such undertaking will in no way detract from the Service Provider's obligations in terms of this Agreement.
- 15.4.5. The Service Provider will comply with and will procure that all Service Provider Personnel, agents and Subcontractors comply with all security measures imposed by SARS regarding security and access to the SARS Facilities.

15.5. **Exceptions**

The Parties acknowledge that subject to Applicable Law this **Clause 15** will not be applicable where the Receiving Party discloses the Confidential Information to attorneys or auditors, provided that: (i) such disclosure is reasonably required by the Receiving Party for the purposes of conducting its business activities; and (ii) the attorneys or auditors agree in writing to be bound by the provisions of this **Clause 15** and complete and submit the SARS Oath of Secrecy/Solemn Declaration to SARS.

15.6. **Disclosure Required by Law, Regulation or Court Order**

In the event that the Receiving Party is required to disclose the Confidential Information of the Furnishing Party in terms of a requirement or request by operation of law, regulation or court order but only to the extent so disclosed and only in the specific instance and under the specific circumstances in which it is required to be disclosed, the Receiving Party will:

- 15.6.1. advise the Furnishing Party thereof prior to disclosure, if possible;

- 15.6.2. take such steps to limit the extent of the disclosure to the extent that it lawfully and reasonably practically can;
- 15.6.3. afford the Furnishing Party a reasonable opportunity, if possible, to intervene in the proceedings; and
- 15.6.4. comply with the Furnishing Party's requests as to the manner and terms of any such disclosure.

15.7. Loss of Confidential Information

In the event of any unauthorised disclosure or loss of, or inability to account for any Confidential Information of the Furnishing Party, the Receiving Party will promptly, at its own expense:

- 15.7.1. notify the Furnishing Party in writing;
- 15.7.2. take such actions as may be necessary or reasonably requested by the Furnishing Party to minimise the violation; and
- 15.7.3. co-operate in all reasonable respects with the Furnishing Party to minimise the violation and any damage resulting there from.

15.8. Return of Confidential Information

SARS may at any time on written instruction to the Service Provider require that the Service Provider immediately return to SARS, in a form reasonably acceptable to SARS, and thereafter destroy all remaining copies of SARS Confidential Information in possession of the Service Provider's personnel, agents or Subcontractors (including where applicable by electronically deleting the same in such manner that it is completely and utterly irretrievable). In addition SARS may instruct that the Service Provider furnishes a written statement to the effect that upon such return it has not retained in its possession or under its control, either directly or indirectly, any such Confidential Information or material and has fully complied with the foregoing return and destruction obligations.

16. WARRANTIES

16.1. Work Standards

The Service Provider warrants that the Services will be performed with promptness and diligence and executed in a workmanlike manner, in terms of the practices and professional standards used in well-managed operations performing services similar to the Services.

16.2. Manner of Performance

The Service Provider warrants that the Services will at all times be performed in a manner which will: (i) not diminish SARS's reputation; and (ii) not be detrimental to SARS.

16.3. Business Continuity Services

The Service Provider warrants that it has suitable and tested Business Continuity Plans in place in order to ensure continuity of the Services in the event of a Disaster in the Service Provider Environment.

16.4. Service Provider Personnel

The Service Provider warrants that it will use adequate numbers of qualified individuals with suitable training, education, experience, and skill to perform the Services in terms of this Agreement and the Performance Standards.

16.5. **Protecting SARS Confidential Information**

16.5.1. The Service Provider warrants that it will at all times comply with its obligations to establish and maintain such procedures as may be necessary to ensure that all Confidential Information to which the Service Provider has access is not accessible to unauthorised persons, is not altered, lost or destroyed and it is capable of being retrieved only by persons duly authorised by SARS.

16.5.2. The Service Provider hereby further warrants in favour of SARS that it will at all times strictly comply with all Applicable Laws relating to data protection and with all the provisions and requirements of policies and procedures, as amended from time to time, for the protection of Confidential Information (including encryption standards) and any further requirements of which SARS may, from time to time, advise the Service Provider in writing, or which may be required by Applicable Laws, whether within the Republic of South Africa or elsewhere in the world. The SARS Confidential Information protection policies and procedures will be made available to Service Provider on request. It is incumbent on the Service Provider to ensure, for the duration of this Agreement, that: (i) it remains fully cognisant of Applicable Laws relating to data protection; and (ii) requests and obtains from SARS the latest versions of the SARS Confidential Information protection policies and procedures.

16.5.3. The Service Provider hereby further warrants that it will not, at any time copy, compile, collect, collate, process, mine, store, transfer, alter, delete, interfere with or in any other manner use the Confidential Information for any purpose other than to provide the Services to SARS.

16.5.4. The Service Provider further warrants that it will ensure that all its systems and operations which it uses to provide the Services, including all systems on which Confidential Information is copied, compiled, collected, collated, processed, mined, stored, transmitted, altered or deleted or otherwise used as part of providing the Services, will at all times be of at least the minimum standard required under Applicable Law and further be of a standard no less than the standards which are in compliance with best practice for the protection, control and use of such data.

16.6. **Non-Infringement**

The Service Provider warrants that:

16.6.1. it will perform its responsibilities under the Agreement in a manner that does not infringe or constitute an infringement or misappropriation of any patent, copyright, trademark, trade secret or other intellectual property or proprietary rights of SARS and/or any Third Party; and

16.6.2. the assets it uses to perform the Services will not infringe, or constitute an infringement or misappropriation of, any patent, copyright, trademark, trade secret or other intellectual property or proprietary rights of SARS and/or any Third Party.

16.7. **Authorisation**

16.7.1. Each Party warrants to the other that it has the requisite authority to enter into this Agreement.

16.7.2. The Service Provider further warrants that as at the Effective Date and during the Term: (i) it has all the necessary licences, certificates, authorisations and consents required under the laws of the Republic of South Africa or under any other applicable jurisdiction for the provision of the Services under this Agreement; and (ii) it will comply with all legal requirements and with the terms and conditions of all licences, certificates, authorisations and consents required for the provision of the Services.

16.8. **Inducements**

Each Party warrants to the other that it has not violated any Applicable Laws, regulations or policies of the other of which it has been given notice, regarding the offering of unlawful inducements in connection with this Agreement.

16.9. **Disabling Code**

The Service Provider warrants that:

16.9.1. it will not use, or authorise Third Parties including Subcontractors, to use any code that would have the effect of disabling or otherwise shutting down all or any portion of the Services; and

16.9.2. with respect to any disabling code that may be part of any Software in any way related to the provision of the Services, Service Provider will not invoke, or authorise a Third Party to invoke, such disabling code at any time, including upon expiration or termination of this Agreement for any reason.

16.10. **Service Level Measurement**

The Service Provider warrants that the steps, tools, processes, workflows and interfaces provided in **Appendix C-1 (Service Levels and Credits)** for measuring the Service Provider's performance against the Service Levels will, on a Service Level by Service Level basis, produce a system of measuring the Service Provider's performance against the Service Level that is at least as automated and objective as the most automated and objective system for measuring a similar service level deployed in a comparable, well-managed commercial environment by a professional service provider performing services similar to the Services.

16.11. **Tax Compliance**

16.11.1. The Service Provider warrants that as of the Effective Date it and its Subcontractors are in full compliance, and throughout the Term will remain in full compliance, with all Applicable Laws relating to taxation in South Africa.

16.11.2. The Service Provider undertakes that it will inform SARS should it become aware that Service Provider and/or any of its Subcontractors are not tax compliant.

16.11.3. If SARS becomes aware of any such tax non-compliance of Service Provider and/or its Subcontractors and should such non-compliance not be remedied within 3 (three) months (or such other shorter period as the Applicable Law may prescribe) after SARS has given notice to the Service Provider or its Subcontractors to remedy such non-compliance, such non-compliance will be deemed to constitute a material breach of this Agreement by the Service Provider.

16.11.4. SARS will be entitled to all remedies (including termination for cause) provided for in this Agreement pursuant to a material breach hereof by the Service Provider or

SARS may in the alternative (at its sole discretion) upon written notice, require the Service Provider to remedy the material breach. In the case of non-compliance by any Subcontractor procure that the Subcontractor immediately ceases providing Services pursuant to the subcontract and that the Service Provider terminates the subcontract between the Service Provider and that Subcontractor. SARS will have no liability to the Service Provider with respect to a termination under this **Clause 16.11.4**.

16.11.5. The Service Provider further warrants that the Service Provider will deliver to SARS on the Effective Date and each anniversary thereof during the Term a valid tax clearance certificate issued for the then-current year in respect of the Service Provider and each Subcontractor. A copy of the Service Provider's tax clearance certificate valid as of the Effective Date is attached hereto as **Schedule J (Service Provider's Tax Clearance Certificate)**. If Service Provider fails to provide such certificates: (i) in respect of itself and not due to any failure by SARS in the production of the certificate, SARS may terminate the Agreement on 30 (thirty) days notice; and (ii) in respect of any Subcontractor, and not due to any failure by SARS in the production of the certificate, SARS may direct the Service Provider to: (a) procure that the Subcontractor immediately ceases providing Services pursuant to the subcontract; and (b) that Service Provider terminates the subcontract. SARS will have no liability to the Service Provider with respect to a termination under this **Clause 16.11.5**.

16.12. **Legal and Regulatory Compliance**

16.12.1. The 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 Services and/or Deliverables under the Agreement.

16.12.2. The Service Provider will, within 14 days of the Effective Date, furnish SARS with copies of all regulated licences (including all amendments and renewals as well as copies of all radio frequency spectrum licences) granted to the Service Provider by the Independent Communications Authority of South Africa and which are required by the Service Provider for the provision of the Services to SARS. The details of all licence terms and conditions and other obligations imposed on the Service Provider which are not contained in the Service Provider's licences must be furnished in writing by the Service Provider to SARS.

16.13. **BBBEE Compliance**

The Service Provider undertakes and warrants that it and its Subcontractors are and will remain for the duration of this Agreement, fully cognisant of and compliant with the obligations detailed in **Schedule I (BBBEE)**.

16.14. **Documentation**

The Service Provider warrants that it will provide and maintain such documentation as is authored by or on behalf of the Service Provider so that it: (i) accurately reflects the operations and capabilities of any corresponding Deliverables; (ii) is accurate, complete and written in a manner easily understood by SARS; and (iii) is promptly updated from time to time to reflect any change.

16.15. Conflicts of Interest

The Service Provider warrants that:

- 16.15.1. neither it nor any member of the Service Provider Personnel, will have or will acquire any direct or indirect contractual, financial, business or other interest or advantage that would conflict in any manner or degree with the Service Provider's performance of its duties and responsibilities to SARS under this Agreement and the Service Provider will promptly inform SARS of any such interest that may be incompatible with the interests of SARS;
- 16.15.2. neither it nor any member of the Service Provider Personnel, has used or will use the authority provided or to be provided under this Agreement to improperly obtain financial gain, advantage or benefit;
- 16.15.3. neither it nor any member of the Service Provider Personnel, has used or will use any SARS Confidential Information acquired in connection with this Agreement to obtain financial gain, advantage or benefit;
- 16.15.4. neither it nor any member of the Service Provider Personnel has accepted or will accept anything of value or an inducement that would provide a financial gain, advantage or benefit, based on an understanding that the actions of the Service Provider or the Service Provider Personnel on behalf of SARS would be influenced thereby;
- 16.15.5. it will not attempt to influence any SARS Personnel by the direct or indirect offer of anything of value or an inducement; and
- 16.15.6. neither it nor any member of the Service Provider Personnel has paid or agreed to pay any Person any fee, commission, percentage, brokerage fee, gift or any other consideration, that is contingent upon or resulting from the award or execution of this Agreement, save for such remuneration as is paid to bona fide Service Provider Personnel working solely for the Service Provider or any of the Service Provider's Subcontractors.

17. INSURANCE AND RISK OF LOSS

17.1. Insurance

- 17.1.1. The 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, consistent with acceptable and prudent business practices, including:
 - 17.1.1.1. insurance cover, in accordance with the Service Provider's insurance cover as of the date of last signature of this Agreement as disclosed to SARS and attached hereto as **Schedule K (Service Provider's Insurance Policies)**, affording sufficient cover in order to cover Service Provider's potential liability in terms of **Clause 17.1.1**; and
 - 17.1.1.2. run-off cover identical to that contemplated in **Clause 17.1.1** above, 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 the Service Provider 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 the Service Provider, SARS may purchase the requisite insurance and deduct the costs thereof from any amounts owed to the Service Provider under this Agreement.

17.3. Risk of Loss

The 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 the 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. INDEMNITIES

18.1. Indemnity by Service Provider

The Service Provider hereby indemnifies, holds harmless and agrees to defend SARS and the Government Entities and their respective officers, employees, agents, successors, and assigns, from any and all Losses arising from or in connection with, any of the following:

- 18.1.1. all claims and any actions taken against SARS in respect of the Service Provider's non-compliance with legislation and regulations within the scope and responsibility of the Service Provider's provision of the Services.
- 18.1.2. Third Party claims attributable to the Service Provider's breach of its obligations with respect to **Clauses 15 and 16.5**;
- 18.1.3. Third Party claims attributable to theft, fraud or other unlawful activity or any negligent, wilful or fraudulent misconduct by the Service Provider or Service Provider Personnel, and claims attributable to errors or omissions for which the Service Provider is required to insure under **Clause 17.1.1** to the extent of the insurance required there under;
- 18.1.4. Third Party claims of infringement of any patent, trade secret, trademark, copyright or other proprietary rights, arising out of or relating to the Services, any deliverable and/or technology used and/or provided by the Service Provider or its Subcontractors to provide the Services other than technology and Software owned or provided by SARS;
- 18.1.5. Third Party claims of infringement of any patent, trade secret, trademark, copyright or other proprietary rights, alleged to have occurred because of hardware or Software provided to Service Provider by SARS to the extent arising from a change in the use or configuration of such hardware or Software by the Service Provider or its Subcontractors on or after Effective Date;
- 18.1.6. Third Party claims arising from breach of an agreement between the Service Provider and a Subcontractor or supplier (including claims by the Subcontractor or supplier);
- 18.1.7. Third Party claims arising from: (i) the Service Provider's failure to observe or perform any duties or obligation in terms of any law, licence, certificate and/or authorisation relating to any legislation governing labour brokers, personal services

companies or personal services trusts; and (ii) any Service Provider Personnel instituting any action against SARS in terms of the Labour Relations Act 66 of 1995, in each case in the event that, in the performance of the Services, Service Provider is found to be a labour broker, personal services company, or a personal services trust;

- 18.1.8. Claims brought by any Service Provider Personnel based upon any act by the Service Provider, its employees, agents and/or its Subcontractors on or after the Effective Date including, without limitation, any claim relating to the failure to appoint or promote employees by the Service Provider, claims for wages, benefits, discrimination or harassment of any kind, wrongful termination and/or refusal to pay severance or notice pay or termination payments upon leaving the Service Provider's employ;
- 18.1.9. Third Party claims arising from or related to the death or bodily injury of any agent, employee, customer, business invitee, or business visitor or other person caused by the negligent or wilful conduct of the Service Provider;
- 18.1.10. Third Party claims arising from or related to damage to tangible personal or real property including computer data, data loss or any other damage, notwithstanding the form in which any such action is brought (e.g. contract, delict or otherwise), to the extent such injuries or damages arise directly or indirectly from acts, errors or omissions that constitute negligence, wilful misconduct or a contravention of law, by the Service Provider and/or Service Provider Personnel, agents and/or Subcontractors;
- 18.1.11. any Third Party claim, demand, charge, action, cause of action, or other proceeding asserted against SARS in SARS's capacity as an employer of a person resulting from an act or omission of the Service Provider

18.2. **Infringement**

If any item used by the Service Provider to provide the Services becomes, or in Service Provider's reasonable opinion is likely to become, the subject of an infringement or misappropriation claim or proceeding, the Service Provider will, in addition to indemnifying SARS as provided in **Clause 18.1** and to the other rights SARS may have under this Agreement or otherwise, promptly take the following actions, at no additional charge to SARS, in the listed order of priority: (a) secure the right to continue using the item; (b) replace or modify the item to make it non-infringing, provided that replacement or modification must not degrade performance or quality or increase SARS's costs; or (c) remove the item from the Services in which case the Service Provider's charges will be equitably adjusted to reflect such removal.

18.3. **Indemnification Procedures**

With respect to Third Party claims, the following procedures will apply:

- 18.3.1. **Notice:** Promptly after receipt of notice of the commencement or threatened commencement of any civil, criminal, administrative, or investigative action or proceeding involving a claim in respect of which SARS may seek indemnification in terms of this **Clause 18**, SARS will notify the Service Provider of such claim in writing. Failure to notify the Service Provider will relieve the Service Provider of its obligations under this Agreement except to the extent that it can demonstrate damages attributable to such failure. Within 15 (fifteen) days after receipt of notice from SARS relating to any claim, but (to the extent possible) not later than 10 (ten) days before the date on which any response to a complaint or summons is due, the

Service Provider will notify SARS in writing if the Service Provider elects to assume control of the defence and settlement of that claim ("**Notice of Election**").

- 18.3.2. **Procedure Following Notice of Election:** If the Service Provider delivers a Notice of Election relating to any claim within the required notice period, the Service Provider will be entitled to have sole control over the defence and settlement of such claim; provided that: (i) SARS will be entitled to participate in the defence of such claim and to employ counsel at its own expense to assist in the handling of such claim; and (ii) the Service Provider will obtain the prior approval of SARS before entering into any settlement of such claim or ceasing to defend against such claim. After the Service Provider has delivered a Notice of Election relating to any claim in terms of the preceding paragraph, the Service Provider will not be liable to SARS for any legal expenses incurred by SARS in connection with the defence of that claim. In addition, the Service Provider will not be required to indemnify SARS for any amount paid or payable by SARS in the settlement of any claim for which the Service Provider has delivered a timely Notice of Election if such amount was agreed to without the consent of the Service Provider.
- 18.3.3. **Procedure Where No Notice of Election Is Delivered:** If the Service Provider does not deliver a Notice of Election relating to any claim within the required notice period, SARS will have the right to defend the claim in such manner as it may deem appropriate, at the cost and expense of the Service Provider. The Service Provider will promptly reimburse SARS for all such costs and expenses.
- 18.3.4. Regardless of the provisions of this **Clause 18.3**, (i) SARS will be entitled, prior to permitting the Service Provider control over the defence and settlement of the claim in terms of **Clause 18.3.2** above, to require the Service Provider to furnish SARS with security in such form and to such amount as SARS at its discretion may require to ensure that SARS is able to meet the full value of all amounts and costs which may be awarded against SARS or for which SARS may become liable; and (ii) SARS will be entitled to withdraw control of the defence and settlement of the claim if SARS at its discretion but acting reasonably, considers that any act or omission of the Service Provider or the control of the defence and settlement by the Service Provider may in any way be adverse to SARS's good name and reputation.

19. LIABILITY

19.1. General Intent

Subject to the specific provisions of this **Clause 19** and any countervailing provisions in this Agreement, it is the intent of the Parties that each Party will be liable to the other Party for any actual 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.

19.2. Liability Restrictions

- 19.2.1. Subject to **Clause 19.2.3** below, in no event will a Party be liable for indirect, special, consequential, punitive or exemplary damages or lost profits, or lost revenues, even if such Party has been advised of the possibility of such damages in advance.
- 19.2.2. Subject to **Clause 19.2.3**, each Party's liability to the other Party with respect to a claim or series of related claims, losses, damages or liability in any way arising out

of this Agreement, regardless of form or cause of action, will be limited to all Losses which constitute direct and/or general damages.

- 19.2.3. The limitations set out in **Clauses 19.2.1** and **19.2.2** will not apply with respect to:
- 19.2.3.1. damages occasioned by the wilful misconduct or negligence of Service Provider and/or Service Provider Personnel;
 - 19.2.3.2. damages occasioned by a Party's breach of **Clause 15**;
 - 19.2.3.3. damages occasioned by: (i) unlawful termination of this Agreement; or (ii) abandonment of the Services by Service Provider in whole or in part;
 - 19.2.3.4. claims of personal injury or death, including indemnification for a Third Party personal injury claim;
 - 19.2.3.5. Service Level Credits; and
 - 19.2.3.6. damages occasioned by a claim against which the Service Provider indemnifies SARS.
- 19.2.4. Each Party will have a duty to mitigate damages for which the other Party is responsible.

19.3. **Force Majeure**

- 19.3.1. Neither Party will be liable for any default or delay in the performance of its obligations under this Agreement if and to the extent that: (i) the default or delay is caused, directly or indirectly, by fire, flood, elements of nature or acts of God, or any other cause beyond the reasonable control of the Party; and (ii) the non-performing Party is without fault and the default or delay could not have been prevented by reasonable precautions ("**Force Majeure Event**"). Subject to **Clause 19.3.2**, in such event, the non-performing Party is excused from further performance for as long as such circumstances prevail and provided the non-performing Party continues to use its Commercially Reasonable Efforts to recommence performance. Any Party so delayed will notify the Party to whom performance is due and describe the circumstances causing the delay.
- 19.3.2. If a Force Majeure Event substantially prevents or delays performance of the Services or any part thereof necessary for the performance of SARS functions that SARS at its discretion reasonably believes to be critical at reasonable levels of service for more than 5 (five) consecutive days (or such longer period as SARS may agree at its sole discretion), then at SARS's option, SARS may:
- 19.3.2.1. at its expense procure the Services in question from an alternate source, in which case SARS will be relieved of its obligation to pay the Service Provider for such Services for so long as the Service Provider's performance is impaired;
 - 19.3.2.2. terminate the portion of the Agreement affected as of a date specified by SARS and the Charges will be equitably reduced to reflect the termination of the terminated Services; or
 - 19.3.2.3. if a substantial portion of the Services is affected, terminate the Agreement as of a date specified by SARS in a written notice to the Service Provider.
- 19.3.3. Termination of the Agreement under **Clause 19.3.2** will not be treated as a termination for convenience. SARS will have no liability to the Service Provider for

terminating the Agreement.

- 19.3.4. The Service Provider will not be entitled to rely on the provisions of this **Clause 19.3** as a result of any failed performance by Subcontractors, unless the Subcontractor's failure to perform was caused by a Force Majeure Event and the Subcontractor has made and continues to use its Commercially Reasonable Efforts to recommence performance.

20. AUDITS

20.1. Audit Rights

- 20.1.1. The Service Provider and its Subcontractors will maintain a complete audit trail of financial and non-financial transactions resulting from the Agreement. The 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 the Service Provider or any of its Subcontractors is providing the Services, to Service Provider Personnel, and to equipment, Software, personnel, data, records and documentation, including agreements between Service Provider and its Subcontractors, relating to the Services for the purpose of performing audits and inspections of either the 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 the Service Provider; (iii) verify the accuracy of price changes to the extent such changes are determined by reference to the 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 the Service Provider's performance of the Services, 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 Services 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.
- 20.1.2. SARS will not use a competitor of Service Provider to perform an audit under this **Clause 20** without the Service Provider's prior approval; provided, however, that the Parties specifically agree that the audit arms of the major accounting firms will not be treated as competitors of Service Provider.
- 20.1.3. The 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 the Service Provider's normal course of business and will comply with the Service Provider's reasonable confidentiality requirements.
- 20.1.4. Unless SARS has a good faith suspicion of fraud, SARS will provide the 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.
- 20.1.5. All costs incurred by SARS in performing audits of the 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 the Service Provider.

- 20.1.6. If an audit reveals an overcharge, the 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 the Service Provider.
- 20.1.7. All Subcontractors will be obliged to comply with the provisions of this **Clause 20**. If the Service Provider seeks to hire a Subcontractor, and such prospective Subcontractor does not grant SARS the audit rights described in this **Clause 20**, The 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 the Service Provider will be obliged to continue providing the Services in accordance with the Performance Standards, notwithstanding SARS's decision to withhold such approval.

20.2. **Audit Follow-Up**

- 20.2.1. Following an audit or examination, SARS or its external auditors will meet with the Service Provider to obtain factual concurrence with issues identified in the audit or examination.
- 20.2.2. Within 10 (ten) Business Days following the provision to the 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 the Service Provider. The Audit Response Plan will identify the steps that the 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, the Service Provider will implement such Audit Response Plan at the Service Provider's cost and expense. The 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.
- 20.2.3. The Service Provider will promptly make available to SARS the results of any reviews or audits conducted by the 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 Services.
- 20.2.4. Promptly after the issuance of any audit report or findings issued under **Clause 20.2.3**, the Parties will meet to review such report or findings and to agree on how to respond to the suggested changes.

20.3. **Records Retention**

The 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.

21. BENCHMARKING

21.1. SARS has the right, at its option and not more than once in each Contract Year but not at all in the first Contract Year, to initiate a benchmarking process, in respect of some or all of the Services, in order to evaluate and measure the extent to which SARS is receiving the Services competitively. Such benchmarking exercise includes evaluating the following:

21.1.1. general service levels applicable in ICT Facilities industry including those Service Levels set forth in this Agreement, and to ensure that the Service Provider's achievement with regard to such service levels fall into the best (most favourable to SARS) quartile of assessed service levels of service providers benchmarked in the benchmarking exercise; and/or

21.1.2. the Charges set forth in this Agreement, and to ensure that such Charges fall into the lowest (most favourable to SARS) quartile of assessed charges made for similar services to the Services, including the Service Levels, by the service providers benchmarked in the benchmarking exercise.

21.2. General Rules for Benchmarking

21.2.1. SARS may request a benchmark for any specific Service component or in respect of all of the Services. SARS will appoint the Benchmarker to conduct the benchmarking exercise and shall advise the Service Provider.

21.2.2. The Service Provider agrees (as part of the Services) to co-operate fully with the Benchmarker performing the benchmarking exercise and to promptly provide all data, documentation, records and resources necessary or relating to the provision of the Services to SARS requested by the Benchmarker.

21.2.3. SARS will direct the Benchmarker to select a representative sample of transactions to use in the benchmarking, which may include some transactions for which the Service Provider is also a service provider and to perform any normalisation that the Benchmarker deems at its sole discretion to be necessary.

21.2.4. The Benchmarker will enter into a confidentiality agreement with the Parties on terms reasonably acceptable to both Parties prior to being provided with Confidential Information of either Party.

21.2.5. The Benchmarker will be directed to use Commercially Reasonable Efforts to complete its analysis within 90 (ninety) days after its engagement, to the extent practical.

21.2.6. Unless otherwise agreed by the Parties, the Benchmarker will perform the benchmarking exercise in accordance with the Benchmarker's documented methodologies and procedures which will be provided to the Parties prior to the commencement of the benchmarking exercise. The Benchmarker may (but is not obligated to) discuss such methodologies and process with the Parties. Any such discussions will be with both Parties simultaneously. The Benchmarker will be free to reflect or not to reflect the Parties' input at its discretion.

21.3. Benchmarking findings

21.3.1. At the end of each such benchmarking process the Benchmarker will make recommendations as to the required improvements and acceptable time scales for

the implementation thereof and the Service Provider will (as part of the Services) be obliged to implement such recommendations in accordance with those time scales at no additional cost to SARS. Each Party will be provided a reasonable opportunity to review, comment on and request changes in the Benchmarkers' proposed findings. The Benchmarkers will have sole discretion as to how it addresses such comments and requests. Following such review and comment, the Benchmarkers will issue a final report of its findings and conclusions.

- 21.3.2. For the avoidance of doubt and notwithstanding any benchmarking results or recommendations, there will be no adjustment to any Charges having the effect of an increased amount payable by SARS or any adjustment of any Service Levels having the effect of the performance of the Services being less favourable to SARS as a result of the benchmarking exercise.
- 21.3.3. If a benchmarking exercise reveals that the performance under the Agreement is less favourable than that of benchmarked service providers falling into quartile of best performance, then the Service Levels will be adjusted to eliminate such variance or additional Service Levels will be incorporated into **Schedule C (Service Levels)** and its appendices to ensure the performance of the Services would fall into the best quartile of benchmarked service providers. The adjustments to Service Levels or the incorporation of additional Service Levels will be made according to the recommendations, including timelines, made by the Benchmarkers provided that should the Service Provider dispute the recommendations made by the Benchmarkers, such dispute must be resolved in accordance with **Clause 22**.
- 21.3.4. If a benchmarking exercise reveals that the Charges under the Agreement exceed those charges made for any component of the Services by service providers not falling into the quartile of lowest charges the Service Provider will reduce the Charges sufficiently to ensure the Charges fall into the quartile of lowest Charges amongst the benchmarked service providers provided that should the Service Provider dispute the recommendations made by the Benchmarkers, such dispute must be resolved in accordance with **Clause 22**.
- 21.3.5. SARS will be responsible for the Benchmarkers' charges in respect of a benchmarking exercise unless that benchmarking exercise reveals the Charges are to be reduced as contemplated in **Clause 21.3.4**, in which case the Service Provider will reimburse SARS for the Benchmarkers' charges. If a benchmarking exercise does not show that Charges are required to be reduced, findings will be and will remain the Confidential Information of SARS. Except as aforesaid, each Party will bear its own direct costs in relation to the benchmarking exercise.
- 21.3.6. If the Parties fail to reach agreement on the implementation of the adjustment set out in **Clause 21.3.3** or **21.3.4**, SARS will have the right, in addition to any remedies it may have in terms of this Agreement, to terminate the Agreement early by providing a notice of termination to the Service Provider setting forth the applicable Termination Date. A termination of the Agreement under this **Clause 21.3.6** will not be treated as a termination for convenience. SARS will have no liability to the Service Provider for terminating the Agreement.

22. DISPUTE RESOLUTION

A dispute of whatsoever nature between the Parties arising out of or in connection with this Agreement, including disputes: (i) as to the validity, existence, enforceability, interpretation, application, implementation, breach, termination or cancellation of this Agreement; (ii) as to

the Parties' rights and/or obligations in terms of this Agreement; or (iii) in connection with any documents furnished by the Parties in terms of this Agreement, will be finally settled as provided in this **Clause 22**.

22.1. Informal Dispute Resolution

22.1.1. Prior to the initiation of formal dispute resolution procedures, the Parties will first attempt to resolve their dispute informally in accordance with the procedure set forth in this **Clause 22.1**.

22.1.2. Upon the written request of a Party, any dispute, which arises between the Parties, will be referred to a joint committee consisting of the SARS nominated person and a senior representative of the Service Provider nominated by the Service Provider. The joint committee will meet as often as the Parties reasonably deem necessary in order to gather and furnish to the other all information with respect to the matter in issue that the Parties believe to be appropriate in connection with its resolution.

22.1.3. The SARS nominated person and the senior representative of the Service Provider contemplated in **Clause 22.1.3** will discuss the problem and attempt to resolve the dispute without the necessity of any formal proceeding. During the course of discussion, all reasonable requests made by one Party to another for non-privileged information, reasonably related to this Agreement, will be honoured in order that each of the Parties may be fully advised of the other Party's position. The specific format for the discussions will be left to the discretion of the joint committee.

22.1.4. Formal proceedings for the resolution of a dispute may not be commenced until the SARS nominated person or the senior representative of the Service Provider contemplated in **Clause 22.1.2** conclude in good faith that amicable resolution through continued negotiation of the matter does not appear likely.

22.1.5. In the event that the informal dispute resolution process fails, a Party may either approach a competent court for relief or alternatively the Parties may, by agreement, refer the dispute to formal dispute resolution in accordance with **Clause 22.2**. Once the Parties have committed to formal dispute resolution, the Parties irrevocably consent to any proceedings in terms thereof.

22.2. Formal Dispute Resolution

Any dispute which is not resolved in the manner referred to in **Clause 22.1**, may be submitted to binding arbitration before a single arbitrator and will be subject to the rules of the Arbitration Foundation of Southern Africa.

22.2.1. The arbitrator will, if the dispute is:

22.2.1.1. primarily an accounting matter, be an independent practising accountant of not less than 10 (ten) years standing as such;

22.2.1.2. primarily a technical matter, be an independent technical expert of not less than 10 (ten) years experience in the telecommunications and related environment;

22.2.1.3. primarily a legal matter, be an attorney of not less than 15 (fifteen) years standing as such or a practising senior counsel.

