

**THIS AGREEMENT INCLUDING ITS ANNEXURES AND/OR SCHEDULES  
THERE TO DO NOT CONSTITUTE A FINAL AGREEMENT BETWEEN THE  
PARTIES. SARS RESERVES THE RIGHT TO AMEND SAME, AT ITS OWN  
DISCRETION, AT ANY POINT IN TIME PRIOR TO SIGNATURE HEREOF.**

**YOUR SUBMISSION OF YOUR RESPONSE IS THEREFORE DEEMED TO BE AN  
ACKNOWLEDGEMENT AND ACCEPTANCE OF THE AFORESAID  
SOFTWARE SUBSCRIPTION LICENSE AND SUPPORT SERVICES AGREEMENT**

**IN RESPECT OF**

**APPLICATION PERFORMANCE MANAGEMENT SOLUTION**

**Between**

**THE SOUTH AFRICAN REVENUE SERVICE**

**(“SARS”)**

**And**

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

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## 1. PARTIES

1.1. The Parties to this Agreement are:

1.1.1. The South African Revenue Service, an organ of state within the public administration but outside the public service established in terms of Section 2 of the South African Revenue Service Act, 1997 (Act No. 34 of 1997), with its principal place of business situated at 299 Bronkhorst Street, Nieuw Muckleneuk, Pretoria (“SARS”); and

1.1.2. [DRAFTING NOTE: TO BE UPDATED POST AWARD], Registration Number: [drafting note: to be updated post award] a private company registered in terms of the Companies Act, 2009 (Act No. 71 of 2008) with its principal place of business situated at [DRAFTING NOTE: TO BE UPDATED POST AWARD] (the “Service Provider”).

(collectively referred to herein as the “Parties” and individually as a “Party”)

## 2. INTERPRETATION AND DEFINITIONS

2.1. The headings in this Agreement are for reference purposes only and will not govern or affect the interpretation of nor modify nor amplify the terms of this Agreement.

2.2. Unless inconsistent with the context, the words and expressions have the following meanings and similar expressions will have corresponding meanings:

2.2.1. “Acceptance Certificate” means the document signed by SARS, indicating its Acceptance of a Deliverable (or part thereof);

2.2.2. “Acceptance Testing” means the procedure and /or criteria and process of measurement, examination and/or such other activities as set out clause 12 below, required to test and verify that a Deliverable (i) meets SARS’s Technical Specification Requirements and (ii) operates and functions in accordance with the Functional Specification;

- 2.2.3. **"Acts of Insolvency"** means when a Party is unable to pay its debts, becomes insolvent, is going through business rescue, is the subject of any order made or a resolution passed for the administration, winding-up or dissolution (otherwise than for the purpose of a solvent amalgamation or reconstruction), has an administrative or other receiver, manager, trustee, liquidator, administrator, or similar officer appointed over all or any substantial part of its assets, enters into or proposes any composition or arrangement with its creditors generally or is the subject of any events or circumstances or analogous to the foregoing in the Republic of South Africa, as fully defined in the Insolvency Act, 1936 (Act No. 24 of 1936), as amended;
- 2.2.4. **"Ad Hoc Services"** means ad hoc services and/or services explicitly designated as such which is based on time spent and material utilised to execute such service and required by SARS from time to time which includes without being limited thereto, the provision of the Training Services, Professional Services and/or any other component of the Services required by SARS during the Term, subject to SARS's procurement governance processes and procedures;
- 2.2.5. **"Agreement"** means this Subscription Software License and Support Services Agreement, RFP Document and any annexure thereto;
- 2.2.6. **"Affiliate(s)"** means, with respect to any entity, any other entity Controlling, Controlled by or under common Control with such entity. The term "Affiliate" will also include:
- 2.2.6.1. a subsidiary of such entity, as the term "**subsidiary**" is defined in section 3 of the Companies Act 71 of 2008, as amended; and
- 2.2.6.2. any foreign company which, if it were registered under such Act, would fall within the ambit of such term.
- 2.2.7. **"AFSA"** means the Arbitration Foundation of Southern Africa;

- 2.2.8. **“Applicable Law(s)”** means any statute which includes without being limited thereto, Companies Act, PFMA, PAJA, PAIA, POPIA, ECA, including any regulation, directive, or subordinate legislation; the common law; any binding court order as between the Parties, judgment; any applicable securities industry code, standard enforceable by law; or any applicable direction, policy or order that is given by the Authority where there is an onus on the Parties to adhere to the aforesaid;
- 2.2.9. **“APM”** means the Application Performance Management Software;
- 2.2.10. **“Authority”** means any agency, tribunal, commission, regulator, self-regulatory body or other similar body having jurisdiction over the Deliverables and/or Services activities or operations of any of the Parties in any territory that is applicable to this Agreement, including without limitation, Information Regulator, SARB and SARS;
- 2.2.11. **“B-BBEE”** means broad-based black economic empowerment as defined in the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003) as amended from time to time;
- 2.2.12. **“BEE Codes”** means the Codes of Good Practice on Black Economic Empowerment gazetted by the Minister of Trade and Industry under section 9 of the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003), as amended, applicable to and binding on the Service Provider;
- 2.2.13. **“BEE Status”** means the BEE Status of the Service Provider based on its generic scorecard as measured and certified by a verification agency in accordance with the applicable BEE Codes;
- 2.2.14. **“BEE Verification Certificate”** means a certificate issued by a Verification Agency, verifying the Service Provider's BEE Status level, the details of its scorecard performance, as may be applicable, and any other aspect of its BEE performance under the Codes;
- 2.2.15. **“Best Industry Practices”** means the best industry practice, quality standards and requirements prescribed by ITIL and/or NIST ;

- 2.2.16. **"Bug-Fixes"** means changes to the Software, as the case may be, or any component thereof with a view to correcting any noncompliance with the Documentation thereof;
- 2.2.17. **"Business Day"** means any day other than a Saturday, Sunday or public holiday in the Republic of South Africa;
- 2.2.18. **"Commercially Reasonable Efforts"** means taking such steps and performing in such a manner as a well-managed firm / consultancy would undertake where such firm / consultancy was acting in a prudent and reasonable manner to achieve the particular result for its own benefit, provided always that such steps are within the reasonable control of the Party;
- 2.2.19. **"Companies Act"** means the Companies Act, 2008 (Act No. 71 of 2008), as amended;



2.2.20. **“Confidential Information”** means (a) in general, information which by its nature, content, or circumstances of disclosure is or ought reasonably to be identifiable by the Receiving Party as confidential (including by reason of such information not being generally known to, or readily ascertainable by, third parties generally) and/or proprietary to the Disclosing Party, including (i) information regarding Staff and suppliers, processes and plans projections, manuals, forecasts, and analyses of the Disclosing Party; Intellectual Property; (ii) Intellectual Property including information relating to the knowledge, know-how, expertise, trade secrets and activities of the Disclosing Party; (iii) any information which the Disclosing Party (without creating a presumption that only so designated information is confidential), acting reasonably, may designate in writing, at the time of disclosure to the Receiving Party, as being confidential information; (iv) information which in terms of Applicable Laws or by its nature, content, or circumstances of disclosure is or ought reasonably to be identifiable by the Disclosing Party as confidential (including by reason of such information not being generally known to, or readily ascertainable by, third parties generally); and (v) and any other information of the Disclosing Party which would be regarded by a reasonable person to be confidential or proprietary in nature; (b) in relation to SARS, subject to sub-Clause 2.2.20 immediately below in this definition any information or data of any nature, whether provided orally or in writing or otherwise obtained and in any format or medium, which constitutes: (i) SARS Information; (ii) SARS Data; (iii) Taxpayer Information; (iv) Information as defined in section 68 of the Tax Administration Act, 2011 (Act No. 28 of 2011) (hereinafter referred to as **“TAACT”**); (v) data, financial information, information regarding taxpayers; and Governmental Entities; processes, plans projections, manuals, forecasts, and analysis Governmental Entities and any other information of Governmental Entities which would be regarded by a reasonable person to be confidential or proprietary in nature; and (c) in relation to the Service Provider, 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 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, or which information by its nature could reasonably be expected to be confidential under the circumstances in which it is disclosed. Confidential Information does not include information that is lawfully publicly available to, or lawfully in the Receiving Party's possession, at the time of disclosure thereof by the Disclosing Party (whether before or after the Effective Date) to the Receiving Party; or (ii) is independently developed or learned by the Receiving Party without reference to or use of the Confidential Information of the Disclosing Party; or (iii) is in or enters the public domain without breach of this Agreement or any other obligation owed by the Receiving Party to the Disclosing Party; or (iv) the Receiving Party receives from a Third Party without restriction on disclosure and without breach of a non-disclosure obligation; provided always that notwithstanding the foregoing:

- 2.2.20.1. the onus will at all times rest on the Receiving Party to establish that such information falls within such exclusions;
  - 2.2.20.2. the information disclosed will not be deemed to be within the foregoing exclusions merely because such information is embraced by more general information that is publicly available or in a Party's possession;
  - 2.2.20.3. any combination of features will not be deemed to be within the foregoing exclusions merely because individual features are publicly available or in a Party's possession, but only if the combination itself is publicly available or in a Party's possession; and
  - 2.2.20.4. 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, trademarks or otherwise.
- 2.2.21. **“Consent”** means the POPIA consent as defined in section 1 of POPIA, required by the Parties for the Processing of Personal Information of a Data Subject;

- 2.2.22. **“Contact Centre”** means the local call centre forming part of SPOC which contact centre is as fully described in the Service Level Agreement;
- 2.2.23. **“Control”** means with regard to any entity, the right or power to dictate the management of and otherwise control such entity by any of:
- 2.2.23.1. 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;
- 2.2.23.2. controlling the majority of the voting rights in such entity; or
- 2.2.23.3. having the right to appoint or remove directors holding a majority of the voting rights at meetings of the board of directors of such entity.
- 2.2.24. **“Data Protection Agreement”** means the data protection agreement to be signed by the Service Provider and Service Provider Personnel required for the Processing of the Personal Information as part of the provision of the Services attached hereto as **Annexure A**;
- 2.2.25. **“Data Protection Legislation”** means collectively, POPIA and any other South African legislation prescribing the protection of Personal Information unless the context indicate otherwise;
- 2.2.26. **“Data Subject”** means the person to whom Personal Information relates;
- 2.2.27. **"Deficiency"** means any error, Problem, non-conformity or defect in the: (i) Software; (ii) License; and/or (iii) Documentation, resulting from any deviation from the Technical Requirements Specification, Functional Specification, or incorrect or incomplete documentation;
- 2.2.28. **"Deliverable(s)"** means the Solution, Subscription Licenses and/or Documentation;

- 2.2.29. **“Design and Installation Procedure”** means a procedure agreed to by the Parties in recording the method and procedures to be followed by the Service Provider in the design and installation of the Solution as part of the Implementation Services, which document will be delivered by the Service Provider as part of the Implementation Services;
- 2.2.30. **"Destructive Element"** means any "back door", "time bomb", "time lock", "trojan horse", "worm", "drop dead device", "virus" or other computer software routine, code or device intended or designed to: (a) permit access to or the use of any software, firmware, hardware and peripherals, wide area network, or local area network by an unauthorised person; or (b) disable, damage, erase, disrupt or impair in any way the operation of any software, firmware, hardware and peripherals, wide area network, or local area network, including by the elapsing of a period of time, exceeding an authorised number of copies, advancement to a particular date or other numeral; or (c) damage, erase or corrupt data, storage media, programmes, equipment or communications or otherwise interfere with operations of any software, firmware, hardware and peripherals, wide area network, or local area network; and/or (d) any other form of destructive coding and/or device, including those which result in aesthetical disruptions or distortions;
- 2.2.31. **"Disclosing Party"** means a Party disclosing the Confidential Information to the Receiving Party;
- 2.2.32. **"Documentation"** means the Technical Specification Requirements, Functional Specification, Project Plan, and Manuals;
- 2.2.33. **“ECA”** means the Electronic Communications Act, 2005 (Act No. 36 of 2005), as amended;
- 2.2.34. **“Effective Date”** means **[DRAFTING NOTE: TO BE INSERTED POST AWARD]**, being the date upon which the Service Provider commenced with the provision of the Services or any part thereof notwithstanding the Signature Date;