22.2.2. The Parties will, within 3 (three) days of the date on which the arbitration is demanded, agree in writing as to the nature of the dispute and the identity of the arbitrator to be appointed. Should the Parties be unable to reach agreement as

contemplated within such 3 (three) day period, the arbitrator will (irrespective of the nature of the dispute) be appointed by the Chairman of the Arbitration Foundation of Southern Africa or its successor-in-title upon request by either Party. The appointment of the arbitrator (whether by agreement or by the Chairman of the Arbitration Foundation of Southern Africa or its successor-in-title as contemplated in the preceding sentence) will be final and conclusive and may not subsequently be challenged on any grounds by either Party.

- 22.2.3. The arbitration will be held as soon as is reasonably possible, with a view to completion within 30 (thirty) days of it being demanded.
- 22.2.4. Promptly after appointment of the arbitrator, either Party will be entitled to call upon the arbitrator to set: (i) the date(s) on which the arbitration is to be held; and (ii) the procedure that will govern the arbitration. The arbitration proceedings will be held in Johannesburg, Republic of South Africa.
- 22.2.5. Any order or award that may be made by the arbitrator:
 - 22.2.5.1. will be final and binding;
 - 22.2.5.2. will be carried into effect; and
 - 22.2.5.3. may be made an order of any competent court.

22.3. **Interim Relief**

Nothing in this **Clause 22** will preclude either Party from obtaining interim relief on an urgent basis from a court of competent jurisdiction.

22.4. **Continued Performance**

SARS reserves the right to withhold payment of amounts it disputes in good faith under **Clause 3.3 of Schedule D (Charges, Invoicing and Payments)**, and to terminate the Agreement while the dispute is being resolved. Each Party agrees to continue performing its obligations under this Agreement while any dispute is being resolved, unless SARS terminates the Agreement as aforesaid.

23. **TERMINATION**

23.1. **Termination for Cause by SARS**

- 23.1.1. SARS may, by giving notice to the Service Provider, terminate this Agreement, in whole or in part (provided that SARS will not terminate the Agreement in part unless the Services being terminated include the Services with respect to which the termination for cause occurred), as of a date set out in the notice of termination, in the event that the:
 - 23.1.1.1. Service Provider commits a material breach of this Agreement, which breach is not cured within 30 (thirty) days after notice of breach from SARS to the Service Provider;
 - 23.1.1.2. Service Provider commits a material breach of this Agreement that is not capable of being cured within 30 (thirty) days;
 - 23.1.1.3. Service Provider commits a non-material breach of this Agreement, which breach is not cured within 90 (ninety) days after notice of breach from SARS to Service Provider;

- 23.1.1.4. Service Provider regularly commits breaches of this Agreement and fails to prevent reoccurrences of such breaches within 90 (ninety) days after notice from SARS to Service Provider, that such breaches together with any future breach will collectively constitute a material breach;
- 23.1.1.5. Service Provider fails to meet the same Service Level for 3 (three) consecutive months, or if the Service Provider fails to meet the same Service Level for 4 (four) months, not necessarily consecutive, out of any 12 (twelve) consecutive month period; and/or
- 23.1.1.6. Service Provider is placed under provisional or final liquidation; placed under judicial management; enters into an arrangement with its creditors; or Service Provider enters into Business Rescue procedures as envisaged under Chapter 6 of the Companies Act, 2008 (Act No. 71 of 2008).
- 23.1.2. In the case of a termination of the Agreement in part, the charges payable under this Agreement will be reduced in terms of **Clause 14 of Schedule D (Charges, Invoicing and Payments)** to reflect the partial termination of the Agreement.
- 23.1.3. SARS may terminate this Agreement, by giving 30 (thirty) days notice to the Service Provider, in whole or in part (provided that SARS will not terminate the Agreement in part unless the Services being terminated include the Services with respect to which the termination occurred), if with respect to a Fiscal Year, SARS is unable to obtain funding for the Charges under this Agreement for such Fiscal Year.
- 23.1.4. SARS may immediately terminate this Agreement, by giving notice to the Service Provider, if the Service Provider fails to comply with **Clauses 16.5 or 16.11**.
- 23.1.5. SARS will have no liability to the Service Provider with respect to a termination under this **Clause 23.1**.
- 23.2. **Termination for Cause by Service Provider**
- 23.2.1. In the event that SARS fails to pay Service Provider undisputed amounts or amounts which have been finally adjudged to be due under this Agreement and fails to make such payment within 90 (ninety) days of the later of: (i) notice from the Service Provider of the failure to make such payment; or (ii) the date that an amount is finally adjudged to be due under the Agreement, then the Service Provider may, by giving notice to SARS, terminate this Agreement as of a date set out in the notice of termination.
- 23.2.2. The Service Provider will have no right to terminate this Agreement other than in accordance with the provisions of **Clause 23.2.1** above.
- 23.3. **Termination for Convenience**
- Unless otherwise agreed between the Parties or otherwise provided in this Agreement 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 90 (ninety) days prior notice designating the Termination Date. SARS will have no liability to the Service Provider with respect to such termination.
- 23.4. **Termination upon Sale, Acquisition, Merger or Change of Control**

In the event of a sale, acquisition, merger, or other change of Control of the 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 the Service Provider in a single or series of related transactions, then SARS may terminate this Agreement by giving the 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 to the Service Provider with respect to such termination.

23.5. Extension of Termination Effective Date

SARS will, not later than 90 (ninety) days (or 30 (thirty) days in the case of a termination for cause) prior to expiration or termination of the Agreement, have the option to require that the Service Provider continues to provide some or all of the Services for a fixed term of up to 180 (one hundred and eighty) days following the effective date of expiration or termination of the Agreement on the terms and conditions (including price as adjusted in accordance with **Clause 11 of Schedule D (Charges, Invoices and Payments)**) then in effect.

23.6. Disengagement Assistance

The Parties will comply with their respective obligations set forth in **Schedule F (Disengagement Assistance)**.

24. GENERAL

24.1. Viruses

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

24.2. Binding Nature and Assignment

This Agreement will be binding on the Parties hereto and their respective successors and assigns. Neither Party may, or will have the power to, assign this Agreement without the consent of the other, except that SARS may assign its rights and obligations under this Agreement without the approval of the Service Provider to another Government Entity.

24.3. Non-Solicitation

During the Term, and for a period of 1 (one) year thereafter, Service Provider will not directly solicit or encourage, or attempt to solicit or encourage any employee of SARS to leave the employment of SARS unless prior consent is obtained from SARS, which will not be unreasonably withheld.

24.4. Entire Agreement; Amendment

24.4.1. Any commitments made by the Service Provider in its response to the Request for Proposal, which is attached hereto as **Schedule H (Service Provider Proposal)** will be deemed binding on Service Provider. Notwithstanding anything to the

contrary stated in the Service Provider's response, in the event of a conflict between the Service Provider's response and this Agreement, the Agreement will prevail and nothing in the Service Provider's response will in any way limit SARS's rights or expand SARS's obligations under this Agreement.

- 24.4.2. This Agreement, including any schedules, appendices and attachments referred to herein and attached hereto, each of which is incorporated herein for all purposes, constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior agreements, whether written or oral, with respect to the subject matter contained in this Agreement. For the avoidance of doubt, the Service Provider's standard terms will not apply to the Services.
- 24.4.3. No variation or consensual cancellation of this Agreement, including to this **Clause 24.4.3**, and no addition to this Agreement will be of any force or effect unless reduced to writing and signed by the Parties or their duly authorised representatives.

24.5. **Compliance with Applicable Laws**

24.5.1. **Governing Law**

This Agreement will in all respects (including its existence, validity, interpretation, implementation, termination and enforcement) be governed by the laws of the Republic of South Africa.

24.5.2. **General Obligation**

Each Party will perform its obligations in a manner that complies with the Applicable Laws (including identifying and procuring required permits, certificates, approvals and inspections).

24.5.3. **SARS's Rules and Regulations**

The Service Provider will perform its obligations in a manner that complies with SARS's safety, security, environmental and health rules and regulations as from time to time identified by SARS to Service Provider.

24.5.4. **Monitoring and Changes to Law**

24.5.4.1. As part of the Services, the Service Provider will monitor Applicable Laws that apply to comparable service providers generally, Third Party service providers generally and corporations in South Africa generally to identify any proposed changes to Applicable Law. The Service Provider will remain responsible for communications with and participation in any governmental or regulatory body having jurisdiction over the Service Provider, or any industry body in which the Service Provider participates.

24.5.4.2. Upon identifying or being notified by SARS of a change or proposed change described in **Clause 24.5.4.1**, the Service Provider will promptly analyse the impact of such change or proposed change on the Services, notify SARS of such impact, and propose changes to the Services to SARS, if any, that are, or in the case of a proposed change may be, required. The Service Provider will be solely responsible for any fees, costs or expenses incurred in this regard. SARS will promptly review such proposal, and upon SARS's approval, Service Provider will promptly implement such changes to the Services as well as any other changes requested by SARS and reasonably required as a consequence of a change described in

Clause 24.5.4.1.

- 24.5.4.3. In the event that the Service Provider establishes to SARS's reasonable satisfaction that a change in Applicable Laws after the Effective Date (other than a change in Applicable Laws described in **Clause 24.5.4.1**) directly and materially increases the cost to the Service Provider of providing the Services in terms of the Service Levels, the Service Provider will be entitled to propose amendments to appropriate clauses of **Schedule D (Charges, Invoicing and Payments)** under which the Service Provider's charges would be increased on a prospective basis, but not in excess of the amount required for the Service Provider to recover the additional costs solely and directly attributable to the change in Applicable Laws under this **Clause 24.5.4.3**. If SARS is unwilling to agree to such an increase in the Service Provider's charges, SARS may terminate the affected Service, or the Agreement in whole, as of a date set out in a notice from SARS to the Service Provider. Such a termination will not be treated as a termination for convenience and SARS will not be liable for the payment of any termination fees.

24.5.5. Non-Compliance

- 24.5.5.1. If either Party is charged with non-compliance of any Applicable Laws, the Party charged with such non-compliance will promptly notify the other Party of such charges in writing.
- 24.5.5.2. The Service Provider will be solely responsible for any fines and penalties imposed on the Service Provider or SARS resulting from Service Provider's failure to comply with the provisions of this **Clause 24.5**.

24.6. Notices

- 24.6.1. Each Party chooses as its *domicilium citandi et executandi* for all purposes of this Agreement, including for purposes of serving any court process or other documents, giving any notice or making any other communications will be as follows:

In the case of SARS:	Office of the Commissioner Block A 299 Bronkhorst Street Nieuw Muckleneuk Pretoria 0181 (marked for the urgent attention of the Executive, Corporate Legal Services)
Facsimile:	Office of the Commissioner (012) 422 5250 (marked for the urgent attention of the Executive, Corporate Legal Services) with a copy to: [to be completed upon finalisation]

In the case of Service Provider: **[to be completed upon finalisation]**
Facsimile: **[to be completed upon finalisation]**
with a copy to: **[to be completed upon finalisation]**

- 24.6.2. All notices, requests, demands, and determinations under this Agreement (other than routine operational communications), will be valid and effective only if in writing. Such notices, requests, demands and determinations under this Agreement will be deemed duly given only when delivered by hand during ordinary Business Hours to a responsible person at the addressee's *domicilium*. Such notices, requests, demands and determinations under this Agreement may also be sent by facsimile to the facsimile number set out in **Clause 24.6**. Notices, requests, demands and determinations sent by facsimile and received prior to 13h00 on a Business Day will be deemed duly given on such Business Day; notices, requests, demands and determinations sent by facsimile and received at other times will be deemed duly given on the first Business Day following the date that such facsimile is received.
- 24.6.3. Either Party may by notice to other Party change its *domicilium* to another physical address in the Republic of South Africa and the change will take effect on the seventh day after the date when the notice is duly given.
- 24.6.4. The Parties record that whilst they may correspond via email during the currency of this Agreement for operational reasons, neither formal notice required in terms of this Agreement, nor any amendment of or variation to this Agreement may be given or concluded via email.

24.7. Relationship of Parties

- 24.7.1. The Service Provider, in furnishing the Services hereunder, is acting as an independent contractor. Neither Party is an agent of the other or has any authority to represent the other as to any matters, except as expressly authorised in this Agreement.
- 24.7.2. Neither Party's Personnel will be deemed personnel of the other Party.
- 24.7.3. Nothing contained in this Agreement will be construed as creating any company, close corporation, joint venture, partnership or association of any kind involving SARS or the Service Provider or their Affiliates; nor is anything contained in this Agreement to be construed as creating or requiring any continuing relationship or commitment on a Party's or its Affiliates' behalf with regard to the other Party and its Affiliates other than as specifically set out herein.
- 24.7.4. Unless expressly authorised by this Agreement, neither of the Parties (nor their respective agents) will have the authority or right, nor will any Party hold itself out as having the authority or right, to assume, create or undertake any obligation of any kind whatsoever, express or implied, on behalf of or in the name of the other Party.

24.8. Restatement and Severability

In the event that any provision of this Agreement conflicts with the law under which this Agreement is to be construed or if any such provision is held invalid by an arbitrator or a court with jurisdiction over the Parties, such provision will be deemed to be restated to reflect as nearly as possible the original intentions of the Parties in terms of Applicable Laws, or if

not possible, then to be severed from the remainder of the Agreement. The remainder of this Agreement will remain in full force and effect.

24.9. **Consents and Approval**

24.9.1. Any approval, acceptance, consent or similar action required to be given by either Party in terms of this Agreement will, unless specifically otherwise stated or stated to be at the discretion of a Party, not be unreasonably withheld.

24.9.2. An approval, acceptance, consent or similar action by a Party (including of a plan or deliverable) under this Agreement will not relieve the other Party from responsibility for complying with the requirements of this Agreement, nor will it be construed as a waiver of any rights under this Agreement, except as and to the extent otherwise expressly provided in such written approval or consent. For example, where this Agreement sets forth a standard by which a plan is to be developed, the Service Provider will be responsible for complying with such requirement and will not be deemed to be relieved of it merely because SARS has approved such plan.

24.10. **Penalties**

Wherever a provision of this Agreement stipulates for, or operates as, a penalty in favour of SARS: (i) the Service Provider waives, to the fullest extent permitted by law, any right it may have to claim a reduction of such penalty; and (ii) SARS will be entitled to at any time claim damages in lieu of such penalty.

24.11. **Waiver of Default and Cumulative Remedies**

24.11.1. A delay or omission by either Party hereto to exercise any right or power under this Agreement will not be construed to be a waiver thereof. A waiver by either of the Parties hereto of any of the undertakings to be performed by the other or any breach thereof will not be construed to be a waiver of any succeeding breach thereof or of any other undertaking herein contained. No waiver by SARS will be valid unless reduced to writing and signed by the SARS Contract Executive or his or her designee.

24.11.2. Except as otherwise expressly provided herein, all remedies provided for in this Agreement will be cumulative and in addition to and not in lieu of any other remedies available to either Party at law, in equity or otherwise.

24.12. **Survival**

Any provision of this Agreement which contemplates performance or observance subsequent to any termination or expiration of this Agreement will survive any termination or expiration of this Agreement and continue in full force and effect.

24.13. **Public Disclosures**

24.13.1. No advertising or publicity matter of either Party having or containing any reference to the other Party or in which the name of the other Party is mentioned (except announcements intended solely for internal distribution or to meet legal or regulatory requirements beyond the reasonable control of the disclosing Party) will be made by or for a Party or Subcontractors without first obtaining written approval from the other Party.

24.13.2. The Service Provider may not use the SARS logo or any other service marks or

trademarks of SARS.

24.14. **Third Party Beneficiaries**

Except as set out in this Agreement, this Agreement is entered into solely between, and may be enforced only by, SARS and the Service Provider. This Agreement will not be deemed to create any rights in Third Parties, including suppliers and customers of a Party, or to create any obligations of a Party to any such Third Parties.

24.15. **Undertaking against Cession, Pledging and Assignment**

The Service Provider will not, without SARS's prior consent, assign, cede, transfer, pledge, hypothecate or otherwise encumber its rights to receive payments from SARS under this Agreement for any reason whatsoever.

24.16. **Performance Bond**

24.16.1. The Service Provider will post on the Effective Date, a performance bond ("**Performance Bond**") by a financial institution approved by SARS and in the form prescribed by SARS, or if SARS does not prescribe a form, in a form proposed by the Service Provider and approved by SARS at its sole discretion (regard being had to **Clause 24.16.7**). Notwithstanding the generality of the above, such Performance Bond will secure the Service Provider's obligations in an amount equal to R30,000.00 (thirty thousand Rand) per Region

24.16.2. SARS shall be entitled to make a claim for payment from the Performance Bond in the event that:

24.16.2.1. the Service Provider materially breaches this Agreement, and the breach is reasonably capable of being remedied and the Service Provider fails to remedy such breach within 30 (thirty) days of being called upon by SARS to do so;

24.16.2.2. the breach is not capable of being remedied;

24.16.2.3. an event occurs in respect of which this Agreement permits SARS to recover a penalty or similar service credit from the Service Provider and the Service Provider fails to pay such penalty when it is due in terms of this Agreement; and/or

24.16.2.4. an Insolvency Event occurs in respect of the Service Provider.

24.16.3. For the avoidance of doubt, any claim that SARS may be entitled to make under the Performance Bond will be subject to: (i) the indemnities and limitations of liability contained in **Clauses 18** and **19**; and (ii) the Performance Bond claims procedure contained in this **Clause 24.16**.

24.16.4. The Service Provider shall not be absolved of any of its obligations and liabilities under this Agreement by virtue of it having furnished the Performance Bond.

24.16.5. If SARS intends to en-cash the Performance Bond, it must demand, on 15 (fifteen) days written notice, payment from the Service Provider, specifying:

24.16.5.1. the cause of the claim, and

24.16.5.2. the amount claimed.

24.16.6. If the Service Provider disputes any aspect of the claim the Parties agree that the dispute resolution provisions of **Clause 22** of this Agreement shall apply to such

dispute.

24.16.7. If SARS encashes the Performance Bond in terms of **Clause 24.16.2**, SARS will be entitled to recover from the proceeds of the Performance Bond all of: (i) SARS's Losses occasioned by the Service Provider; (ii) all amounts for which the Service Provider is liable in terms of any indemnities given by it to SARS; (iii) all penalties which SARS is entitled to impose upon the Service Provider; (iv) all legal costs which SARS is entitled to recover from the Service Provider in asserting SARS's rights under this Agreement and the Performance Bond; and (v) any other amounts which may be owing by the Service Provider to SARS, of whatever nature and however arising; provided always that the provisions of this **Clause 24.16.7** will never be construed as in any way limiting SARS's right of recovery to the full value of the Performance Bond.

24.16.8. In the event of SARS:

24.16.8.1. cancelling the Agreement pursuant to any matter referred to in **Clause 24.16.2**, after SARS has recovered all amounts which may be owing to SARS by the Service Provider in terms of **Clause 24.16.7**, SARS will pay the balance, if any, to the Service Provider;

24.16.8.2. not cancelling the Agreement pursuant to any matter referred to in **Clause 24.16.2**, the Service Provider will deliver to SARS, within 10 (ten) Business Days of SARS's written instruction, a new Performance Bond for the same value as that of the original Performance Bond (and for which purpose **Clause 24.16** will again apply, *mutatis mutandis*) against delivery of which SARS will pay to the Service Provider the balance, if any, of the amounts remaining from the previous Performance Bond following SARS's recovery of the amounts owing to it in terms of **Clause 24.16.7**.

24.16.9. The Performance Bond will automatically be revoked on expiry of a period of 6 (six) months after Termination of the Agreement.

24.17. **Covenant of Good Faith**

Each Party agrees that, in its respective dealings with the other Party under or in connection with this Agreement, it will, to the extent not otherwise specifically stated, act reasonably and act in good faith.

24.18. **Counterparts**

This Agreement may be executed in several counterparts, all of which taken together will constitute one single agreement between the Parties hereto.

[Remainder of page intentionally blank]

IN WITNESS WHEREOF SARS and **[Service Provider name]** have each caused this Agreement to be signed and delivered by its duly authorised officer.

[Service Provider name]

By: _____

Printed:

Title:

Date:

South African Revenue Service

By: _____

Printed:

Title:

Date:

South African Revenue Service

By: _____

Printed:

Title:

Date:

South African Revenue Service

By: _____

Printed:

Title:

Date:

South African Revenue Service

By: _____

Printed:

Title:

Date:

SCHEDULE A: GLOSSARY

1. DEFINITIONS

- 1.1. **Actual Performance** means, in respect of each Service Level, the Service Provider's actual performance of the Services against such Service Level.
- 1.2. **Adjustment Date** has the meaning set out in **Clause 11.1 of Schedule D (Charges, Invoicing and Payments)**.
- 1.3. **Affiliate** means, with respect to any entity, any other entity Controlling, Controlled by or under common Control with such entity. The term "**Affiliate**" will also include:
- (a) a subsidiary of such entity, as the term "subsidiary" is defined in section 3 of the Companies Act 71 of 2008, as amended; and
 - (b) any foreign company which, if it were registered under such Act, would fall within the ambit of such term.
- 1.4. **After Hours** means all hours during a day other than Business Hours.
- 1.5. **Agreement** means the **Main Agreement** together with all schedules, appendices, attachments and other documents attached thereto or referenced therein.
- 1.6. **Agreement Interest Rate** means the bank lending rate set by the South African Reserve Bank from time to time.
- 1.7. **Applicable Law** means any of the following, from time to time, to the extent it applies to a Party (including, as applicable, Affiliates and Subcontractors of a Party), or the Services (including the performance, delivery, receipt or use of the Services, as applicable and wherever occurring):
- (a) any statute, regulation, policy, by-law, ordinance or subordinate legislation (including treaties, multinational conventions and the like having the force of law);
 - (b) South African common law;
 - (c) any binding court order, judgment or decree;
 - (d) any applicable industry code, policy or standard enforceable by law; and
 - (e) any applicable direction, policy or order that is given by a regulator (other than SARS's directions or policies given as a customer of the Services).

1.8.	At Risk Amount	has the meaning set out in Clause 3.1.2 of Schedule C (Service Levels) .
1.9.	Audit Response Plan	has the meaning set out in Clause 20.2.2 of the Main Agreement .
1.10.	Back-out Plan	bears the meaning assigned to it in Clause 10.3.4.1.2 of Schedule B (SOW) .
1.11.	Benchmarker	means an independent industry recognised benchmarking service provider designated by SARS and approved by the Service Provider (such approval not to be unreasonably withheld).
1.12.	Bronze	means a Support Level with associated Service Level Targets as set out in Table 2: Support Levels of Appendix C-1 (Service Levels and Credits) .
1.13.	Break-fix	means the restoration of broken or dysfunctional ICT Facilities Infrastructure as more fully described in Clause 3 of Schedule B (SOW) .
1.14.	BRS	means the Business Requirements Specification document outlining SARS's technical and system requirements for Request for Proposal 05/2020
1.15.	Bug	means any error, flaw or mistake in the program of a Deliverable's source code which in any way prevents the Deliverable from functioning correctly.
1.16.	Business Continuity Plan	means the plan or plans which contain detailed and specific requirements with to be performed by the Service Provider in the event of a Disaster occurring.
1.17.	Business Day	means any day between and including Monday and Friday except official public holidays in South Africa.
1.18.	Business Hours	means 07h00 through 17h00 on a Business Day.
1.19.	Change Order	means a change order substantially in the form and fulfilling the requirements of Appendix E-3 (Form of Change Order) that records the changes agreed between the Parties in respect of the Services provided in accordance with the Agreement, schedules to the Agreement and/or under a Work Order executed during the Term. A Change Order will only be binding of the Parties once the Change Order has been signed by duly authorised representatives of both Parties.
1.20.	Change	has the meaning set out in Clause 10.1.2 of Schedule B (SOW) .
1.21.	Charges	means the amounts payable by SARS to the Service

- Provider under **Schedule D (Charges, Invoicing and Payments)** together with its appendices, attachments and any other documents attached thereto or referenced therein.
- 1.22. **Checklist** means the checklist found in **Appendix B-9 (Maintenance Checklists)** listing: (i) detailed inspection and maintenance activities to be performed by the Service Provider; and (ii) the frequency of the performance of each activity in accordance with the Maintenance Type. The Service Provider shall, throughout the Term, evaluate and make recommendations to SARS on the activities and frequency of inspection and SARS and the Service Provider may agree to vary the Checklists from time to time.
- 1.23. **CIDB** means the Construction Industry Development Board.
- 1.24. **Commencement Date** means the date on which the Service Provider is to assume full responsibility for performing the Services in accordance with this Agreement (including the Performance Standards).
- 1.25. **Commercially Reasonable Efforts** means taking such steps and performing in such a manner as a well managed entity would undertake where such entity was acting in a determined, prudent, and reasonable manner to achieve the particular result for its own benefit provided always that such steps are within the reasonable control of the Party.
- 1.26. **Confidential Information** (a) means in relation to SARS, subject to **Sub-Clause (c)** immediately below in this definition, any information or data of any nature, whether provided orally or in writing or otherwise obtained and in any format or medium, which:
- (i) in terms of applicable legislation or by its nature, content, or circumstances of disclosure is or ought reasonably to be identifiable by the Service Provider as confidential (including by reason of such information not being generally known to, or readily ascertainable by, Third Parties generally) and/or proprietary to SARS, including: (i) data, financial information, information regarding taxpayers; information regarding employees, independent contractors and suppliers of SARS and Governmental Entities; processes and plans of SARS and Governmental Entities; projections, manuals, forecasts, and analysis of SARS and Governmental Entities; Intellectual Property owned by or licensed to SARS or a Governmental Entity; (ii) information relating to the knowledge, know-how, show-how, expertise, trade secrets and activities of SARS; (iii) any information which SARS (without creating a presumption that only so designated information is confidential), acting reasonably, may designate

- in writing, at the time of disclosure to the Service Provider, as being confidential information; and
- (iv) and any other information of SARS or Governmental Entities which would be regarded by a reasonable person to be confidential or proprietary in nature;
- (ii) SARS or any person acting on behalf of SARS discloses or provides (or has previously disclosed or provided) to the Service Provider (including the Service Provider Personnel, Affiliates, Subcontractors, Third Party service providers or agents, as applicable) or which the Service Provider (including Service Provider Personnel, Affiliates, Subcontractors, Third Party service providers or agents, as applicable) otherwise becomes aware of in connection with this Agreement or as a result of the provision or receipt of Services under this Agreement, and which information will include this Agreement;
- (b) means in relation to the Service Provider, subject to **Sub-Clause (c)** immediately below in this definition, any information or data of any nature, whether provided orally or in writing and in any format or medium, which is clearly designated in writing by the Service Provider, at the time of disclosure to SARS, as being Confidential Information, and which written designation is in each case acknowledged by SARS, by SARS initialling such designation;
- (c) does not include information that: (i) is lawfully publicly available to, or lawfully in the Receiving Party's possession, at the time of disclosure thereof by the Furnishing Party (whether before or after the Effective Date) to the Receiving Party; or (ii) is independently developed or learned by the Receiving Party without reference to or use of the Confidential Information of the Furnishing Party; or (iii) is in or enters the public domain without breach of this Agreement or any other obligation owed by the Receiving Party to the Furnishing Party; or (iv) the Receiving Party receives from a Third Party without restriction on disclosure and without breach of a non-disclosure obligation; provided always that notwithstanding the foregoing:
- (i) the onus will at all times rest on the Receiving Party to establish that such information falls within such exclusions;
- (ii) the information disclosed will not be deemed to be within the foregoing exclusions merely because such information is embraced by more general information that is publicly available or in a Party's possession;

- (iii) any combination of features will not be deemed to be within the foregoing exclusions merely because individual features are publicly available or in a Party's possession, but only if the combination itself is publicly available or in a Party's possession; and
- (iv) the determination of whether information is Confidential Information will not be affected by whether or not such information is subject to, or protected by, common law or statute related to copyright, patent, trade marks or otherwise.
- 1.27. **Configuration Management** means the ITIL discipline embodied by the Configuration Management Procedures and Configuration Management Services.
- 1.28. **Consulting Services** has the meaning set out in **Clause 12.1 of Schedule B (SOW)**.
- 1.29. **Contact** has the meaning set out in **Clause 6 of Schedule B (SOW)**.
- 1.30. **Contract Year** means:
- (a) for the 1st (first) contract year, the period of time from the Commencement Date until [Drafter's Note: update]; and
- (b) for each subsequent year of the Term, each successive 12 (twelve) month period ending on [31 August].
- 1.31. **Control** and its derivatives means, with regard to any entity, the right or power to dictate the management of and otherwise control such entity by any of:
- (a) holding directly or indirectly the majority of the issued share capital or stock (or other ownership interest if not a corporation) of such entity ordinarily having voting rights;
- (b) controlling the majority of the voting rights in such entity; or
- (c) 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.
- 1.32. **Cost Review Meeting** has the meaning set out in **Clause 1.5.1 of Schedule D (Charges, Invoicing and Payments)**.
- 1.33. **Critical Deliverables** means those milestones, activities, actions and projects identified as such in this Agreement including, without limitation, in **Appendix C-1 (Service Levels and Credits) to Schedule C (Service Levels)**.

1.34.	Deliverable	means any tangible materials that are provided by the Service Provider to SARS as part of the Services pursuant to this Agreement.
1.35.	Developed Intellectual Property	has the meaning set out in Clause 12.2.1 of the Main Agreement .
1.36.	Dependency	bears the meaning set out in Clause 9.1 of the Main Agreement . All Dependencies are set forth in Appendix B-5 (Dependencies) .
1.37.	Diagnosis	has the meaning set out in Clause 3.2 of Schedule B (SOW) .
1.38.	Disengagement Assistance	has the meaning set out in Clause 1.1 of the Schedule F (Disengagement Assistance) .
1.39.	Disengagement Assistance Manager	has the meaning set out in Clause 1.8.1 of the Schedule F (Disengagement Assistance) .
1.40.	Disengagement Assistance Period	means the period commencing 6 (six) months prior to expiration of this Agreement, or commencing on any notice of termination and continuing through the effective date of expiration (as it may be extended in terms of the Main Agreement) or, if applicable, through the effective date of termination (as such effective date may be extended in terms of the Agreement) and ending up to 12 (twelve) months after such date as is necessary to successfully complete Disengagement Assistance.
1.41.	Disengagement Assistance Plan	means the disengagement assistance plan(s) to be developed in accordance with Schedule F (Disengagement Assistance) .
1.42.	Effective Date	has the meaning set out in the preamble of the Main Agreement .
1.43.	Event	means a discrete and separate activity that comprises any part of the Services regardless of the duration and number of visits to a Supported Site.
1.44.	Enhanced Maintenance	means a type of Scheduled Maintenance, performed at a Supported Site, in accordance with the Enhanced Maintenance Checklist found in Appendix B-9 (Maintenance Checklists) .
1.45.	Error Control	has the meaning set out in Clause 9.4 of Schedule B (SOW) .
1.46.	Essential Maintenance	means a type of Scheduled Maintenance, performed at a Supported Site, in accordance with the Essential Maintenance Checklist found in Appendix B-9 (Maintenance Checklists) .

- 1.47. **Essential Terms** has the meaning set out in **Clause 5.4** of the **Main Agreement**.
- 1.48. **Extraordinary Event** has the meaning set out in **Clause 12.2** of **Schedule D (Charges, Invoicing and Payments)**.
- 1.49. **Fiscal Year** means SARS's financial accounting year running from 01 April to 31 March.
- 1.50. **Fixed Travel Charge** means a fixed Charge for travel based on the distance ("d") between a Supported Site and the closest Regional Main Centre. The Fix Travel Charge is the amount in **Appendix D-1 (Transition Charges)** corresponding to "d". Should "d" be less than 51km, the Fixed Travel Charge is R0 (zero rand). The Fixed Travel Charge shall only be invoiced once for each Maintenance or Break-fix Event received from SARS.
- 1.51. **Force Majeure Event** has the meaning set out in **Clause 19.3** of the **Main Agreement**.
- 1.52. **Furnishing Party** means the Party who furnishes or otherwise makes available such Party's Confidential Information to the other Party (including such other Party's employees, Affiliates, Subcontractors, Third Party Suppliers and agents, as applicable) or on whose behalf such Party's Confidential Information is furnished or otherwise made available to the other Party (including such other Party's employees, Affiliates, Subcontractors, Third Party Suppliers and agents, as applicable).
- 1.53. **Hold** means a Support Level with associated Service Level Targets as set out in Table 2: Support Levels of **Appendix C-1 (Service Levels and Credits)**.
- 1.54. **Governmental Entity** means any department, agency, service or other constituent body of the national South African government.
- 1.55. **ICT** means information and communication technology.
- 1.56. **ICT Facility/ies** means a room/s specifically fitted for the purpose of housing servers, storage hardware, network equipment, communication systems and related equipment. For the avoidance of doubt, examples of ICT Facilities are computer rooms, server rooms, plant rooms, network patch rooms and the like.
- 1.57. **ICT Facilities Infrastructure** means the infrastructural equipment within an ICT Facility that provides utilities, environmental control, security and monitoring in support of the equipment located in an ICT Facility which includes but is not limited to uninterruptible power supply equipment ("**UPS**"); electricity generators; air

conditioning equipment; electrical distribution boards and associated cabling; server racks; access control systems; environmental monitoring systems; raised flooring construction, cable and cooling ducting and fire prevention systems equipment and so forth.