- 2.2.35. **"Enhancement"** means significant changes to the Solution or any component of therefore resulting in the addition of a new feature or capability of the Solution which feature, or capability is not present in the specifications for such Solution;
- 2.2.36. **"Fees"** means the fees payable by SARS to the Service Provider for the provision of the Services which fees include License Fee, Implementation Fees, Training Fees, Support Fees, and Time and Material Rates which fees are as set out in **Annexure B**;
- 2.2.37. **"Force Majeure Event"** means any circumstances beyond a Party's reasonable control and includes, without limitation: (i) acts of God, public enemy, fire, explosion, earthquake, perils of the sea, flood, storm or other adverse weather conditions, war declared or undeclared, civil war, revolution, civil commotion or other civil disorder, sabotage, riot, strikes, lock-outs or other labour disputes, blockade, embargo, sanctions, epidemics, pandemics, act of any Government or other Authority, compliance with law, regulations or demands of any Government or Governmental agency, limitations imposed by exchange control or foreign investment or other similar regulations or any other circumstances of like or different nature beyond the reasonable control of the Party so failing;
- 2.2.38. **"Functional Specification"** means the document specifying the technical functionality and operation of the Solution including processes and procedures to be prepared by the Service Provider and annexed hereto and marked **Annexure C**;
- 2.2.39. **"ICT"** means information communication and technology;
- 2.2.40. **"Implementation Date"** means the date recorded by the Parties in the Project Plan to commence with the Implementation Services;
- 2.2.41. **"Implementation Fees"** means the implementation fees set out in the **Annexure B**, payable by SARS to the Services Provider for the provision of the Implementation Services;

- 2.2.42. **“Incident”** means any event that is not part of the standard operation of a service and which causes, or may cause, an interruption to, or a reduction in, the quality of the Solution or Service;
- 2.2.43. **“Intellectual Property”** means all computer programs, software, source code, object code, programmer interfaces, specifications, operating instructions, compilations, lists, databases, systems, operations, processes, methodologies, technologies, algorithms, techniques, methods, designs, circuit layouts and mask-works, plans, reports, data, works protected under the Copyright Act 98 of 1978, works of authorship, video recordings, audio recordings, photographs, models, samples, substances, trade secrets, formulae, know-how, show-how, Confidential Information, concepts and ideas of any nature (including of a technical, scientific, engineering, commercial, strategic, financial, marketing or organisational nature), inventions, discoveries, drawings, notes, manuals, documentation, training materials, job aids, trademarks, service marks, logos, slogans, corporate, business and trade names, domain names, trade dress, brand names and other indicia of origin, regardless of whether Intellectual Property Rights actually inhere in any such items, and any other tangible or intangible items in which Intellectual Property Rights may inhere, as may exist anywhere in the world and any applications for registration of such intellectual property, and includes all Intellectual Property Rights in any of the foregoing;
- 2.2.44. **“Intellectual Property Rights”** means all rights of whatever nature and however described in respect of Intellectual Property, including:
- 2.2.44.1. all patents and other patent rights, including divisional and continuation patents, utility models;
  - 2.2.44.2. rights in and to inventions, whether patentable or not;
  - 2.2.44.3. rights in trademarks, service marks, logos, slogans, corporate, business and trade names, trade dress, brand names and other indicia of origin;

- 2.2.44.4. rights in designs, topography rights, rights in circuit layouts and mask-works;
- 2.2.44.5. copyright, including all copyright in and to computer programs;
- 2.2.44.6. rights in internet domain names, reservations for internet domain names, uniform resource locators and corresponding internet sites;
- 2.2.44.7. rights in databases and data collections; and
- 2.2.44.8. know-how, show-how, trade secrets and confidential information, in each case whether or not registered and including applications for the registration, extension, renewal and re-issuance, continuations in part or divisions of, any of these and the right to apply for any of the foregoing, all claims for past infringements, and all rights or forms of protection of a similar nature or having equivalent or similar effect to any of these which may subsist anywhere in the world.
- 2.2.45. **“Implementation Fees”** means the once off fees charged to SARS for the implementation of the Solution
- 2.2.46. **“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 (**“ITMF”**) from time to time, including any natural successor organisations to the ITSMF;
- 2.2.47. **“Key Personnel”** means the personnel of the Service Provider that has been assigned to SARS to provide the Services;
- 2.2.48. **“Letter of Award”** means the letter of award issued to the Service Provider by SARS and signed by SARS on [**DRAFTING NOTE: TO BE UPDATED POST AWARD**] and accepted by the Service Provider on [**DRAFTING NOTE: TO BE UPDATED POST AWARD**];

- 2.2.49. **“License Fees”** means the annual Subscription Licenses fees payable by SARS to the Service Provider which fees include Support Services;
- 2.2.50. **“Licensor”** means the license owner and OEM of the Software and Subscription Licenses as contemplated in this Agreement, being **[DRAFTING NOTE: TO BE UPDATED POST AWARD]**;
- 2.2.51. **“Losses”** means all losses, liabilities, costs, expenses, fines, penalties, damages and claims, and all related costs and expenses (including legal fees on the scale as between attorney and own client, tracing and collection charges, costs of investigation, interest and penalties);
- 2.2.52. **“Manuals”** means collectively, the user manuals, training manuals, support manuals, including any other documentation relating to the Solution under this Agreement which will be furnished by the Service Provider to SARS as envisaged in this Agreement. A list of the Manuals is attached hereto and marked **Annexure D**;
- 2.2.53. **“NIST”** means the National Institute of Standard and Technology Cybersecurity Framework;
- 2.2.54. **"New Release"** means a new release of the Software incorporating Upgrades, Bug Fixes, Software Breakages or Enhancements to the Software and which is generally a replacement for the Software. For the sake of clarity, New Releases are usually identified by a change in the version number, for instance a change from version 1 to version 2;
- 2.2.55. **“OHSA”** means the Occupational Health and Safety Act, 1993 (Act No. 85 of 1993) and regulations thereto, amended;
- 2.2.56. **“Operator”** means a person who Processes Personal Information for a Responsible Party in terms of a contract or mandate, but does not come under the direct authority or control of the Responsible Party and for the purposes of this Agreement, Operator means the Service Provider and Service Provider Personnel;
- 2.2.57. **“PAIA”** means the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000), as amended;



- 2.2.58. **“PAJA”** means the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000);
- 2.2.59. **"Personal Information"** means information relating to an identifiable, living, natural or juristic person as fully defined in section 1 of POPIA;
- 2.2.60. **“Personal Information Breach”** means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of or access to, Personal Information transmitted, stored or otherwise Processed;
- 2.2.61. **“PFMA”** means the Public Finance Management Act, No. 1 of 1999;
- 2.2.62. **“POPIA”** means Protection of Personal Information Act, 2013 (Act No. 4 of 2013);
- 2.2.63. **"Pre-delivery Testing"** means the Service Provider’s testing of a Deliverable, which testing is to be performed by the Service Provider prior to presenting any Deliverable to SARS for Acceptance Testing;
- 2.2.64. **“Premises”** means any SARS’s environment where the Solution will be implemented and provisioned for use including offices where the Services are required;
- 2.2.65. **“Privacy and Data Protection Requirements”** means the 8 (eight) requirements for the lawful Processing of personal information contained in Chapter 3 of POPIA;
- 2.2.66. **"Problem"** means the underlying cause of one or more Incidents; or the occurrence of a problem or error in the Solution reported by SARS to the Service Provider, including a Deficiency;
- 2.2.67. **“Process” and “Processing”** means any operation or activity or any set of operations, whether or not by automatic means, concerning Confidential Information, including its collection, receipt, recording, organisation, collation, storage, updating or modification, merging, linking, blocking, degradation, erasure or destruction retrieval, alteration, consultation, testing or use, dissemination or distribution by any means;

- 2.2.68. **“Professional Services”** means the provision of professional services required by SARS for the implementation, operation and functionality of the Solution including where required, professional support;
- 2.2.69. **“Project Plan”** means the project plan prepared by the Service Provider and approved by SARS required for the management of the implementation of the Solution, a copy of which is attached hereto and marked **Annexure E**;
- 2.2.70. **“Repo Rate”** means the interest rate (percent per annum) at which the South African Reserve Bank lends money to private banks;
- 2.2.71. **“RFP Document”** means the Request For Proposal number RFP 16/2020 for the provision of the Deliverables issued by SARS which forms an integral part of this Agreement;
- 2.2.72. **“Responsible Party”** means the party who determines the purpose of and means for Processing Personal Information and for the purposes of this Agreement, Responsible Party shall mean SARS;
- 2.2.73. **“SANAS”** means the South African National Accreditation System established in terms of Section 3 (1) of the Accreditation for Conformity Assessment Calibration and Good Laboratory Practice Act, 2006 (Act No. 19 of 2006) and recognised by the South African Government as the national accreditation body;
- 2.2.74. **“SARS Act”** means the South African Revenue Service Act, 1997 (Act No. 34 of 1997);
- 2.2.75. **“SARS Data”** means any information and/or data including but not limited to data or any information owned and created by SARS, whether or not Confidential Information in any format, being information of SARS relating to SARS’s business operations, a taxpayer, its employees, contractors and Service Provider which information and/or data includes without being limited thereto, personal information as defined in the Tax Acts, POPIA, or any other Applicable Legislation, including:

- 2.2.75.1. all reports, documentation, software or inventions in material form, irrespective of media on which they occur, entered into, contained in and/or stored, collected, accessed or processed by the Service Provider for the purpose of providing the Services to SARS; and
- 2.2.75.2. all other records, data, files, input materials, reports, forms and other such items that may be received, computed, developed, used or stored by the Service Provider or any of the Service Provider Personnel, for or on behalf of SARS or in connection with the Services;
- 2.2.76. **“SARS’s Designated Representative”** means any SARS official who is authorised to enter into this Agreement with the Service Provider;

2.2.77. **"SARS Information"** means— (a) any information (including Personal Information) about a current or former SARS official, whether deceased or not; (b) information subject to legal professional privilege vested in SARS; (c) information that was supplied in confidence by a third party to SARS, the disclosure of which could reasonably be expected to prejudice the future supply of similar information, or information from the same source; (d) information related to investigations and prosecutions described in section 39 of PAIA; (e) information related to the operations of SARS, including an opinion, advice, report, recommendation or an account of a consultation, discussion or deliberation that has occurred, if— (i) the information was given, obtained or prepared by or on behalf of SARS for the purpose of assisting to formulate a policy or take a decision in the exercise of a power or performance of a duty conferred or imposed by law; and (ii) the disclosure of the information could reasonably be expected to frustrate the deliberative process in SARS or between SARS and other organs of state by— (aa) inhibiting the candid communication of an opinion, advice, report or recommendation or conduct of a consultation, discussion or deliberation; or (bb) frustrating the success of a policy or contemplated policy by the premature disclosure thereof; (f) information about research being or to be carried out by or on behalf of SARS, the disclosure of which would be likely to prejudice the outcome of the research; (g) information the disclosure of which could reasonably be expected to prejudice the economic interests or financial welfare of the Republic of South Africa or the ability of the government to manage the economy of the Republic of South Africa effectively in the best interests of the Republic of South Africa, including a contemplated change or decision not to charge a tax or a duty, levy, penalty, interest and similar moneys imposed under a Tax Act; (h) information supplied in confidence by or on behalf of another state or an international organization to SARS; (i) a computer program, as defined in section 1(1) of the Copyright Act, 1978 (Act No. 98 of 1978), owned by SARS; (j) financial, commercial, scientific or technical information, other than trade secrets, of SARS, the disclosure of which would be likely to cause harm to the financial interests of SARS; (k) information the disclosure of which could reasonably be expected to

put SARS at a disadvantage in contractual or other negotiations; and (l) information relating to the security of SARS buildings, property, structures or systems;

- 2.2.78. **“SARS Personnel”** means SARS’s staff, consultants and/or agent employed by SARS for the purposes of the Agreement;
- 2.2.79. **“SARS PPS&G”** means the SARS’s policies, procedures, processes, standards, guidelines, and other similar issuances (including any updates, amendments or revisions) that are applicable to the Services or the Service Provider from time to time as may be amended, updated and/or replaced by SARS;
- 2.2.80. **"Services"** means the functions and responsibilities to be provided by the Service Provider to SARS as part of the Solution as detailed in the RFP as they may evolve or be supplemented, enhanced, modified, amended or replaced in accordance with the terms of this Agreement, and in particular means: (i) provision of Subscription Licenses; (ii) Implementation Services; (iii) Support Services; (iv) Training Services; (v) Ad Hoc Services and any services related to those detailed in (i) to (v) above;
- 2.2.81. **“Service Coverage Period”** means the period within which the Services are covered which Service Coverage Period is defined in the Service Level Agreement;
- 2.2.82. **"Service Level Credit"** means a penalty amount which will be payable by the Service Provider to SARS for its failure to meet a Service Levels;
- 2.2.83. **“Service Level”** means a quantitative standard of performance of the Services that Service Provider is required to satisfy in its performance of the Services, as are detailed under **Annexure F**;
- 2.2.84. **"Service Level Agreement"** means the Service Level Agreement attached hereto and marked **Annexure F**;
- 2.2.85. **“Service Provider Personnel”** means the Service Provider’s staff, be they permanent, temporary or contractors, performing the Services on behalf of the Service Provider;