- 1.58. **Incident** means any event that is not part of the standard operation of a Service (including a fault with hardware or Software or a failure to successfully complete a batch job on time) and that causes, or may cause, an interruption to, or a reduction in, the quality of that Service.
- 1.59. **Incident Management Services** has the meaning set out in **Clause 8 of Schedule B (SOW)**.
- 1.60. **Incident Management Procedures** has the meaning set out in **Clause 8.1.1 of Schedule B (SOW)**.
- 1.61. **Inflation Sensitivity Factor** has the meaning set out in **Appendix D-4 (Pricing Adjustments)**.
- 1.62. **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, trade marks, 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.
- 1.63. **Intellectual Property Rights** means all rights of whatever nature and how 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 trade marks, 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 divisionals 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.
- 1.64. **ITIL** means the Information Technology Infrastructure Library published by the UK Office of Government Commerce ("**OGC**"), 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 (ITSMF) from time to time, including any natural successor organisations to the ITSMF.
- 1.65. **Key Service Provider Personnel** means the personnel approved by SARS to fill the Key Service Provider Positions. The Key Service Provider Positions and Service Provider Personnel approved to fill such positions as of the Effective Date are set out in **Appendix E-1 (Key Service Provider Positions)**.
- 1.66. **Key Service Provider Positions** has the meaning as set out in **Clause 8.2** of the **Main Agreement**.
- 1.67. **Known Error** means an identified Problem for which a temporary Workaround or permanent solution has been identified.
- 1.68. **Losses** means all losses, liabilities and damages arising from claims (whether actual or threatened) and all related costs and expenses (including legal fees, disbursements and costs of investigation, litigation, settlement, and judgment), fines, interest and penalties.
- 1.69. **Main Agreement** means the ICT Facilities Agreement Terms and Conditions.

- 1.70. **Managed SARS Third Party** means a Third Party Supplier as to whom the Service Provider is to oversee and manage such Third Party Supplier's performance and contract with SARS.
- 1.71. **Managed SARS Third Party Contract** means a contract between SARS and a Managed SARS Third Party that the Service Provider is to oversee and manage. The Managed Third Party Contracts as of the earlier of the Effective Date are set out in **Appendix B-x-[]** for the relevant area of scope.
- [Note to the Bidder: To be completed upon finalisation of Agreement if required.]**
- 1.72. **Maintenance** has the meaning set out in **Clause 2 of Schedule B (SOW)**.
- 1.73. **Maintenance Type** means the classification of Scheduled Maintenance at a Supported Site in accordance with activities and frequencies in the Checklists, as such is varied at SARS' sole discretion upon no less than 60 (sixty) days prior written notice to the Service Provider. Maintenance Types are either Enhanced or Essential Maintenance and the Maintenance Type for each Supported Site, at the Commencement Date, is set out in **Appendix B-3 (Site List)**.
- 1.74. **Maintenance Window** means the window of time for each Supported Site during which Maintenance must occur being either during Business Hours or After Hours as specified in **Appendix B-3 (Site List)** as such is varied at SARS' sole discretion upon no less than 60 (sixty) days prior written notice to the Service Provider.
- 1.75. **Monthly Maintenance Travel Charge** means a fixed monthly Charge per Supported Site for travel, based on the distance ("d") between a Supported Site and the closest Regional Main Centre. The Monthly Maintenance Travel Charge is the amount in **Appendix D-2 (Final Mode of Operation Charges)** corresponding to d. Should d be less than 51km, the Monthly Maintenance Travel Charge is R0 (zero rand). For the avoidance of doubt, the Monthly Maintenance Travel Charge shall be Charged monthly, once for each Supported Site.
- 1.76. **New Services** means anything relating to the provision of the Maintenance and Break-fix for of ICT Facilities and ICT Facilities Infrastructure materially different to the Services and as set out in a Work Order.
- 1.77. **Notice of Election** has the meaning set out in **Clause 18.3.1 of the Main Agreement**.
- 1.78. **OGC** has the meaning set out in the definition of ITIL in this **Schedule A (Glossary)**.

1.79.	Operational Change Management Services	has the meaning set out in Clause 10.1.1 of Schedule B (SOW) .
1.80.	Operational Change Management Procedure	has the meaning set out in Clause 10.2 of Schedule B (SOW) .
1.81.	Party or Parties	has the meaning set forth in the preamble to the Main Agreement .
1.82.	Parts	means replacement components for ICT Facilities Infrastructure.
1.83.	Pass Through Expense	means an expense charged by a Third Party Supplier for goods or services which relates to the Services, is purchased by the Service Provider on behalf of SARS, and SARS agrees to pay on a Pass Through Expense Basis.
1.84.	Pass Through Expense Basis	means the actual and reasonable amount charged or invoiced by the applicable Third Party for Pass Through Expenses without the addition of, or separate charge for, any margin, mark-up, administrative or other similar fee.
1.85.	Performance Bond	has the meaning given to it in Clause 24.16 of the Main Agreement .
1.86.	Performance Standard	means a quantitative or qualitative level of service specified in this Agreement as to which the Service Provider's performance of the Services must conform. Performance Standards include Service Levels.
1.87.	Person	means any person or entity, whether an individual, trustee, corporation, partnership, limited partnership, company (whether incorporated or not), trust, organisation, business association, firm, joint venture, Governmental Entity or other governmental unit, agency or other body.
1.88.	Personnel Rates	means the applicable Charges by skill set for Services performed on a Time and Materials Basis as set out in Appendix D-3 (Personnel and Material Rates) and Schedule D (Charges, Invoicing and Payments) .
1.89.	PIR	has the meaning set out in Clause 9.5 of Schedule B (SOW) .
1.90.	Preventative Maintenance	has the meaning set forth in Clause 2.2 of Schedule B (SOW) .
1.91.	Problem	means the unknown underlying cause of one or more Incidents.
1.92.	Problem Management Services	has the meaning set out in Clause 9 of Schedule B (SOW) .

1.93.	Problem Management Procedures	the meaning set out in Clause 9.1.1 of Schedule B (SOW) .
1.94.	Problem Control	has the meaning set out in Clause 9.3 of Schedule B (SOW) .
1.95.	Process and Procedures Library	means the comprehensive and detailed manual described in Clause 4.5 of Schedule E (Governance) , including processes and procedures applicable to the Services.
1.96.	Project	<p>means a set of tasks and other work relating to the Services that is requested by SARS after the Effective Date and performed by the Service Provider thereafter so long as:</p> <ul style="list-style-type: none"> (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 Services are provided; and (d) the work is not required for the Service Provider to: <ul style="list-style-type: none"> (i) meet the Performance Standards; (ii) implement changes to the environment required as a result of benchmarking under the Agreement; (iii) meet the Service Provider's currency (including refresh) obligations under the Agreement; or (iv) meet any other obligations of the Service Provider under this Agreement. <p>Projects must be contained in a Change Order/Work Order in accordance with Appendix E-3 (Form of a Change Order) and Appendix E-4 (Form of a Work Order).</p> <p>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/Change Order.</p>
1.97.	Project Management Services	has the meaning set out in Clause 11 of Schedule B (SOW) .
1.98.	Proposal	means the Service Provider's response to the Request for Proposal 01-2012 as attached in Schedule H (Service Provider Proposal) .
1.99.	Receiving Party	means the Party receiving Confidential Information from the Furnishing Party.
1.100.	Red Alert	The process for dealing with high severity Incidents as set out in Appendix B-8 (SARS Red Alert Process) .

- 1.101. **Region** means the geographical area/s containing Supported Sites, as set out in **Appendix B-3 (Site List)** as such is varied at SARS' sole discretion upon no less than 60 (sixty) days prior written notice to the Service Provider.
- 1.102. **Regional Main Centre** is a strategically centrally located town or city, as set out in **Appendix D-6 (Regional Main Centres)** as such is varied at SARS' sole discretion upon no less than 60 (sixty) days prior written notice to the Service Provider. For the purpose of travel distance calculation, a Supported Site located in the Regional Main Centre, or the town/city centre (if there is no Supported Site in the Regional Main Centre), will be used as the point from which the distances to other Supported Sites which have such town/city designated as their Regional Main Centre will be measured. The Service Providers will not be allowed to charge for travel to SARS Supported Sites less than 50km away from the Regional Main Centre.
- 1.103. **Remedy** is the BMC Incident, problem and change management product Remedy ITSM.
- 1.104. **Reports** means the reports to be provided by the Service Provider in accordance with the Agreement.
- 1.105. **Request for Change or RFC** has the meaning set out in **Clause 10.3.1 of Schedule B (SOW)**.
- 1.106. **Request for Proposal or RFP** means SARS's Request for Proposal number 05/2020 for ICT Facilities services.
- 1.107. **Required Consent** means, with respect to Third Party Software or any other resource provided to SARS under contract, those consents and approvals necessary to effect the Service Provider's assumption of financial, administrative and operational responsibility, or the Service Provider's access and use thereof, as applicable.
- 1.108. **Resolve** means to correct an Incident, Problem or Known Error so that the affected Service is recovered and restored (and in the case of Incidents, Problems or Known Errors affecting supported hardware or supported Software, the relevant supported hardware or supported Software is operating correctly), or a Workaround is otherwise successfully implemented, and that the end user or SARS support group has confirmed such resolution in accordance with the provisions of the Process and Procedures Library and the configuration management database has been appropriately updated to reflect the Incident and its Resolution. "**Resolution**" and "**Resolved**" will have corresponding meanings.
- 1.109. **Resources** has the meaning set out in **Clause 4.13.2 of the Main**

Agreement.

- 1.110. **Retained Expenses** mean the costs, other than the Charges and Pass Through Expenses that SARS incurs in connection with the Services (including its internal costs).
- 1.111. **SARS** has the meaning set out in the preamble to the **Main Agreement**.
- 1.112. **SARS Assets** has the meaning set out in **Clause 7.4.1** of the **Main Agreement**.
- 1.113. **SARS CAB** Means SARS's Change Advisory Board.
- 1.114. **SARS Contract Executive** means the one individual designated by SARS to whom all the Service Provider communications concerning this Agreement will be addressed. SARS may change the SARS Contract Executive from time to time during the Term upon notice to the Service Provider.
- 1.115. **SARS Disengagement Assistance Manager** has the meaning set out in **Clause 1.8.2** of the **Schedule F (Disengagement Assistance)**.
- 1.116. **SARS Personnel** means any employees, officers, contractors or consultants of SARS other than Service Provider Personnel.
- 1.117. **SARS PPS&G** means SARS's policies, procedures, processes, standards, guidelines, and other similar issuances (including any updates, amendments or revisions) that are applicable to the Services or Service Provider from time to time. The SARS PPS&G are specified in **Appendix E-2 (SARS PPS&G)** of **Schedule E (Governance)**.
- 1.118. **SARS Service Desk** means the facilities, associated technologies and SARS Personnel who provide first level support.
- 1.119. **SARS Site** means a campus, office or other physical location lease, owned or occupied by SARS.
- 1.120. **SARS Software** means:

Software owned by SARS and modifications made thereto during the Term; and

Software developed by or for, or acquired by, SARS during the Term and modifications thereto during the Term. SARS Software will include Software developed during the course of the Service Providers performance of a Project or a New Service, to the extent such Software is developed by the Service Provider and SARS.
- 1.121. **Scheduled Maintenance** has the meaning set forth in **Clause 2.3** of **Schedule B**

(SOW).

1.122.	Service Coverage Period	has the meaning set out in Clause 3.2 of Appendix C-1 (Service Levels and Credits) .
1.123.	Service Level	means the quantitative standards of performance of certain of the Services that the Service Provider is required to satisfy under Schedule C (Service Levels) .
1.124.	Service Level Credit	means an amount by which SARS is entitled to reduce the Charges payable by it as contemplated in Clause 1.4.1 of Schedule C (Service Levels) and as determined in accordance with the provisions of Schedule C (Service Levels) and Appendix C-1 (Service Levels and Credits) .
1.125.	Service Level Credit Percentage	has the meaning set out in Clause 3.2.2.2 of Schedule C (Service Levels) .
1.126.	Service Level Credit Increment Percentage	has the meaning set out in Clause 3.2.2.2(b) of Schedule C (Service Levels) .
1.127.	Service Level Failure	means in respect of a Service Level where Actual Performance fails to meet or exceed such Service Level in the relevant month.
1.128.	Service Level Report	has the meaning set out in Clause 2.40 of Schedule C (Service Levels) .
1.129.	Service Level Target	has the meaning given in Clause 3.2.2.2 of Schedule C (Service Levels) .
1.130.	Service Provider	has the meaning set out in the preamble to the Main Agreement .
1.131.	Service Provider Environment	means the hardware, Software, contracts, Intellectual Property, assets, facilities, and other resources owned, leased, licensed or otherwise controlled by the Service Provider (collectively, the " Service Provider Resources ") that, directly or indirectly, interface with, interconnect with, exchange data with or otherwise interact or interoperate with the relevant environment or the systems the Service Provider uses internally. Except as otherwise provided in this Agreement, the Service Provider environment is out of the scope of the Services.
1.132.	Service Provider Facilities	has the meaning set out in Clause 7.1 of the Main Agreement .
1.133.	Service Provider Policies	has the meaning set out in Clause 4.4.1.2 of Schedule E (Governance) .
1.134.	Service Provider Proposal	means the Service Provider's formal response to the Request for Proposal 01-2012 as per Schedule H (Service Provider Proposal) .

1.135. Service Provider Service Delivery Manager	<p>means a person designated by the Service Provider who will:</p> <p>(a) serve as the Service Provider's single point of accountability for the Services; and</p> <p>(b) have day-to-day authority for ensuring the Service Provider's fulfilment of its obligations under the Agreement and SARS's satisfaction with the Services.</p> <p>The Service Provider Service Delivery Manager will be a senior member of the Service Provider Personnel who will have the authority to act on behalf of the Service Provider and its Subcontractors.</p>
1.136. Service Provider Site	means a physical location from which the Service Provider or a Subcontractor is performing any of the Services, excluding any SARS Sites.
1.137. Services	has the meaning set forth in Clause 4 of the Main Agreement read together with Schedule B (SOW) .
1.138. Silver	means a Support Level with associated Service Level Target as set out in Table 2: Support Levels of Appendix C-1 (Service Levels and Credits) .
1.139. Software	means any elements of coding or computer programs (including related documentation and media), including as applicable the object code and/or source code and without limit to whether the software is operating system software, applications Software, Tools, firmware or otherwise.
1.140. SPOC	means a single point of contact designated by the Service Provider.
1.141. SSA	means Statistics South Africa.
1.142. Standard Change	means a change to the ICT Facilities Infrastructure that follows an established path, reoccurs, carries low risk and is the SARS's accepted solution to a specific requirement or set of requirements.
1.143. Statement of Work or SOW	means one, some or all of the Statements of Work set out in Schedule B (SOW) to the Agreement.
1.144. Steering Committee	has the meaning set out in Clause 4.1 of Schedule E (Governance) .
1.145. Subcontract	has the meaning set out in Clause 5.4 of the Main Agreement .
1.146. Subcontractor	means a Third Party (including a Service Provider Affiliate) to whom the Service Provider subcontracts or otherwise delegates any Service Provider obligations to perform any of the Services (including subcontractors of a Subcontractor)

provided that such Third Party has been approved for such purpose by SARS in accordance with the **Main Agreement**. For clarity, “Subcontractor” excludes parties for whom the Service Provider acts as a value-added reseller in terms of a reseller agreement with a bulk supplier/distributor of utilities.

- 1.147. **Successor** means SARS or any replacement service provider designated by SARS that replaces the Service Provider as the service provider to SARS of the Services or part of the Services.
- 1.148. **Support Levels** means a Service Level category for Break-fix defined by a particular Service Level Target the achievement of which is to be measured in terms of the Service Level metric of Time to Respond and Time to Resolve. Support Levels must occur either during Business Hours or After Hours as specified in **Appendix B-3 (Site List)** as such is varied at SARS’ sole discretion upon no less than 30 (thirty) days prior written notice to the Service Provider.
- 1.149. **Terminated Services** means the Services or part of the Services that are no longer to be performed by the Service Provider and instead are to be performed by a Successor at the end of the Term, including where such Services are replaced by alternative Services or New Services.
- 1.150. **Termination Date** means the effective date of termination or expiration pursuant to **Clause 23** of the **Main Agreement** as it may be extended by SARS pursuant to **Clauses 3.2** and **23.5** of the **Main Agreement**.
- 1.151. **Third Party** means a Person other than SARS, a Governmental Entity, the Service Provider or its Affiliates.
- 1.152. **Third Party Intellectual Property** means all Intellectual Property that is owned or controlled by a Third Party and:
- (a) used by the Service Provider to perform the Services; or
 - (b) incorporated or embedded in any Deliverable or any Intellectual Property forming part of or related to any Deliverable, including all Third Party Software.
- 1.153. **Third Party Resources** has the meaning set out in **Clause 4.13.2** of the **Main Agreement**.
- 1.154. **Third Party Service Contracts** means any agreements with Third Party Suppliers pursuant to which the Third Party provides services to SARS.
- 1.155. **Third Party Software** means any computer programs, Software, source code, object code, programmer interfaces, specifications and/or operating instructions owned or controlled by a Third Party and:

- (a) used by the Service Provider to perform the Services; and/or
- (b) incorporated or embedded in any Deliverable or any Intellectual Property forming party of or related to any Deliverable.
- 1.156. **Third Party Supplier** means a Third Party that is a licensor of Software, lessor of equipment, or supplier of other goods or services to SARS (or to a Governmental Entity that is receiving Services under this Agreement) from time to time, including such Third Party's employees, agents, Affiliates, Subcontractors and Third Party suppliers. Third Party Suppliers exclude any Affiliate, Subcontractor (direct or indirect), or other agents of the Service Provider to the extent involved in performing or delivering the Services under contract (direct or indirect) with the Service Provider.
- 1.157. **Time and Materials Basis** means compensation to the Service Provider, where and to the extent additional work is expressly authorised to be paid in this manner under this Agreement, as follows:
- (a) at the Personnel Rates for the actual time expended on such work; and
- (b) on a Pass Through Expenses Basis for material or incidental costs incurred in performing such work.
- 1.158. **Tool** means any Software tool or process used to deliver the Services.
- 1.159. **Transition** means the process of transferring the Services from the Incumbent Service Provider to the Service Provider in accordance with the provisions of **Appendix B-1 (Transition Services)**.
- 1.160. **Transition Charges** means a once off Charge as contained in **Appendix D-1 (Transition Charges)** for the provision of Transition Deliverables.
- 1.161. **Transition Deliverable/s** has the meaning set out in **Clause 1.3.1 of Appendix B-1 (Transition Services)**.
- 1.162. **Transition Deliverable Criteria** the applicable technical and functional specifications and/or standards, which have been developed by the Service Provider and approved by SARS.
- 1.163. **Transition Manager** means the individual assigned by SARS on the one hand and the individual assigned by the Service Provider on the other hand (and as approved by SARS) to manage the Service Provider's performance of Transition.

- 1.164. **Transition Plan** means a plan setting forth the steps the Service Provider will take to transition the performance and delivery of the Services from Incumbent Service Provider; SARS; and/or any existing Third Party Suppliers to SARS, as applicable, to the Service Provider. Such plan will identify critical milestones, a timetable for accomplishing such milestones, the resources the Service Provider will deploy to accomplish the transition, the facilities to which the Services are to be transitioned and any relevant, mutually agreed SARS retained responsibilities.
- 1.165. **Transition Services** means the transition services, further set out in **Appendix B-1 (Transition Services)**.
- 1.166. **Transition Tests** means testing by SARS of the Transition Deliverable to determine whether such Transition Deliverable complies with and conforms to the Transition Deliverable Criteria.
- 1.167. **Unit Rates** means the price for each unit of product as defined in the specifications set out in **Schedule D (Charges, Invoicing and Payments)** and its appendices and attachments.
- 1.168. **UPS** has the meaning set out in **Clause 1.57 of Schedule A (Glossary)**.
- 1.169. **Urgency** has the meaning set out in **Clause 7.4 of Appendix B-8 (SARS Red Alert Process)**.
- 1.170. **VAT** means value-added tax as levied from time to time in terms of the Value-Added Tax Act 89 of 1991.
- 1.171. **Virus** means any computer code, device, procedures, routines, mechanisms, method or means, including any virus, Trojan horse, worm, lock-up, time bomb, logic bomb or disabling code, that:
- (a) causes the unplanned interruption, disruption, distortion (including aesthetic disruptions or distortions) of the Services or accessibility to, use or operation of any:
 - (i) Deliverables;
 - (ii) item of Intellectual Property forming part of or related to any Deliverable;
 - (iii) item of Intellectual Property arising out of or pursuant to the rendering of any Services under this Agreement; or
 - (iv) systems, networks, Software or computer hardware of the Service Provider or SARS or SARS data contained therein (**Sub-Clauses (a)(i) to (a)(iv) inclusive hereinafter for the purposes of this "Virus" definition collectively referred to as the "Components"**), or is designed

to interrupt, disrupt, distort (including aesthetically disrupt or distort) the aforementioned;

- (b) alters, disables, causes to cease functioning, harms, destroys, impedes or inhibits the use or operation of any of the Components or is designed to alter, disable, cause to cease functioning, harm, impede or inhibit (including aesthetically alter, harm, impede or inhibit) the aforementioned);
- (c) otherwise blocks authorised access to any of the Components or is designed to block access to the aforementioned;
- (d) interferes with, or is designed to interfere with, the delivery of the Services to SARS;
- (e) would permit any party access to any of the Components to cause any of the effects described above (inclusive); or
- (f) can cause damage or corrupt data, storage media, programs, equipment or communications, or otherwise interfere with operations thereof.

1.172. **Whole Unit Spare** has the meaning set out in **Clause 3.4 of Schedule B (SOW)**.

1.173. **Workaround** means in respect of an Incident or Problem that the Incident or Problem is avoided either by implementing a temporary fix or by using a technique that means that SARS are not reliant on the particular aspect of the Service (or the relevant hardware, Software or part thereof) that is affected by the Incident or Problem.

1.174. **Work Order** means a work order substantially in the form and fulfilling the requirements of **Appendix E-4 (Form of a Work Order)** and describing at least: (i) the details of the New Services and or Projects to be performed under this Agreement; (ii) the amount, schedule and method of payment (subject to the provisions of **Schedule D (Charges, Invoicing and Payments)**); (iii) start and end date or where applicable to the timeframes for performance; (iv) where applicable the completion and acceptance criteria; and (v) any applicable Service Levels and Service Level Credits, etc. A Work Order will only be binding of the Parties once the Work Order has been signed by duly authorised representatives of both Parties.

1.175. **24x7x365** means at all times.

2. INTERPRETATION

2.1. Construction

In this Agreement, a reference to:

- 2.1.1. a statutory provision, includes a reference to:
 - 2.1.1.1. the statutory provision as modified or re-enacted from time to time (whether before or after the Effective Date); and
 - 2.1.1.2. any subordinate legislation made under the statutory provision (whether before or after the Effective Date);
- 2.1.2. persons or entities, includes a reference to natural persons, any body corporate, association, trust, partnership or other entity or organization;
- 2.1.3. a person or entity, includes a reference to that persons or entity's successors or assigns;
- 2.1.4. a schedule, appendix or attachment unless the context otherwise requires, is a reference to a schedule, appendix or attachment to this Agreement; and
- 2.1.5. the singular includes the plural and vice versa, unless the context otherwise requires.

2.2. Other

- 2.2.1. Wherever a term is defined in this Agreement anywhere outside of this **Schedule A (Glossary)**, such term will bear the meaning so assigned to it throughout this Agreement wherever it appears in the title case.
- 2.2.2. Technical terms that are not contained in the definitions set out above has their generally understood meaning in the telecommunications and information technology industries and, if used in ITIL, then in ITIL.
- 2.2.3. The headings in this Agreement will not affect the interpretation of this Agreement.
- 2.2.4. This Agreement will not be construed against either Party as a result of that Party having drafted or proposed the relevant clause.
- 2.2.5. The words "include" and "including" mean "include without limitation" and "including without limitation". The use of the words "include" and "including" followed by a specific example or examples will not be construed as limiting the meaning of the general wording preceding it.
- 2.2.6. Whenever any person is required to act "as an expert and not as an arbitrator" in terms of this Agreement, then:
 - 2.2.6.1. the determination of the expert will (in the absence of manifest error) be final and binding;
 - 2.2.6.2. subject to any express provision to the contrary, the expert will determine the liability for his or her charges, which will be paid accordingly;
 - 2.2.6.3. the expert will be entitled to determine such methods and processes as he or she may, at his or her sole discretion, deem appropriate in the circumstances provided that the expert may not adopt any process which is manifestly biased, unfair or unreasonable;
 - 2.2.6.4. the expert will consult with the relevant Parties (provided that the extent of the expert's consultation will be at his or her sole discretion) prior to rendering a determination; and
 - 2.2.6.5. having regard to the sensitivity of any confidential information, the

expert will be entitled to take advice from any person considered by him or her to have expert knowledge with reference to the matter in question.

- 2.2.6.6. Notwithstanding the above SARS, in its sole election, will be entitled to bring any matter under consideration by an expert before the North Gauteng High Court, Pretoria and the Service Provider hereby submits to the jurisdiction of that court.

SCHEDULE B: ICT FACILITIES SERVICES SOW**Appendices and Attachments**

Appendix B-1	Transition Services
Appendix B-2	Transition Plan
Appendix B-3	Site List
Appendix B-4	Equipment List
Appendix B-5	Dependencies
Appendix B-6	Reports
Appendix B-7	Escalation Procedures
Appendix B-8	SARS Red Alert Process
Appendix B-9	Maintenance Checklists
Appendix B-10	Accreditation

SCHEDULE B

ICT Facilities Services SOW

1. SCOPE OF SERVICES

1.1. Introduction

1.1.1. The Service Provider will provide Services and any other obligations of the Service Provider under this Agreement relating to the Services (e.g. Service Level reporting) save only those services, activities, functions, and responsibilities set out in **Appendix B-5 (Dependencies)**.

[Note to the Bidder: As part of your Proposal, you must identify any Dependencies by completion of Appendix B-5 (Dependencies). Appendix B-5 (Dependencies) will have an attachment per Region should the Bidder be awarded more than one Region.]

1.1.2. The Service Provider will provide Services in the Region(s) at the Supported Sites as these may change from time to time in accordance with this Agreement.

1.1.3. The Service Provider shall perform the Services in accordance with the Performance Standards.

1.2. Overview of the Services

1.2.1. Without limiting the generality of **Clause 1.1**, the Services generally include the following 5 (five) main activities:

1.2.1.1. regular and scheduled inspections and maintenance of ICT Facilities and ICT Facilities Infrastructure;

1.2.1.2. Break-fix, in relation to ICT Facilities Infrastructure, necessary to restore the functioning thereof after the occurrence of an Incident or to rectify a Problem;

1.2.1.3. Incident, Problem and operational Change management relating to ICT Facilities Infrastructure;

1.2.1.4. the provision, delivery, installation and commissioning of ICT Facilities Infrastructure on request by SARS and in accordance with **Clause 4.10** of the **Main Agreement**;

1.2.1.5. when applicable, SARS PPS&G for the management of assets; and

1.2.1.6. reporting to SARS representative.

1.2.2. Without limiting the Service Provider's obligations under this **Schedule B (SOW)**, certain responsibilities are included within the scope of the Services although not specifically addressed in this **Schedule B (SOW)**. These responsibilities include but are not limited to:

1.2.2.1. compliance with good engineering practices;

1.2.2.2. compliance with SARS PPS&G, including SARS ICT Facilities Code of

- Practice, as such may be updated by SARS from time to time;
- 1.2.2.3. compliance with security and access policies and procedures:
- 1.2.2.3.1. contained in SARS PPS&G; and
- 1.2.2.3.2. of organisations, such as National Intelligence, where ICT Facilities and ICT Facilities Infrastructure do not belong to SARS;
- 1.2.2.4. prompt, efficient and courteous co-ordination and co-operation with SARS, including the use of good customer service techniques;
- 1.2.2.5. compliance with asset management as set out in **Clause 5** below;
- 1.2.2.6. keeping all Services under this Agreement current with industry advances and leading technology standards, by ensuring that all technology used by the Service Provider to provide the Services is maintained and is kept up to date as new technology is introduced into the market, so as to keep the Services competitive with the similar services offered by well-managed and adequately-funded organisations throughout the Term;
- 1.2.2.7. ensuring that the Service Provider Personnel performing Services have and maintain the appropriate accreditation to perform the functions assigned to them, including any granted by the applicable Third Party manufacturers of the relevant ICT Facilities and ICT Facilities Infrastructure, including CIDB registration by the Service Provider or Service Provider Subcontractors as an air-conditioning maintenance provider. Without limiting the generality of the foregoing, the Service Provider shall maintain compliance with the requirements set out in **Appendix B-10 (Accreditation)**.
- [Note to the Bidder: Appendix B-10 (Accreditation) will have an attachment per Region should the Bidder be awarded more than one Region].**
- 1.2.2.8. without limiting the generality of the preceding two paragraphs, the Service Provider shall render the Services in all respects so as not to void or reduce any applicable warranty coverage for the ICT Facilities Infrastructure. In furtherance of this, the Service Provider shall have only the Service Provider Personnel who have the required certifications perform activities as to which the absence of such certifications would void or reduce warranty coverage, and will only purchase Parts that are authorised by the applicable OEM (including, if required, only purchasing Parts from the applicable OEM or a distributor or other supplier authorised by the applicable OEM).

1.3. ICT Facilities Infrastructure

The ICT Facilities Infrastructure includes but is not limited to:

- 1.3.1. air-conditioning equipment;
- 1.3.2. UPS;
- 1.3.3. electricity generators;
- 1.3.4. electrical reticulation and associated cabling;

- 1.3.5. high tension power reticulation and associated cabling;
- 1.3.6. fire prevention systems equipment;
- 1.3.7. safety, security and environmental monitoring equipment;
- 1.3.8. access control systems; and
- 1.3.9. physical structures such as raised flooring construction.

1.4. **SARS Regions and Supported Sites**

- 1.4.1. The Service Provider will provide Services, as set out in this Agreement, at Supported Sites within the SARS Region(s). The ICT Facilities located at Supported Sites as at the Effective Date are contained in **Appendix B-3 (Site List)**. SARS may from time to time, at its sole discretion, include and/or remove ICT Facilities and/or Supported Sites.
- 1.4.2. Should the Service Provider, during the Term, be unable to provide Services to all Supported Sites within the Region(s), such inability will be deemed to constitute a material breach of this Agreement by the Service Provider. SARS will be entitled to all remedies (including termination for cause) provided for in this Agreement pursuant to a material breach hereof by the Service Provider or SARS may in the alternative (in its sole discretion) upon written notice, require the Service Provider to remedy the material breach within 30 (thirty) days of receipt of such written notice. SARS will have no liability to Service Provider with respect to a termination under this **Clause 1.4.2**.

1.5. **Transition**

The Service Provider's responsibilities in regard to the assumption of the Services from the Effective Date are set out in **Appendix B-1 (Transition Services)**.

1.6. **Escalation Procedures**

Any operational-level communications relating to the Services or this **Schedule B (SOW)** will be escalated in accordance with the escalation procedures set out in **Appendix B-7 (Escalation Procedures)**.

1.7. **Use of Subcontractors**

The Service Provider's use of Subcontractors to perform any aspect of the Services will be subject to the provisions of **Clause 5** of the **Main Agreement**.

1.8. **Reports**

The Service Provider's responsibilities in regard to preparing and delivering reports to SARS in connection with the Services are set out in **Appendix B-6 (Reports)**.

2. **MAINTENANCE SERVICES**

2.1. **General Obligations**

- 2.1.1. The Service Provider shall maintain all ICT Facilities and ICT Facilities Infrastructure at Supported Sites within the Region(s), by keeping all ICT Facilities and ICT Facilities Infrastructure in conformance with, or restore it to the

manufacturer's specifications.

- 2.1.2. In addition to the above, the Service Provider shall perform inspections and Maintenance in accordance with the Checklists in **Appendix B-9 (Maintenance Checklists)**.

2.2. Preventive Maintenance

Without limiting the generality of the foregoing, the Service Provider shall provide preventive maintenance, on an ongoing basis to minimise disruption to SARS's business, the Services and the end users, in accordance with the relevant manufacturer's instructions or as otherwise mutually agreed ("**Preventive Maintenance**"). The Service Provider's Preventive Maintenance obligations shall include:

- 2.2.1. performing Maintenance in accordance with **Clause 2.3** below and OEM instructions;
- 2.2.2. on-site inspections, including predictive fault investigation testing and diagnosis as well as replacement and repair services;
- 2.2.3. in accordance with either **Clause 4.9** or **4.10** of the **Main Agreement** and unless directed otherwise by SARS, implementing corrections and solutions in relation to the activities set out in the previous paragraph so that the ICT Facilities and ICT Facilities Infrastructure shall on an ongoing basis:
- 2.2.3.1. operate in accordance with the manufacturer's specifications; and
- 2.2.3.2. perform in accordance with this Agreement;
- 2.2.4. at SARS's request and in accordance with **Clause 4.9** or **4.10** of the **Main Agreement**, should the Service Provider be unable to procure Parts for existing ICT Facilities Infrastructure or where an item is going out of manufacturer support, recommend to SARS that such ICT Facilities Infrastructure is replaced or upgraded before the support period has expired in accordance with the Operational Change Management Procedure;
- 2.2.5. maintaining and updating maintenance and repair records relating to the ICT Facilities and ICT Facilities Infrastructure, conducting trend analysis and predictive Incident and Problem management and provide a bi-annual report in this regard;
- 2.2.6. recommending and, if directed by SARS, implementing in terms of **Clause 4.9** or **4.10** of the **Main Agreement**, methods of minimising the downtime caused by Maintenance and Break-fix and alternative or new ICT Facilities Infrastructure to achieve this goal;
- 2.2.7. complying with relevant maintenance recommendations, specifications or suggestions published from time to time by the manufacturer of the ICT Facilities Infrastructure in accordance with the timelines set forth in such recommendations, specifications or suggestions; and
- 2.2.8. where available, subscribing to user/developer/engineering information services that are made available by the manufacturer of the ICT Facilities Infrastructure.

2.3. Scheduled Maintenance

In addition to the above, the Service Provider shall perform inspection and Maintenance activities in accordance with the Checklists in **Appendix B-9 (Maintenance Checklists)**, as frequently as dictated by the Maintenance Type of each Supported Site contained in **Appendix B-3 (Site List)** ("**Scheduled Maintenance**"). The Service Provider shall arrange

Scheduled Maintenance at SARS' convenience in consultation with SARS and in accordance with **Clause 2.1.2 of Appendix C-1 (Service Levels and Credits)**. The Service Provider will deliver to SARS completed Checklist signed off by a Supported Site contact, designated by SARS, within 2 (two) Business Days of the scheduled date of the Maintenance.

[Note to the Bidder: these Charges will be calculated in accordance with RFP 05/2020 Pricing response template.xls].

3. BREAK-FIX

3.1. General

Without limiting the Service Provider's obligations under this Agreement, the Service Provider will at all times:

- 3.1.1. adhere to the support standards and technical accreditations of the OEM;
- 3.1.2. adhere to the Performance Standards; and
- 3.1.3. conduct Break-fix in accordance with **Clauses 7 and 8 of this Schedule B (SOW)**.

3.2. Diagnosis

The Service Provider shall, as part of the Break-fix, diagnose the Problems underlying Incidents affecting ICT Facilities Infrastructure, including by means of consulting applicable documentation and expertise and performing diagnostic testing ("**Diagnosis**").

3.3. Repair

- 3.3.1. The Service Provider shall, as part of the Break-fix, attempt to repair ICT Facilities Infrastructure that is malfunctioning. In the first instance, the Service Provider shall attempt to perform such repair at the Supported Site where such ICT Facilities Infrastructure resides (collectively, "**On-site Repair**"). The Service Provider may perform such repair by identifying a malfunctioning component of the malfunctioning item of ICT Facilities Infrastructure and replacing such components with a Part, provided that the requirements of **Clause 4 of this Schedule B (SOW)** are satisfied. In such event, title to the Part will transfer to SARS in accordance with **Clause 4.3 of this Schedule B (SOW)**.
- 3.3.2. In the event that the Service Provider is unable to successfully repair an item of ICT Facilities Infrastructure by means of On-site Repair, the Service Provider will remove the malfunctioning item from SARS's premises and identifying and applying (in accordance with the Operational Change Management Procedure) any temporary Workarounds or permanent correction.

3.4. Whole Unit Spares

- 3.4.1. As part of the Break-fix, the Service Provider shall at its expense, obtain, maintain, and manage pools of whole units of ICT Facilities Infrastructure for use as loaners ("**Whole Unit Spares**") in amounts and locations determined in the Service Provider's sole discretion to be necessary in order to render Break-fix in accordance with the applicable Performance Standards.
- 3.4.2. The Service Provider may swap ICT Facilities Infrastructure with the corresponding

Whole Unit Spare where in the Service Provider's judgment it is expedient for the Service Provider to meet applicable Performance Standards, (including the applicable Service Levels) by doing so. It will be for the Service Provider to determine from time to time how many Whole Unit Spares to stock and where to do so, and the conditions under which to swap an item of ICT Facilities Infrastructure with a Whole Unit Spare in order to meet the applicable Performance Standards. The Service Provider's determinations in this regard will not relieve it in any event of its obligation to meet or exceed the applicable Performance Standards.

- 3.4.3. The Service Provider shall replace the Whole Unit Spare with a repaired original whole unit within 30 (thirty) days. Notwithstanding the foregoing, the Service Provider shall be excused from such dead-line if it notified SARS at least 5 (five) days in advance of such dead-line that it would likely fail to meet such dead-line. Where the Service Provider determines to swap an item of ICT Facilities Infrastructure with a Whole Unit Spare, the Service Provider shall only do so on written instruction from SARS in accordance with **Clause 4.11** of the **Main Agreement** and the title to the Whole Unit Spares will transfer to SARS in accordance with **Clause 4.3** of this **Schedule B (SOW)**.
- 3.4.4. Any Whole Unit Spare installed by Service Provider must not void the OEM's warranty and must be configured for the particular unit of ICT Facilities Infrastructure that they are being used to repair.
- 3.4.5. Providing secure storage for Whole Unit Spares shall be the sole and exclusive responsibility of the Service Provider.
- 3.4.6. On termination of the Agreement, SARS will not be obliged to purchase any Whole Unit Spares held by the Service Provider.

3.5. **Install**

After repairing ICT Facilities Infrastructure or causing such ICT Facilities Infrastructure to be repaired, as well as after replacing such ICT Facilities Infrastructure with new units or Whole Unit Spares, the Service Provider shall install such repaired or new Infrastructure in accordance with the OEM instructions and **Clause 10** of this **Schedule B (SOW)**.

4. **PARTS AND CONSUMABLES**

- 4.1. As part of the Maintenance and Break-fix, the Service Provider shall at its expense, obtain, maintain, and manage pools of Parts and consumables in amounts and locations determined in the Service Provider's sole discretion to be necessary in order to render Maintenance and Break-fix in accordance with the applicable Performance Standards.
- 4.2. The Service Provider shall use Parts and consumables that were manufactured by the same manufacturer as the original part (except where, and to the extent, otherwise agreed in writing by SARS in its sole discretion) and that comply with SARS's PPS&G. Parts may either be new, remanufactured or refurbished, in the Service Provider's reasonable discretion; provided, however, that the Service Provider's determination in this regard will not relieve the Service Provider of its obligation to render the Services in accordance with the applicable Performance Standards and the Service Provider shall not act in a way that voids the warranty and provided further that the Service Provider will provide a monthly report in this regard.
- 4.3. Upon a Part being installed in accordance with **Clauses 4.1** and **4.2** above, all rights, title, and interest in such Parts shall transfer to SARS without any further action required on the

part of either Party, and free of any liens or other encumbrances.

- 4.4. Any Parts installed by the Service Provider must not void the OEM's warranty and must be configured for the particular unit of ICT Facilities Infrastructure that they are being used to repair. Should the Service Provider void such warranty, the Service Provider shall, for the remainder of the warranty period so voided, perform in accordance with the warranty in the OEM's stead.
- 4.5. Providing secure storage for Parts and consumables shall be the sole and exclusive responsibility of the Service Provider.
- 4.6. On termination of the Agreement, SARS will not be obliged to purchase any Parts or consumables held by the Service Provider. Should SARS however exercise the option to purchase Parts or consumables, Service Provider shall Charge therefore in accordance with **Clause 9.4 of Schedule D (Charges, Invoicing and Payments)**.

5. ICT INFRASTRUCTURE PROCUREMENT

Other than set out in **Clauses 3 and 4** above, all ICT Infrastructure procurement will be Charged to SARS on a Pass Through Expense Basis in accordance with **Clause 9 of Schedule D (Charges, Invoicing and Payments)**.

6. SINGLE POINT OF CONTACT

The Service Provider will provide a SPOC for all contacts ("**Contacts**") between the Parties relating to incidents, problems, performance, receipt and use of the Services as described in this **Clause 6**. The SPOC will provide primary support for resolution of Incidents, Problems or requests relating to the Services and will provide a seamless interface for other communications or activities relating to the Services.

6.1. Contacts

- 6.1.1. The Service Provider will keep a detailed record of all Contacts. Contacts may relate to known or suspected Incidents or Problems, requests for Changes or New Services, or questions relating to the use of the Services.
- 6.1.2. The Service Provider will maintain and update the SARS incident management system with updates to Contacts and upon completion of the activities required or as requested by SARS. SARS will be responsible for providing web based access to the SARS incident management system. The Service Provider will be responsible for managing and providing the end-user structures, devices and network connections necessary to operate and connect to the incident management web based access provided by SARS.
- 6.1.3. The Service Provider will report to SARS monthly on the number and disposition of Contacts received. Contacts will be categorised as follows: (i) Incidents or Problems relating to the Services; (ii) questions relating to the Services; (iii) requests for Changes; (iv) other issues or questions relating to the Services; or (v) issues or questions that do not relate to the Services.
- 6.1.4. With respect to telephonic Contacts, the SPOC will as far as reasonably possible immediately resolve such Contacts without transferring or escalating the Contact.

6.2. Resources

The Service Provider will ensure that the Service Provider Personnel providing SPOC functions will be trained in, or will otherwise be made knowledgeable about, the Services, the environments and SARS. The Service Provider will provide sufficient numbers of the Service Provider Personnel with the requisite training to be able to address SARS's specific issues and questions.

6.3. Hours of Service

The Service Provider will provide contact information so that the Service Provider Personnel providing SPOC functions can be accessed as appropriate on a 24x7 basis.

7. ASSET MANAGEMENT SERVICES

The Service Provider will perform asset management, including the services described in this **Clause 7** (collectively, the "**Asset Management Services**"). The Service Provider will perform the Asset Management Services in accordance with the processes and procedures set forth herein and the applicable SARS PPS&G, interfacing seamlessly and non-disruptively with such applicable SARS PPS&G.

7.1. Asset Management Procedures

7.1.1. Development

During Transition, the Service Provider will prepare for SARS's review and approval detailed asset management processes and procedures for the Services (the "**Asset Management Procedures**"). Such Service Provider Asset Management Procedures will interface seamlessly with the applicable SARS PPS&G and the other SARS processes. The Asset Management Procedures will be based on the processes and procedures set forth in this **Clause 7** and to the extent consistent with the processes and procedures set forth in this **Clause 7**, the Service Provider's standard processes and procedures that it uses to perform asset management services for other customers. The Service Provider will incorporate SARS's comments on the Asset Management Procedures and include the revised Asset Management Procedures in the Process and Procedures Library promptly, but in no event later than 30 (thirty) days after SARS has provided such comments.

7.1.2. The Service Provider will follow the Asset Management Procedures from the date that they have been approved by SARS. Before such date, the Services Provider will follow the processes and procedures regarding Incident management that are set forth in this **Clause 7** supplemented with the Service Provider's own standard processes and procedures (to the extent they are not inconsistent with this **Clause 7**).

7.1.3. Updates

The Service Provider will promptly update the Asset Management Procedures to reflect any changes in the applicable SARS PPS&G. The Service Provider will submit the revised Asset Management Procedures to SARS for its review and approval in the same manner as set forth in **Clause 7.1.1** above.

7.2. The Service Provider's obligations

The Service Provider shall:

- 7.2.1. within 2 (two) Business Days of any activity (including Maintenance and Break-fix) by the Service Provider resulting in an ICT Facilities Infrastructure change, ensure that it provides SARS with updated information including the bar code, make, model, type, serial number, location, room, version and release of the ICT Facilities Infrastructure in question;
- 7.2.2. as part of Maintenance, conduct asset verification of all ICT Facilities Infrastructure against an asset list provided by SARS and provide SARS with such information within 2 (two) Business Days of doing so; and
- 7.2.3. affix SARS barcodes to any new assets should the Service Provider install and/or commission any such assets.

7.3. **Communications**

The Service Provider will keep the applicable SARS contact persons (as then specified in the Process and Procedures Library and escalation procedures) apprised of the status of asset management activities on an ongoing basis in accordance with the notification and escalation processes set forth in the Asset Management Procedure. The Service Provider's obligations in such regard will include:

- 7.3.1. documenting and maintaining in the Asset Management Procedures, processes and procedures for notification;
- 7.3.2. alerting SARS of any asset change in accordance with the Asset Management Procedures; and
- 7.3.3. updating the asset status in accordance with the Asset Management Procedure so that it is up to date on a real time basis.

7.4. **Asset Management Services Outputs**

The outputs of Incident Management Services include:

- 7.4.1. Incident Management Procedures;
- 7.4.2. up-to-date of SARS's asset records; and
- 7.4.3. management information relating to the Asset Management Services as requested by SARS from time to time (e.g. status, updates, efficiency and effectiveness, other management or performance metrics).

8. **INCIDENT MANAGEMENT SERVICES**

The Service Provider will perform Incident management, including the services described in this **Clause 7** (collectively, the "**Incident Management Services**"). The Service Provider will perform the Incident Management Services in accordance with the processes and procedures set forth herein and in **Schedule C (Service Levels)** or the applicable SARS PPS&G, interfacing seamlessly and non-disruptively with such applicable SARS PPS&G.

8.1. **Incident Management Procedures**

8.1.1. **Development**

During Transition, the Service Provider will prepare for SARS's review and

approval detailed Incident management processes and procedures for the Services (the "**Incident Management Procedures**"). Such Service Provider Incident management processes and procedures will interface seamlessly with the applicable SARS PPS&G and the other SARS processes. The Incident Management Procedures will be based on the processes and procedures set forth in this **Clause 7** and to the extent consistent with the processes and procedures set forth in this **Clause 7**, the Service Provider's standard processes and procedures that it uses to perform Incident management services for other customers. The Service Provider will incorporate SARS's comments on the Incident Management Procedures and include the revised Incident Management Procedures in the Process and Procedures Library promptly, but in no event later than 30 (thirty) days after SARS has provided such comments.

8.1.2. The Service Provider will follow the Incident Management Procedures from the date that they have been approved by SARS. Before such date, the Services Provider will follow the processes and procedures regarding Incident management that are set forth in this **Clause 7** supplemented with the Service Provider's own standard processes and procedures (to the extent they are not inconsistent with this **Clause 7**).

8.1.3. **Updates**

The Service Provider will promptly update the Incident Management Procedures to reflect any changes in the applicable SARS PPS&G. The Service Provider will submit the revised Incident Management Procedures to SARS for its review and approval in the same manner as set forth in **Clause 8.1.1** above.

8.2. **Incident Recording**

8.2.1. **Recording Incidents**

The Service Provider will report all Incidents and ensure that such Incidents are recorded, either by SARS or the Service Provider directly, in the SARS Incident management system immediately upon their earliest detection. The fact that SARS records the Incident does not absolve the Service Provider of the obligation contained in this **Clause 8.2.1**.

8.2.2. **Checking for the Same or Similar Incidents**

When recording an Incident, the Service Provider will first check to see if there are similar open Incidents. If there are any similar open Incidents and they concern the same Incident, the Service Provider will update the Incident information and link the newly reported Incident to the existing Incident record. If this is the report of a new Incident but there have been other similar Incidents, this will be noted and addressed. The Service Provider will identify and analyse the reasons for any differences in the effectiveness of the resolution for similar Incidents. *[add 6.2 – time to already used – cumulative + cost for parts or consumables used for sp account]*

8.3. **Classification**

All Incidents will be classified in accordance with the process set forth in this **Clause 8.3**. The Service Provider will comply with the then-current SARS PPS&G relating to Incident management and will interface closely with SARS so as to correctly identify and classify Incidents.

8.3.1. **Process**

In the first instance, the Service Provider will make such classification in accordance with SARS's then-current Impact and Urgency classifications in accordance with the SARS PPS&G. Such classifications as of the Effective Date are set out in **Appendix B-8 (SARS Red Alert Process)**. If there is a disagreement as to the priority level that should be assigned to an Incident, the priority level will be that prescribed by SARS in its reasonable judgment.

8.3.2. Re-categorisation of Recurring Incidents

The Service Provider will re-categorise recurring Incidents to a higher Impact and Urgency classifications in accordance with the Incident Management Procedure.

8.3.3. Incident Record

The Service Provider will create and maintain an Incident record for each Incident containing details of the Incident symptoms, an initial Incident categorisation, and the Impact of the Incident. The Service Provider's records of Incidents will be designed to enable the Service Provider to measure and improve the affected processes, provide information required for other Service management processes, and report on progress.

8.4. Communications

The Service Provider will keep the applicable SARS contact persons (as then specified in the Process and Procedures Library and escalation procedures) apprised of the status of Incident management activities on an ongoing basis in accordance with the notification and escalation processes set forth in the Incident Management Procedure. The Service Provider's obligations in such regard will include:

- 8.4.1. documenting and maintaining in the Incident Management Procedures processes and procedures for notifying affected parties, including SARS, of Incidents, escalation paths, contacts and timescales;
- 8.4.2. alerting SARS of any Incidents in accordance with the Incident Management Procedures;
- 8.4.3. at SARS's request, informing the SARS Incident Manager about the estimated maximum time to Resolve the Incident, and apprising him or her of progress on an ongoing basis;
- 8.4.4. at SARS's request, providing SARS with a preliminary report of the Incident on an expedited basis;
- 8.4.5. updating the Incident status in the relevant record in the SARS Incident management system promptly upon any developments so that it is up to date on a real time basis; and
- 8.4.6. notifying the SARS Incident management team promptly in accordance with the Incident Management Procedure in the event that an Incident is likely to require a Problem investigation, including informing the SARS Problem management team.

8.5. Resolution and Recovery

- 8.5.1. The Service Provider will Resolve Incidents and return the affected Services to full performance in accordance with the Performance Standards, as soon as possible but in no event later than necessary to meet any applicable Service Levels with the least possible impact on the operations of SARS.
- 8.5.2. The Service Provider will provide SARS with prior notice of any temporary

Workaround or permanent solution that:

- 8.5.2.1. may have a further impact on the Services and/or on SARS;
- 8.5.2.2. represents a departure from SARS's processes; or
- 8.5.2.3. materially increases or is likely to materially increase the workload of SARS Personnel or SARS systems or SARS's costs.

The implementation of every temporary Workaround or permanent solution will be subject to the Operational Change Management Procedure. Without limiting the generality of the foregoing, the Service Provider will identify and describe all other temporary Workarounds on a report submitted by the Service Provider on the next Business Day after the Workaround was implemented.

8.6. Completion and Closure of Incidents

- 8.6.1. An Incident will not be Resolved until all Changes, the date and time of Resolution, the final classification and priority of the Incident, the Services/functions that were affected, any Workarounds have been captured on the SARS Incident management system.
- 8.6.2. When an Incident has been Resolved, the Service Provider will record the Incident as completed and communicate this fact to SARS.
- 8.6.3. The Service Provider will participate in Incident *post mortem* and improvement activities to prevent the re-occurrence of the Incident and to improve the Incident Management Procedures.

8.7. Incident Management Services Outputs

The outputs of Incident Management Services include:

- 8.7.1. Incident Management Procedures;
- 8.7.2. up-to-date records in the SARS's Incident tracking system (updated with information about each Incident relating to status, solutions, and Workarounds);
- 8.7.3. Change request records implemented to Resolve Incidents; and
- 8.7.4. management information relating to Incident Management Services as requested by SARS from time to time (e.g. status, updates, efficiency and effectiveness, other management or performance metrics).

9. PROBLEM MANAGEMENT SERVICES

The Service Provider will perform Problem management including the services described in this **Clause 9** (collectively, the "**Problem Management Services**") and will do so in accordance with the processes and procedures set forth or referred to herein and in a manner that interfaces seamlessly and non-disruptively with the applicable SARS PPS&G. In performing the Problem Management Services, the Service Provider will minimise the adverse effect of Problems on SARS's operations, the Services and proactively minimise the Impact and prevent the occurrence of Problems.

9.1. Problem Management Procedures

9.1.1. Development

During Transition the Service Provider will prepare for SARS's review and approval detailed Problem management processes and procedures for the Problem Management Services ("**Problem Management Procedures**"). Such Service Provider Problem management processes and procedures will interface seamlessly with the applicable SARS PPS&G and the other SARS processes. The Problem Management Procedures will be based on the processes and procedures set forth in this **Clause 9** and, to the extent consistent with the processes and procedures set forth in this **Clause 9**, the Service Provider's standard processes and procedures that it uses to perform Problem Management Services for other customers. The Service Provider will incorporate SARS's comments on the Problem Management Procedures and include the revised Problem Management Procedures in the Process and Procedures Library promptly, but in no event later than 30 (thirty) days after SARS has provided such comments.

The Service Provider will follow the Problem Management Procedures from the date that they have been approved by SARS. Before such date, the Services Provider will follow the processes and procedures regarding Problem management that are set forth in this **Clause 9** supplemented with the Service Provider's own standard processes and procedures (to the extent they are not inconsistent with this **Clause 9**).

9.1.2. Updates

The Service Provider will promptly update the Problem Management Procedures to reflect any changes in the applicable SARS PPS&G. The Service Provider will submit the revised Problem Management Procedures to SARS for its review and approval in the same manner as set forth in **Clause 9.1.1**.

9.2. Proactive Problem Management

The Service Provider will use Commercially Reasonable Efforts to proactively prevent Problems, including by means of performing trend analysis and identifying potential Incidents before they occur. The Service Provider will use Commercially Reasonable Efforts to prevent failures from spreading. The Service Provider will identify and investigate weaknesses of infrastructure components.

9.3. Problem Control

The Service Provider will be responsible for identifying Problems and investigating their root cause in accordance with the terms of this **Clause 9.3** ("**Problem Control**"). When the Problem investigation has identified the root cause of a Problem and a resolution to the Problem, the Problem will be classified as a Known Error. In performing Problem Control, Service Provider will perform the following services:

9.3.1. Problem Identification and Recording

The Service Provider will associate Incidents caused by one or more Problem(s) with such Problem(s), including Incidents that recur or are expected to recur, as well as any single significant Incident.

9.3.2. Problem Classification

The Service Provider will analyse Problems and classify them in accordance with SARS's then-current Impact and Urgency classifications. The SARS Impact and Urgency classifications as of the Effective Date are set forth in **Appendix B-8 (SARS Red Alert Process)**. The analysis will include an Impact analysis assessing the seriousness of the Problem and its effect on the Services. The

Service Provider will confer with SARS in formulating these classifications and categorizations. If there is a disagreement as to the priority level that should be assigned to a Problem, the priority level will be that prescribed by SARS in its reasonable judgment. Factors to be considered in determining the classification of a Problem will include:

- 9.3.2.1. category: identifying the relevant domain, for example hardware or software;
- 9.3.2.2. Impact on the business;
- 9.3.2.3. Urgency: extent to which deferral of the solution is acceptable;
- 9.3.2.4. priority; and
- 9.3.2.5. status: e.g. Problem, Known Error, Resolved, closed pending a post-implementation review.

These classifications and categorisations will be updated to reflect any changes during the Resolution of the Problem. For example, new Incidents may increase the Impact and Urgency, and accordingly the priority of a Problem.

9.3.3. Problem Investigation and Resolution

- 9.3.3.1. The Service Provider will investigate and diagnose each Problem to achieve a Resolution.
- 9.3.3.2. The Service Provider will perform the Error Control activities described below in **Clause 9.4**.
- 9.3.3.3. If a temporary fix requires modification of infrastructure, the Service Provider will implement it in accordance with the Operational Change Management Procedures.
- 9.3.3.4. The Service Provider will comply with and interface with SARS's Problem management processes and procedures.
- 9.3.3.5. The Service Provider will correctly identify Problems and investigate and monitor the Problem(s) to Resolution.
- 9.3.3.6. The Service Provider will conduct a formal root cause analysis to identify the origin of each Problem that : (i) gave rise to a Service Level Failure; (ii) result from a Severity One Incident; or (iii) repeat Incident.
- 9.3.3.7. Once the Service Provider has identified the root cause of a Problem and a method of resolving it, such Problem will be classified as a Known Error. The Service Provider will record all Known Errors against the current and potentially affected Services in addition to the component at fault and any Workarounds. Known Errors will not be closed until they have been Resolved.
- 9.3.3.8. The Service Provider will use Commercially Reasonable Efforts to eliminate the root cause of each of the types of Problems specified in **Clause 9.3.3** and prevent recurrence of such Problem, including by means of performing a detailed review of each such Problem.
- 9.3.3.9. The Service Provider will facilitate Problem management investigations and reviews of Problems, including identifying Problem trends.
- 9.3.3.10. The Service Provider will participate in cross-functional Problem

determination activities, including facilitating Problem management review and Problem management investigation meetings as reasonably required by SARS.

- 9.3.3.11. The Service Provider will adhere to the mutually agreed Problem escalation path for each Problem severity group.
- 9.3.3.12. The Service Provider will take 'ownership' for all Problems assigned to the Service Provider by SARS, including using Commercially Reasonable Efforts to manage Third Party Suppliers where necessary in order to determine the root cause of and/or Resolve the Problem.
- 9.3.3.13. The Service Provider will report to SARS during the normal reporting cycle the results of any root causes analyses conducted with respect to Problems that were not the result of a Severity One Incident(s) or did not cause a Service Level Failure.
- 9.3.3.14. The Service Provider will report to SARS daily the Service Provider's progress in conducting root causes analyses on each Problem that gave rise to a Service Level Failure or was the result of a Severity One Incident.
- 9.3.3.15. The Service Provider will conduct all root cause analyses in accordance with the applicable procedures set forth in the Process and Procedures Library.
- 9.3.3.16. With respect to each Problem that:
 - 9.3.3.16.1. gave rise to a Service Level Failure; or
 - 9.3.3.16.2. results from a Severity One Incident,
 The Service Provider will provide SARS with: (1) a plan for correcting such failure and preventing its recurrence; (2) reasonable evidence that the Problem has been corrected and will not recur, and (3) a detailed explanation of the Service Provider's contingency plan.

9.4. **Error Control**

The Service Provider will monitor and manage Known Errors until they are successfully resolved ("**Error Control**"). The Service Provider will perform Error Control in accordance with the Operational Change Management Procedures and evaluate the changes in a post-implementation review, as described in **Clause 9.5**. The Service Provider will monitor and report on all Known Errors from their identification through to their Resolution.

9.5. **Problem Closure and Post-Implementation Review**

When they are resolved, the Service Provider will record Problems and Known Errors as resolved. Only SARS will close Problems. Once implemented, all Changes to resolve Problems and Known Errors will be reviewed in a post-implementation review. SARS will not close the Problem until: (i) the post implementation review ("**PIR**") has been completed; (ii) any other steps mandated under the relevant SARS PPS&G have been completed; and (iii) the Parties agree (acting reasonably) that the Change(s) was (were) implemented in such a fashion so as to Resolve the Problem or Known Error. In such case, all related Problem and Known Error records, together with their associated Incident records, will be closed by SARS. For Problems designated as major, in SARS's reasonable judgment, a separate major Problem review will promptly be undertaken jointly by the Service Provider and SARS to identify:

- 9.5.1. what was done well;
- 9.5.2. what was done badly;
- 9.5.3. how it can be done better in future; and
- 9.5.4. further steps the Service Provider should take to prevent a recurrence.

9.6. **Communications**

The Service Provider will keep applicable SARS contacts apprised of the status of Problem management activities in accordance with the Problem Management Procedure notification and escalation processes. The Service Provider's obligations will include:

- 9.6.1. alerting SARS of any Problems in accordance with the Service Levels; and
- 9.6.2. at SARS's request, providing a preliminary report of the Problem on an expedited basis to SARS.

9.7. **Problem Management Service Outputs**

The outputs of Problem Management Services include:

- 9.7.1. Problem Management Procedures;
- 9.7.2. a Known Error database, which is a subset of the Problem management system;
- 9.7.3. up-to-date Problem records (updated with information about status, Known Errors, solutions and/or Workarounds);
- 9.7.4. closed Problem records (once the root cause has been eliminated and the Problem Resolved);
- 9.7.5. matching of Incidents to Problems and Known Errors;
- 9.7.6. Problem reports indicating history and status of Problems, categorised by type, time period and status as reasonably requested by SARS; and
- 9.7.7. management information relating to Problem Management Services as requested by SARS from time to time (e.g. status, updates, efficiency and effectiveness, other management or performance metrics).

10. **OPERATIONAL CHANGE MANAGEMENT SERVICES**

10.1. **Introduction**

10.1.1. The Service Provider will perform operational Change management, including the Services described in this **Clause 10 ("Operational Change Management Services")** and will do so in accordance with the processes and procedures set forth or referred to herein and in a manner that:

- 10.1.1.1. interfaces seamlessly and non-disruptively with the SARS PPS&G relating to operational Change management and the other Service Management processes;
- 10.1.1.2. facilitates the efficient and prompt handling of any Changes made by the Service Provider; and
- 10.1.1.3. facilitates making Changes quickly and with the least possible impact on the operations of SARS or on the affected users.

10.1.2. A "**Change**" is any modification, alteration, or other change made by the Service Provider to:

10.1.2.1. the Services; or

10.1.2.2. the ICT Facilities or the ICT Facilities Infrastructure.

Examples of Changes include changes to equipment, systems or processes, configuration changes, changes in technology, changes to environmental parameters and changes to policies or procedures.

10.1.3. No Change may commence without the prior approval of the SARS Change Advisory Board ("**SARS CAB**"). SARS may withhold approval for any Change, in its sole discretion.

10.2. **Operational Change Management Procedures**

10.2.1. As part of the Transition Deliverables as set out in **Clause 1.4 of Appendix B-1 (Transition Services)**, the Service Provider will prepare for SARS's review and approval detailed operational Change management processes and procedures for the Operational Change Management Services. Such processes and procedures will interface seamlessly with the applicable SARS PPS&G and the other Service Management Processes. The Service Provider will incorporate SARS's comments on such processes and procedures and include such revised procedures in the Process and Procedures Library promptly but in no event later than 30 (thirty) days after SARS has provided such comments ("**Operational Change Management Procedures**"). The Operational Change Management Procedures will be based on the processes and procedures set forth in this **Clause 10.2** and, to the extent consistent with the processes and procedures set forth in this **Clause 10.2**, Service Provider's standard processes and procedures that it uses to perform operational change management services for other customers.

10.2.2. Service Provider will follow the Operational Change Management Procedures from the date that they have been approved by SARS. Before such date, the Service Provider will follow the processes and procedures that are set forth in this **Clause 10.2** supplemented with Service Provider's own standard processes and procedures (to the extent they are not inconsistent with this **Clause 10.2**).