- 2.2.86. **“Signature Date”** means the date of signature of this Agreement by the last Party signing;
- 2.2.87. **“Solution”** means the solution designed by the Service Provider for real-time monitoring of the performance of the applications utilised by SARS within its environment utilising the Software, which Solution will once implemented, enable SARS to auto-discover applications experiencing performance issues, identify and isolate application performance bottlenecks through monitoring of end user experience, business transactions and application health.
- 2.2.88. **“Software”** means Application Performance Monitoring (APM) being a suite of monitoring software comprising digital experience monitoring (DEM) application recover, tracing and diagnostic and purpose built artificial intelligence for IT operations issued and utilised by the Service Provider in the design of the Solution;
- 2.2.89. **“Software Breakages”** means individually and/or collectively, the Bug Fixes, Work-Arounds and temporary fixes, patches relating to the Software;
- 2.2.90. **“SPOC”** means a Single Point of Contact and/or a Contact Centre designated by either Party to ensure the implementation of the Agreement in accordance with the terms hereof and to resolve any operational issues pertaining thereto whose details are as set out in **Annexure E** (Service Level Agreement);
- 2.2.91. **“Staff”** means collectively, SARS Personnel and Service Provider Personnel;
- 2.2.92. **“Subscription Software License Agreement”** means this Subscription Software License and Support Service including its annexures and/or schedules thereto as amended and/or added from time to time by the Parties in writing;
- 2.2.93. **“Subscription Licence(s)”** means license required by SARS to access and use the Solution, which licenses are fully specified in **Annexure G**;

- 2.2.94. **"Support Services"** means the provision of services including all support activities stipulated in the RFP Document and as fully set out in Clause 9 below, by the Service Provider to SARS whereby the Service Provider: (i) attends to all service request logged by SARS and escalated to the Service Provider; (ii) resolves all Incidents and Problems logged by SARS in accordance with the Service Levels; (iii) the installation and repair of all Software Breakages and Upgrades; and (iv) provides professional services in respect of or related to the Solution to ensure the continued functionality of the Solution in accordance with the Functional Specification and/or Documentation, which services may be provided via telephonic support. For the avoidance of doubt, the provisions of this Clause 2.2.92 will apply in respect of all copies of the Software including the Subscription Licenses used by SARS, including those used by SARS for disaster recovery purposes; [
- 2.2.95. **"Tax Act(s)"** means an Act, or a portion thereof, referred to in section 4 read with Schedule 1 to the SARS Act, as well as the Tax Administration Act No. 28 of 2011; the Mineral and Petroleum Resources Royalty Act No 28 of 2008 and the Mineral and Petroleum Resources Royalty Administration Act No. 29 of 2008 as amended;
- 2.2.96. **"Taxpayer Information"** means any relevant material, including details of a Taxpayer's bank account, Tax reference number; identity number and/or any information, document or thing that is reasonably foreseeable to be relevant to enable the performance of the Services as envisaged in this Agreement (and as may be more fully described in the Agreement), provided by a Taxpayer or obtained by SARS in respect of a Taxpayer;
- 2.2.97. **"Term"** means the term of this Agreement defined in Clause 8 below;
- 2.2.98. **"Third Party"** means any person other than SARS, Service Provider, Affiliates or Subcontractor;
- 2.2.99. **"Third Party Intellectual Property"** means Intellectual Property owned by a third party and licensed for use by the Service Provider in the provision of the Services subject to SARS's written consent;

- 2.2.100. **“Third Party Service Provider(s)”** means the third party service provider authorised to the extent involved: (i) in providing the services and/or (ii) delivery of the Deliverables under this Agreement with the Service Provider;
- 2.2.101. **“Technical Specification Requirements”** means without limiting the RFP Document, SARS’s architectural technology standards and requirements for the design, configuration and implementation of the Solution which includes without being limited thereto configuration installation and connection requirements, security protocol requirements etc, which specifications will be reviewed and enhanced by the Parties as part of the Implementation Services and presented to SARS’s Business Unit for approval. The Technical Specification Requirements are incorporated herein by reference;
- 2.2.102. **“Time and Materials Basis”** means the basis on which the Service Provider will charge SARS for Ad Hoc Services and/or services explicitly designated as such and based on the time spent and the materials utilised to execute such services. All such time will be billed in accordance with the time and material rates described in **Annexure B** and approved by SARS in accordance with SARS’s procurement governance processes and procedures;
- 2.2.103. **“Training Services”** means the training, advisory and professional services provided by the Service Provider to SARS’s Personnel to enable SARS’s Personnel to maintain and support the Solution which consists of (i) ongoing training required by SARS from time to time in writing; and (ii) once-off training required during the Implementation Services; and
- 2.2.104. **“Training Fees”** means the training fees payable by SARS to the Services Provider for the provision of the Training Services required by SARS post the Implementation Date, which fees are as set out in **Annexure B**;
- 2.2.105. **“Support Fees”** means the support fees payable by SARS to the Service Provider for the provision of Support Services required by SARS during the Term, which fees are as set out in **Annexure B**;



- 2.2.106. **"Upgrade"** means any change or improvement to the Software that relates to or affects the operating performance of the Software or an aspect of such Software but does not change the basic operation or functionality of the Software. For the sake of clarity, Upgrades are usually identified by a change in the version number, for instance a change from version 1.1 to version 1.2; and
- 2.2.107. **"Work Arounds"** means a methodology applied, and/or change made, to the Software, as the case may be, with a view to furnishing SARS with a temporary means to make use of the Software, as the case may be, or any component thereof until such time as a permanent solution is provided.
- 2.3. Any reference in this Agreement to:
- 2.3.1. **"Clause"** shall, subject to any contrary indication, be construed as a reference to a Clause in this Agreement.
- 2.3.2. **"Person"** refers to any person including juristic entities.
- 2.4. Unless inconsistent with the context or save where the contrary is expressly indicated:
- 2.4.1. if any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that it appears only in the definition Clause, effect shall be given to it as if it were a substantive provision of this Agreement;
- 2.4.2. when any number of days is prescribed in this Agreement, such a period shall be computed by excluding the first and including the last day unless the last day falls on a day which is not a Business Day, in which case the last day shall be the next succeeding Business Day;
- 2.4.3. no provision of this Agreement constitutes a stipulation for the benefit of any Person who is not a Party to this Agreement; and
- 2.4.4. a reference to a Party includes that Party's successors-in-title and permitted assignees, including any other persons contemplated in Clause 2.8 of this Agreement.

- 2.5. Unless inconsistent with the context, an expression which denotes:
- 2.5.1. any one gender includes the other gender; and
- 2.5.2. the singular includes the plural and vice versa.
- 2.6. Unless it is clear from a specific Clause in which a term has been defined that such definition has limited application to the relevant Clause, any term defined within the context of any particular Clause in this Agreement shall bear the same meaning as ascribed to it throughout the Agreement, notwithstanding that that term has been defined in a specific Clause.
- 2.7. The termination of this Agreement will not affect the provisions of this Agreement which operate after any such termination or which of necessity must continue to have effect after such termination, notwithstanding that the clauses themselves do not expressly provide for this.
- 2.8. This Agreement is binding on the executors, administrators, trustees, permitted assignees or liquidators of the Parties as fully and effectually as if they had signed this Agreement in the first instance and reference to any Party is deemed to include such Party's estate, heirs, executors, administrators, trustees, permitted assigns or liquidators, as the case may be.
- 2.9. Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.
- 2.10. None of the provisions hereof shall be construed against or interpreted to the disadvantage of the Party responsible for the drafting or preparation of such provision.
- 2.11. Subject to Clause 2.11.2 below in the event of a conflict:
- 2.11.1. between the terms and condition contained in various clauses of the Subscription Licenses and Support Services Agreement and any other document that is part of or executed under this Subscription Licenses and Support Services Agreement, the terms and conditions of this Subscription Licence and Support Services Agreement shall prevail; and/or

2.11.2. the Subscription Licence and Support Services Agreement and RFP, the provision of the RFP will prevail.

2.12. This Agreement shall govern the relationship between the Parties for Services to be provided by the Service Provider to SARS. Any terms and conditions imposed by the Service Provider (whether in a quotation, offer, proposal, invoice, etc., as the case may be) and purporting to bind SARS, shall not (to the extent that they contradict the provisions of this Agreement) override this Agreement, unless agreed to by SARS in writing and such agreement is confirmed and signed by SARS.

### **3. CONDITIONS PRECEDENT**

3.1. The operation of this entire Agreement is subject to the conditions precedent that the Parties execute the following within 21 (twenty) Business Days from the date set out in the Letter of Award or such date as requested by SARS in writing:

3.1.1. Project Plan

3.1.2. Design and Installation Procedure;

3.1.3. Skills Transfer Plan

3.1.4. Payment Milestone; and

3.1.5. Service Level Agreement).

3.2. Unless all the conditions precedent have been fulfilled or waived by not later than the date specified (or such later date as SARS may notify the Service Provider in writing), the provisions of this Agreement as well as the letter of award will fall away and be of no further force or effect and the status quo ante will be restored as near as may be possible and the Service Provider will have no claim against SARS in terms hereof or arising from the failure of the conditions precedent.

### **4. BACKGROUND AND OBJECTIVES**

- 4.1. SARS's mandate under the South African Revenue Service Act 34 of 1997 includes the collection of all revenues that are due, ensuring maximum compliance with revenue legislation and providing a customs service that will maximise revenue collection, facilitate trade and protect the borders of South Africa.
- 4.2. SARS's vision is to be an innovative revenue and customs agency that enhances economic growth and social development and supports South Africa's integration into the global economy in a way that benefits all citizens. SARS strives to exercise its mandate in an efficient and cost-effective manner.
- 4.3. Sustained system performance and unavailability is critical to SARS's , vision, reputation and taxpayer confidence. As such, SARS requires an applications diagnostics and end user experience monitoring solution to be used in the Integrated IT Operations Centre. This solution will provide SARS with a major advantage of proactively identifying and responding to application specific availability and performance issues. The solution can also be used by all business stakeholders to monitor and view related business applications.
- 4.4. By responding to the RFP, the Service Provider:
- 4.4.1. warrants and represents (without limiting the provisions of the RFP Document) that, throughout the Term, it shall have the resources, capacity, skills, qualification, and experience necessary to supply maintenance and support services including any other ancillary service as proposed in the RFP Document and defined in clause 2 below.
- 4.4.2. undertakes to procure that the Subscription Licenses purchased on SARS's behalf as contemplated in the RFP Document, and shall ensure that the Subscription Licenses authorises SARS:
- 4.4.2.1. to use, move, deploy and install the Software supplied by the Service Provider on a world-wide, non-exclusive and transferable basis, within SARS's own business environment and for its personal use;

- 4.4.2.2. transfer the Subscription Licenses from one host to another provided that SARS does not exceed the total Subscription Licenses allocation which is listed in the Agreement; and

(the provisions of Clauses 4.4.2.1 and 4.4.2.2 are collectively referred to as the “**Subscription Licence**”).

- 4.5. Words and phrases used in this Agreement shall, unless the context clearly indicates a contrary intention, have the corresponding meanings assigned to them in the Agreement.
- 4.6. Therefore, the Parties wish to record the above and other matters relevant thereto, as set out below.

## **5. APPOINTMENT AND NON-EXCLUSIVITY**

- 5.1. The Service Provider is hereby appointed in accordance with the Letter of Award, to provide the Solution and Services to SARS under this Agreement.
- 5.2. Subject to the provisions of the RFP, the Agreement generally and the provisions of Clause 9 specifically, SARS hereby appoints the Service Provider, on a non-exclusive basis, to provide the Solution and Services on the terms and conditions of this Agreement, and the Service Provider hereby accepts such appointment.
- 5.3. 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 from SARS for Services in the future, whether under this Agreement or otherwise.
- 5.4. SARS shall not be precluded from obtaining services that may be similar or identical to the Services from any other service provider.

## **6. NATURE OF RELATIONSHIP AND NON-EXCLUSIVITY**

- 6.1. The Parties act for all purposes in terms of the Agreement as independent contractors. Without limiting the foregoing:

- 6.1.1. neither Party shall be entitled to contract on behalf of or bind the other Party in any manner whatsoever or to incur any liability or debt on behalf of the other Party; and
- 6.1.2. the Service Provider shall not publish or cause to be published any advertisement or other information relating to SARS or SARS's business without the prior written approval of SARS; and
- 6.1.3. neither Party's Staff shall be deemed Staff of the other Party for any purpose whatsoever and for these purposes, where the Service Provider has utilised the fixed term contractors, temporary employees and/or consultants either as Service Provider Personnel, the Service Provider undertakes to ensure that its contracts with the aforesaid Service Provider Personnel, specifically states that the assignment to SARS is only for a project and is by no means a reflection of SARS as an intended employer of the Service Provider Personnel or deemed employer in terms of the deeming provision introduced by section 198 the Labour Act, 1995 (Act No. 66 of 1995 as amended) ("**the Labour Relations Act**"), in the event of termination of this Agreement for any reason whatsoever.

- 6.2. In the event that the Labour Act, deems the Service Provider Personnel to be employees for the purposes of the aforesaid section 198, the Service Provider undertakes to indemnify SARS in full against all costs, expenses (including legal expenses on an attorney own client scale), damages, loss (including loss of business or loss of profits), liabilities, demands, claims, actions or proceedings, which the Service Provider may incur arising as a result of the aforesaid Labour Act.

## **7. SUBCONTRACTORS**

- 7.1. The Service Provider may not sub-contract its obligations under this Agreement without the prior written consent of SARS which consent may be withheld by SARS in its sole discretion.

- 7.2. Should SARS consent to such appointment, the Service Provider will in no event 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 the Service Provider's obligations under this Agreement and will remain SARS's sole point of contact regarding the Services, including with respect to payment.
- 7.3. The 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.
- 7.4. In the event of SARS's approval of subcontracting, the Service Provider undertakes to ensure that:
- 7.4.1. a subcontractor, complies with the applicable provisions of this Agreement, including in particular, the terms and conditions relating to confidentiality, data security, protection of personal information and intellectual property rights;
  - 7.4.2. a Data Protection Agreement is in place between SARS and the subcontracting and the Service Provider remains responsible to ensure that its subcontracting conditions explicitly states this requirement as a 'condition precedent for subcontracting;

7.4.3. a written contract with the subcontractor is in place prior to performing any of the subcontracted services, the terms of which shall be consistent with the terms of this Agreement. Prior to the conclusion and signature of any such agreement between the Service Provider and the 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 shall be obliged to accommodate all reasonable requests of SARS for amendments to the subcontract. The draft agreement shall 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) shall be submitted to SARS within 7 (seven) business days of signature. The Service Provider will not terminate, alter, amend or vary in any material respect a subcontract or novate a subcontract that was approved by SARS under this clause 7 without obtaining prior written consent from SARS;

7.4.4. The Service Provider will act as principal and not agent for SARS in all contracts with subcontractors. The Service Provider acknowledges and agrees that it shall, subject always to the limitations and exclusions of liability contained in clause 30, be fully responsible for the acts and omissions of all subcontractors as if they were the acts and omissions of the Service Provider.

7.5. Notwithstanding the foregoing, the Service Provider acknowledges that it shall be fully responsible for the payment of all fees and charges payable to subcontractors.

## **8. COMMENCEMENT AND DURATION**

8.1. This Agreement will commence on the Effective Date and, unless extended as provided in clause 8.2 or terminated earlier in accordance with the terms of this Agreement, shall endure for a period of **[DRAFTING NOTE: TO BE UPDATED POST AWARD]** thereafter ("**Initial Period**").



- 8.2. SARS shall have the option, in its sole discretion, to extend the Agreement beyond the Initial Period for a further period approved in terms of its procurement policies and procedures ("**Renewal Period**"), by serving written notice to that effect on the Service Provider not less than 90 (ninety) days prior to expiry of the Initial Period. It is specifically recorded that the right on the part of SARS to renew the Agreement for the Renewal Period may be exercised in respect of certain Services only and not others, as the case may be, at SARS' option and without any penalty to SARS. The then-existing terms and conditions of this Agreement shall unless agreed otherwise by the Parties in writing, remain in full force and effect during the Renewal Period, *mutatis mutandis*.
- 8.3. For the avoidance of doubt, it is recorded by the Parties that where procurement approval has not been obtained, this Agreement shall automatically terminate at the expiry of the Term.

## **9. SCOPE OF THE SERVICES**

- 9.1. The Service Provider shall for the Term, provide Services to SARS on the terms and conditions of this Agreement and subject to the Service Levels and Best Industry Practices and deliver to SARS the Deliverables required in terms of this Agreement.
- 9.2. As part of the Services, the Service Provide shall for Term perform the following:
- 9.2.1. **Subscription Licenses:**
- 9.2.1.1. The Service Provider shall:
- 9.2.1.2. on the delivery date, deliver the Subscription Licenses to SARS to enable the access and use of the Solution by SARS.
- 9.2.1.3. ensure the renewal of Subscription Licenses required by SARS annually, for the Term of this Agreement;
- 9.2.1.3.1. ensure provision of the Support Services required for the operation and functioning of the Solution including the maintenance thereof for the Term;

9.2.1.3.2. provide the Ad-hoc Services as and when required by SARS for the Term;

9.2.1.3.3. manage the Subscription Licenses deployed for use by SARS in line with SARS's usage requirements which management include ensuring that SARS does not over deploy Subscription Licenses.

## 9.2.2. **Implementation Services**

9.2.2.1. The Services Provider undertakes to design and implement the Solution to ensure that such Solution is (i) aligned to SARS's Technical Specification Requirements, POPIA where relevant, Data Protection Legislation; and (ii) operates and functions in line with the Functional Specifications.

9.2.2.2. The Service Provide will provide and deliver to SARS:

9.2.2.2.1. a detailed Design and Installation Procedure, which shall once accepted by SARS, be signed-off by SARS as part of the Implementation Services.

9.2.2.2.2. a detailed Project Plan recording the project management process and timelines for the Implementation Services including timelines for resource application and Acceptance Testing.

9.2.2.2.3. a detailed Skill Transfer Plan to train and equip SARS's resource on the management and support of the Solution including the ability of SARS's resources to implement the Solution for other SARS's business process with minimal support, which plan will record the recording the training programme and resource allocations.

9.2.3. In order to ensure the implementation of the Solution in accordance with the Project Plan, the Parties will record and agree the reasonable penalty to be enforced in the event that the Service Provider fails to meet a timeline in the Project Plan. The penalty shall be included in the Project Plan.

## 9.2.4. **Support Services:**

- 9.2.4.1. The Service Provider shall provide world-class local Support Services backed by Licensor support as reasonably required for the management, maintenance and sustainability of the operation and functionality of the Solution in accordance with the Functional Specifications.
- 9.2.4.2. The Service Provider undertakes that in providing the Support Services it will use its Commercially Reasonable Efforts to ensure that the Solution functions error-free and to maintain the Solution's continued compliance with its Functional Specifications and the Documentation.
- 9.2.4.3. The Service Provider will, on an ongoing basis apply Best Industry Practices to provide proactive preventative maintenance and advice in an effort to ensure that the Solution will function error-free and will continue to comply with its Functional Specifications. In addition, the Service Provider will identify the nature and cause of the Problem, advise SARS thereof and provide SARS with future avoidance advice as well as undertaking any necessary preventative measures to minimise recurrence of the Problem.
- 9.2.4.4. The Service Provider shall ensure the delivery of the Support Services in accordance with the Service Coverage Period and the Service Levels.
- 9.2.4.5. The Service Provide shall ensure availability of SPOC for the Term and any changes thereto shall be communicated to SARS in writing.
- 9.2.4.6. The Service Provider shall, at its expense, supply all items necessary or required for the Support Services, provided that should the Services be provided at SARS's offices, supplies of electricity, local area network connectivity and telephone services reasonably required by the Service Provider to provide such Services will be made available to the Service Provider in accordance with SARS's policies and procedures and at SARS's expense. Notwithstanding the aforesaid, the Service Provider remains responsible for ensuring that it has the data and cellphone available in the event that SARS is unable to connect the Service Provider Personnel to SARS's local area network and telephone services for the provision of the Services.
- 9.2.4.7. To ensure timely support to SARS, the Service Provider shall:

- 9.2.4.7.1. promptly notify SARS of any Upgrades or New Release of the Solution;
- 9.2.4.7.2. provide SARS with each notification and/or release specifying:  
(i) the nature of such Upgrades or New Release; and (ii) any adverse effects which the Upgrades or New Release may be expected to have, including, without limitation, any expected degradation in performance. The Service Provider undertakes that while such release notes may not be equivalent to a detailed specification of the Upgrades or New Release, it shall contain sufficient information to enable SARS to determine whether such Upgrade or New Release will be appropriate to SARS's requirements;
- 9.2.4.7.3. ensure, within 7 (seven) days of receipt of such notification, that it delivers to SARS the object code of the Upgrade or New Release in machine-readable form together with any amendments to the documentation which shall be necessary to describe and enable proper use of the improved facilities and functions of the Upgrade or New Release;
- 9.2.4.7.4. ensure that it is available at all times during any SARS evaluation period to provide assistance to SARS in this respect; and
- 9.2.4.7.5. continue to provide any Support Services to SARS in respect of the release in use by SARS in the event that SARS elects not to evaluate and/or install the Upgrades or New Release.
- 9.2.4.8. SARS will (subject to the provisions of Clause 12 below), at its election evaluate the Upgrade or New Release and will indicate to the Service Provider whether it wishes to install such Upgrade or New Release.
- 9.2.4.9. For the avoidance of doubt, the Parties record and agree that the Service Provider will provide the Support Services from the Implementation Date, notwithstanding the Effective Date.

9.2.5. **Training Services:**

9.2.5.1. The Service Provider will provide Training Services related to the Solution to SARS and/or the SARS Personnel the scope of which is set out in the Service Provider's proposal to the RFP. For the avoidance of doubt, the Parties record and agree that, (i) the Service Provider will provide Training Services during the Implementation Services at no costs to SARS; and (ii) 15 (fifteen) days training will be provided for up to 10 (ten) SARS's Personnel.

9.2.6. **Ad Hoc Services:**

9.2.6.1. The Service Provider will provide ongoing Professional Services in the Service Provider's specialist fields of activity related to the operation and improved/increased use of the Solution, as may be reasonably requested by SARS from time to time in writing, subject to SARS's procurement processes and procedures.

## **10. GENERAL PROVISIONS RELATION TO THE SERVICES**

10.1. The Service Provider undertakes for the Term, to provide the Services in accordance with the provisions of this Agreement.

10.2. The Service Provider shall:

10.2.1. perform the Services contemplated in this Agreement remotely or where required, onsite, at the Premises. The Service Provider shall not remove any Confidential Information from the Premises without SARS's express prior written permission, which SARS may, in its sole discretion, withhold. For these purposes, the Service Provider Personnel shall sign SARS's oath of secrecy and where applicable, without limiting Clauses 24, 25, and 26 below, as well as Data Protection Agreement, which documents will once signed by the Parties, be incorporated herein by reference.

- 10.2.2. provide all Services utilising security technologies and techniques in accordance with Best Industry Practice and SARS PPS&G including those relating to the prevention and detection of inappropriate use of or access to the Solution, Software, Subscription Licenses, systems and networks. For the avoidance of doubt, the Service Provider will not be under any obligation to find such suitable software, systems or networks if it is not currently using it in the provision of services to its other clients. Should the Service Provider, however, be using certain software or programmes for similar services rendered to other clients, SARS has the expectation that such software will also be used in the provision of the Services under this Agreement, where appropriate and at no additional costs to SARS.
- 10.2.3. in providing the Services to SARS:
- 10.2.3.1. comply with SARS's information and data security standards, policies and procedures which includes without being limited thereto, Privacy and Data Protection Requirements;
- 10.2.3.2. at its own cost, provide, maintain and support the Solution and, where required, Upgrade the Software and such computer systems and data bases as may be necessary, and as required by SARS, for the provision of the Services. In particular, the Service Provider shall ensure that all Software will be kept at levels supported by the Licensor and will be Upgraded as required to meet the Solution and Licensor end-of-life policies and timelines and Licensor-recommended requirements. The Service Provider shall schedule all such Upgrades and replacements in advance and implement them in such a way as to prevent/minimise any interruption or disruption of, or diminution in, the nature or level of any portion of the Services. The Service Provider shall ensure that its internal systems and infrastructure and the Solution at all times remains compatible with the Technology Requirements as well as SARS's technology strategies as set out in clause 3 above; and

10.2.3.3. without limiting the generality of Clause 10.2.3.2 above, at its own cost, maintain its computer based security systems to counteract cybercrime in as far as it is in accordance with the Best Industry Practice or implement security level that is no less secure than the security SARS provided as of the Effective Date or the security the Service Provider then provides for its own systems and data, whichever is greater.

10.2.3.4. implement and/or use network management and maintenance applications and tools and appropriate intrusion detection, identity management, and encryption technologies when providing the Services.

10.2.3.5. shall maintain the security of the Services and the systems relating to such Services at a level that is generally acceptable in the marketplace and/or as prescribed by Best Industry Practice.