10.2.3. Service Provider will promptly update the Operational Change Management Procedures to reflect any Changes in the applicable SARS PPS&G. The Service Provider will submit the revised Operational Change Management Procedures to SARS for its review and approval in the same manner as set forth in **Clause 10.2** above.

10.2.4. The Operational Change Management Procedures must meet the following requirements:

10.2.4.1. the Operational Change Management Procedures will include a set of sub-processes designed to: (i) manage and control the response to planned Changes; (ii) control creation and execution of plans for approved projects, including reporting on progress and issues; (iii) ensure that ownership responsibilities for resources will be properly exercised; and (iv) assess the potential operational impact of Changes on SARS;

10.2.4.2. the Operational Change Management Procedures will embody the principle that Changes may only be commenced after approval by the SARS CAB.

- 10.2.4.3. the Operational Change Management Procedures will include procedures for co-ordinating Change activity with SARS's operational change procedures as set out in the applicable SARS PPS&G consistent with **Clause 10.1.2**. As part of such co-ordination, the Service Provider will utilise the SARS Operational Change Management Procedures for each Change; provide any required information, notices or updates; provide or participate in (as requested by SARS) assessments, evaluations or analyses of the proposed Change, including its Impact and Urgency; seek SARS approvals and provide for SARS reviews when mandated (for example, approvals will be required to proceed with planning a Change and subsequently to implement such Change); promptly notify SARS of status updates and any problems in implementation; and participate in post-implementation reviews and/or verifications. In doing so, the Service Provider will adhere to the relevant timescales specified in the applicable SARS PPS&G or otherwise specified by SARS;
- 10.2.4.4. the Operational Change Management Procedures will facilitate a high degree of co-ordination and communication across SARS business units and agents and facilitate measures to minimise the business Impact and risk to SARS of any Change activity;
- 10.2.4.5. the Operational Change Management Procedures will provide processes for managing conflicts of timing, resources and priorities;
- 10.2.4.6. the Operational Change Management Procedures will enable the clear assignment of responsibility for individual Changes to be established and maintained throughout the Change process, with regular and applicable progress updates communicated back to those affected; and
- 10.2.4.7. the Operational Change Management Procedures will include an emergency change process for any Changes that must be implemented in less than the minimum scheduled change period provided for by the applicable SARS PPS&G, including for a Change that is judged by SARS as to have a material operational impact and is classified by SARS as 'urgent' and a Change needed in response to an Incident.

10.3. Processing Changes

10.3.1. Recording

The Service Provider will plan and submit all requests for Change ("**Requests for Change**" or "**RFC**") to SARS. When an RFC is submitted in order to diagnose or Resolve an Incident, Problem or Known Error, the Service Provider will also indicate the related Incident, Problem or Known Error.

10.3.2. Acceptance

SARS shall consider such RFC and shall inform the Service Provider accordingly. Should SARS accept the RFC, such Change shall be dealt with in accordance with this Agreement.

10.3.3. Approval

All Changes will be implemented only after the Service Provider has obtained the required approvals in accordance with the applicable SARS PPS&G. Where the

Service Provider has obtained the required approvals for the use of a Standard Change, the Service Provider will not be required to obtain SARS's approval for further implementations of such Standard Change as long as there are no alterations to the design or the use of the Standard Change has been withdrawn. The other Operational Change Management Procedures relating to implementing a Change will apply to each implementation of a Standard Change (e.g. co-ordination and requirements regarding scheduling implementation of the Change, any required testing, etc.).

10.3.4. Executing Changes

10.3.4.1. Plan and Build Phase

10.3.4.1.1. Where applicable, the Service Provider will plan and execute a specific building phase for Changes.

10.3.4.1.2. The Service Provider will prepare a sufficiently detailed back-out plan (i.e., a plan describing the process to be followed to reverse a Change) ("**Back-out Plan**") before implementing any Change that could have an adverse impact (as determined by SARS) on SARS, the Services, taxpayers or SARS constituents if the Change is not successful or cannot be completed on time. Such Back-Out Plan will include:

- fall-back procedures if it is necessary to reverse a Change due to a failure;
- modification and escalation lists;
- Workaround plans; and
- risk assessments.

10.3.4.1.3. The Service Provider will prepare a sufficiently detailed communication plan before implementing any Change that impacts SARS business.

10.3.4.1.4. The Service Provider will prepare a sufficiently detailed implementation plan for all Changes.

10.3.4.2. Testing

Unless SARS agrees otherwise:

10.3.4.2.1. before implementing any Changes (or as otherwise mutually agreed in a specific instance), the Service Provider will test the back-out procedure (as reflected in the Back-out Plan), Change implementation, and envisaged result of the Change. In conducting such testing, the Service Provider will give due consideration to any change criteria defined by the SARS CAB.

10.3.4.2.2. with respect to a particular Change, the Service Provider will develop for SARS's approval a test plan and acceptance criteria for each Change. The Service Provider will proactively recommend objective test criteria for approval by SARS. The determination as to whether a test was successful will be made on the basis of whether the test results met the applicable acceptance criteria for the testing effort as set out in the relevant test plan.

The Service Provider will use Commercially Reasonable Efforts in fulfilling its testing obligations for Changes and will include performing testing on such components in as near real life conditions as is according to SARS's instructions.

10.3.4.3. Implementing

10.3.4.3.1. After completing the building and testing activities described in **Clauses 10.3.4.1** and **10.3.4.2** The Service Provider will implement the Change, after obtaining the necessary approvals to implement, in accordance with this **Clause 10.3.4.3** and conduct additional testing in order to verify that the implementation of the Change was successful.

10.3.4.3.2. The Service Provider will implement all Changes authorised by SARS. The Service Provider's obligations for implementing Changes, including Changes that are incorporated into Projects that have been approved for implementation, will include:

- project managing the implementation of the Change;
- keeping SARS informed (through the person nominated by SARS to co-ordinate the change) on an ongoing basis as to the status of the implementation of the Change, including providing status reports; and
- mutually agreeing the applicable tests with SARS prior to commencing with the implementation of a Change.

10.3.5. Evaluation

10.3.5.1. The Service Provider will evaluate all Changes after they have been implemented and apprise the person nominated by SARS to co-ordinate the change of the results of its evaluation.

10.3.5.2. The person nominated by SARS to co-ordinate the change will decide whether any follow-up is needed, based on considerations such as whether the Change achieved the expected objective, whether users are satisfied with the result, and whether there were any side effects.

10.3.5.3. Upon completing the RFC SARS will verify that the Change was completed successfully and thereafter the RFC will be marked as completed.

10.3.5.4. If the Parties do not agree that the Change was successful, the Service Provider will restart the Operational Change Management Procedure where it went wrong, using an approach that: (i) is modified to address the failure(s); and (ii) is approved by SARS before the Service Provider may recommence performing the Change.

10.3.6. Implementing Urgent Changes

10.3.6.1. The Service Provider will implement urgent Changes in accordance with SARS's PPS&G addressing emergency or urgent Change procedures. Where a diversion of resources of the Service Provider would allow an urgent Change to be implemented more quickly, the Service Provider will apprise SARS of that option, including the consequences to the Services that the redeployed resources would have performed. If SARS in its sole discretion authorises the

redeployment, the Service Provider will be excused for failing to perform Services in a timely fashion that the redeployed resources would have performed, but solely to the extent of the impact advised by the Service Provider in advance, and solely to the extent the Service Provider could not reasonably have performed the affected Services nonetheless using Commercially Reasonable Efforts.

- 10.3.6.2. Where possible, SARS will organise an emergency meeting of those SARS CAB members whose participation is needed to evaluate, authorise, and provide the resources for an urgent Change.
- 10.3.6.3. Where time does not permit normal tests to be performed before an urgent Change is made as agreed by SARS, as soon as possible thereafter the Service Provider will complete all the required stages of the normal testing process.

10.3.7. Procedures for Submitting Changes

The Service Provider will submit all Changes in accordance with the requirements set out in the SARS PPS&G.

10.3.8. Other Operational Change Management Responsibilities

- 10.3.8.1. The Service Provider will attend SARS's regularly scheduled and ad hoc meetings regarding operational Change management in respect of the Services when called upon to do so by SARS.
- 10.3.8.2. The Service Provider's responsibilities with respect to operational Change management also include the following:
 - 10.3.8.2.1. implementing Changes in a manner that ensures continuity; and
 - 10.3.8.2.2. collecting data on each Change attempted, including the cause of any resulting Incidents or Problems, measures taken to prevent reoccurrence, and impact on end users.

11. PROJECTS AND PROJECT MANAGEMENT SERVICES

The Service Provider will perform Projects and provide project management including the Services described in this **Clause 11** (collectively, "**Projects**" and "**Project Management Services**") and will do so in accordance with the processes and procedures set forth or referred to herein and in a manner that interfaces seamlessly and non-disruptively with SARS's processes and procedures for project management.

11.1. Best Practices

In performing Projects and providing Project Management Services the Service Provider will apply best practices including with respect to its planning, execution and management of Projects.

11.2. Projects

The Service Provider's obligations in relation to Projects will include:

- 11.2.1. utilising project management methodologies, knowledge, skills, tools, and techniques consistent with leading internationally recognised and accepted project

management practices as updated from time to time. The Service Provider will be responsible for understanding SARS's requirements, defining the scope of and planning the Project and managing execution to successful completion;

- 11.2.2. maintaining applicable levels of industry knowledge to provide support of and recommendations for Projects;
- 11.2.3. managing knowledge transfer and continuity by ensuring that a significant portion of each Project team remains working on the Project from inception until completion of that Project;
- 11.2.4. unless and to the extent SARS agrees otherwise, developing functional and technical requirements and Project plans, including cost, ongoing maintenance support requirements, risk, alternatives and recommendations with specific references to any variances to SARS's Project plans and requirements;
- 11.2.5. using the Service Provider's methodology for the aspects of Projects being worked upon by the Service Provider and working with SARS to help ensure that the Service Provider's methodology aligns with SARS PPS&G as seamlessly and non-disruptively as possible;
- 11.2.6. providing a Service Provider project manager for each Project. The Service Provider project managers will be the Service Provider Personnel for any significant Projects; and
- 11.2.7. managing all Subcontractors' and Third Party Suppliers' participation in a Project.

11.3. **Project Management Services**

The Service Provider's obligations relating to Project Management Services include:

- 11.3.1. preparing proposals and plans for Projects for approval by SARS. Except to the extent otherwise agreed by SARS, such proposals and plans will be consistent with SARS's approved processes and templates and will include:
 - 11.3.1.1. the details of the initiator of the proposed Project or project;
 - 11.3.1.2. the project charter/project definition report for the Project or project;
 - 11.3.1.3. the Project Plan setting forth the Project's tasks, schedule and Deliverables;
 - 11.3.1.4. the business requirements for the work and the Deliverable(s) to be provided;
 - 11.3.1.5. the functional and technical approach, solution and acceptance criteria;
 - 11.3.1.6. the quantitative and qualitative benefits anticipated to be received by SARS as a result of performing the Project;
 - 11.3.1.7. the total number and type(s) of technicians required for the Project;
 - 11.3.1.8. a description of any hardware, software, or other materials or resources required for the Project and ongoing support;
 - 11.3.1.9. the Performance Standards to which the Project shall comply;
 - 11.3.1.10. the total projected elapsed time to complete the Project and any time constraints or mutually agreed material assumptions;
 - 11.3.1.11. the total cost of the Project (where applicable, including fees paid to

- the Service Provider as well as any costs or expenses to be borne or otherwise retained by SARS), the timing of any such payment(s) and whether the cost is included in the Charges and demonstrating compliance with the agreed rates contained in **Appendix D-3 (Personnel and Material Rates)**;
- 11.3.1.12. the ongoing annual cost of the Project post-implementation (where applicable, including fees paid to the Service Provider as well as any costs or expenses to be borne or otherwise retained by SARS), the timing of any such payment(s) and whether the cost is included in the Charges and demonstrating compliance with the agreed rates contained in **Appendix D-3 (Personnel and Material Rates)**;
 - 11.3.1.13. a rating of the relative risk of the Project and possible alternatives to the Project;
 - 11.3.1.14. any other material assumptions related to the Project, including any support required from SARS or its or the Service Provider's Third Party Suppliers in relation to the Services; and
 - 11.3.1.15. any other provisions or information necessary to describe the work needed to complete the Project;
- 11.3.2. defining scope, Deliverables, milestones, project schedules and anticipated risks for all Projects;
 - 11.3.3. defining and monitoring the support resources required for the Projects;
 - 11.3.4. testing and, as applicable, piloting, integrating and installing technology components to verify that the Project does not cause an unexpected adverse impact to the existing Services or the SARS IT environment;
 - 11.3.5. managing and co-ordinating the Project with SARS including the applicable SARS project managers and the SARS lead project managers as required, from start until successful completion including liaising as necessary with Third Party Suppliers and acting as a SPOC for SARS;
 - 11.3.6. managing the Project communication with SARS including the applicable SARS project managers and the SARS lead project managers as required, from start until successful completion including liaising as necessary with Third Party Suppliers and acting as a SPOC for SARS;
 - 11.3.7. ensuring immediate notification to the requestor of the Project shortly after sign-off approval is obtained;
 - 11.3.8. meeting with SARS as necessary or reasonably requested by SARS to manage and deliver the Project and Deliverables effectively, including supporting and participating in:
 - 11.3.8.1. all Project management committees;
 - 11.3.8.2. related SARS business planning meetings in support of the Projects or SARS project managers, as required to review operations and business plans and make recommendations to support the Project;
 - 11.3.9. co-ordinating changes required by a Project in accordance with the Operational Change Management Procedure;
 - 11.3.10. supplying data as reasonably required by SARS to assist SARS to obtain the financial authorisation for the Project, including assisting SARS to produce the initial and full business cases for the Project as well as progress reports against

- budgets;
- 11.3.11. tracking, controlling and reporting Project expenditure on an ongoing basis;
 - 11.3.12. ensuring that Change are submitted to SARS in a timely manner;
 - 11.3.13. assisting with SARS's preparations of rolling Project portfolios, providing budget estimates for work to be performed by the Service Provider during the following 12 (twelve) months;
 - 11.3.14. measuring, tracking, and evaluating progress against the Project Plans;
 - 11.3.15. maintaining files of the Project plans and any associated documentation;
 - 11.3.16. addressing the Resolution of Project issues and escalating such issues promptly to the SARS project managers and, where applicable, the SARS lead project manager;
 - 11.3.17. planning, scheduling, conducting and participating in periodic Project planning;
 - 11.3.18. holding status meetings, as applicable, which include a review of the work products or other Deliverables being produced;
 - 11.3.19. co-ordinating and scheduling the attendance of Services personnel as applicable, at such periodic planning, review and status meetings;
 - 11.3.20. reviewing and confirming that the Deliverables meet the completion criteria set out in the applicable Project Plan;
 - 11.3.21. managing the quality of the Project Deliverables;
 - 11.3.22. managing the transition from Project to process;
 - 11.3.23. conducting the Project post-implementation review sessions to identify and minimise the recurrence of any problems or issues; and
 - 11.3.24. preparing the Project history conclusions ('lessons learned') for use on future Projects by the Service Provider or SARS.

11.4. **Project Requirements**

- 11.4.1. The Service Provider is not authorised to commence any Project work without SARS's purchase order. With SARS's approval, for Projects only, the Service Provider will Charge SARS for Project labour at a reasonable fixed price proposed by the Service Provider and agreed by SARS on a project by project basis, or if SARS does not agree to such fixed price proposed by the Service Provider, on a Time and Materials Basis no greater than the rates set out in **Appendix D-3 (Personnel and Material Rates)**.
- 11.4.2. SARS may cancel, postpone, or change a Project that has not commenced upon notice to the Service Provider. SARS may terminate a Project in advance of its completion upon 14 (fourteen) days prior written notice to the Service Provider. The Service Provider will be paid for work performed, and other reasonable expenses (such as hardware and payments to Subcontractors) on a Project that is terminated, up to (and including) the effective date of such termination (unless payment for a longer period is agreed in advance by SARS, such agreement to be in SARS's sole discretion; provided that the Service Provider will use Commercially Reasonable Efforts: (i) to redeploy its personnel performing such work as soon as possible upon receipt of notice of termination; (ii) to negotiate into subcontracts provisions permitting the Service Provider to terminate subcontracts for convenience without payment upon termination of the Project or project by SARS;

and (iii) otherwise to mitigate any such expenses (such as by re-using or reselling hardware purchased for the terminated Project or project). Changes to a Project (e.g. schedule, tasks) will be as reasonably required by SARS following the establishment of the Project, and the Service Provider will use Commercially Reasonable Efforts to accommodate such Changes as soon as practicable.

12. OTHER SERVICE MANAGEMENT SERVICES AND TERMS

12.1. Consulting Services

The Service Provider will provide to SARS consulting services as reasonably requested by SARS in accordance with this **Clause 12.1 ("Consulting Services")**. Unless otherwise expressly provided, all Consulting Services will be provided by the Service Provider at no additional charge. Where this Agreement expressly authorises the Service Provider to Charge separately for Consulting Services, any such Consulting Services will be provided on a Time and Materials Basis or, if the Parties agree, on a fixed price basis and a Project. Examples of Consulting Services that SARS may request the Service Provider to perform include:

12.1.1. Future Technology Delivery

The Service Provider will proactively identify strategies and approaches for future technology delivery within SARS that may provide SARS with efficiency improvement, service improvement or cost reduction opportunities. The Service Provider will assist SARS in setting SARS's technology direction and strategy.

12.1.2. Management of Technology Offerings

The Service Provider will support SARS in the management and representation of technology product and service offerings to its internal clients;

12.1.3. Identification of Product and Enhancement Opportunities

Without limiting the generality of the Service Provider's obligations to provide ongoing innovation, the Service Provider will identify product and enhancement opportunities for improved performance, and notify SARS of such opportunities; and

12.1.4. Recommending Improvements

Without limiting the Service Provider's backup and restore obligations, the Service Provider will recommend improvements in procedures and tools, including implementing redundancy measures where required.

APPENDIX B-1: TRANSITION SERVICES

1. TRANSITION: OVERVIEW

1.1. Duration

Transition will commence upon the Effective Date and conclude within 90 (ninety) days of the Effective Date or such shorter period as the Parties may agree in the Transition Plan.

1.2. The Service Provider Responsibilities

1.2.1. The Service Provider will:

1.2.1.1. perform the services described in this **Appendix B-1 (Transition Services)** and the Transition Plan (described in **Clause 1.3** below) in accordance with the timelines set out in the Transition Plan, including delivering the Transition Deliverables in accordance with **Clause 1.4**; and

1.2.1.2. take any other steps and perform any other services that are necessary in order for the Service Provider to be ready to commence performing the Services, in accordance with the Performance Standards, from the Commencement Date,

(hereinafter collectively referred to as the “**Transition Services**”).

1.2.2. The Service Provider will perform the Transition Services in such a manner that:

1.2.2.1. performance of the Services is transferred to the Service Provider in a smooth and orderly manner, without disruption or deterioration to the Services and so that the Services meet SARS’s business requirements;

1.2.2.2. any unplanned disruption to the delivery of services to SARS associated with the Transition Services is minimised; and

1.2.2.3. to the extent the same is within the reasonable control of the Service Provider, all costs incurred by SARS in relation to the Transition Services are minimised.

1.2.3. Save for those transition activities expressly stated in the Agreement and/or the Transition Plan to be SARS’s responsibility, the Service Provider will be responsible for the successful completion of the Transition Services and overall transition of the Services in accordance with this Agreement.

1.3. Transition Plan

1.3.1. **Appendix B-2 (Transition Plan)** sets out the Transition Plan as of the Effective Date.

[Note to the Bidder: Draft of the Transition Plan, per Region, submitted as part of the Proposal will be finalised during contract negotiations and consolidated into one Transition Plan].

Within 10 (ten) Business Days following the Effective Date, the Service Provider

will develop and submit to SARS, for SARS's comment, review and approval, a granular, detailed plan, which will include a detailed description of each Transition Service (including tasks and sub-tasks ("**Transition Deliverables**") and respective start and end dates, including the Commencement Date ("**Transition Plan**"). The Transition Plan will be consistent with the terms of this Agreement and **Appendix B-2 (Transition Plan)**.

- 1.3.2. The Service Provider and SARS will each perform their respective tasks in accordance with the Transition Plan.
- 1.3.3. Subsequent to its review of the Transition Plan, and at any time during the period for which the Service Provider provides the Transition Services, SARS's will be entitled to direct the Service Provider to amend the Transition Plan. Any amendments to the Transition Plan will be subject to SARS's approval.
- 1.3.4. The Service Provider will continually update and develop the Transition Plan to address the impact of issues identified by either Party, provided, however, that all such updates will be subject to SARS's approval.

1.4. **Transition Deliverables**

Transition Deliverables include:

- 1.4.1. the attendance by, at a minimum, the Service Provider Service Delivery Manager and 5 (five) Service Provider Personnel, of:
 - 1.4.1.1. an induction course to SARS systems and processes;
 - 1.4.1.2. Remedy training; and
 - 1.4.1.3. a contract education session;
- 1.4.2. the development of all processes and procedures for the provision of the Services in accordance with this Agreement, which will include:
 - 1.4.2.1. a maintenance plan;
 - 1.4.2.2. other administrative processes in accordance with **Schedule E (Governance)**;
 - 1.4.2.3. Asset Management processes and procedures, in accordance with **Clause 7** of this **Schedule B (SOW)**; and
 - 1.4.2.4. Incident Management Procedures, in accordance with **Clause 8** of this **Schedule B (SOW)**;
 - 1.4.2.5. Problem Management Procedures, in accordance with **Clause 9** of this **Schedule B (SOW)**; and
 - 1.4.2.6. Operational Change Management Procedures, in accordance with **Clause 10.2.1** of this **Schedule B (SOW)**; and
- 1.4.3. within the first month of the Effective Date, accompany SARS on visits to at most 3 (three) Supported Sites per Region to facilitate handover of the Services; and
- 1.4.4. the verification of the ICT Facilities Infrastructure as listed in **Appendix B-4 (Equipment List)**, to enable invoicing from the Commencement Date in accordance with **Appendix B-3 (Site List)** and **Appendix B-4 (Equipment List)**.

1.5. **Additional Services during Transition**

The Service Provider will during Transition, at SARS's direction, provide Maintenance as set

out in **Clause 2 of Schedule B (SOW)**; and Break-fix in accordance with **Clause 3 of Schedule B (SOW)**.

1.6. **Acceptance of Transition Deliverables**

SARS will accept a Transition Deliverable, or reject it, within 5 (five) Business Days beginning either on the date the Service Provider notifies SARS that it is of the view that the Transition Deliverable is ready for acceptance or the date set forth in the Transition Plan. Transition Deliverables will be reasonably acceptable to SARS. The Commencement Date will take effect on the Business Day following the final acceptance of all Transition Services by SARS.

1.7. **Failure to achieve Acceptance**

1.7.1. Should the Service Provider, within 90 (ninety) days of the Effective Date, be unable to achieve final acceptance of the Transition Deliverables, as set out above, or otherwise be unable to commence the provision of the Services, SARS will, in its sole discretion: (i) have the right to terminate all or part of the Services; (ii) to terminate the Agreement; or (iii) view such failure as a Service Level Failure and issue the Service Level Credits as detailed in **Schedule C (Service Levels)**.

1.7.2. Any termination pursuant to this **Clause 1.7.1** will not constitute a termination for convenience or cause, and SARS will have no liability to the Service Provider with respect to any such termination.

1.7.3. Notwithstanding SARS's election, upon the occurrence of **Clause 1.7.1** above, to allow the Service Provider to commence performing the Services on the Commencement Date, the Service Provider will not be relieved of its obligations under this Agreement. The Service Provider will at all times be responsible to SARS for fulfilment of all the Service Provider's obligations under this Agreement, including the provision of the Services in accordance with the Performance Standards.

2. **TRANSITION SERVICES: MANAGEMENT**

2.1. **Transition Managers and PMO**

2.1.1. Both Parties will use Commercially Reasonable Efforts to ensure that any issues or disputes relating to the Transition Services are resolved promptly by each Party's respective Transition Managers. Any disputes that cannot be resolved will be escalated in accordance with the Dispute Resolution Procedure detailed in **Clause 22** of the **Main Agreement**.

2.1.2. Within no later than 10 (ten) days after the Effective Date and until completion of the Transition Services to the satisfaction of SARS, the Service Provider will establish and provide a transition project office (PMO) led by the Service Provider's Transition Manager, with a transition team sufficiently staffed and experienced to manage the Transition Services.

2.2. **Managing and Monitoring of Transition Services**

2.2.1. The Service Provider will be responsible for managing, monitoring and implementing the Transition Services including:

2.2.1.1. proactively identifying, monitoring and managing any significant risks

or issues in relation to the Transition Services, including:

- 2.2.1.1.1. developing a risk mitigation plan for risks identified;
 - 2.2.1.1.2. instituting formal risk mitigation strategies;
 - 2.2.1.1.3. taking appropriate preventive measures; and
 - 2.2.1.1.4. developing contingency plans for rapid recovery from actual or potential Incidents;
- 2.2.1.2. managing (including project managing), co-ordinating and planning all aspects of the Transition Services (whether performed by the Service Provider, SARS or any Third Party);
 - 2.2.1.3. monitoring progress of all Transition Services tasks and responsibilities (whether the responsibility of the Service Provider, SARS or any Third Party) against the Transition Plan and promptly escalating to SARS any failures (or potential failures) or slippages in performance of any tasks or responsibilities, including failures by SARS or Third Parties;
 - 2.2.1.4. resolving any incidents or problems arising with respect to the Transition Services;
 - 2.2.1.5. defining an escalation process to be used if there is a failure in any part of the Transition Services;
 - 2.2.1.6. establishing within 10 (ten) days of the Effective Date, the necessary communications and interfaces between the Service Provider, SARS and Third Parties performing services that will be replaced by the Services on the Commencement Date; and
 - 2.2.1.7. where workshops are required to facilitate the delivery of Transition Services, initiating, administering and leading the workshops (including agreeing with SARS on the timing, location and proposed agenda for such workshops as appropriate).
- 2.2.2. The Service Provider's management and implementation of Transition Services will be subject to SARS's approval.

2.3. Reports

For the duration of Transition, the Service Provider will provide SARS with a weekly detailed progress report that describes the following:

- 2.3.1. an executive level summary of the progress of the Transition Services to date, including an updated summary project plan and project highlights;
- 2.3.2. an up to date chart detailing the progress and status of all Transition Services activities;
- 2.3.3. details of all Transition Deliverables, including estimated time to completion, days overdue, required completion date, actual completion date, comments and an indicator of whether the Transition Deliverable is likely to be delivered on time;
- 2.3.4. a listing of all unresolved issues related to the execution of the Transition Plan, including those for which SARS has primary responsibility, along with due date, priority, an indication of the responsible Party and an assessment of the potential and actual business impact and the Transition Plan; and
- 2.3.5. any risks identified in accordance with **Clause 2.2.1.1** and the steps being taken to

mitigate such risks.

2.4. **Meetings**

The Transition Managers will meet on a weekly basis (or as otherwise required by SARS) during transition to review the status of the Transition Services and to ensure that the objectives of the Transition Services are being met.

APPENDIX B-2: TRANSITION PLAN

[Note to the Bidder: this Appendix B-2 (Transition Plan) will be completed as part of final contract negotiations and will be based on the draft of the Transition Plan submitted as part of the Proposal.]

APPENDIX B-5: DEPENDENCIES

[Note to the Bidder: SARS is seeking an end to end solution and disfavours solutions which shift responsibilities back to SARS.

With this in mind, please identify any dependencies on which the Charges or any of the Service Provider's responsibilities may depend.]

APPENDIX B-6: REPORTS

[Note to the Bidder:

This Appendix B-6 (Reports) will be completed as part of final contract negotiations. SARS's minimum requirements are stated below. The Bidder is encouraged to specify and propose additional reports which the Service Provider will supply to SARS. The additional reports which the Bidder proposes as part of its solution should be completely specified with sample output if possible, including the mode of delivery, frequency, detail of fields etc.

In addition the Bidder is encouraged to supply and to make available, as part of its solution the availability of and access to any online reporting portal that will be part of the Bidder's proposed solution. The Bidder should supply details of the reports/screens/custom enquiries that would be made available.

The Reports listed below represent SARS's minimum requirements.]

1. DAILY OPERATIONAL REPORTING

Daily Operational Reports must be submitted daily before 7h00 on each Business Day and must be submitted via email in a format prescribed by SARS.

- 1.1. Outstanding Incident and Problem Status;
- 1.2. Incident and Problem completed;
- 1.3. Maintenance completed;
- 1.4. root cause analysis report since the previous report (where applicable); and
- 1.5. Status of planned Changes.

2. MONTHLY PERFORMANCE REPORT

Monthly Performance Reports must be submitted on or before the 5th Business Day of every month and must be submitted via email in a format prescribed by SARS.

- 2.1. Exception reporting including discrepancies, Excused Performance requests, corrections, deviations from contractual obligations and the like;
- 2.2. recommendations;
- 2.3. trend analysis with 6 month history;
- 2.4. summary of root cause analysis over the reporting period;
- 2.5. financial reporting;

- 2.6. supply chain reporting (providers, costs per services/goods);
- 2.7. use of Parts: new, remanufactured or refurbished; and
- 2.8. summary of important factors affecting delivery.

3. ANNUAL REPORTING

Annual Reports must be submitted within 15 (fifteen) Business Days of each anniversary of the Effective Date and must be submitted via email in a format prescribed by SARS.

- 3.1. Subcontractor utilisation reporting;
- 3.2. summary of business value added;
- 3.3. cost savings report; and
- 3.4. aggregated summary of monthly Report.

APPENDIX B-7: ESCALATION PROCEDURES

[Note to the Bidder: this schedule will be completed as part of final contract negotiations.]

APPENDIX B-8: SARS RED ALERT PROCESS

[Note to the Bidder: this is a SARS confidential operational document. Certain portions not relevant to the Bidder preparing the Proposal have been deleted.]

**South African Revenue Service
Service Management - Resolution Management
Sub Division: Problem Management**

Procedure: Operational Crisis - Severity One Incident

Purpose of the Document : is to ensure that a standard process is followed for the management of an Operational Crisis - Severity One incident

1. DOCUMENT APPROVAL

We hereby certify that this document has been checked with the mutually agreed upon baseline requirements and that the content is accurate and adequate for the purpose intended.

Table 1: Document Approval

2. DOCUMENT CONFIGURATION DATA

Table 2: Configuration Index Record - History Changes

Table 3: Configuration Index Record - Storage Media

3. EXECUTIVE SUMMARY

- 3.1. Provide standard process for managing an operational crisis – Severity One Incident.

This procedure is also known in other SARS reference documents as the "**Red Alert**" process.

- 3.2. The SARS ITSM system will be used to log, track and manage Problems and Incidents until the affecting or potentially affecting Incident of the production or development environments is restored.

- 3.3. The criterion for handling the Incident as a Red Alert or Severity One Incident is included in this document.

4. RESPONSIBLE SECTION TO FACILITATE THIS PROCESS

Problem management.