10.3. In order to ensure that SARS meets its objectives as stated in the RFP and clause 3 above, the Service Provider undertakes for the Term:

10.3.1. to use industry leading levels of functionality and performance as prescribed by the Best Industry Practice in the provision of the Solution and Services to SARS;

10.3.2. to implement such new technologies as it deems appropriate to deliver the Solution and 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 also keep the Solution and Services under this Agreement current with industry advances and leading technology standards; and

10.3.3. to provide SARS with information regarding any newly improved or enhanced commercially available information technologies that the Service Provider becomes aware of and which reasonably could be expected to have a positive impact on the performance of the Solution, Network and the Services including, without limitation, in the areas of increased efficiency, increased quality and/or reduced costs.

- 10.4. The risk of and liability for any erroneous Deliverables or any errors which may occur due to fraud or unlawful activity on the part of the Service Provider's Staff shall lie with the Service Provider.
- 10.5. In the event that any installation, connection and/or configuration of the systems is required for the performance of the Services, the Parties shall record and agree on the technical specification required for the installation, connection and configuration of such systems used for the provision of the Services in order to ensure Services performance and delivery.
- 10.6. Without limiting the provisions of this Clause 10, the Parties undertake to, perform all actions and take all reasonable steps and, where necessary, to procure all that may be open to them and necessary for or incidental to the putting into effect or maintenance of the terms, conditions and/or import of this Agreement where such things, actions, steps and procurement shall not materially and/or adversely affect such Party being expected to so perform.

## **11. SERVICE COMPATIBILITY**

- 11.1. The Service Provider shall in providing the Services as envisaged in this Agreement, cooperate with all Third-Party Service Providers of SARS to coordinate its provision of the Services with the services and systems of such Third-Party Service Providers. Subject to reasonable confidentiality requirements, such cooperation will include providing:
- 11.1.1. applicable written information concerning any or all of the Service Provider resources, data and technology strategies used in providing the Services;
- 11.1.2. reasonable assistance and support services to such Third-Party Service Providers; and
- 11.1.3. access to systems and architecture configurations of the Service Provider to the extent reasonably required for the activities of such Third-Party Service Providers. SARS will procure that relevant Third-Party Service Providers to SARS provide the Service Provider with their reasonable cooperation, where reasonably requested by the Service Provider.



- 11.2. In order to prevent disruption to the Services, the Service Provider will immediately notify SARS if an act or omission of a Third-Party Service Provider may cause a problem (including a Problem) or delay in providing the Services and will work with SARS to prevent or circumvent such problem or delay.

## **12. ACCEPTANCE TESTING AND DELIVERY**

### **12.1. Pre-delivery Testing:**

- 12.1.1. Prior to presenting any Deliverable to SARS for Acceptance Testing, the Service Provider will carry out Pre-delivery Testing in order to ensure that the Deliverable functions in accordance with the relevant Functional Specifications and complies with the Technical Specification Requirements.
- 12.1.2. The Service Provider will ensure that the Tested Deliverable procured in terms of this Agreement are compatible with the information technology and telecommunications standards and architectures of SARS. This information is available to the Service Provider upon prior written request.

### **12.2. Acceptance Testing Procedure:**

- 12.2.1. Following delivery of Solution, Enhancements, Upgrades, New Releases, Bug Fixes, Work Arounds or patches to SARS, SARS shall in its discretion, conduct Acceptance Testing thereof (collectively referred to as “**Tested Deliverable(s)**”).
- 12.2.2. During Acceptance Testing, the Service Provider shall (if required by SARS), assist SARS, to the extent necessary and reasonable, in conducting the Acceptance Testing and respond to any queries relating to the Services and/or Tested Deliverables, within a reasonable time. Without limiting the foregoing, the Service Provider shall be available to liaise with SARS regarding any queries arising with regard to the Tested Deliverables and its related documentation and shall assist SARS with its evaluation of such Tested Deliverables and its related Documentation.

- 12.2.3. Should SARS not accept the Tested Deliverables and/or its related Documentation, SARS shall provide the Service Provider with written notice of its non-acceptance of such Tested Deliverables and/or its related Functional Specification. The Service Provider shall correct any Deficiencies in such Tested Deliverables and Functional Specification within timeframe agreed upon by the Parties in writing to ensure that such Tested Deliverable is free from Deficiencies and conform to SARS's business and security requirements, where after such Tested Deliverable will be resubmitted to Acceptance Testing in accordance with this Clause.
- 12.2.4. SARS shall have the right to review and accept or reject all Tested Deliverables and any components of such Tested Deliverables to be provided by the Service Provider to SARS under this Agreement, pursuant to the methodology set forth in this Clause.
- 12.2.5. The Service Provider will be available to liaise with SARS regarding any queries arising with regard to a Deliverable and will assist SARS with its evaluation of Tested Deliverables.
- 12.2.6. Should SARS not accept the Tested Deliverable, SARS will provide the Service Provider with written notice of its non-acceptance, as well as detailed reasons for it not being acceptable. The Service Provider will correct any Deficiencies within 5 (five) business days of receiving SARS's notice, where after the Tested Deliverables will be resubmitted to SARS for review and evaluation in accordance with this Clause 12.
- 12.2.7. If the Service Provider is still unable to correct the Deficiency within this period, then SARS may in its sole discretion elect to –
- 12.2.7.1. direct the Service Provider to continue its efforts to make the Tested Deliverables acceptable to SARS, in which case the Service Provider shall continue such efforts; or
- 12.2.7.2. accept the deficient Tested Deliverables, in which event the charges with respect to such Tested Deliverables shall be equitably reduced to reflect the presence of such Deficiency; or

12.2.7.3. without limiting the generality of SARS's right to terminate this Agreement for cause under Clause 33 or to claim damages, without liability by providing written notice of termination to the Service Provider, in which case the Service Provider shall refund to SARS all amounts paid by SARS to the Service Provider in respect of that Tested Deliverables. Such refund shall be made within 14 (fourteen) days of receiving SARS's notice.

12.2.8. Once SARS is satisfied with the outcome of Acceptance Testing, SARS will furnish the Service Provider with Acceptance Certificate.

### 12.3. **Functionality Testing**

12.3.1. Upon delivery of any Tested Deliverables, SARS shall test such Tested Deliverables against the Functional Specification in order to determine if the functionality thereof meets the Technical Specification Requirements. where after such Tested Deliverable will be resubmitted to Acceptance Testing in accordance with the provisions of Clause 12.2 above.

12.3.2. The acceptance of the functionality of the Tested Deliverables shall be governed by a test and acceptance procedure and criteria, which shall demonstrate the correct and satisfactory operation and functioning of the relevant functionality of the Tested Deliverables in accordance with the Functional Specification.

12.3.3. The Parties will conduct functionality testing in accordance with the Acceptance Testing Procedure set out in clause 12.2 above.

12.3.4. Once SARS is satisfied with the outcome of Acceptance Testing, SARS will furnish the Service Provider with Acceptance Certificate of the functionality of the Tested Deliverable.

### 12.4. **Documentation**

- 12.4.1. The Service Provider shall deliver the Documentation in respect of each Tested Deliverable on the date agreed upon by the Parties for review and approval. SARS shall give the Service Provider written notice of its approval or non-approval of the Documentation. If SARS does not approve the Documentation, SARS shall give written reasons for its non-approval of the deliverable.
- 12.4.2. The Service Provider must upon receipt of the notification of non-approval from SARS, rectify the Deficiency within a timeframe agreed upon by the Parties.
- 12.4.3. Once SARS is satisfied with the outcome of the approval process, SARS shall furnish the Service Provider with Acceptance Certificate of the Documentation.

### **13. SERVICE LEVELS**

- 13.1. The Service Provider shall perform the Services with promptness and diligence, where possible, and courtesy on a best effort basis and ensuring that all Service request logged are attended to during Business Hours and/or Support Hours as stated in the Service Level Agreement (**Annexure E**).
- 13.2. The Service Provider shall perform the Services with promptness, diligence and courtesy. The Service Provider shall execute the Services in a professional manner and in accordance with the Best Industry Practices and professional standards used in well-managed operations performing Services similar to the Services.
- 13.3. The Parties will agree to objectively measurable Service Levels and to specific formulae by which to calculate Service Level Credits related to the Service Provider's failure to meet, or the Service Provider's breach of the Service Levels. The Service Levels and Service Level Credits, including the applicable formulae, shall be included in the Service Level Agreement to which the Services and Service levels relate.

- 13.4. SARS may, to the extent agreed to under the Service Level Agreement recover the applicable Service Level Credit from the Service Provider. In the event that SARS is entitled to a Service Level Credit in accordance with the provisions of the Service Level Agreement, the amount of such Service Level Credit shall be deducted by SARS from any amount due to be paid by SARS to the Service Provider. If there is no further amount due to be paid by SARS to the Service Provider for the Services in question, then the Service Provider shall, at SARS' election, either refund the amount of the Service Level Credit to SARS or provide SARS with a credit note for such amount.
- 13.5. The Service Provider shall be excused from failing to comply with the Service Levels to the extent that non-performance or delayed performance is caused by SARS or its Staff, or a Force Majeure Event.
- 13.6. If the Service Provider fails to meet any Service Level, the Service Provider shall:
- 13.6.1. investigate and report on the root causes of the Service Level failure;
  - 13.6.2. promptly correct the failure and begin meeting the Service Levels;
  - 13.6.3. advise SARS, as and to the extent requested by SARS, of the status of remedial efforts being undertaken with respect to such Service Level failure; and
  - 13.6.4. take appropriate preventive measures to prevent the recurrence of the Service Level failure.
- 13.7. SARS shall be entitled to reasonable access to all data in the Service Provider's possession relating to Service Levels and Service Level performance as provided for in this Agreement. When required by SARS in writing, the Service Provider shall provide SARS with written reports on the Service Provider's performance against the Service Levels, together with any supporting information for each report as reasonably requested by SARS.

- 13.8. Should a Service Level Credit become payable to SARS and the Service Provider is also liable to pay damages to SARS under this Agreement in respect of the act or omission that is the subject or cause of failure to meet the Service Level, then the value of the Service Level Credit shall be deducted from any such claim for damages.

#### **14. SERVICE PROVIDER PERSONNEL**

- 14.1. The Service Provider shall:
- 14.1.1. ensure that the Service Provider Personnel who perform the services are appropriately skilled, experienced and qualified to render the specific services for which they are responsible, and that each of them strictly comply with this Agreement including the Service Levels in the performance of the Service;
  - 14.1.2. notify SARS in writing and in advance of the names, details, qualifications and responsibilities of each Key Personnel (where a Key Personnel is required for service provisioning);
  - 14.1.3. promptly provide to SARS any information pertaining to the skill, experience and qualification of any Key Personnel, as SARS may reasonably request from time to time; and
  - 14.1.4. ensure that a Key Personnel signs the Oath of Secrecy, Consent (**Annexure A**) and Data Protection Agreement (**Annexure B**), prior to entering the Premises.
- 14.2. The Service Provider shall duly comply with its contractual arrangements with all Service Provider Personnel to ensure uninterrupted provision of Services.

- 14.3. The Service Provider shall be liable for any criminal activity, delicts, misconduct, failure to comply with any law and/or wrongdoing or Personal Information Breach on the part of a Service Provider Personnel committed (or omitted) by a Service Provider Personnel in the course of the Agreement and the Service Provider hereby (in addition to any other indemnities recorded elsewhere in the Agreement), indemnifies SARS and holds SARS harmless against any costs, liabilities, expenses or damages of whatever nature suffered or incurred by SARS, and caused directly by any Service Provider Personnel.

## **15. HEALTH, SAFETY AND SECURITY PROCEDURES AND GUIDELINES**

- 15.1. SARS has in terms of OHS Act,
- 15.1.1. established and provided a safe working environment for SARS's Personnel and visitors to its Premises and further maintains the work environment, which is safe, without risks to the health of SARS's Personnel and visitors, in as far as is reasonably practical to eliminate or mitigate any health and safety hazard or potential health and safety hazard; and
  - 15.1.2. controls in place required to respond to any health safety risk which controls are regularly updated in line with the applicable provisions of the OHSA and where required, standards and guides as published by the aforesaid prescript and/or National Institute for Communicable Diseases (NICD).
- 15.2. The Service Provider hereby agrees and undertakes:

15.2.1. in terms of section 37(2) of the OHSA, to ensure that the Service Provider and the Service Provider's Personnel comply in all respects, with the aforesaid OHSA and regulations and accept sole responsibility for all health and safety matters relating to the provision of the Services, or in connection with or arising out of such Services, for the Term of this Agreement, including with regard to the Service Provider Personnel and ensuring that neither SARS's Personnel nor any Third Party Service Providers staff's health and safety is endangered in any way by the Service Provider's activities or conduct in providing the Services whilst at the Premises.

15.2.2. to ensure that the Service Provider Staff will at all times and if required by SARS at its Premises, be in possession of the necessary PPE (Personal Protective Equipment) prescribed by the OHSA before entering SARS's offices and Premises and shall when within SARS's offices and/or Premises, adhere to SARS PPS&G applicable to SARS and SARS's Personnel and are available to the Service Provider on request. Should SARS at any time have reason to believe that any member of the Service Provider Personnel is failing to comply with SARS PPS&G, SARS will be entitled to deny such member of Service Provider Personnel to any or all of Premises and require the Service Provider to replace such member of Staff without delay.

15.3. The Service Provider undertakes and warrants to SARS that:

15.3.1. it shall ensure that all Service Provider Personnel are and remain adequately and validly insured in terms of the Compensation for Occupational Injury and Diseases Act, 1993 ("COIDA"), and shall deliver proof to that effect to SARS as and when required to do so. In addition, the Service Provider shall, before commencement of the Services (notwithstanding the Effective Date), furnish to SARS a copy of a certificate of good standing issued by the Compensation Commissioner appointed in terms of COIDA;

15.3.2. it shall at all times comply with the provisions of COIDA and the OHSA;



- 15.3.3. it shall, at the request of SARS, furnish to SARS a copy of its own health, safety and environmental plan, policy and procedures pertaining to occupational health and safety, and amend such policy if SARS can reasonably demonstrate that the plan, policy and/or procedures are incomplete or inadequate;
- 15.3.4. it shall ensure that no Service Provider Personnel brings intoxicating drugs or liquor onto the Premises, and that no Service Provider Personnel arrives at the Premises under the influence of intoxicating drugs or liquor;
- 15.3.5. it shall supply all personal protective equipment and clothing, and other safety measures and equipment, as may be necessary in the circumstances (or as may be requested by SARS from time to time) in order to protect Service Provider Personnel while they are at the Premises; and
- 15.3.6. all equipment, tools and materials brought onto the Premises for use by the Service Provider Personnel, are in good working order for the Term, and that they meet the requirements contemplated in the OHSA.
- 15.4. SARS reserves (where applicable), the right to undertake audit(s) at any given time at the Service Provider's and its sub-contractor's premises to assess the Service Provider's compliance with its health and safety plan;
- 15.5. The Service Provider hereby indemnifies and agrees to hold SARS harmless against any loss, damages, liability or expense suffered or incurred by SARS:
  - 15.5.1. as a result of any breach in terms of this clause 15.1.1; and
  - 15.5.2. in terms of the OHSA as a result of any Service Provider Personnel failing to comply with SARS PPS&G as contemplated in clause 15.2 above;
  - 15.5.3. as a result of any charge that may be brought against SARS in terms of Section 37 and related provisions of the OHSA, in the event that any of its personnel commit any offense in terms of the OHSA, while on the Premises.

- 15.6. The indemnity referred to in clause 15.4 is in addition to the general indemnity contained elsewhere in this agreement and does not limit the ambit of the general indemnity in any way whatsoever.

## **16. FEES INVOICING AND PAYMENT**

- 16.1. In general, the Fees applicable to the Services are set out in **Annexure B** hereto.
- 16.2. SARS shall for the Term, pay the Service Provider for the provision of the Services and the Subscription Licenses the Fees set out in **Annexure B** which fees shall be payable as follows:
- 16.2.1. In respect of the Implementation Services, total fees for the implementation which fees shall be paid in accordance with the payment milestones aligned to the Project Plan (the “**Payment Milestone**”) and attached hereto as **Annexure “B-1”**;
- 16.2.2. In respect of each 12 (twelve) months, the Subscription Licenses required for such period, within 30 days from the date of invoice, annual in advance; and
- 16.2.3. In respect of Ad Hoc Services, the Time and Material Rates for such Services and as approved in terms of SARS’s procurement governance processes and procedures.
- 16.3. The Service Provider will (subject to the provisions of this Clause 16), not be entitled to: (i) impose or seek payment of any amounts or charges under the Agreement other than the Fees; (ii) establish any new types of charges under the Agreement; or (iii) modify any of the Fees under the Agreement; unless SARS has agreed thereto in writing.
- 16.4. Each invoice will consist of or have attached statement of the total amount due which will be itemised per Service. The Service Provider will provide to SARS the calculation of the Fees in accordance with **Annexure B**.

- 16.5. The Service Provider will verify that each invoice is complete and accurate and that it conforms to the requirements of the Agreement (including by carrying out detailed checks of each invoice) before issuing the invoice to SARS.
- 16.6. SARS may withhold any amounts that it disputes in good faith, provided that such dispute shall either be discussed in the meetings as provided for in Clause 18 and/or automatically be referred to dispute resolution in terms of Clause 46.
- 16.7. The Service Provider will maintain complete and accurate records of, and supporting documentation for, the amounts invoiced to and payments made by SARS hereunder in accordance with generally accepted South African accounting practice (compliant with FAIS and IFRS) applied on a consistent basis.
- 16.8. Notwithstanding the provision of Clause 18 below, SARS may as and when it deems necessary audit the Fees that have been paid to the Service Provider during the Term. For these purposes, the Service Provider shall within 10 (ten) days after SARS's request, provide SARS with response to any payment queries raised by SARS including any other documentation or information reasonably required in order to verify the accuracy of the Fees invoiced and paid by SARS including compliance by the Service Provider with the requirements of the Agreement. In the event that SARS determines, at any time during the Term and/or expiry thereof that SARS has overpaid the Service Provider, the Service Provider shall refund such overpaid Fees to SARS in full without any set off, including any interest thereon, calculated at Repo Rate.

## **17. TAX, DUTIES AND CURRENCY ISSUES**

- 17.1. Unless otherwise specified, all Fees and expenses are recorded **[DRAFTING NOTE: TO BE CONFIRMED POST AWARD]** of Value Added Tax. The Service Provider will be financially responsible for all taxes associated with the Services and will comply with all applicable laws relating to tax and tax invoices.

- 17.2. All Fees set out in this Agreement are inclusive of any export and import tax.
- 17.3. The Fees are stated in South African Rand and will be quoted, invoiced and paid in South African Rand. Subject only to the discounts contemplated in the RFP, the Fees are not subject to adjustment due to any currency fluctuations for the duration of the Agreement.

## **18. DISPUTED FEES AND INVOICING ERRORS**

- 18.1. SARS may withhold payment of any Fees that SARS disputes in good faith (or, if the disputed Fees have already been paid, SARS may withhold an equal amount from a later payment), including disputes in respect of an error in an invoice or an amount paid. If SARS withholds any such amount:
- 18.1.1. SARS will promptly notify the Service Provider that it is disputing such Fees; and
- 18.1.2. the Parties will promptly address such dispute in accordance with Clause 46 of the Agreement.
- 18.2. If the dispute relates to (or is equal to (in the case of disputed Fees that have already been paid by SARS)) only certain of the Fees included on an invoice, then SARS will pay the undisputed amounts in accordance with the provisions of RFP.
- 18.3. If an invoice is identified as incorrect by SARS, the Service Provider will either (i) issue a correct invoice if the amount stated on the invoice has not yet been paid; or (ii) make a correction on the next invoice if the amount has been paid by SARS, provided however, that the Service Provider will refund any overpayments with interest calculated at the Repo Rate for the number of days from the date of SARS's payment to the date of the refund. SARS will not be responsible for paying interest on undercharged amounts, if any.
- 18.4. For the avoidance of doubt, the Parties record and agree that the Service Provider shall not be entitled to suspend or interrupt the provision of the Services until the dispute is resolved by the Parties and such resolution is recorded in writing.

## **19. SERVICE PROVIDER OBLIGATIONS TO REDUCE COSTS**

- 19.1. In consultation with SARS, the Service Provider will continuously investigate methods to reduce the Fees whilst maintaining Performance Standards.
- 19.2. Without limiting the generality of its obligations under Clause 19.1 above, the Service Provider will:
  - 19.2.1. use Commercially Reasonable Efforts to identify methodologies, processes and solutions and technologies that SARS or the Service Provider may employ to reduce consumption, costs and to claim applicable discounts;
  - 19.2.2. Model the effect of the methodologies, processes, solutions and technologies at different levels and mixes of consumption; and
  - 19.2.3. periodically report (but no less frequently than quarterly) on such efforts and make recommendations to SARS regarding the steps SARS, the Service Provider or both may take to reduce the Fees.

## **20. PERFORMANCE BOND**

- 20.1. The Service Provider will post before or within 21 (twenty one) Business Days from the date of the Letter of Award, a performance bond ("**Performance Bond**") by a financial institution approved by SARS and in the form prescribed by SARS. (regard being had to clause 20.2), or, if SARS does not prescribe a form, in a form proposed by Service Provider and approved by SARS in its sole discretion (regard being had to clause 20.2). Notwithstanding the generality of the above, such Performance Bond will secure the Service Provider's obligations in an amount equal to R 500 000 (Five Hundred Thousand Rand). The Service Provider will not be absolved of any of its obligations and liabilities under this Agreement by virtue of it having obtained the Performance Bond required in this clause 20.
- 20.2. SARS will be entitled to encash the Performance Bond if:

- 20.2.1. an event occurs in respect of which this Agreement permits SARS to recover a penalty from the Service Provider and the Service Provider fails to pay such penalty when it is due in terms of this Agreement or otherwise upon demand by SARS; or
  - 20.2.2. the Service Provider materially breaches this Agreement, and such breach is reasonably considered by SARS to be irremediable; or
  - 20.2.3. the Service Provider materially breaches this Agreement, such breach is reasonably capable of being remedied and the Service Provider fails to remedy such breach when called upon by SARS to do so.
- 20.3. If SARS encashes the Performance Bond in terms of clause 20.2, 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 20.3 will never be construed as in any way limiting SARS's right of recovery to the full value of the Performance Bond.
- 20.4. For the avoidance of doubt, the Parties record and agree that SARS will not exercise its right to encash the Performance Bond as contemplated in clause 20.2 until the dispute has been resolved in accordance with the provision of clause 46 below. Notwithstanding the aforesaid, the Service Provider remains obligated to continue providing the Services as envisaged in this Agreement.
- 20.5. In the event of SARS:
- 20.5.1. cancelling the Agreement pursuant to any matter referred to in clause 20.2, after SARS has recovered all amounts which may be owing to SARS by the Service Provider in terms of clause 20.3, SARS will pay the balance, if any, to the Service Provider;

20.5.2. not cancelling the Agreement pursuant to any matter referred to in clause 20.2, the Service Provider will, at the election of SARS:

20.5.2.1. pay to SARS an amount equal to that which SARS is entitled to recover from the Service Provider in connection with such matters and in accordance with the provisions of clause 20.3, so that SARS holds in trust (either itself or in escrow with its attorneys) an amount equal to that which was represented by the Performance Bond prior to SARS recovering the amounts owing to it in accordance with clause 20.3;

20.5.2.2. deliver to SARS a new Performance Bond for the same value as that of the original Performance Bond (and for which purpose clause 20.1 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 20.3.

20.6. Upon SARS receiving any amount from the Service Provider in terms of clause 20.5.1, 20.5.2.1 or a replacement Performance Bond in terms of clauses 20.5.2 and 20.5.2.2, the provisions of this clause 20 will apply anew in respect thereof.

## **21. SARS'S RIGHTS AND OBLIGATIONS**

21.1. SARS undertakes to furnish the Service Provider with any relevant information necessary for the Service Provider to perform the Services in compliance with the terms and conditions of this Agreement including provision of Resources to a Key Personnel.

21.2. SARS undertakes to:

21.3. ensure that a Key Personnel is allocated a work area including Resources required for the performance of the Services at the Premises; and

21.4. set up an email account for the Key Personnel including extension number which shall be utilised by a Key Personnel for communication and Service performance.

## **22. INTELLECTUAL PROPERTY RIGHTS**

### **22.1. SARS Intellectual Property:**

22.1.1. 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 Term, to perform any lawful act including the right to use, copy, maintain, modify, enhance and create derivative works of SARS Intellectual Property (including source code materials, programmer interfaces, available documentation, manuals and other materials to the extent necessary for the use, modification, or enhancement thereof) for the sole purpose of providing the Deliverables and/or Services to SARS. The Service Provider will not be permitted to use SARS Intellectual Property for the benefit of any entities other than SARS without a signed written consent of SARS, which may be withheld at SARS's sole discretion. Except as otherwise requested or approved by SARS, which approval will be at SARS's sole discretion, the Service Provider will cease all use of SARS Intellectual Property as of the termination or expiration date of this Agreement.