5. PURPOSE

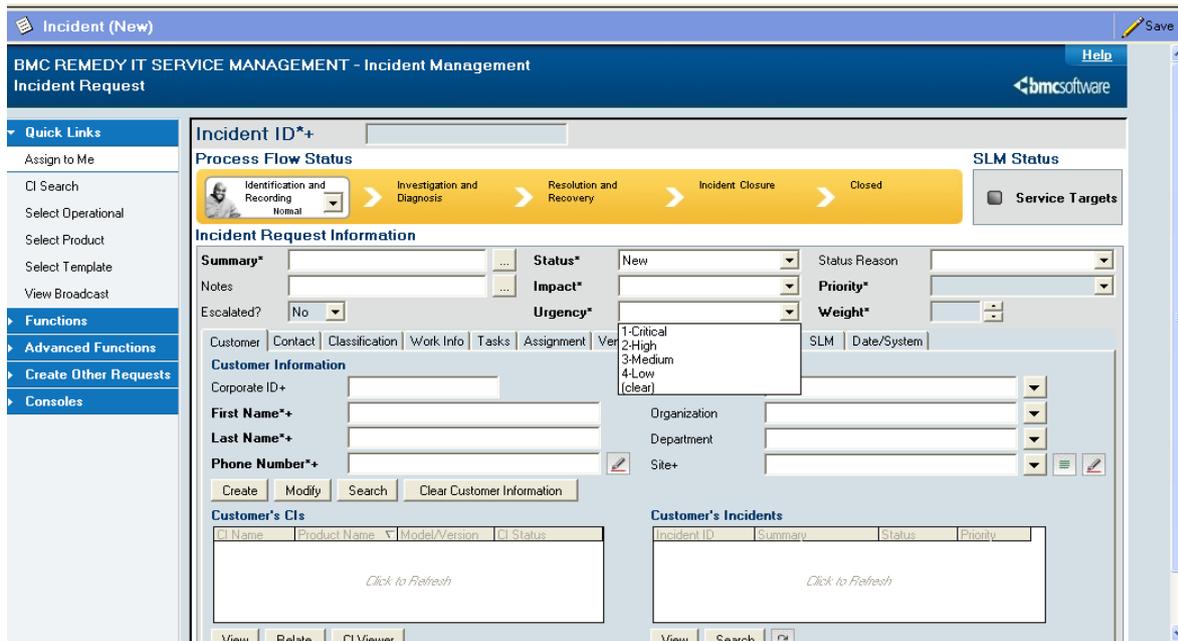
- 5.1. The ITIL Problem management process model aims to minimize the total impact of problems on the organization. Problem management plays an important role in the detection and repair of problems to prevent their re-occurrence.
- 5.2. A problem is defined in ITIL as a condition that has been defined, identified from one large Incident or many Incidents exhibiting common symptoms for which the cause is unknown.
- 5.3. The purpose of this document is to provide the standard operational process for the handling of a Severity One Incident and managing it until Services are restored.

6. TOOL

The tool that will be used for the capturing and updating of the Incident will be BMC REMEDY – ITSM v 7.0 ("**Remedy**"). SARS will provide web based access to Remedy as well as training on the use of Remedy and the Service Provider will provide the infrastructure to house this software.

7. CLASSIFYING THE INCIDENT AS A SEVERITY ONE

- 7.1. Severity will be determined as a product between the Impact and Urgency of the Incident. This will be dependent on the trends of the calls received by the Service Desk or as reported by the system owners and/or system support teams.
- 7.2. This approach takes into consideration Remedy's way of determining a Change's risk level. In Remedy, the risk level of a change is dependent on Impact and Urgency.



7.3. **Impact**

7.3.1. A list of values which depict the impact of the Incident on the SARS environment.

7.3.2. Remedy uses the following list to rate the impact of an Incident:

Impact	Description
Extensive / Widespread	The Change has an extensive effect/consequence on the organization's resources (Financial, HR, Technological, etc.), strategy and operational activities
Significant / Large	The Change has a significant effect/consequence on the organization's resources (Financial, HR, Technological, etc.), strategy and operational activities
Moderate / Limited	The Change has a moderate effect/consequence on the organization's resources (Financial, HR, Technological, etc.), strategy and operational activities
Minor / Localised	The Change has minor effect/consequence on the organization's resources (Financial, HR, Technological, etc.), strategy and operational activities

7.4. **Urgency**

The list of items indicates how urgent the Incident is. Based on their definitions, the urgency can be determined.

7.4.1. Impact on Business - Number of users (impacted during implementation or back-out):

7.4.1.1. > 150 users – critical (Whole country)

- 7.4.1.2. 50-150 users – high (TC site)
- 7.4.1.3. 10< 50 users – medium (all users affected at 1 site)
- 7.4.1.4. < 10 - low
- 7.4.2. Financial Implications - Financial implications (Indication, has to be established)
 - 7.4.2.1. >500 000.00 – critical
 - 7.4.2.2. > R150 000.00 high
 - 7.4.2.3. R50 000.00 - R150 000.00 – medium
 - 7.4.2.4. < R5 000.00 – low
- 7.4.3. Risk if Incident is not resolved
 - 7.4.3.1. Critical. Tax payers are prevented from being rendered a service
 - 7.4.3.2. High. Business will not be able to use system
 - 7.4.3.3. Medium. Part of the functionality will not be available
 - 7.4.3.4. Low. No implications for the business

7.5. Severity

Priority	Severity 1: Critical	Severity 2: High	Severity 3: Medium
Impact	Significant/ Widespread	Significant/Large	Moderate/Limited
Urgency	2 1's	1 1 and 1 2	1 2 and 1 3

8. CALLING A SEVERITY ONE

A Severity One/Red Alert will be called when the criteria of the above table reflects the stages of Severity 1, 2 and 3.

9. CONDUCTING A SEVERITY ONE

A breakdown of tasks and roles are detailed in Table 4: ATTACHMENT A.

Table 4: ATTACHMENT A

No	Event	Task	Accountable	Comments
1.	Log an Incident	Priority <Critical>	Agent	Immediate escalations are done via Tool to SIO management and Problem management.
2.	Incident routed to Support groups,	Call Crisis	SIO - Service management (Problem management)	Crisis Manager is identified by Service Management/Resolution Management and meeting attendees. The role of the Crisis Manager:

No	Event	Task	Accountable	Comments
	through the tool (automated routing)		by delegated authority)	Quality assure the correct Incident Management Procedures are followed Ensure that the right resources are working on the problem. Ensure the correct focus is applied to resolving the problem. Convening of stakeholders: Problem management arrange for the correct level of representation after consultation with crisis manager. Standard attendees: Service, Infrastructure and operational managers, business unit managers affected by change. IT Risk
3.	Crisis meeting	Conduct crisis meeting according to operational procedure consistent with problem management principles	Problem management	Problem description Impact Sequence of events Immediate actions to limit impact Concerns(during meeting) Communication requirements Escalation requirements Confirmation of severity Time of next meeting (1 – 2 hours from closing)
4.	Escalation	Inform all stakeholders impacted by the Incident	Crisis Manager with Problem management	UP: Crisis Manager to Senior Manager Senior Manager to CIO CIO to General Manager DOWN: Crisis Manager to business unit impacted Problem management to user community: Notification, voice scripts, Service level managers
5.	Ongoing crisis	Continue with resolution	Crisis Manager with Problem management	Ongoing crisis Resolution. Crisis Manager in conjunction with Resolution management schedule a follow-up or progress meeting. Crisis Manager to: get full briefing from support staff working on problem; undertake analysis of effects and ongoing risks; review approach to Problem Resolution; determine alternative courses of actions (if possible); develop contingency plans; ensure appropriate resources are allocated (including vendor support); determine client communications; Brief senior management.

No	Event	Task	Accountable	Comments
				Refer to Critical Systems, IT Contingency Planning. Emergency or temporary authorisation access required.
6.	Down Severity	Workaround implemented to restore service	Crisis Manager with Problem management	Service Restoration and review Notify as per escalation route Call down crisis
7.	Root Cause Analysis	Determine root cause to prevent repeat of Incident	Problem management	Problem management team to schedule a root cause analysis meeting to review the Problem and Problem Resolution process, i.e. lessons learnt; resolution scripts and Known Error and knowledge recording and publishing to the Service Desk and to all affected parties for future use.

APPENDIX B-9: MAINTENANCE CHECKLISTS

[Note to the Bidder: This Appendix B-9 (Maintenance Checklists) will populated with the checklists specified in the Business Requirements Specification, found in document SARS RFP 05/2020 ICT Facilities Services Business Requirement Specification and scheduling will be agreed during Transition.]

APPENDIX B-10: ACCREDITATION

Required Accreditations for the Service Provider Personnel Performing Service

[Note to the Bidder: This Appendix B-10 (Accreditation) will be completed during the contract negotiations.]

SCHEDULE C: SERVICE LEVELS

Appendices and Attachments

Appendix C-1	Service Levels and Credits
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1. INTRODUCTION

1.1. General

- 1.1.1. This **Schedule C (Service Levels)** and its appendices set out the Service Levels that will apply during the Term and the method for calculating any Service Level Credits that may apply if the Service Provider fails to perform the Services in accordance with such Service Levels.

Appendix C-1 (Service Levels and Credits) sets out the Service Levels, Critical Deliverables and Service Level Credits that apply.

- 1.1.2. The measurements and Service Levels set forth in this **Schedule C (Service Levels)** and its appendices will be used to measure the Service Provider's performance of the Services. During the Term, new Service Levels may be added by SARS or substituted by agreement between the Parties in order to achieve a fair, accurate, and consistent measurement of the Service Provider's performance of the Services. For example, such additions or substitutions may occur in conjunction with changes to the environment and the introduction of new hardware or Software or means of Service delivery; provided, however, that where such hardware or Software or means of Service delivery is a replacement or upgrade of existing technology, there will be a presumption of equivalent or improved performance.
- 1.1.3. The Service Provider will monitor its performance of the Services with respect to the Service Levels on a continuous basis.
- 1.1.4. SARS will measure and report on its performance of the Services with respect to the Service Levels as set out in this **Schedule C (Service Levels)**.
- 1.1.5. Any disputes regarding the accuracy of the Service Level reports produced by the Service Provider that cannot be resolved will be escalated in accordance with the dispute resolution procedure set forth in **Clause 22** of the **Main Agreement**.

1.2. Service Levels

- 1.2.1. The Service Provider will perform the Services set out in accordance with **Appendix C-1 (Service Levels and Credits)** with the Service Levels from the Commencement Date.
- 1.2.2. From the Commencement Date, the Service Provider will perform the services in accordance with this **Schedule C (Service Levels)**. Moreover, the Service Provider will perform the Services promptly, using reasonable skill and care and in a professional and workmanlike manner. The Service Provider will also perform the

Services in accordance with any other Performance Standards specified in the Agreement.

1.3. **Changes in Service Levels**

The Service Levels will change annually upon each anniversary of the Commencement Date. SARS and the Service Provider will review the Service Levels and will make adjustments to them as appropriate to reflect improved performance capabilities associated with advances in the technology and methods used to perform the Services. The Service Levels will be improved over time.

1.4. **Status of Service Level Credits**

The following will apply in respect of Service Level Credits:

- 1.4.1. Service Level Credits (“**Service Level Credits**”) are a price adjustment for the relevant period or order as detailed below to reflect the reduced level of Service performed by the Service Provider. The Service Level Credits are not an estimate of the loss or damage that may be suffered by SARS as a result of the Service Level Failure.
- 1.4.2. The payment of a Service Level Credit by Service Provider is without prejudice to, and will not limit, any right SARS may have to terminate this Agreement and/or seek damages or other remedies at law resulting from such Service Level Failure and any resulting termination.
- 1.4.3. Notwithstanding the provisions of **Clauses 1.4.1** and **1.4.2**, any claim for damages resulting from such Service Level Failure, in respect of which a Service Level Credit has already been paid, will be reduced by the amount paid to SARS in respect of that Service Level Credit.

2. **PERFORMANCE AGAINST SERVICE LEVELS**

2.1. **Measurement**

- 2.1.1. Except as otherwise set out in the description of the individual Service Level, the Service Provider’s performance with respect to the Service Levels will:
 - 2.1.1.1. commence being measured by the Service Provider on the Commencement Date; and
 - 2.1.1.2. be measured against the Service Provider’s Actual Performance of the Services against the Service Levels, not merely a sampling of its performance of such Services.
- 2.1.2. Except as otherwise specifically provided herein, SARS will measure and report to the Service Provider on performance as required to apply the Service Levels.
- 2.1.3. SARS will provide web based access to Remedy and the Service Provider will utilise Remedy to collect, calculate and report data as required to determine the Service Provider’s compliance with each of the Service Levels.
- 2.1.4. The Service Provider will be responsible for monitoring performance as required to manage the Service Levels.

2.2. **Time Periods**

Except as otherwise specified:

- 2.2.1. all references to hours will be to actual hours during a calendar day and not to Business Hours;
- 2.2.2. all references to time will be to local time at the site at which the Service is being received;
- 2.2.3. all references to days, months and quarters will be to calendar days, calendar months and calendar quarters, respectively; and
- 2.2.4. where a time period is specified by a number of Business Days it will exclude the first Business Day and include the last Business Day.

2.3. **Actions on Failures**

- 2.3.1. In respect of any Service Level Failure, the Service Provider will:
 - 2.3.1.1. investigate, assemble, and preserve pertinent information with respect to, and report on the causes of, the Incident, including performing an appropriate root cause analysis of each Incident which led to the Service Level Failure;
 - 2.3.1.2. propose and execute a written corrective action plan;
 - 2.3.1.3. advise SARS of the status of remedial efforts being undertaken with respect to such Incident. In this respect, the Service Provider will track the status of such remedial efforts and make available such progress information to SARS through an electronic on-line tool;
 - 2.3.1.4. minimise the impact of the Incident, correct it, and resume meeting the Service Level as soon as possible once it is corrected; and
 - 2.3.1.5. use Commercially Reasonable Efforts to employ preventive measures to ensure that the Incident does not recur, including allocating additional Service Provider Personnel and resources to the performance of the Services and proposing Changes.
- 2.3.2. The Service Provider will, on a monthly basis, perform trend analyses on the Service Level performance data. If the Service Provider or SARS identifies a trend in Service Level performance which reasonably indicates a meaningful risk of a future Service Level Failure, then the Service Provider will perform a root cause analysis with respect to the trend, report to SARS on its findings and use Commercially Reasonable Efforts (as approved by SARS) to prevent the Service Level Failure from actually occurring.

2.4. **Reporting**

SARS will issue a report ("**Service Level Report**") at the beginning of each month following the month for which the Service Levels are measured, containing the quantified performance of the Service Provider for that month with respect to all the Service Levels as defined in this **Schedule C (Service Levels)**.

3. **SERVICE LEVEL CREDITS**

3.1. **Entitlement to Service Level Credits**

- 3.1.1. Subject to **Clause 3.3**, for each Service Level Failure occurring during the Term,

the Charges for the month following the month in which the Service Level Failure occurred will be reduced by the Service Level Credits calculated in accordance with **Clause 3.2**.

- 3.1.2. In no event will the total, aggregate amount of Service Level Credits payable by the Service Provider for a calendar month exceed 15% (fifteen percent) of the total of all amounts invoiced to SARS by the Service Provider for such month ("**At Risk Amount**"), provided however that Pass Through Expenses invoiced in any particular month will not be taken into account in calculating such At Risk Amount.
- 3.1.3. If the Service Provider is able to show to SARS's reasonable satisfaction that:
- 3.1.3.1. a single triggering event directly causes 2 (two) or more Service Level Failures in any month; and
 - 3.1.3.2. but for such event, none of such Service Level Failures would have occurred,

then SARS will be entitled to receive only a single Service Level Credit (selected by SARS) and Service Level Credits will not apply to such other Service Level Failures.

3.2. Calculation of Service Level Credits

- 3.2.1. Each of the Service Levels set out in this **Schedule C (Service Levels)** and its appendices constitutes a single Service Level, even if it has multiple metrics. The Service Provider must satisfy each metric of those Service Levels with multiple metrics in order to satisfy the Service Level as a whole. If the Service Provider fails any single metric, the Service Provider will be deemed to have failed the entire Service Level.

3.2.2. Escalating Service Levels

- 3.2.2.1. Service Level Credits for each of the Service Levels detailed in **Appendix C-1 (Service Levels and Credits)** are determined by reference to the time unit in which it is measured (days or hours whichever appropriate) that an event exceeds its Service Level Target in accordance with **Appendix C-1 (Service Levels and Credits)**.
- 3.2.2.2. Each measured event has a maximum allowable elapsed time within which it must be completed ("**Service Level Target**"). If the event is not completed within the Service Level Target then:
- (a) a Service Level Credit to the value specified, either a percentage ("**Service Level Credit Percentage**") of the specified charge will be payable to SARS or a specified fixed amount will be payable to SARS; and
 - (b) for each further period by which the completion of the event exceeds the Service Level Target the Service Level Credit payable will increase to the value specified, either a percentage ("**Service Level Credit Increment**") of the specified charge or a specified fixed amount will be payable to SARS.

3.2.3. Event based Service Levels

For each of the following Service Levels (in respect of which Service Level Credits are determined on a per-event or per-occurrence basis):

[Drafter's Note: check if we have any on completion of the service levels]

the applicable Service Level Credit payable by Service Provider to SARS is contained in the definition of the Service Level itself.

- 3.2.4. Regardless of whether the method of calculating Service Level Credits described in **Clause 3.2.2** or **Clause 3.2.3** applies, all Service Level Credits will be applied against the first monthly invoice following the month in which the Service Level Failure(s) occurred. Service Level Credits arising in respect of the last month of the Term will be withheld out of the final payment due.

3.3. **Excused Performance**

- 3.3.1. Where the Service Provider can establish to the reasonable satisfaction of SARS that:

3.3.1.1. the cause of its failure or the extent to which it failed to achieve a Service Level was a factor or factors outside of the reasonable control of the Service Provider;

3.3.1.2. The Service Provider would have achieved such Service Level or would not have failed the Service Level to the same extent that it did but for such factor(s);

3.3.1.3. The Service Provider used Commercially Reasonable Efforts to perform and achieve that Service Level notwithstanding the presence and impact of such factor(s); and

3.3.1.4. The Service Provider is without fault in causing such factor(s),

the Service Level Credit will be reduced by the extent to which such factor(s) satisfying all of the conditions 3.3.1 3.3.1.1, 3.3.1.2, 3.3.1.3 and 3.3.1.4 have affected the Service Level Credit.

The Service Provider must make applications, in writing, to SARS regarding excused performance. Such applications must be received by SARS within 3 business days of the end of the month in which the event(s) leading to the Service Level failure occurred.

4. **MISCELLANEOUS**

General Sections

Descriptions of each of the Service Levels in the 'General' Sections in the appendices to this **Schedule C (Service Levels)** are intended to summarise each Service Level and will be subject to the full description of the Service Level set out in the remainder of the relevant clause.

APPENDIX C-1: SERVICE LEVELS AND CREDITS

Service Levels, Critical Deliverables and Credits for ICT Facilities Services

1. TRANSITION CREDITS

Transition Service Level Credit Rate	
Days from Effective Date	Service Level Credit
91 (ninety one) days and every consecutive day until final Acceptance	R 500.00 (five hundred rand only) including VAT

2. MAINTENANCE

2.1. Service Levels

- 2.1.1. The Service Level Targets for Scheduled Maintenance are determined by the Maintenance Type for each Supported Site as detailed in **Appendix B-3 (Site List)**.
- 2.1.2. The Service Provider may due to unforeseen circumstances and then only upon SARS' written approval obtained no less than 2 (two) Business Days in advance of the scheduled date of a Scheduled Maintenance Event, vary such Maintenance within the parameters contained in Table 1 below.
- 2.1.3. SARS may upon no less than 2 (two) Business Days advance written notice to the Service Provider, vary a Scheduled Maintenance Event.
- 2.1.4. Changes to Scheduled Maintenance Events do not entitle the Service Provider to a price adjustment.

Table 2: Adherence to Maintenance Schedules

Activity frequency	Weekly	Monthly	Quarterly	Annual
Variance from Service Level Target	1 (one) day	3 (three) days	6 (six) calendar days	6 (six) calendar days

2.2. Service Level Credit

In the event that a Checklist for a Supported Site has not been completed, signed off and submitted to SARS in accordance with **Clause 2.3 of Schedule B (SOW)** (as the scheduled dates may be varied in terms of this **Clause 2.2**), a Service Level Credit will become payable by the Service Provider to SARS. This Service Level Credit will be payable for each Supported Site and for every day that the completion of the Checklist remains outstanding.

Maintenance Service Level Credit Rate
R 500.00 (five hundred rand only) including VAT for every day that the Checklist remains outstanding

3. BREAK-FIX

3.1. Support Level

- 3.1.1. SARS has designated the Support Level of the Supported Sites as of the Effective Date in **Appendix B-3 (Site List)**. SARS may change such designations at SARS' sole discretion upon no less than 30 (thirty) days prior written notice to the Service Provider.
- 3.1.2. A Problem/Incident will be deemed to begin at the time that it is first reported to, or otherwise discovered by the Service Provider. The Service Provider shall ensure that all Incidents and/or Problems are logged on Remedy as soon as they become aware of such Incidents and/or Problems.
- 3.1.3. **Time to Respond:** The Service Provider shall respond to a Problem/Incident within the period set forth in **Appendix C-1 (Service Levels and Credits)** from time that it begins. The Service Provider will be deemed to have responded to the Problem/Incident when a member of the Service Provider staff, qualified to attend to and Resolve the Incident, has in person reported to the affected Supported Site and made contact with the relevant SARS technical staff or the SARS member of staff reporting the Problem/Incident.
- 3.1.4. **Time to Resolve:** The Service Provider shall resolve a Problem/Incident within the period set forth in **Appendix C-1 (Service Levels and Credits)** from time that it begins.

Table 2: Support Levels

Support Level	Service Level Target	
	Time to Respond	Time to Resolve
Bronze	4 Hours	8 Hours
Silver	2 Hours	4 Hours
Gold	1 Hour	2 Hours

3.2. Service Coverage

Each Supported Site also has one of several service coverage periods (each, a "**Service Coverage Period**") designated as the period of time during which Service Levels are to be measured against the Service Provider's provision of the Services. Each item of ICT Facilities Infrastructure contained at the Supported Site shall have the associated Service Coverage Period of that Supported Site. SARS has designated the Service Coverage Period of each Supported Site as of the Commencement Date in **Appendix B-3 (Site List)**. If no Service Coverage Period is specified for any Supported Site, its Service Coverage Period shall be deemed to be Standard. SARS may change such designations at SARS'

sole discretion upon no less than 30 (thirty) days prior written notice to the Service Provider. The Service Coverage Periods are set forth below.

Standard	07h00 to 17h00 Monday to Friday (excluding public holidays)
Extended	07h00 – 22h00 Monday – Friday (including public holidays); and 07h00 – 17h00 Saturdays (including public holidays)
Premium	24 X 7 x 365

3.3. Service Level Credit

Break-Fix Service Level Credit Rate
R 250.00 (two hundred and fifty rand only) including VAT per hour or part thereof falling within the Service Coverage Period in excess of Service Level Targets.

4. SERVICE LEVEL: GENERAL OBLIGATIONS

4.1. General

The General Obligations Service Level measures the Service Provider compliance to all the Service Provider obligations in this Agreement. The Service Provider is expected to adhere to all obligations and deliverables contracted for in the Agreement and upon the non-performance of any obligation or non-delivery of a specified deliverable within the timeframes specified in the Agreement the General Obligations Service Level will be missed if:

- 4.1.1. SARS has given notice to the Service Provider, by delivering a written notice to the Service Provider Service Delivery Manager of the fact that an obligation in the Agreement has not been performed; and
- 4.1.2. the Service Provider fails to perform the obligation within 14 days of SARS giving such notice to the Service Provider.

The provisions of this General Obligations Service Level and/or payment by the Service Provider of Service Level Credits with regard to the General Obligations Service Level does not in any way limit any right or recourse SARS may have to enforce the performance of any obligation in this Agreement nor limit SARS's right to seek remedies for the non-performance of any obligation in this Agreement.

The payment of a Service Level Credit by the Service Provider in no way releases the Service Provider from the future timely performance of any obligation in this Agreement.

General Obligations Service Level Credit Rates	
Service Level	Service Level Credit
For each obligation contained in the Agreement that is not performed within 14	R 3,000 (Three Thousand Rand)

General Obligations Service Level Credit Rates	
Service Level	Service Level Credit
days of the notice by SARS to the Service Provider Service Delivery Manager of the Service Provider's failure to perform any obligation in the Agreement timeously.	
Service Level Credit Increment	R 3,000 (Three Thousand Rand) for every 14 (fourteen) days for which the obligation contained in Agreement is not performed after notice by SARS has been given to the Service Provider Account Executive of the Service Provider's failure to perform an obligation.

4.2. Example

The Service Provider fails to deliver the Asset Management Services (as detailed in **Clause 7 of Schedule B (SOW)**). SARS notifies the Service Provider and the Service Provider rectifies the service 30 days after being notified. Then General Obligations Service Level Service Level Credit will be calculated as R6,000. (R3,000 for not delivering the report within 14 days of the notification and another R3,000 for not delivering the report within a further 14 days after that.)

SCHEDULE D: CHARGES, INVOICING AND PAYMENTS**Appendices and Attachments**

Appendix D-1	Transition Charges
Appendix D-2	Final Mode of Operation Charges
Appendix D-3	Personnel and Material Rates
Appendix D-4	Pricing Adjustment
Appendix D-5	Discount on Multiple Regions
Appendix D-6	Regional Main Centres

SCHEDULE D: CHARGES, INVOICING AND PAYMENTS

1. GENERAL

1.1. General

- 1.1.1. This **Schedule D (Charges, Invoicing and Payment)** describes how the Charges payable by SARS to the Service Provider pursuant to this Agreement are calculated and invoiced.
- 1.1.2. The Charges for Transition commence on the Effective Date and Charges for Services will commence on the Commencement Date.
- 1.1.3. The Charges are set forth in the appendices to this **Schedule D (Charges, Invoicing and Payment)**.
- 1.1.4. The Charges detailed in this **Schedule D (Charges, Invoicing and Payment)**, and its appendices are the only amounts payable by SARS to the Service Provider the Services or otherwise in connection with this Agreement and no other or separate charges, expenses, costs or other amounts incurred by the Service Provider will be chargeable to or payable by SARS to the Service Provider.
- 1.1.5. Unless specifically provided otherwise in this Agreement, the Charges will include all incidental expenses (e.g. travel and lodging) that the Service Provider incurs in performing the Services. Prices for New Services and Projects (as contemplated in **Clauses 6 and 7** below) and Pass Through Expenses (as contemplated in **Clause 9** below) must similarly include all incidental expenses.
- 1.1.6. There will be no changes to the Charges except to the extent:
- 1.1.6.1. required under **Clause 1.3.5** below;
- [Note to the Bidder: This reference is to the Service Provider's obligation to reduce costs]**
- 1.1.6.2. permitted under **Clause 4** below;
- [Note to the Bidder: This reference is to Services]**
- 1.1.6.3. permitted under **Clause 6** below;
- [Note to the Bidder: This reference is to New Services]**
- 1.1.6.4. permitted under **Clause 7** below;
- [Note to the Bidder: This reference is to Projects]**
- 1.1.6.5. permitted under **Clause 11** below;
- [Note to the Bidder: This reference is to Inflationary adjustments]**
- 1.1.6.6. required under **Clause 12** below;
- [Note to the Bidder: This reference is to Extraordinary Events]**
- 1.1.6.7. required under **Clause 14** below;

[Note to the Bidder: This reference is to changes which result from SARS's partial termination of the Agreement as contemplated in Clauses 23.1 and 23.3 of the Main Agreement]

1.1.6.8. required under **Clause 15** below;

[Note to the Bidder: This reference is to Service Level Credits];

or

1.1.6.9. permitted by SARS under **Clause 24.5.4.3** of the **Main Agreement**

[Note to the Bidder: This reference is to changes to law.]

1.1.6.10. required under **Clause 21** of the **Main Agreement**.

[Note to the Bidder: This reference is to Benchmarking]

1.1.7. The Service Provider will not be entitled to unilaterally: (i) impose or seek payment of any amounts or charges under the Agreement other than the Charges; (ii) establish any new types of charges under the Agreement; and/or (iii) modify any of the Charges under the Agreement.

1.1.8. References to: (i) "days" will be to calendar days; (ii) "months" will be to calendar months; and (iii) "quarters" will be to calendar quarters, unless a more specific reference is given. References to "years" will be to Contract Years, unless a more specific reference is given.

1.2. **Currency**

The Charges are stated in South African Rand and will be invoiced and paid in South African Rand. The Charges are not subject to adjustment due to any currency fluctuations.

1.3. **Taxes**

1.3.1. All Charges and Unit Rates are VAT inclusive and include all applicable taxes, duties and levies.

[Note to the Bidder: Pricing submitted in the pricing templates must be inclusive of all duties, taxes and all applicable levies, but exclusive of VAT. The template spreadsheet will automatically add VAT. In the final contract the pricing inclusive of VAT will be reflected in the pricing tables]

1.3.2. The Service Provider will comply with all Applicable Laws relating to tax and tax invoices. In addition, the Service Provider will comply with all SARS's requirements for invoicing taxes.

1.3.3. Each Party will be responsible for: any real estate taxes and real estate transfer taxes on real estate it acquires, owns or leases; for any wage taxes levied on wages for employees employed by the relevant Party in connection with the provision or the receipt of the Services and for taxes based on its net or gross income, in particular corporate income tax and trade tax. SARS will not be responsible for any allocation of any of the aforementioned taxes that are levied on the Service Provider.

1.3.4. Except for value added taxes, the general tax risk allocation principle as set out in Section 1.3.3 shall apply *mutatis mutandis* with respect to all taxes that are not addressed in Section 1.3.3, in particular, including taxes levied outside South Africa.

- 1.3.5. The Service Provider will be responsible for any taxes levied by a regulator or other government authority that are assessed on goods and services used or consumed by the Service Provider in providing the Services. SARS will not be responsible for any allocation of taxes that are levied on goods and services used or consumed by the Service Provider in providing the Services.

1.4. **Costs**

- 1.4.1. In consultation with SARS, the Service Provider will continually investigate methods to reduce the Charges.
- 1.4.2. Without limiting the generality of its obligations under **Clause 1.4.1**, the Service Provider will:
- 1.4.2.1. use Commercially Reasonable Efforts to identify methodologies, processes, solutions and technologies that SARS or the Service Provider may employ to reduce Incidents and Problems; and
 - 1.4.2.2. model the effects of the methodologies, processes, solutions and technologies at different levels and mixes of consumption; and
 - 1.4.2.3. periodically report (but no less frequently than annually) on such efforts and make recommendations to SARS regarding steps SARS, the Service Provider or both may take to reduce the Charges.

1.5. **Cost Review Meetings**

- 1.5.1. Within 60 (sixty) days prior to the Adjustment Date defined in **Clause 11.1** below, and at such other times as SARS may reasonably request, the Parties will meet to:
- 1.5.1.1. formally review the Charges;
 - 1.5.1.2. formally review the extent to which the Service Provider is achieving all efficiencies in its performance of the Services to the extent reasonably possible; and
 - 1.5.1.3. consider whether the Agreement is achieving its objective of providing SARS the Services in accordance with the Performance Standards at the lowest possible prices.
- each such meeting being referred to as a "**Cost Review Meeting**".
- 1.5.2. At each Cost Review Meeting, the Service Provider will be prepared to discuss, and will discuss: (i) proposals arising from the Service Provider's report under **Clause 1.4** above; (ii) any specific issues that SARS wishes to discuss; and/or (iii) any other pertinent matter.
- 1.5.3. During Cost Review Meetings, the Service Provider, having analysed the Charges in detail in advance of such review, will propose, and the Parties will discuss and consider, changes that can reasonably be expected to result in a reduction of the cost of the Services to SARS. Such changes may relate to, for example: SARS's business processes; the technology used to provide and deliver, or to receive and use, the Services; the Service Provider Personnel; the Service Provider's processes; and/or the selection and use of Subcontractors and Third Party service providers.
- 1.5.4. The Service Provider will schedule Cost Review Meetings by giving SARS at least 45 (forty five) days prior notice. The Service Provider will use Commercially Reasonable Efforts to co-ordinate with SARS before scheduling the review. The foregoing notwithstanding, SARS will be entitled to schedule a Cost Review

Meeting at any time that SARS deems fit. A Cost Review Meeting will run for such period of time as is reasonably required by SARS. All Cost Review Meetings will take place at a venue designated by SARS.

- 1.5.5. In order to prepare for and participate in any Cost Review Meeting, the Service Provider will make available such resources as are reasonably required: (i) to analyse SARS consumption and the cost of the Services to SARS; (ii) to perform all of the tasks and activities described in this **Clause 1.5** associated with such Cost Review Meeting; and (iii) otherwise to maximise the likelihood that such Cost Review Meetings will result in a reduction in the Charges and the cost of the Services to SARS. The Parties acknowledge and agree that the application of this provision will not result in any changes to the Agreement, Services or Service Levels unless set forth in a formal amendment to the Agreement pursuant to **Clause 24.4.3** of the **Main Agreement**.
- 1.5.6. Without limiting the generality of the foregoing, at least 5 (five) Business Days prior to the commencement of each Cost Review Meeting, the Service Provider will provide SARS with a draft description of any proposals the Service Provider intends to make during the Cost Review Meeting, including any charges or Charge adjustments proposed by the Service Provider in order to implement any such proposals, or resulting from their implementation, as well as projections of any changes to the costs of the Services to SARS resulting from such proposal.
- 1.5.7. If SARS decides (at its sole discretion) to implement any such proposals, the Service Provider will promptly implement them or (at SARS request) assist SARS to implement them, as applicable.
- 1.5.8. The Service Provider acknowledges and agrees that the process described in this **Clause 1.5** is critical to enable the Parties to achieve their price/performance objectives during the Term.

1.6. **Travel and Incidental Charges**

Should the Service Provider be required to travel at SARS's insistence other than as set out in this Agreement, such travel shall be Charged on a Pass Through Expense Basis and shall be limited to travel, subsistence and accommodation which expenses shall be pre-approved in writing (including by e-mail) by SARS.

2. **CHARGES**

2.1. **Charges – Specific Charges Requirements**

- 2.1.1. Except as expressly provided otherwise in this Agreement, the only amounts payable by SARS for any Service will be the Charges and applicable taxes as and to the extent the Service Provider generally charges them to its customers of similar services, all provided that such amount is specified on **Schedule D (Charges, Invoicing, and Payments)**.
- 2.1.2. Unless otherwise expressly set forth in **Schedule D (Charges, Invoicing, and Payments)** or its appendixes, all installation and all other onetime charges for all ICT Facilities Services are waived.
- 2.1.3. The Service Provider will waive expedite charges for any Services ordered under the Agreement. There will be no limit on the number of expedite requests.
- 2.1.4. SARS will have the right to reschedule or delay installation due dates for service

elements or equipment without incurring any increased or separate charges.

- 2.1.5. The Service Provider will not charge SARS for any the Service Provider-supplied Third Party service components for which costs are incurred after expiry of SARS's notice of cancellation of a service component to the Service Provider.
- 2.1.6. The Service Provider represents and warrants that the Unit Rates and any other rates or Charges set forth in the Service Provider's Proposal constitute the totality of all of the Charges (all costs to SARS are included in these rates) for all of the ICT Facilities Services. SARS will not be charged any amounts that are not set forth in the Service Provider's Proposal for any of the Services.

2.2. No Minimums

No minimum charges are applicable in relation to this Agreement. If there is an inconsistency between the Agreement and the Service Provider's tariffs or other regulatory filings which precludes SARS from receiving all of the rights and benefits provided for by the Agreement, then the Service Provider shall amend the tariff or otherwise resolve the inconsistency to provide such rights or benefits to SARS. If that is not possible, SARS will have the right to terminate upon 60 (sixty) days prior written notice (given any time within 90 (ninety) days after the Service Provider notifies SARS in writing of any such discrepancy) any or all of the affected Services with no liability (other than paying for Services properly provided prior to the effective date of such termination).

3. INVOICING AND PAYMENT

3.1. Invoicing

- 3.1.1. The Service Provider will invoice SARS for the Charges (other than for Projects) on a monthly basis in arrears on or before the 5th (fifth) Business Day of the month following the month in which the Services were performed. Projects will be invoiced in accordance with the agreed methodology for the Project, which may be: (i) monthly; (ii) upon SARS's acceptance of delivery milestones; or (iii) upon completion of the Project and acceptance thereof by SARS.
- 3.1.2. Each invoice will contain or have attached such information, and be in such form and on such media as SARS may reasonably request.
- 3.1.3. Subject to **Clause 3.1.4** below, invoiced Charges will be reduced: (i) by 1 (one) percent if SARS does not receive the invoice by the 20th (twentieth) day of the month in which the Service Provider is obligated to deliver such invoice; and (ii) by an additional 1 (one) percent for each month thereafter.
- 3.1.4. Regardless of anything else in this Agreement, SARS will not be obliged to pay any amounts that are invoiced more than 120 (one hundred and twenty) days after the Services were rendered.
- 3.1.5. Each invoice will consist of or have attached:
 - 3.1.5.1. a statement of the total amount due. In addition, at SARS's request, the Service Provider will provide to SARS the calculation of the Charges under the algorithms of this **Schedule D (Charges, Invoicing and Payment)**;
 - 3.1.5.2. the Service Provider's estimate of the Charges that were approved by SARS for any work performed by the Service Provider Personnel on a

- Time and Materials Basis prior to commencement of such work;
- 3.1.5.3. if so requested by SARS, copies of daily time cards signed by an authorised SARS representative and the reference number generated by the SARS service desk for any work performed by the Service Provider Personnel on a Time and Materials Basis;
 - 3.1.5.4. a valid SARS purchase order number; and
 - 3.1.5.5. any additional details and information reasonably specified by SARS, in the format reasonably specified by SARS from time to time.
- 3.1.6. The Service Provider will send the invoices to the department designated by SARS from time to time and provide copies of the invoices to other SARS contacts as may be designated by SARS from time to time.
 - 3.1.7. The Service Provider will maintain complete and accurate records of, and supporting documentation for, the amounts invoiced to and payments made by SARS in accordance with International Financial Reporting Standards (IFRS).
 - 3.1.8. Within 10 (ten) days after SARS's request, the Service Provider will provide SARS with any other documentation or information reasonably required in order to verify: (i) the accuracy of the Charges on an invoice; and (ii) its compliance with the requirements of this Agreement.
 - 3.1.9. The Service Provider will verify that each invoice is complete and accurate and that it conforms to the requirements of this Agreement (including by carrying out detailed checks of each invoice) before issuing the invoice to SARS.
 - 3.1.10. The Service Provider will, at no additional Charge, provide appropriately skilled Service Provider Personnel as SARS's point of contact for answering invoicing queries. Such individuals will respond promptly to any billing queries.
 - 3.1.11. At no additional charge to SARS, the Service Provider will review all of its invoices submitted to SARS during the first 3 (three) months of the Term and certify in writing that each invoice was calculated correctly, including using the correct Unit Rates set out in the Agreement and only invoicing for Services actually being provided. The Service Provider will provide this certification within 15 (fifteen) days after it submits each such invoice. If the Service Provider discovers discrepancies in an invoice submitted to SARS within the first 3 (three) months pursuant to this procedure, it will reissue such invoice and such invoice will be deemed to have been 'received' (for purposes of calculating the payment due date) by SARS on the date that SARS receives the corrected invoice.
 - 3.1.12. The Service Provider will, at no additional charge to SARS and within 60 (sixty) days following the end of each subsequent calendar quarter, review and validate each invoice that it issued to SARS during such quarter. The Service Provider will provide SARS with a reconciliation report listing the results including exception reports, errors and a complete reconciliation of invoices to actual required invoice amounts. The Service Provider will promptly credit any amounts that were improperly invoiced and may issue a supplemental invoice with respect to amounts that the Service Provider discovers could have been invoiced but were not invoiced.
 - 3.1.13. The Service Provider may round invoiced amounts only once per invoice, at the highest summary (or aggregate) level.
 - 3.1.14. The Service Provider will provide SARS with the option of implementing, at any time during the Term, invoicing and payment in a mutually agreed electronic,

digital, EDI or Web-based format, within 90 (ninety) days of SARS's request at no additional cost to SARS. In addition, the Service Provider will provide hard copies of invoices where required under Applicable Law and in the format, and with the information and detail, required by Applicable Law.

- 3.1.15. The Service Provider will invoice all Charges within 60 (sixty) days after providing the Services giving rise to such Charges.

3.2. **Payment**

3.2.1. SARS will pay undisputed Charges to the Service Provider within 30 (thirty) days following receipt of each invoice provided such invoice is accurate and meets the requirements of this Agreement.

3.2.2. SARS may set off any amounts due by the Service Provider pursuant to this Agreement against any Charges payable by SARS pursuant to this Agreement. If the amounts payable by the Service Provider to SARS exceed the Charges payable by SARS to the Service Provider pursuant to an outstanding invoice under this **Schedule D (Charges, Invoicing and Payment)** then, at SARS's option, the Service Provider will either: (i) issue a credit note for the net amount which SARS may set off against any other invoices rendered by the Service Provider; or (ii) pay the amount to SARS.

3.3. **Disputed Charges and Invoicing Errors**

3.3.1. SARS may withhold payment of Charges that SARS disputes in good faith (or, if the disputed Charges have already been paid, SARS may withhold an equal amount from a later payment), including disputes in respect of an error in an invoice or an amount paid. If SARS withholds any such amount:

3.3.1.1. SARS will promptly notify the Service Provider that it is disputing such Charges; and

3.3.1.2. the Parties will promptly address such dispute in accordance with **Clause 22** of the **Main Agreement**.

3.3.2. If the dispute relates to (or, in the case of disputed Charges that have already been paid, is equal to) only certain of the Charges included on an invoice, then SARS will pay the undisputed amounts in accordance with **Clause 3.2.1** above.

3.3.3. If an invoice is identified by either Party as incorrect, then the Service Provider will either issue a correct invoice if the amount has not yet been paid, or make a correction on the next invoice if the amount has been paid; provided, however, that the Service Provider will refund any overpayments with interest (calculated at the Agreement Interest Rate) calculated from the date of SARS's payment to the date of the refund both dates inclusive. SARS will not be responsible for paying interest on undercharged amounts, if any.

4. **CALCULATION OF CHARGES**

4.1. **Transition**

4.1.1. Upon acceptance of all Transition Deliverables in accordance with **Clause 1.6** of **Appendix B-1 (Transition Services)**, the Service Provider may Charge the Transition Charge.

4.1.2. During Transition, at SARS's election, the Service Provider will provide

Maintenance on a Time and Material Basis excepting that such Charges shall exclude all incidental costs, including travel time as set out in **Clause 5.2.1** below. The Service Provider may however Charge a Fixed Travel Charge for each Maintenance Event.

- 4.1.3. At SARS's election the Service Provider will perform Break-fix during Transition. The Charge for a Break-fix Event shall equal the sum of: (i) Event Break-fix Charge; (ii) the Fixed Travel Charge; and (iii) Charges for Parts and consumables as set out in **Clause 9.4** below.

4.2. Maintenance

- 4.2.1. The total monthly Charges for Maintenance from the Commencement Date shall be charged in accordance with **Appendix D-2 (Final Mode of Operation Charges)** and shall be equal to the sum of the Charges for each Supported Site in Region [x], as calculated below.

- 4.2.2. Charges for monthly Maintenance for a Supported Site shall be equal to:

$$\sum_{e \in E} (P_{ewm} \times I(e)) + T_{wmk}$$

Where: E is the set of ICT Facilities Infrastructure types.

e is an ICT Facilities Infrastructure type (an element of E).

Pewm is the Monthly Maintenance Rate corresponding to an ICT Facilities Infrastructure type of e; a Maintenance Window of w and a Maintenance Type of m.

w is the Maintenance Window of the Supported Site.

m is the Maintenance Type of the Supported Site.

I (e) is the number of items of ICT Facilities Infrastructure that are of type e at the Supported Site.

Twmk is the Monthly Maintenance Travel Charge for a Supported Site with a Maintenance Window of w, a Maintenance Type of m and the distance of the Supported Site to the closest Regional Main Centre of k.

k is the distance of the Supported Site to the closest Regional Main Centre.

4.3. Break-fix

The total monthly Charges for Break-fix from the Commencement Date shall be charged on a monthly basis in accordance with **Appendix D-2 (Final Mode of Operation Charges)** and shall be equal to the sum of the Charges for each Supported Site in Region [x], as described below and in addition may include any Whole Unit Spares.

$$\sum_{e \in E} [(P_{esv} \times I(e)) + C_{ek}]$$

Where: E is the set of ICT Facilities Infrastructure types.

Pesl is the Monthly Break-fix Rate corresponding to an ICT Facilities Infrastructure type of e; a Service Coverage Period of s and a Support Level of v.

e is an ICT Facilities Infrastructure type (an element of E).

s is the Service Coverage Period of the Supported Site.

v is the Support Level of the Supported Site.

I (e) is the number of items of ICT Facilities Infrastructure that are of type e at the Supported Site.

Cek is the Monthly Break-fix Travel Surcharge for a item of ICT Facilities Infrastructure of type e and a distance of the Supported Site to the closest Regional Main Centre of k.

k is the distance of the Supported Site to the closest Regional Main Centre.

- 4.4. There shall be no additional charge for Maintenance and Break-fix of ICT Facilities Infrastructure.
- 4.5. For the avoidance of doubt, Charges for the performance of Asset, Incident, Problem and Operational Change Management Services shall be included in these Charges.

[Note to Bidder: these Charges will be calculated in accordance with RFP 05/2020 Pricing Response Template.xls]

5. CHARGES ON A TIME AND MATERIALS BASIS

5.1. General

- 5.1.1. New Services and Projects will be charged on a Time and Materials Basis, unless otherwise agreed in a Work Order/Change Order. In such cases, the time component of the time and materials charge will be the product of the units of time (e.g., hour, day) and the applicable Personnel Rates.
- 5.1.2. Personnel Rates (by skill classification) are set forth in **Appendix D-3 (Personnel and Material Rates)** on an hourly, daily, monthly and quarterly basis. If there is no Personnel Rate for a skill classification required for the performance of the work to be performed on a Time and Materials Basis, the Service Provider's rate for such skill set will be the rate for the next closest, lowest skill set specified in **Appendix D-3 (Personnel and Material Rates)**.

5.2. Chargeable Time

- 5.2.1. For Services performed on a Time and Materials Basis, the Service Provider may charge for travel time only if, and to the extent that, the Service Provider Personnel performing such Services are required to travel more than 50 (fifty) kilometres from a Regional Main Centre as listed in **Appendix D-6 (Regional Main Centres)** and Service Provider has used Commercially Reasonable Efforts to deploy alternative

Service Provider Personnel who do not have to travel more than 50 (fifty) kilometres.

- 5.2.2. The Service Provider Personnel will accurately complete daily time sheets on a concurrent basis showing the actual time spent performing the work that is chargeable on a Time and Materials Basis. Such time sheets shall be verified and signed by SARS before submission of the associated Time and Material Based Charges.
- 5.2.3. All work to be performed on a Time and Materials Basis will be performed by the Service Provider in a productive and efficient manner (including using the Service Provider Personnel charged at the lowest appropriate rate).
- 5.2.4. SARS will not be charged (and will not be liable to pay) for any time spent by the Service Provider Personnel in remedying the Service Provider errors.

6. NEW SERVICES

6.1. Generally

In the event that any New Service is requested by SARS, the Service Provider will quote to SARS a reasonable fixed or unit price for such New Service and the Parties will promptly meet to discuss such quote. If the Parties do not reach agreement, SARS may elect in its sole discretion to have the Service Provider perform the New Services, and the Service Provider will perform the New Services, on a Time and Materials Basis at the Personnel Rates contained in **Appendix D-3 (Personnel and Material Rates)** unless otherwise agreed in the Work Order/Change Order.

6.2. Replacement Services

If a New Service, once approved by SARS, replaces any of the Services, the New Services will be treated as a **"Replacement Service"**. In such event, SARS will be charged only for incremental resources and costs net of any savings or reduced costs realised from no longer performing the Service that is being replaced (including a Replacement Service that requires fewer resources, which causes the applicable Charges to be equitably reduced).

7. PROJECTS

In the event that any Project is requested by SARS, the Service Provider will quote to SARS a reasonable fixed price for such Project and the Parties will promptly meet to discuss such quote. If the Parties do not reach agreement, SARS may elect at its sole discretion to have the Service Provider perform the Project, and the Service Provider will perform the Project on a Time and Materials Basis at the Personnel Rates.

8. CHANGES TO SARS STANDARDS

If after the Effective Date, SARS materially changes any of the standards under **Clause 4.4 of Schedule E (Governance)** other than as part of transition and solely as a result of such change the Service Provider is unable to avoid a material change to the Services, then such change to the Services will be treated as New Services (or Replacement Services, as the

case may be) under **Clause 6** of this **Schedule D (Charges, Invoicing, and Payments)**.

9. PASS THROUGH EXPENSES

- 9.1. Any Pass Through Expenses will be subject to prior approval by SARS and will be charged to SARS on a Pass Through Expense Basis. The Service Provider will use Commercially Reasonable Efforts to minimise the cost of goods and services provided to SARS on a Pass Through Expense Basis.
- 9.2. Materials procured on a Pass Through Expense Basis will be acquired in SARS's name and SARS will have all right, title and interest in such materials.
- 9.3. The Service Provider must procure any goods or services related to the Services, on behalf of SARS on a Pass Through Expense Basis, should SARS so require.

9.4. Charges for Whole Unit Spares, Parts and Consumables

The Service Provider will be entitled to charge for Whole Unit Spare, Parts and consumables on a Pass Through Expenses Basis and may include a mark-up of up to [complete]% ([complete percent]).

[Note to Bidder: Mark-up percentage shall be populated from SARS RFP 05/2020 Pricing Response Template - Region x]

SARS will audit the Service Provider's compliance with the provisions of this **Clause 9.4** in accordance with **Clause 20** of the **Main Agreement** and will require the provision of original supporting documentation.

10. DISENGAGEMENT ASSISTANCE

The Service Provider may charge for Disengagement Assistance only in accordance with the provisions of **Schedule F (Disengagement Assistance)**.

11. PRICE ADJUSTMENTS AND ADJUSTMENT DATES

- 11.1. The Charges will be adjusted on the date set out hereinafter and each anniversary thereof ("**Adjustment Date**") to take account of increases in the Service Provider's labour costs, travel and the costs of consumables, but only to the extent set forth in this **Clause 11**. The first Adjustment Date will be the [*shall be updated according to the pricing template*].

[Note to reviewers - this date is to be confirmed]

- 11.2. The adjustment will be made to the percentage of all Charges in **Appendix D-2 (Final Mode of Operation Charges)** and **Appendix D-3 (Personnel and Materials Rate)** on the Adjustment Date and will be calculated as follows:

$$\text{Adjusted price} = [(1+(A*B))*C]$$

Where: A = the actual inflation (defined below) at the Adjustment Date calculated as

follows:

$$A = (CPI1 - CPI2) / (CPI2)$$

Where : CPI1 is the consumer price index for the month of the Adjustment Date. (For example if the Adjustment Date is 1 October 2013, CPI1 will be that of October 2013).

CPI2 is the consumer price index at the previous Adjustment Date. (Where this is to be used in the calculation for the Adjustment Date of 1 October 2012, CPI2 will be the consumer price index for October 2011).

The consumer price index is the consumer price index (**CPI**) for the month in question as published by Statistics South Africa ("**SSA**") (or its equivalent successor in title) Should SSA cease publishing the CPI or substantially change the content or format thereof SARS will by notice to the Service Provider substitute another appropriate equivalent measure of CPI.

B = the Inflation Sensitivity Factor. The Inflation Sensitivity Factor is set forth in **Appendix D-4 (Pricing Adjustments)**.

C = Charges in **Appendix D-2 (Final Mode of Operation Charges)** and **Appendix D-3 (Personnel and Material Rates)** in the previous Contract Year.

12. EXTRAORDINARY EVENTS

12.1. In the case of an Extraordinary Event (defined in **Clause 12.2** below), the Service Provider's Charges will, on prior approval by SARS, be equitably adjusted.

12.2. "**Extraordinary Event**" means:

12.2.1. a governmental reorganisation;

12.2.2. a change in law; or

12.2.3. the addition, reduction, or other elimination of a significant 'Line of Operations' or other similar organisational change to SARS; and

which the Service Provider is able to show, to SARS's reasonable satisfaction, has a material impact on the Service Provider's cost structure in respect of the Services.

13. TERMINATION CHARGES

SARS will under no circumstances be liable for any termination charges under this Agreement.

14. CESSATION UPON PARTIAL TERMINATION OR REDUCTION IN REQUIREMENTS

In the event that SARS exercises its rights pursuant to the **Main Agreement** to:

- 14.1. provide itself, or retain Third Parties to provide, any or all of the Services (**Clauses 4.12.2 and 19.3.2.1 of the Main Agreement**); or
- 14.2. partially terminate the Services (**Clauses 19.3.2.2 and 23.3 of the Main Agreement**);

then any Charges that relate to the Services that are no longer being performed will no longer be chargeable to or payable by SARS.

15. SERVICE LEVEL CREDITS

The Charges will be adjusted by the application of Service Level Credits.

APPENDIX D-1: TRANSITION CHARGES

[Note to the Bidder: this will be populated with the completed pricing templates, tables and amounts upon finalisation of the contract.]

APPENDIX D-2: FINAL MODE OF OPERATION CHARGES

[Note to the Bidder: this will be populated with the completed pricing templates, tables and amounts upon finalisation of the contract.]

APPENDIX D-3: PERSONNEL AND MATERIAL RATES

[Note to the Bidder: this will be populated with the completed pricing templates, tables and amounts upon finalisation of the contract.]

APPENDIX D-4: PRICING ADJUSTMENTS

[Note to the Bidder: this will be populated with the completed pricing templates, tables and amounts upon finalisation of the contract.]

APPENDIX D-5: DISCOUNTS ON MULTIPLE REGIONS

[Note to the Bidder: this will be populated with the completed pricing templates, tables and amounts upon finalisation of the contract.]

APPENDIX D-6: REGIONAL MAIN CENTRES

Region	Province	Regional Main Centres
Region 1	Gauteng Province	Pretoria Johannesburg
Region 2	Northern Cape Province	Upington Kimberley
	Western Cape Province	Cape Town George
Region 3	North West Province	Mafikeng Klerksdorp Rustenburg
	Free State Province	Bloemfontein
Region 4	Eastern Cape Province	East London Port Elizabeth
	KwaZulu-Natal Province	Durban
Region 5	Limpopo Province	Polokwane
	Mpumalanga Province	Ermelo Nelspruit

SCHEDULE E: GOVERNANCE

Appendices and Attachments

Appendix E-1	Key Service Provider Positions
Appendix E-2	SARS PPS&G
Appendix E-3	Form of a Change Order
Appendix E-4	Form of a Work Order
Appendix E-5	Form of Charge Adjustment Acceptance

SCHEDULE E: GOVERNANCE

1. INTRODUCTION

This **Schedule E (Governance)** details the terms which are relevant to and which will govern the Service Provider's management of its performance of the Services and SARS's management of the Service Provider.

2. CHANGE

2.1. Technology Refresh

The Service Provider will ensure that the Software and hardware it uses and/or provides in connection with its performance of the Services, including measurement, management and monitoring Tools are:

- 2.1.1. Current and proven;
- 2.1.2. Supported by the applicable maintenance provider's maintenance agreement;
- 2.1.3. support the Maintenance and Break-fix of in scope ICT Facilities Infrastructure standards;
- 2.1.4. support the Service Provider's obligation to perform the Services in terms of its obligations under this Agreement (including the Performance Standards); and
- 2.1.5. where applicable to the Services, are compatible with the SARS Software and hardware.

- 2.2. Notwithstanding the foregoing, the Service Provider will have sole responsibility for the cost of purchasing and replacing its own assets as required for it to meet its obligation to perform the Services in terms of its obligations under this Agreement (including the Performance Standards).

3. REVIEWS

3.1. Innovation

Without limiting the generality of the Service Provider's other obligations under this Agreement, the Service Provider will on an annual basis:

- 3.1.1. seek to: (i) identify innovative ways to reduce SARS internal and external costs associated with the Services, including the Charges; and (ii) increase functionality of the Services, in each case evaluating SARS's use of technology and considering whether changes to such use or to technology would reduce SARS's internal and external costs or increase the functionality provided by the hardware and Software;
- 3.1.2. summarise the results of the Service Provider's efforts under **Clause 3.1.1** in the form of proposals, including recommendations regarding ways to achieve the goals

articulated in **Clause 3.1.1**;

3.1.3. analyse and evaluate the proposals referred to in **Clause 3.1.2** and any similar proposals reasonably made by SARS; and

3.1.4. implement such proposals with SARS's approval.

3.2. **Annual Review of Services and Service Levels**

The Parties will perform an annual review of the Services and the Service Levels to determine whether: (i) the Service Provider is meeting its obligations in **Clause 1.2 of Schedule C (Service Levels)** to improve its level of Service throughout the Term; and (ii) the specific Service Levels required of the Service Provider should be more favourable to SARS than those set out in **Schedule C (Service Levels)**. Upon completion of this review, the Service Provider will propose all potential improvements to the Service Levels for SARS's review and approval.

3.3. **Annual Review of Charges**

In addition to the Cost Review Meetings detailed in **Clause 1.5 of Schedule D (Charges, Invoicing and Payment)**, the Parties will perform an annual review of the Charges (including any expenses or Charges charged on a Pass Through Expense Basis and/or a Time and Materials Basis under the Agreement) and the Service Provider's efforts and success in fulfilling its obligations set out in **Clause 1.4 of Schedule D (Charges, Invoicing and Payment)**. As part of these periodic reviews, the Service Provider will provide a description of the success to date in fulfilling such obligations including analyses of: (i) any reduction in Charges and Pass Through Expenses; and (ii) potential savings achieved or anticipated.

4. **PROJECT AND CONTRACT MANAGEMENT**

4.1. **Steering Committee**

The Parties will form a steering committee to facilitate communications between them ("**Steering Committee**"). The Steering Committee will be composed of the SARS Contract Executive (and at such Executive's election, other SARS Personnel) and Service Delivery Manager.

4.2. **Reports**

The Service Provider will provide SARS with the reports reasonably required by SARS, including the reports set out in **Appendix B-6 (Reports)**. The format, content and frequency of such reports will be as is reasonably required by SARS.

4.3. **Meetings**

4.3.1. Within 30 (thirty) days of the Effective Date, the Service Provider will propose for SARS's review and approval a set of monthly, annual and other periodic meetings to be held between representatives of SARS and the Service Provider.

4.3.2. As of the Effective Date, such meetings will include the following:

4.3.2.1. during Transition, a monthly meeting to be held by the SARS Contract Executive (and at such Executive's election, other members of SARS

- contract management team) and the Service Delivery Manager to discuss day-to-day operations, the status of ongoing and planned activities including changes that might adversely affect performance, and such other matters as appropriate;
- 4.3.2.2. a quarterly management meeting of the Steering Committee to: (i) review the monthly performance reports for each month during the quarter; (ii) review the Service Provider's overall performance under the Agreement; (iii) review progress on the resolution of issues; (iv) provide a strategic outlook for the systems requirements of SARS; and (v) discuss such other matters as appropriate;
- 4.3.2.3. an annual meeting of senior management of the Parties to review relevant relationship, contract and performance issues; and
- 4.3.2.4. such other meetings between SARS and the Service Provider Personnel as may be reasonably requested by SARS and as may be necessary to address relevant relationship, contract and performance issues.
- 4.3.3. The Service Provider will prepare and circulate an agenda sufficiently in advance of each such meeting to give participants an opportunity to prepare for the meeting. The Service Provider will incorporate into such agenda items that SARS desires to discuss. At the request of SARS, the Service Provider will prepare and circulate minutes promptly after a meeting for review and approval by SARS.

4.4. SARS Policies, Procedures, Standards and Guidelines

4.4.1. Compliance with Policies

The Service Provider will comply with the following (and to the extent that the same issue is addressed by two or more of these policies or procedures, the Service Provider will comply with the higher standard):

- 4.4.1.1. SARS PPS&G, as such policies and procedures may be changed in terms of **Clauses 4.4.3** and **4.4.4**; and
- 4.4.1.2. The Service Provider's standard policies and procedures that relate to the performance of the Services or the Service Provider's other obligations under this Agreement (to the extent that they do not conflict with the SARS Policies or the other provisions of this Agreement) (the "**Service Provider Policies**"). The Service Provider will provide copies of the Service Provider Policies (including any amendments, updates or replacements) to SARS.
- 4.4.2. SARS PPS&G as at the Effective Date are attached hereto as **Appendix E-2 (SARS PPS&G)**.

[Note to the Bidder: Appendix E-2 (SARS PPS&G) will be established prior to the Effective Date. SARS will make the applicable SARS PPS&G available to the Bidder in the Data Room.]

- 4.4.3. If SARS changes the SARS PPS&G, or introduces new standard policies and procedures that are applicable to the Services, SARS will provide the Service Provider with reasonable notice, and a copy, of same. The pricing impact (if any) of such a change will be addressed in terms of **Clause 8 of Schedule D (Charges, Invoicing and Payments)**.
- 4.4.4. Changes to the Service Provider Policies will not result in an increase in the

Charges or in any other costs to be borne by SARS (e.g. Pass Through Expenses, internal costs).

4.5. Process and Procedures Library

4.5.1. As part of the Transition Deliverables, the Service Provider, in consultation with SARS, will prepare a Process and Procedures Library detailing the operational and management processes by which the Service Provider will perform and deliver the Services under this Agreement. The Process and Procedures Library will also include:

- 4.5.1.1. change control processes;
- 4.5.1.2. incident management processes;
- 4.5.1.3. problem management processes;
- 4.5.1.4. business continuity processes;
- 4.5.1.5. backup and restore processes;
- 4.5.1.6. capacity management practices;
- 4.5.1.7. project management processes;
- 4.5.1.8. management information processes; and
- 4.5.1.9. various administrative processes including invoicing practices.

4.5.2. The Process and Procedures Library will be suitable and accessible for use by SARS Personnel to understand how the Service Provider will provide the Services and to enable SARS and SARS's internal and external auditors to verify and audit the manner in which the Service Provider is providing the Services.

4.5.3. The Service Provider will develop the Process and Procedures Library for SARS's review and approval in accordance with the Transition Plan, and obtain SARS's review and approval of an integrated Process and Procedures Library for all of the Services within 30 (thirty) days of the Commencement Date. Failure to provide a final draft that is reasonably acceptable to SARS within the aforementioned time period will be a material breach of the Agreement. SARS will provide detailed and reasonable comments on each draft within 15 (fifteen) Business Days after receipt of any draft and the Service Provider will incorporate such comments in the next draft.

The Service Provider will update the Process and Procedures Library on an on-going basis during the Term to reflect changes in the operations or procedures described therein. The Service Provider will provide updates to the Process and Procedures Library to SARS on the 5th (fifth) business day of each month during the Term or review and approval.

4.5.4. The Service Provider will perform the Services in terms of the Process and Procedures Library provided that, in the event there is a conflict between the provisions of this Agreement and the provisions of the Process and Procedures Library, the provisions of this Agreement will take precedence. Moreover, the Process and Procedures Library may not: (i) be contrary to the scope of Services; or (ii) modify any of the terms or conditions of this Agreement. Without limiting the generality of the Service Provider's obligation to perform the Services in terms of the Performance Standards, the Service Provider may, in terms of **Clause 4.4.1**, use existing SARS procedures prior to the approval of the Process and Procedures Library.

5. WORK ORDER AND CHANGE ORDER

- 5.1. The Parties may, from time to time, include under the Agreement, Work Orders and Change Orders pertaining to New Services, Projects or changes to the Services provided by the Service Provider to SARS under the Agreement, substantially in accordance with the Work Order template annexed hereto as **Appendix E-4 (Form of a Work Order)** or Change Order template annexed hereto as **Appendix E-3 (Form of a Change Order)**.
- 5.2. The provisions of this Agreement will apply to each and every Work Order and or Change Order issued under this Agreement.
- 5.3. The Service Provider will provide the Services to the Customer subject to the terms and conditions of this Agreement generally and in particular subject to the terms and conditions set forth in the relevant Work Order and/or Change Order provided that a Work Order and/or Change Order may amend the terms and conditions of this Agreement only with respect to the subject matter of such Work Order and/or Change Order.

APPENDIX E-1: KEY SERVICE PROVIDER POSITIONS

[Note to the Bidder: The Bidder is required to propose a list of Key Service Provider Positions in your response to this document. The list of proposed Key Service Provider Positions must be made as a mark-up to the contract. At a minimum, you should include the Service Delivery Manager and a Transition Manager responsible for the day to day transition activities as the Services are transitioned from SARS or an Incumbent Service Provider to you.]

APPENDIX E-2: SARS PPS&G

[Note to the Bidder: This Appendix E-2 (SARS PPS&G) will be populated in accordance with Clause 4.4.2 of Schedule E (Governance)]

APPENDIX E-3: FORM OF A CHANGE ORDER

THIS CHANGE ORDER NO. _____ dated as of [_____] (the '**Change Order Commencement Date**') is being executed with respect to the Services/Work Order # _____ and pursuant to the ICT Facilities Services Agreement between South African Revenue Service ("**SARS**") and [_____] (Proprietary) Limited, (Registration No. [_____] ("**Service Provider**") dated [_____] , the terms of which are incorporated herein by reference. Capitalised terms used but not defined herein shall have the meanings given to them under **Schedule A (Glossary)** of the aforesaid Agreement.