### **22.2. Intellectual Property developed during the Term:**

- 22.2.1. SARS will have all right, title and interest in all Intellectual Property developed or generated for SARS in the course of supplying the Deliverables and/or Services ("**Developed Intellectual Property**").
- 22.2.2. 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.
- 22.2.3. The Service Provider hereby grants SARS (subject to payment of all fees regarding the Developed Intellectual Right), all rights, title and ownership to the Developed Intellectual Property and to perfect such title, the Service Provider undertakes to:



- 22.2.3.1. execute any documents or take any other actions as may be reasonably necessary, or as SARS may request in writing, to cede and assign such Developed Intellectual Property in order to vest all rights, title and ownership thereto, to SARS; and
- 22.2.3.2. not to claim any such rights, title and ownership in such work whether during and/or after the expiry of this Agreement for any reason whatsoever.
- 22.2.4. Unless otherwise agreed, where Developed Intellectual Property incorporates the Service Provider Intellectual Property and/or systems, and processes that Service Provider did not develop in the course of supplying Deliverables and/or 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 including SARS Personnel 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 (“SARS’s License”).

22.3. **The Service Provider Intellectual Property:**

- 22.3.1. Subject to Clause 22.2.3.2, the Service Provider retains all right, title and interest in and to Service Provider Intellectual Property that is used in connection with the Deliverables and/or 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 Deliverables and/or Services during the Term and during the Disengagement Assistance Period (“SARS Licence”).

22.4. **Third Party Intellectual Property:**

22.4.1. The Service Provider will neither, for the Term, 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 supply the Deliverables and 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.

**22.5. Use of Third-Party Intellectual Property licensed to SARS:**

22.5.1. Service Provider will not, without SARS's express prior written consent, use any Third-Party Intellectual Property licensed to SARS whether to provide the Deliverables and/or 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.

**23. CONFIDENTIAL UNDERTAKING**

23.1. The Parties shall ensure that prior to commencing the performance of the Services all the Service Provider Personnel involved in the rendering of the Services, sign the SARS Oath of Secrecy and Data Protection Agreement (where applicable), and submit the original thereof to SARS for record keeping purposes.

- 23.2. The Service Provider undertakes that for the duration of this Agreement and after the expiration or earlier termination of this Agreement for any reason, it will keep confidential all SARS's Confidential Information. This includes the knowledge acquired by the Service Provider Personnel as a result of the work performed by the Service Provider in terms of this Agreement and which by its nature, is intended to be kept confidential.
- 23.3. The Parties agree that no trade and/or business secrets, Confidential Information or methods of work supplied by one Party to the other shall be disclosed to any third party, without first obtaining the written consent of the other Party, unless required by law or competent court or Authority.
- 23.4. The Service Provider specifically acknowledges that all information relating to the Services, including and not limited to, literary works produced thereunder are of a sensitive nature and must be kept confidential. The Service Provider undertakes not to disclose such information without first obtaining the written consent of SARS unless required by law or competent court.
- 23.5. If the Service Provider is uncertain about whether information is to be treated as confidential in terms of this Clause, it shall be obliged to treat it as such until advised otherwise, in writing, by SARS.
- 23.6. The Service Provider will protect the interests of SARS in its Confidential Information by:
- 23.6.1. making available such Confidential Information only to Service Provider Personnel who are actively involved in the execution of its obligations under this Agreement and then only on a "need to know" basis;
  - 23.6.2. putting in place internal security procedures in accordance with current industry standards and/or Applicable Law to prevent unauthorised disclosure and taking all practical steps to impress upon those personnel who need to be given access to Confidential Information, the secret and confidential nature thereof;

- 23.6.3. using the Confidential Information only for the purposes of and to the extent necessary for the Service Provider to comply with its obligations under this Agreement. In particular, the Service Provider shall not use the Confidential Information for the purpose of updating, supplementing or verifying its own data bases;
  - 23.6.4. not using any Confidential Information of SARS, or disclosing directly or indirectly any Confidential Information of SARS to third parties, whether during this Agreement or thereafter, unless required by law;
  - 23.6.5. notifying SARS promptly of any unauthorised or unlawful use, disclosure and/or Processing of the Confidential Information including Personal Information Breach of which the Service Provider becomes aware;
  - 23.6.6. deleting or returning (at the request of SARS) the Confidential Information as may be required by SARS, without keeping copies thereof, immediately upon first written demand for deletion or the return thereof by SARS, whether or not the Service Provider has completed the provision of the Services in respect of any such Confidential Information, and in any event promptly after the use thereof in the provision of the Services;
  - 23.6.7. providing reasonable evidence of the Service Provider's compliance with its obligations under this Clause 23.6.6 to SARS on reasonable notice and request; and
  - 23.6.8. ensuring that all Confidential Information of SARS which has or will come into the possession of the Service Provider and Service Provider Personnel, will at all times remain the sole and absolute property of SARS.
- 23.7. The unauthorised disclosure by the Service Provider of the Confidential Information to a third party may cause irreparable loss, harm, and damage to SARS, and may lead to criminal sanction. As such, the Service Provider indemnifies and holds SARS harmless against all Losses and any action, or damage, of whatever nature, suffered or sustained by the SARS pursuant to a breach by the Service Provider of provisions of this Clause 23.

- 23.8. No announcements of any nature whatsoever will be made by or on behalf of a Party relating to this Agreement without the prior written consent of the other Party.
- 23.9. The provisions of this Clause 23 shall survive the termination or cancellation of this Agreement for any reason whatsoever.

## **24. DATA PROTECTION**

- 24.1. The Service Provider acknowledges that in the course of the providing the Services it may become privy to SARS's Confidential Information including Personal Information.
- 24.2. To the extent that the SARS's Confidential Information and/or Personal Information needs to be stored on the Service Provider's information technology systems, the Service Provider shall take appropriate technical safeguards and organisational measures and/or measures prescribed by sections 19 to 22 of POPIA and/or applicable Data Protection Legislation (where applicable), SARS Act and/or Applicable Laws against unauthorised access to, unlawful Processing, accidental loss, destruction or damage of the SARS's Confidential Information and shall provide SARS, with reasonable evidence of the Service Provider's compliance with its obligations under this Clause 24.2 on reasonable notice and request.
- 24.3. The Service Provider shall institute and operate all necessary back-up procedures to its information technology systems to ensure that, in the event of any information system malfunction or other loss of SARS's Confidential Information and/or Personal Information, such information can be recovered promptly and that the integrity thereof and any database containing such material can be maintained.
- 24.4. The Service Provider shall ensure that all SARS's Confidential Information and/or Personal Information provided to it by SARS in order to render the Services is stored separately and isolated from data and property relating to the Service Provider or any third party (including any other entity with whom the Service Provider may conduct business) in accordance with the Data Protection Legislation, SARS Act and the Applicable Laws.

24.5. The security measures to be taken by the Service Provider in terms of Clause 24.2 must –

24.5.1. not be less rigorous than the security safeguards, measures and practices (i) generally maintained by SARS in respect of its data (and as communicated by SARS to the Service Provider); (ii) maintained by the Service Provider with respect to its own confidential information of a similar nature and/or (iii) prescribed by the Applicable Laws and/or Data Protection Legislation; and

24.5.2. enable SARS and the Service Provider to conform to Applicable Law, including, Data Protection Legislation, PAIA, Electronic Communications and Transactions Act, 2002 (Act No 25 of 2002); the Tax Acts.

24.6. The Service Provider hereby indemnifies and holds SARS harmless against all Losses incurred by SARS as a result of any breach by the Service Provider of the provisions of this Clause 24.

## **25. PROCESSING OF PERSONAL INFORMATION**

25.1. Without limiting any other provision of this Agreement, the Service Provider shall only store, copy or use any Personal Information disclosed to it by SARS pursuant to the Agreement to the extent necessary to perform its obligations under this Agreement and subject to the Privacy and Data Protection Requirements and/or Data Protection Legislation binding on SARS and/or Service Provider.

25.2. If at any time the Service Provider suspects or has reason to believe that Personal Information disclosed to it by SARS pursuant to this Agreement has or may become lost or corrupted in any way for any reason then, the Service Provider shall immediately notify SARS thereof what remedial action it proposes to take, if any, aligned with the relevant conditions of POPIA and/or where applicable the Data Privacy Legislation.

25.3. The Service Provider agrees that, in regard to the Personal Information, it shall –

- 25.3.1. only Process the Personal Information subject to the Privacy and Data Protection Requirements and in accordance with written instructions from SARS and supported by written consent from a Data Subject, (which may be specific instructions or instructions of a general nature limited to the specific purpose (as prescribed by Condition 1 of POPIA “**the Lawful Purpose**”)), as set out in the Agreement or as otherwise notified by SARS to the Service Provider from time to time);
- 25.3.2. not otherwise modify, amend or alter the contents of the Personal Information or disclose or permit the disclosure of any of the Personal Information to any third party unless authorised in writing by SARS and where required, the Data Subject and limited to the Lawful Purpose, being carrying out duties in relation to the performance of the Services;
- 25.3.3. not maintain records of the Personal Information for longer than is necessary in order for the Service Provider to comply with its obligations under the Agreement, unless retention thereof for a longer period is required by the Applicable Laws or as requested in writing by SARS;
- 25.3.4. implement appropriate technical safeguards and organisational measures to protect the Personal Information against unauthorised access or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure in accordance with Condition 7 of POPIA and/or relevant provisions of the Data Protection Legislation and shall further ensure Service Provider Personnel in their role as sub-Operators, comply in all respect with the technical safeguard and organisation measures implemented by the Service Provider or SARS to protect the Personal Information against unauthorised access or unlawful Processing, accidental loss, destruction, damage, alteration or disclosure as prescribed by the aforesaid Condition 7 of POPIA to Personal Information and to the nature of the Personal Information which is to be protected;
- 25.3.5. keep all Personal Information and any analyses, profiles or documents derived therefrom separate from all other data and documentation of the Service Provider;

- 25.3.6. Process the Personal Information in accordance with Privacy and Data Protection Requirements and/or requirements prescribed by Data Protection Legislation where binding on SARS as the Responsible Party; and
- 25.3.7. co-operate as requested by SARS to enable SARS to comply with or exercise rights of Data Subject under POPIA and/or Data Protection Legislation if binding of SARS in respect of Personal Information Processed by the Service Provider and/or Service Provider Personnel under the Agreement or comply with any assessment, enquiry, notice or investigation under the SARS Act, POPIA, PAIA or Applicable Law which shall include the provision of all data requested by SARS within the timescale specified by SARS in each case, subject to compliance by SARS with POPIA.
- 25.4. The Service Provider shall provide co-operation in any investigation relating to security which is carried out by or on behalf of SARS, including providing any information or material in its possession or control, provided that SARS gives its reasonable notice of its intention to carry out such an investigation.
- 25.5. The Service Provider hereby indemnifies and holds SARS harmless against all Losses incurred by SARS as a result of any Personal Information Breach by the Service Provider, Service Provider Personnel and/or breach of any of the provisions of this Clause 25.

## **26. PROTECTION OF PERSONAL INFORMATION**

- 26.1. Each Party shall comply with its obligations under POPIA in respect of Personal Information collected and/or Processed in connection with the Agreement and the Services.
- 26.2. Each Party shall only provide, collect and/or Process the Personal Information:
  - 26.2.1. in compliance with POPIA and where binding on a Party;
  - 26.2.2. as is necessary for the Solution and the Services;



- 26.2.3. for maintaining its internal administrative processes, including quality, risk, client or vendor management processes;
  - 26.2.4. for internal business-related purposes; and
  - 26.2.5. in accordance with the lawful Purpose and reasonable instructions of SARS as the Responsible Party.
- 26.3. Both Parties shall:
- 26.3.1. in dealing with the Personal Information either as the Responsible Party or Operator comply with the specific security safeguards or measures set out in Condition 7 of POPIA and data protection obligations imposed on them in terms of POPIA or Data Protection Legislation; and/or
  - 26.3.2. where applicable, comply with the specific obligations imposed on them in terms of POPIA and/or where applicable, Data Protection Legislation in respect of the specific role they fulfil either as the Operator or Responsible Party in terms of providing the Services as agreed between the Parties;
  - 26.3.3. take, implement and maintain all such technical and organisational security procedures and measures as prescribed by Condition 7 of POPIA and/or relevant articles of Data Protection Legislation where applicable, necessary or appropriate to preserve the security and confidentiality of the Personal Information in its possession and to protect such Personal Information against unauthorised or unlawful collection, disclosure, access or Processing, accidental loss, destruction or damage.
- 26.4. No Personal Information shall be collected, Processed and/or shared with any other third party without obtaining written consent of the Responsible Party supported by the Data Protection Agreement signed with the Responsible Party.