All terms and conditions of the Services/Work Order not specifically amended in terms of this Change Order will remain in full force and effect. Any conflict between the terms and conditions of this Change Order, Work Order and or the Agreement shall be addressed in accordance with **Clause 2.4** of the **Main Agreement**.

DESCRIPTION OF THE CHANGES TO SERVICES

[Note to the Parties: Please insert a description of the changes to the Services/Work Order provided under this Change Order. Upon execution of this Change Order Service Provider shall implement such changes. For purposes of clarity, New Service and/or Projects shall be provided only under Work Orders and not under Change Orders.]

The Parties' duly authorised representatives hereby confirm their acceptance of this Change Order.

[Service Provider name] South African Revenue Service

By: By:

Printed: Printed:

Title: Title:

Date: Date:

[Service Provider name] South African Revenue Service

By: By:

Printed: Printed:

Title: Title:

Date: Date:

APPENDIX E-4: FORM OF A WORK ORDER

THIS WORK ORDER NO. _____ dated as of [_____] (the '**Work Order Commencement Date**') is being executed pursuant to the ICT Facilities Services Agreement between South African Revenue Service ("**SARS**") and [_____] (Proprietary) Limited, (Registration No. [_____] ("**Service Provider**")) dated as of [_____] , the terms of which are incorporated herein by reference (the "**Work Order**"). Capitalised terms used but not defined herein shall have the meanings given to them under **Annexure A (Glossary)** to the aforesaid Agreement.

1. DESCRIPTION OF THE SERVICES

[Note to the Parties: Please insert a description of the Services under this ICT Facilities Services Agreement. Identify Service Provider resources, hardware to be provided by Service Provider and Third Party Software to be provided by Service Provider.]

2. DURATION/DELIVERABLES AND TIMELINE

[Note to the Parties: delete whichever is not applicable]

- 2.1. This Work Order will commence on the Work Order Commencement Date and will terminate on [_____] unless extended or terminated earlier in accordance with the Agreement.
- 2.2. The Service Provider shall procure, modify, plan, design, develop and/or implement the Deliverables that are identified and described in Table B-1.

[Note to the Parties: In the case of Projects, please identify each Deliverable and provide the other information required to complete Table B-1]

Table B-1		
Name of Deliverable	Description	Key Milestones and Timeline

[Note to the Parties: In the case of New Services and/or applicable maintenance and support, please identify the scope of the New Service and provide the other information required to complete Table B-2]

Table B-2

Scope	Description

3. SERVICE LEVELS AND SERVICE LEVEL CREDITS

[Note to the Parties: Please list any applicable Service Levels and Service Level Credits]

4. THE SERVICE PROVIDER CHARGES

Service Provider's Charges for Services under this ICT Facilities Services Agreement shall be the amount of R [_____] in accordance with Table B-3 below:

Table B-3	
Name of Deliverable/New Service	Allocated Portion of the Fixed Price
Total:	

[Note to the Parties: Please list the name of each Deliverable identified in Tables B-4 and take note of Payment Milestones for each such Deliverable/New Service as set out in Table B-3. Table B-4 may be adapted to suit the requirements]

Table B-4			
Name of Deliverable	Payment Milestones for such Deliverable	Amount to be Paid Upon Achievement of Milestone	Dates that Payment Milestones are to be Achieved
Total:			

[Signature blocks appear on the next page.]

The Parties' duly authorised representatives hereby confirm their acceptance of this Work Order.

[Service Provider name]

South African Revenue Service

By:

By:

Printed:

Printed:

Title:

Title:

Date:

Date:

[Service Provider name]

South African Revenue Service

By:

By:

Printed:

Printed:

Title:

Title:

Date:

Date:

APPENDIX E-5: FORM OF CHARGE ADJUSTMENT ACCEPTANCE

1. We refer to the ICT Facilities Services Agreement (the “**Agreement**”) which commenced on [_____] concluded between South African Revenue Service (“**SARS**”) and [_____] (Proprietary) Limited, (Registration No. [_____] (the “**Service Provider**”).
2. In terms of the aforesaid Agreement, the Service Provider provides to SARS, *inter alia*, the Services (as defined in the Agreement), at a charge to be reviewed by the Parties annually.
3. Therefore in accordance with **Clause 11 of Schedule D (Charges, Invoicing and Payments)** of the Agreement, it is hereby recorded that the Parties have reached consensus that the Charges are amended as per the attached pricing tables.
4. The Agreement is hereby amended and the Charges as per paragraph 3 above will apply with effect from [_____] until [_____].

[Signature blocks appear on the next page.]

The Parties’ duly authorised representatives hereby confirm their acceptance of the terms and conditions set out above.

[Service Provider name]

South African Revenue Service

By:

By:

Printed:

Printed:

Title:

Title:

Date:

Date:

[Service Provider name]

South African Revenue Service

By:

By:

Printed:

Printed:

Title:

Title:

Date:

Date:

SCHEDULE F: DISENGAGEMENT ASSISTANCE

1. GENERAL

- 1.1. The Service Provider will, during the Disengagement Assistance Period provide to SARS, or at SARS' request to a Successor (where SARS is not the Successor), without interruption or degradation of the Services: (i) such termination/expiration assistance as SARS may request to facilitate the transition of the Services to SARS or a Successor; and (ii) to the extent applicable, hardware and Software, ("**Disengagement Assistance**").
- 1.2. Disengagement Assistance provided to SARS prior to the effective date of termination or expiration will be chargeable by the Service Provider to SARS only to the extent that the appointment of additional resources (above and beyond those resources used in providing the Services) is strictly necessary for the Service Provider to provide such assistance and provided the Service Provider has notified SARS of such appointment and SARS has pre-approved such appointment (and related charges) in writing, which approval will be exercised at SARS's sole discretion. The Service Provider will use Commercially Reasonable Efforts to perform the Disengagement Assistance without deploying additional resources. Disengagement Assistance provided to SARS after the effective date of termination or expiration pre-approved by SARS in writing in SARS sole discretion, will be chargeable to SARS on a Time and Materials Basis in accordance with the Personnel Rates. Charges related to materials will be treated on a Pass Through Expense Basis. and be pre-approved by SARS in writing, in SARS sole discretion.
- 1.3. Disengagement Assistance will include the provision of all information and assistance requested by SARS and necessary to ensure the seamless transition of Services and functions being performed by the Service Provider or its agents to the Successor. Disengagement Assistance may include capacity planning, consulting services, facilities planning, telecommunications planning, Software configuration, reviewing all system Software with a new vendor, generating machine readable listings of source code, uploading production databases, providing parallel processing, testing, and providing such other assistance as is described in this **Schedule F (Disengagement Assistance)**. The Service Provider shall document all information, knowledge transfer and the like, keep it up to date and provide such documentation to SARS, in a format acceptable to SARS, as part of Disengagement Assistance.
- 1.4. The Service Provider will perform the Disengagement Assistance in a manner such that (to the extent within the Service Provider's control):
 - 1.4.1. the Terminated Services are transferred to the Successor in an efficient and orderly manner;
 - 1.4.2. the impact on SARS' operations (including SARS Personnel) and the internal and Third Party costs incurred by SARS in transferring the Terminated Services are minimised;
 - 1.4.3. the Terminated Services continue to be performed by the Service Provider until the Termination Date has occurred without disruption or deterioration except as approved by SARS and included in the Disengagement Assistance Plan;

- 1.4.4. any disruption or deterioration of the Terminated Services following the Termination Date (except as approved by SARS and included in the Disengagement Assistance Plan) is minimised;
 - 1.4.5. there is a knowledge transfer as part of which SARS and/or the Successor are provided with all information held by the Service Provider (or a Subcontractor) that is required to perform services replacing or reasonably equivalent to the Terminated Services following the Termination Date; and
 - 1.4.6. SARS is able, at its option, to receive services similar to the Terminated Services, independently of the Service Provider following termination, including by the transfer to the SARS or the Successor of the resources specified in **Clause 3** of this **Schedule F (Disengagement Assistance)**.
- 1.5. If there is more than one Successor, then the Service Provider will perform the Disengagement Assistance in respect of each Successor.
- 1.6. **Approach to disengagement**
- SARS will be entitled to determine on notice to the Service Provider the approach to be taken in respect of the transfer of the Terminated Services, including that:
- 1.6.1. the transfer of the Terminated Services from the Service Provider to a Successor may either occur:
 - 1.6.1.1. on the Termination Date; or
 - 1.6.1.2. over a period prior and up to the Termination Date in accordance with a timetable, specified by SARS with a corresponding adjustment of the Charges in accordance with **Clause 14** of **Schedule D (Charges, Invoicing and Payment)**, provided that all Terminated Services will cease being performed by the Service Provider no later than the Termination Date; and
 - 1.6.2. interim changes are made to the Services to enable the transfer of the Terminated Services.
- 1.7. **Disengagement Assistance Plan**
- 1.7.1. A plan (the Disengagement Assistance Plan) will be developed for each transfer of Terminated Services. SARS will elect whether the Disengagement Assistance Plan is to be developed by SARS or in whole or part by the Service Provider.
 - 1.7.2. If SARS elects to develop the Disengagement Assistance Plan (or any part thereof), SARS will provide the Disengagement Assistance Plan to the Service Provider.
 - 1.7.3. If SARS elects for Service Provider to develop all or part of the Disengagement Assistance Plan, then:
 - 1.7.3.1. a detailed draft that complies with this Agreement will be delivered to SARS for its comments and review by:
 - (a) in the case of expiry of the Term, 6 (six) months prior to the end of the Term; or

- (b) in all other cases, 10 (ten) Business Days following the date of delivery of a notice of termination or a notice to reduce the scope of the Services.
- 1.7.3.2. The Service Provider will incorporate SARS's reasonable comments and changes into the Disengagement Assistance Plan (and any subsequent version of the Disengagement Assistance Plan) and finalise the Disengagement Assistance Plan within 15 (fifteen) days following receipt of the same; and
- 1.7.3.3. the final Disengagement Assistance Plan will be subject to the written approval of SARS (not to be unreasonably withheld).
- 1.7.4. The Disengagement Assistance Plan will clearly and in detail:
- 1.7.4.1. give effect to any approach to the Disengagement Assistance specified by SARS in accordance with **Clause 1.6**;
- 1.7.4.2. describe actions to be taken by the Service Provider in performing the Disengagement Assistance (without limitation to any other actions requested by SARS pursuant to this **Schedule F (Disengagement Assistance)** during the Disengagement Assistance Period);
- 1.7.4.3. subject to **Clause 1.7.7**, describe in detail any SARS and/or Successor tasks (including an estimate of the specific staffing required);
- 1.7.4.4. describe how any transfer of assets and contracts will be achieved;
- 1.7.4.5. specify the detailed information that will be provided (having regard to the categories in **Appendix F-1 (Disengagement Assistance Data)**);
- 1.7.4.6. set out the timetable for the transfer of each element of the Terminated Services (including key milestones to track the progress of the transfer); and
- 1.7.4.7. specify reasonable acceptance criteria and testing procedures to confirm whether the transfer of the Terminated Services has been successfully completed.
- 1.7.5. Following SARS's approval of/and authorisation to proceed with the final Disengagement Assistance Plan, the Service Provider will perform the Disengagement Assistance in accordance with the Disengagement Assistance Plan.
- 1.7.6. During the Disengagement Assistance Period, both Party may propose changes to the Disengagement Assistance Plan and the Service Provider will proactively recommend changes that are necessary or desirable. Any changes to the Disengagement Assistance Plan will be subject to the other Party's approval (not to be unreasonably withheld).
- 1.7.7. SARS (or Successor) tasks to be performed in respect of Disengagement Assistance will only apply where:
- 1.7.7.1. the task is reasonable and there is no other practical manner in which the Service Provider can perform the Disengagement Assistance without such task being performed by SARS or a Successor; or
- 1.7.7.2. SARS notifies the Service Provider that SARS wishes to perform such

task.

1.8. Disengagement Assistance Management

- 1.8.1. The Service Provider will appoint a senior project manager as its "**Disengagement Assistance Manager**" who will be responsible for the overall performance of the Disengagement Assistance and who will be the primary point of contact for SARS in respect of the Disengagement Assistance during the Disengagement Assistance Period. The Service Provider will appoint such representative by the relevant date specified in **Clause 1.7.3.1**.
- 1.8.2. SARS will appoint a senior project manager as its "**SARS Disengagement Assistance Manager**" who will be the primary point of contact for the Service Provider during the Disengagement Assistance Period.
- 1.8.3. Both Parties will use Commercially Reasonable Efforts to ensure that any Disengagement Assistance issues or disputes are resolved promptly by the Disengagement Assistance Managers. Any disputes that cannot be resolved will be escalated in accordance with the dispute resolution procedure set forth in **Clause 22** of the **Main Agreement**.
- 1.8.4. The Service Provider will manage the Disengagement Assistance in accordance with SARS's reasonable directions, including:
 - 1.8.4.1. resolving any Incidents or problems arising with respect to the Disengagement Assistance;
 - 1.8.4.2. defining an escalation process, as approved by SARS, to be used if there is a failure in any part of the disengagement;
 - 1.8.4.3. establishing, as directed by SARS, the necessary communications and interfaces between SARS, the Service Provider, the Successor and the Subcontractors; and subject to the provisions of **Clause 1.2** above, providing individuals with the required expertise to perform Disengagement Assistance.
- 1.8.5. The Service Provider will monitor progress of all tasks and responsibilities in the Disengagement Assistance Plan (whether the responsibility of the Service Provider, SARS or any Third Party) against the Disengagement Assistance Plan and promptly escalate to SARS any failures (or potential failures) to perform any tasks or responsibilities, including failures by SARS or the Successor.
- 1.8.6. The Service Provider will provide reports to SARS not less than once a week which:
 - 1.8.6.1. describe the progress of the Disengagement Assistance against the Disengagement Assistance Plan; and
 - 1.8.6.2. identify any risks encountered during the performance of the Disengagement Assistance and propose steps to mitigate such risks.
- 1.8.7. The Disengagement Assistance Managers appointed pursuant to **Clauses 1.8.1** and **1.8.2** above will meet on a weekly basis (or as otherwise required by SARS) during the Disengagement Assistance Period to review the status of the Disengagement Assistance Plan.

1.8.8. SARS may appoint a Successor during the Disengagement Assistance Period to manage Service Provider's performance of the Disengagement Assistance and any Terminated Services. The Service Provider will follow the direction of such Successor only to the extent that:

1.8.8.1. the Service Provider would be obliged to follow SARS's directions under this Agreement; and

1.8.8.2. SARS has authorised the Successor and notified Service Provider of such authorisation.

1.9. Confidentiality and Security Compliance

1.9.1. Prior to a Successor (other than SARS) being provided with any Service Provider Confidential Information as part of Disengagement Assistance, SARS will enter into a confidentiality agreement with the Successor on terms substantially similar to those set out in **Clause 15** of the **Main Agreement** or as otherwise agreed by the Parties.

1.9.2. SARS will procure that any Successor entering any Service Provider or Subcontractor facilities in connection with the Terminated Services will comply with Service Provider's reasonable security and site regulations and policies notified to SARS in advance.

2. SPECIFIC DISENGAGEMENT ASSISTANCE REQUIREMENTS

2.1. Bid Assistance

2.1.1. At any time during the Term (whether before or during the Disengagement Assistance Period), the Service Provider will, as requested by SARS, reasonably co-operate and promptly provide assistance with any bid or tender process that SARS runs in relation to any of the Terminated Services (or potential Terminated Services) including:

2.1.1.1. providing information, reports and data for inclusion in SARS's request for information and request for proposals;

2.1.1.2. answering questions raised by potential Successors; and

2.1.1.3. allowing potential Successors to perform reasonable due diligence activities in respect of the relevant Services, including providing reasonable access to facilities from where the Services are performed (subject to the Service Provider's reasonable security requirements), the Service Provider support systems and the Service Provider Personnel (including personnel located off SARS Sites); provided that such due diligence will be performed in such a reasonable manner so that it does not materially disrupt Service performance (unless SARS excuses such disruption in advance, in writing).

2.1.2. The bid assistance to be performed pursuant to **Clause 2.1.1** above will be at least to the level that would be required for reasonably skilled and experienced Third Party service providers to:

2.1.2.1. prepare an informed, non-qualified offer for the relevant Terminated Services; and

- 2.1.2.2. not be disadvantaged compared to the Service Provider (if the Service Provider is invited to participate) in respect of access to information; and

in any event, be no less than the co-operation and assistance provided by SARS to the Service Provider prior to the Effective Date.

2.2. Return of Materials

The Service Provider will provide SARS with (or destroy) the SARS Confidential Information in accordance with **Clause 15.8** of the **Main Agreement**.

2.3. Information

- 2.3.1. As requested by SARS, the Service Provider will promptly (and in any event within 5 (five) Business Days following the request) provide SARS with and permit SARS to share with the Successor if the Successor is not SARS:

2.3.1.1. the information and data listed in **Appendix F-1 (Disengagement Assistance Data)**, subject to any timing restrictions specified in that appendix;

2.3.1.2. any other information relating to the Services which would be reasonably required by a reasonably skilled and experienced provider of services to continue to perform the Services without disruption or deterioration following the Termination Date.

- 2.3.2. Subject to **Clause 1.8** above, SARS may provide to a Successor (or potential Successor): (a) the information identified in **Clause 2.3.1**; and (b) the Agreement.

- 2.3.3. The Service Provider will provide updates to the information provided pursuant to this **Schedule F (Disengagement Assistance)**, during the Disengagement Assistance Period.

2.4. Knowledge Transfer

The Service Provider will provide knowledge transfer services to the Successor (and SARS where SARS is not the Successor) as reasonably required by SARS, including:

- 2.4.1. explaining procedures, standards and operations used to perform the Terminated Services;

- 2.4.2. answering questions in respect of the information provided pursuant to **Clause 2.3** above; and

- 2.4.3. for reasonable periods during the Disengagement Assistance Period prior to the Termination Date, allowing Successor personnel to work alongside the Service Provider Personnel on a collaborative basis, to shadow their role and enable knowledge transfer and SARS may, at its discretion on a Time and Materials Basis, extend this Agreement for shadowing purposes as set out in this **Clause 2.4.3**.

2.5. Co-operation

As requested by SARS, the Service Provider will co-operate with (and procure that the Subcontractors co-operate with) the Successor during the Disengagement Assistance

Period.

2.6. **Change Freeze**

The Service Provider will, unless otherwise approved by SARS, ensure that during the 1 (one) month period prior to the Termination Date no material changes are made to:

- 2.6.1. the Terminated Services (including to any hardware, Software or other facilities used to perform the Terminated Services), other than changes necessary for the continued performance of the Services in accordance with the Performance Standards; and
- 2.6.2. any hardware, Software or contracts that SARS has the right to acquire in accordance with **Clause 3** below.

2.7. **Backlogs**

The Service Provider will perform its obligations under this Agreement so that there is not an unreasonable backlog of requests for support or resolution of Incidents as at the Termination Date. The final payment of invoices under this Agreement shall be withheld until the agreed backlog has been cleared.

2.8. **Business Continuity**

The Service Provider will provide the following assistance to support SARS's requirements for business continuity:

- 2.8.1. where SARS is not the Successor, informing Successors of SARS's then-current policies and procedures with regard to backup and disaster recovery relating to the Terminated Services;
- 2.8.2. arranging for additional overlapping coverage or support through the Run Down Period to minimise disruption in the event of an outage during the Run Down Period; and
- 2.8.3. as requested by SARS, assisting in disaster recovery testing during the Run Down Period in accordance with the processes and procedures detailed in the Process and Procedures Library.

3. **TRANSFER OF ASSETS AND GRANT OF RIGHTS**

3.1. **Option to purchase hardware**

- 3.1.1. At SARS's election, the Service Provider will sell to SARS some or all of the hardware used primarily to provide the Services to SARS. The Service Provider will sell hardware that SARS elects to purchase under this provision at the lesser of fair market value or net book value. For this purpose, fair market value will be determined by a registered valuator designated by SARS.

By the relevant date as contemplated in **Clause 1.7.3.1** above, the Service Provider will provide a list of any hardware that is owned by the Service Provider or a Subcontractor and is used primarily to provide the Services to SARS. The list will

specify for each item of hardware: the manufacturer, model, configuration, age, location, function in the provision of the Services and net book value.

- 3.1.2. If SARS elects to purchase hardware pursuant to **Clause 3.1.1** above, then:
- 3.1.2.1. as requested by SARS, the Service Provider will de-commission the purchased hardware and prepare it for transportation (including packaging) or provide it for collection by SARS or the Successor;
 - 3.1.2.2. risk in the purchased hardware will pass to SARS only upon collection by SARS or upon delivery to SARS; and
 - 3.1.2.3. the Service Provider will execute or provide any title, bills of sale, invoices or other documents as may be required to give effect to this **Clause 3.1** and to perfect the transfer of title to SARS or the Successor.
- 3.1.3. If SARS elects not to purchase any such hardware, the Service Provider will be responsible for the re-use or safe disposal of the same (including, if it contains any SARS data, cleansing the same to the standards specified in this Agreement).
- 3.1.4. The Service Provider will provide SARS, the Successor or both (as specified by SARS) with such assistance as is reasonably required to ensure the migration of SARS's Software, SARS data or SARS-provided resources from any hardware which SARS does not wish to acquire to alternative hardware designated by SARS, or secure deletion (as required by SARS).
- 3.1.5. At SARS's election, the Service Provider will assign to SARS some or all of the Third Party contracts relating to hardware used primarily to provide the Services to SARS. The Service Provider will be responsible for obtaining, at its sole cost and expense, any Required Consents necessary for the assignment of the applicable lease.

3.2. **Assignment of contracts**

- 3.2.1. SARS or a Successor (where SARS is not the Successor) will have the option (exercisable by SARS on a contract by contract basis) to assume contracts for any Services provided by Third Parties to the Service Provider and used exclusively by the Service Provider to provide Services to SARS. The Service Provider will take all steps necessary to formally assign such contracts to SARS. In respect of Third Party service contracts, the Service Provider will, where required by SARS, use Commercially Reasonable Efforts to arrange for the provision of the Services by the Third Party to SARS under terms at least as favourable as those in the Third Party Service Contract.
- 3.2.2. The Service Provider will provide further information about such contracts in accordance with **Appendix F-1 (Disengagement Assistance Data)**.

APPENDIX F-1: DISENGAGEMENT ASSISTANCE DATA

The Disengagement Assistance Data consists of:

1. THIRD PARTY CONTRACTS

In respect of each Third Party contract entered into by the Service Provider (or by a Subcontractor) in relation to the Services, including contracts with Subcontractors, and warranties, maintenance agreements and leases relating to hardware and licences and maintenance agreements relating to Software:

- 1.1. the type of contract, such as maintenance or support services;
- 1.2. a description of the service being provided;
- 1.3. whether the contract exclusively relates to the Services;
- 1.4. whether the contract can be assigned or novated;
- 1.5. the licences, rights or permissions granted under the contract by the Third Party;
- 1.6. amounts payable under the terms of such contract;
- 1.7. the remaining term of contract and termination rights;
- 1.8. contact details of the Third Party;
- 1.9. a history of dealings with the Third Party (including performance histories against service levels that may be in effect with respect to such Third Party);
- 1.10. a list of projects or unfilled orders in progress and the status of each; and
- 1.11. a copy of each of the contracts with each Third Party.

2. OTHER INFORMATION

- 2.1. A copy of all documents in the Process and Procedures Library required to provide the Services to SARS;
- 2.2. A list of any Tools, systems, hardware, assets, Software, processes and procedures that are necessary to perform the Services that will not be transferred to the Successor;
- 2.3. All Software back-ups of systems used to perform the Services;
- 2.4. Any security features, passwords and password control policies that the Successor needs to know to continue to perform the Services;
- 2.5. Key support contact details for the Service Provider Personnel and Third Party service

providers (excluding Subcontractors), including a contact listing of current potential alternative sources of resources, including skilled labour and spare hardware and parts; and

- 2.6. Work volumes, staffing requirements, actual Service Levels and information on historical performance for each Service component during the preceding 12 (twelve) months.

SCHEDULE G: REQUEST FOR PROPOSAL

[Note to the Bidder: The Request for Proposal documentation will be attached here]

SCHEDULE H: SERVICE PROVIDER PROPOSAL

[Note to the Bidder: The Bidder's Proposal will be included upon finalisation of Agreement]

SCHEDULE I: BROAD-BASED BLACK ECONOMIC EMPOWERMENT

1. This **Schedule I (BBBEE)** sets out, amongst other things, the minimum BEE status that the Service Provider undertakes and warrants will be maintained for duration of the term.
2. In this **Schedule I (BBBEE)** the provisions of the Act and the Codes (defined below) will apply *mutatis mutandis* to any words and expressions, the meaning of which for purposes of this **Schedule I (BBBEE)** are not defined in this **Clause 2**, and unless the context indicates a contrary intention, the following words and expressions bear the meanings assigned to them and cognate expressions bear corresponding meanings:
 - 2.1. "**Act**" means the Broad-based Black Economic Empowerment Act 53 of 2003;
 - 2.2. "**BBBEE**" means broad-based black economic empowerment;
 - 2.3. "**BEE Data**" means without limitation, all the underlying data relating to an Entity which has been relied upon or utilised by a Verification Agency for the purposes of issuing a Verification Certificate in respect of an Entity's BEE Status;
 - 2.4. "**BEE Status**" means the BEE Status of an Entity based on its Generic Scorecard (or the QSE scorecard, as may be applicable) as measured and certified by a Verification Agency in accordance with the applicable Codes and, in accordance with the following compliance bands:

BEE Status	Qualification
Level 1 (One) Contributor	≥ 100 points on the Generic Scorecard
Level 2 (Two) Contributor	≥ 85 but <100 points on the Generic Scorecard
Level 3 (Three) Contributor	≥ 75 but <85 on the Generic Scorecard
Level 4 (Four) Contributor	≥ 65 but <75 on the Generic Scorecard
Level 5 (Five) Contributor	≥ 55 but <65 on the Generic Scorecard
Level 6 (Six) Contributor	≥ 45 but <55 on the Generic Scorecard
Level 7 (Seven) Contributor	≥ 40 but <45 on the Generic Scorecard
Level 8 (Eight) Contributor	≥ 30 but <40 on the Generic Scorecard
Non-Compliant Contributor	< 30 on the Generic Scorecard

or, the compliance bands applicable to QSE's under the Codes, as the case may be;

- 2.5. "**Codes**" mean generally, the Codes of Good Practice on Black Economic Empowerment gazetted by the Minister of Trade and Industry under **Clause 9** of the Act on 9 February

2007 and the specific Code applicable;

- 2.6. "**Entity**" means for purposes of this **Schedule I (BBBEE)**, the Service Provider and any subsidiary of the Service Provider specifically cited as a subsidiary in the Verification Certificate of the Service Provider's group of companies;
- 2.7. "**Element**" means the measurable quantitative or qualitative elements of the Generic Scorecard (or the QSE scorecard, as may be applicable), being Ownership, Management, Employment Equity, Skills Development, Preferential Procurement, Enterprise Development and Socio-Economic Development Initiatives, and each of the specific scorecards relating to these elements, measured in accordance with the respective Codes;
- 2.8. "**Generic Scorecard**" means the following balanced BEE scorecard included in Code 000 Statement 000:

Element	Weighting	Code Series Reference
Ownership	20 points	100
Management control	10 points	200
Employment equity	15 points	300
Skills development	15 points	400
Preferential procurement	20 points	500
Enterprise Development	15 points	600
Socio-economic Development Initiatives	5 points	700

- 2.9. "**QSE**" means a Qualifying Small Enterprise as defined under **Schedule 1** to the Codes;
- 2.10. "**SANAS**" means South African National Accreditation System, being the only national accreditation body recognized by the South African Government;
- 2.11. "**Statements**" mean generally, the statements to the Codes and in respect of the specific Code applicable, the specific statement thereto;
- 2.12. "**Verification Agency**" means a BEE Verification Agency contemplated by the Codes which, at the time of the issue of any certificate or confirmation of any aspect of any Entity's BEE status for purposes of this **Schedule I (BBBEE)**, is:
- 2.12.1. a verification agency accredited by SANAS; or alternatively
- 2.12.2. in respect of any certificate or confirmation of any aspect of any Entity's BEE Status issued after 1 February 2010 (and for 12 months thereafter), a verification agency that has been issued with a valid pre-assessment letter from SANAS; and
- 2.12.3. "**Verification Certificate**" means a certificate which may be required in terms of this **Schedule I (BBBEE)** issued by a verification agency, verifying an Entity's BEE Status level, the details of its scorecard performance on the Elements of the Generic Scorecard (or QSE Scorecard, as may be applicable), and any other aspect of its BEE performance under the Codes or, verifying the BEE Status level,

the details of the scorecard performance and any other aspect of BEE performance under the Codes of a group of companies of which an Entity forms part, provided that such Entity is specifically cited as a subsidiary in the Verification Certificate of that group of companies.

3. The Service Provider undertakes and warrants that, for the full duration of the Term, the Service Provider and its Subcontractors will maintain the BEE Status Level, evidenced by its Verification Certificate submitted as part of the Service Provider's Proposal. If, at any time during the Term, the Service Provider achieves a better BEE Status Level (evidenced by its Verification Certificate) than the level evidenced by its Verification Certificate submitted as part of the Service Provider's Proposal, the Service Provider will maintain the better BEE Status Level for the remainder of the Term.
4. The Service Provider will, annually, at the earlier of, the anniversary of the Effective Date of the Agreement or, prior to the expiry of the Service Provider's previously applicable Verification Certificate, provide to SARS a Verification Certificate for the Service Provider comprising the following -
 - 4.1. a certification of its overall BEE Status, and
 - 4.2. a certification of its scoring on all the Elements of the Generic Scorecard (or QSE Scorecard as may be applicable) stipulating:
 - 4.2.1. the points scored on each Element under the applicable scorecard;
 - 4.2.2. the percentage achieved on each element under the applicable scorecard; and
 - 4.2.3. an executive report on the information contained in the Verification Certificate.
5. The Service Provider will, upon the written request of SARS at any time for the duration of this Agreement, within 30 (thirty) business days, provide SARS with any BEE Data SARS considers relevant to its evaluation of the Service Provider's or the Service Provider's Subcontractor's BEE Status or, the Service Provider's or the Service Provider's Subcontractor's BEE Status performance on any Element of the Generic Scorecard (or QSE Scorecard as may be applicable) for purposes of this **Schedule I (BBBEE)**.
6. Notwithstanding **Clause 5** above, SARS may, at its own cost and at its sole discretion, audit (whether by internal or external auditors) BEE Data provided by Service Provider in terms of this **Schedule I (BBBEE)**, provided that where such audit exercise reveals discrepancies and inaccuracies in the information provided by Service Provider to SARS (other than for minor or insubstantial discrepancies), or that the Service Provider is not in compliance with its obligations in **Clauses 3** above, the cost of such audit will be borne by the Service Provider.
7. In the event that the Service Provider, at any time for the duration of this Agreement, undergoes any corporate or internal restructuring or change which has (or, is reasonably likely to have) a negative impact on its BEE Status (as per the Verification Certificate required to be lodged from time to time in terms of this Agreement) or, undertakes any contractual commitment to do so, the Service Provider will be required to notify SARS thereof forthwith, providing full details of the impact (or anticipated impact) such restructuring or change (or proposed restructuring or change) will have on each Element of the Service Provider's Generic Scorecard, in the form of written confirmation to this effect from a

Verification Agency and the steps that will be taken by the Service Provider to regain a BEE Status Level in compliance with its obligations under **Clause 3** above.

SCHEDULE J: SERVICE PROVIDER'S TAX CLEARANCE CERTIFICATE

[Note to the Bidder: The Bidder's Tax Clearance Certificate as at the time of contracting will be attached here.]

SCHEDULE K: SERVICE PROVIDER'S INSURANCE POLICIES

[Note to the Bidder: The Bidder's Insurance Policies as at the time of contracting will be attached here]

SCHEDULE L: SUBCONTRACTORS TO SERVICE PROVIDER

[Note to the Bidder: The Schedule L (Subcontractors to Service Provider) will be populated from the Proposal]