- 26.5. Neither the Service Provider *nor* Service Provider Personnel in line with their role as the Operator or sub Operator shall be entitled to Process the Personal Information with any other third party except for the Service Provider Personnel (subject to signing of the Data Protection Agreement by Responsible Party), where necessary in order to protect the legitimate interests of any of the Parties, Data Subject or in connection with this Agreement and the Services.
- 26.6. The Service Provider may notify SARS about important developments, proposals and services which it thinks may be relevant to SARS for Service improvement etc., however, the Service Provider undertakes for the Term, not to use or Process the Personal Information to send business offering to SARS and/or Data Subject including newsletters, invitations to seminars and similar marketing material or other communications from the Service Provider.
- 26.7. Electronic communications between the Service Provider and SARS (limited only where the Service Provider Personnel are using the Service Provider's resources), may be monitored by the Service Provider to ensure compliance with its professional standards and internal compliance policies pertaining to this Agreement and not for any other purpose.
- 26.8. Electronic communications between SARS and the Service Provider and SARS Personnel (limited only where the Service Provider Personnel are using SARS's resources), may be monitored by SARS to ensure compliance with its professional standards and internal compliance policies pertaining to this Agreement and not for any other purpose.
- 26.9. The Service Provider shall not Process the Personal Information to:
- 26.9.1. an outsourced information technology service provider; or
  - 26.9.2. another country, including the use of cloud-based solutions (unless those solution are approved by SARS in writing and compliant with POPIA or equivalent Data Protection Legislation); or
  - 26.9.3. an Affiliate unless approved by SARS in writing and provided a Data Protection Agreement has been signed by SARS;

- 26.9.4. without prior written consent of SARS and the Data Subject or existing Data Protection Agreement.
- 26.10. Where consent has been granted in terms of Clause 26.9 above, the Service Provider undertakes in relation to Clauses 26.7 and 26.8 and for the Term as the Operator, to require that any third party, outsourced service provider, foreign legal entity or other Affiliate involved in the Processing or storage of Personal Information, to ensure that such Personal Information is protected with the same Best Industry Practices and/or protection as is required in terms of Clause 24.3 and the provision of the POPIA and/or Data Protection Legislation including the signature of the Data Protection Agreement between SARS and such Third Party.
- 26.11. The Service Provider in their role as Operator shall be held accountable for Personal Information further Processed by the Service Provider Personnel for the purposes set out in the Agreement irrespective of whether a such Service Provider Personnel performs such role under the instruction of SARS as a Responsible Party. It is understood by the Parties that, the role of Service Provider Personnel is integral to the performance of the Services however, such role including the signing of the Data Protection Agreement Service Provider Personnel does not and will not be deemed to absolve the Service Provider from any liability whatsoever, suffered by SARS or Data Subject as a result of breach of this Agreement and/or Data Protection Agreement.
- 26.12. SARS as the Responsible Party warrants that it has obtained written consent from Data Subjects for the Processing or transfer of such Data Subjects' Personal Information whenever this is required for purposes of this Agreement and the Services.
- 26.13. The Service Provider represents and warrants in favour of SARS that:
- 26.13.1. it has used reasonable measures to ensure POPIA compliance by the Service Provider Personnel when at its offices or assigned to customers on a project basis which measures includes, POPIA training and awareness; and

26.13.2. it has established POPIA compliance programme to manage and maintain POPIA compliance.

26.14. For these purposes, and notwithstanding that a Service Provider Personnel will be Processing Personal Information in terms of this Agreement and not the Service Provider, the Service Provider hereby indemnifies and holds SARS harmless against all Losses incurred by SARS as a result of any Personal Information Breaches by Service Provider Personnel and/or breach of any of the provisions of this Clauses 24, 25 and 26.

## **27. AUDITS**

### **27.1. Audit Rights:**

27.1.1. The Service Provider will maintain a complete audit trail of financial and non-financial transactions resulting from the provision of the Services (the “Transactional Information”). Where SARS requires to audit the Transactional Information, the Service Provider will provide SARS with access to such Transactional Information including personnel, data, records and documentation relating thereto for the purpose of performing audits and inspections of the Transactional Information to: (i) verify the accuracy of the Service Provider’s Fees and invoices; (ii) verify the accuracy of payments by SARS or credits from the Service Provider; (iii) verify the accuracy of price changes to the extent such changes are determined by reference to Service Provider’s costs or changes thereto;

- 27.1.2. The Service Provider will maintain complete records of Service Provider accreditation including Key Personnel qualifications (the “Technical Information”) submitted as proof of Service Provider and/or Key Personnel’s ability to provide the Services. Where SARS requires to audit the Technical Information, the Service Provider will provide SARS with access to such Technical Information including personnel data, records and documentation relating thereto for the purpose of performing audits and inspections of the Technical Information to: (i) verify the accuracy of the Service Provider and/or Key Personnel’s accreditation, qualification and/or experience; (ii) examine the Service Provider’s performance of the Services, including verifying compliance with the Best Industry Standards; (vi) verify compliance with the terms of the Agreement; (vii) satisfy the requirements of any Applicable Law.
- 27.1.3. SARS reserves the right to appoint a third party to perform an audit under this Clause 27.1 and the Service Provider will provide to the auditors, inspectors and regulators such assistance as they may require. Unless SARS has a good faith suspicion of fraud, SARS will provide the Service Provider with reasonable notice for audits.
- 27.1.4. 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 Services including compliance with the relevant Applicable Laws, in which event the cost of such audit will be borne by Service Provider.
- 27.1.5. If an audit reveals an overcharge, the Service Provider will promptly refund the overcharge plus interest at Repo Rate, from the date of payment of the overcharge through the date the overcharge is refunded by Service Provider.

**27.2. Audit Follow-Up:**

- 27.2.1. 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.

- 27.2.2. 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 the 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. If required and agreed between the Service Provider and SARS, 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.
- 27.2.3. The Service Provider will promptly make available to SARS the results of any reviews or audits conducted by the Service Provider, its Affiliates agents or representatives (including internal and external auditors) to the extent such findings reflect conditions and events relating to the Services.
- 27.2.4. Promptly after the issuance of any audit report or findings issued under Clause 27.2.3 the Parties will meet to review such report or findings and to agree on how to respond to the suggested changes.

## **28. BREACH**

- 28.1. A Party (the "**Aggrieved Party**") may terminate this Agreement if the other Party (the "**Defaulting Party**") commits a material breach of this Agreement and fails to remedy such breach within 10 (ten) Business Days (the "Notice Period") of being notified of the breach and, if the Aggrieved Party so elects, the steps required to remedy such breach.
- 28.2. For the purposes of Clause 28.1 a breach will be deemed to be a material breach if :-

- 28.2.1. it is capable of being remedied, but is not so remedied within the Notice Period; or
- 28.2.2. it is incapable of being remedied within the Notice Period; or
- 28.2.3. if payment in money will compensate for such breach, but payment is not made within the Notice Period; or
- 28.2.4. the Service Provider commits numerous, repeated breaches even if cured; or
- 28.2.5. at any time, SARS experiences non-performance, alternatively mal-performance from the Service Provider relating to the execution of its duties and obligations in terms of this Agreement.

## **29. INDEMNITIES**

- 29.1. Without in any way detracting from the rights of SARS in terms of this Agreement, the Service Provider hereby indemnifies and holds SARS harmless from any and all Losses which may be suffered as a result of any breach of the warranties set out in Clause 42 including the provisions of this Agreement by the Service Provider or Service Provider Personnel.
- 29.2. In addition to any other remedy available to SARS, the Service Provider agrees to indemnify in full and on demand and to keep SARS so indemnified from and against all claims, demands, actions, proceedings and all Losses, which are made or brought against or incurred or suffered by SARS resulting from:
- 29.3. any or action arising from the Service Provider's breach of any obligation with respect to Confidential Information and/or Personal Information; and/or.
- 29.4. any claim, action or demand by a Third Party that the use by SARS of the Software and its related Documentation supplied by the Service Provider infringes the Intellectual Property rights of that Third Party.

## **30. LIMITATION OF LIABILITY**

- 30.1. The Parties agree that, in the event of a breach of any of the provisions of the Agreement, the Defaulting Party will be liable to the other Party for all Losses which constitute direct and/or general damages.
- 30.2. Subject to Clauses 30.3 and 30.4, the Parties agree that, in the event of a breach of any of the provisions of the Agreement, the Defaulting Party will not be liable to the other Party for any Losses which constitute indirect, special and/or consequential damages.
- 30.3. Notwithstanding anything to the contrary set forth in Clause 30.2 above or the Agreement in general, the Parties agree that they will not be liable to the other for -
- 30.3.1. Losses which constitute indirect, special and/or consequential damages where such damages are caused by a breach of any Intellectual Property and/or Confidential Information undertaking contained in the Agreement; and
- 30.3.2. all Losses which arise out of their dishonesty or gross negligence regardless of whether such Losses arise out of contract or delict; and/or
- 30.3.3. any Third-Party claims arising from or related to the death or bodily injury of any agent, employee, customer, business invitee, or other person caused by the delictual conduct of such Party.
- 30.4. Notwithstanding anything to the contrary set forth in Clauses 30.1, 30.2 and 30.3 or the Agreement in general, the Service Provider agrees that it remains liable to SARS for all Losses including special, indirect or consequential, and/or general damages and which will not be subject to any limitation of liability, where the Losses including special, indirect or consequential, and/or general damages incurred by SARS are occasioned by a misconduct of the Service Provider Personnel and/or breach by the Service Provider of the provisions of Clauses 22; 23; 24; 25 and 25 and 26 above.

## **31. TERMINATION**



- 31.1. If a Party commits a material breach of this Agreement and fails to remedy such breach within 7 (seven) Business Days of written notice requiring the breach to be remedied, then the Party giving the notice will be entitled, at its option, either to claim specific performance of the defaulting Party's obligations whether or not such obligations have fallen due for performance (with or without claiming damages) or to cancel this Agreement (with or without claiming damages) in which case the cancellation will take effect on the date of the notice.
- 31.2. If the Service Provider fails to adhere to any legal requirement or breaches the provisions of Clause 31.1 above and/or any term or condition of any licence, authorisation or consent required for the provision of the Services and which failure or breach SARS, in its sole discretion, considers to be detrimental to SARS, then SARS will be entitled, but not obliged, to immediately terminate this Agreement on written notice to the Service Provider, in which event such termination will be without any liability to SARS and without prejudice to any claims which SARS may have for damages against the Service Provider.
- 31.3. A Party's remedies in terms of this Clause 31 are without prejudice to any other remedies to which such Party may be entitled in law.

## **32. TERMINATION FOR CONVENIENCE**

- 32.1. SARS may terminate this Agreement for convenience and without cause at any time by giving the Service Provider at least 90 (ninety) days prior written notice designating the termination date. SARS will have no liability to the Service Provider with respect to any such termination, other than pro rata refunding to the Service Provider actual annual Fees that the Service Provider may have paid to the Licensor on SARS's behalf and cannot, using Reasonable Commercial Efforts recover from the Licensor. The Service Provider must provide SARS with proof, acceptable to SARS, of such payment.

## **33. TERMINATION FOR CAUSE**

33.1. SARS may (subject to Clause 28.1), by giving notice to the Service Provider, terminate this Agreement in whole or in part, as of a date set out in the notice of termination, in the event that the Service Provider commits a material breach of this Agreement or:

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

33.1.2. commits an Acts of Insolvency.

33.2. Notwithstanding Clause 33.1 above, SARS may terminate this Agreement, in whole or in part, in the event that SARS is unable to obtain funding to procure the Services.

#### **34. TERMINATION UPON SALE, ACQUISITION, MERGER OR CHANGE OF CONTROL**

34.1. 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 towards the Service Provider with respect to such termination save for the settlement of any outstanding fees for the Services rendered as at the date of termination.

#### **35. EFFECT OF TERMINATION**

35.1. The termination of this Agreement will not relieve the Parties hereto of any liabilities, obligations, expenses or charges accruing up to date of such termination and all rights accruing to either Party to the said date of termination will likewise remain in full force and effect.

#### **36. TERMINATION/EXPIRATION ASSISTANCE**

- 36.1. Upon termination of this Agreement, the Service Provider will, at no additional cost to SARS, provide all reasonable information and assistance to SARS to enable SARS or a Third Party designated by SARS to take over the Service Provider's obligations under this Agreement.
- 36.2. For these purposes, the Service Provider shall within 60 (sixty) days from the Signature Date, deliver to SARS a termination assistance plan for SARS's review and approval.

### **37. FORCE MAJEURE**

- 37.1. Delay or failure to comply with or breach of any of the terms and conditions of this Agreement by either Party if occasioned by or resulting from a Force Majeure Event or any other circumstances of like or different nature beyond the reasonable control of the Party so failing, will not be deemed to be a breach of this Agreement nor will it subject either party to any liability to the other. It is understood that neither Party will be required to settle any labour dispute against its will.
- 37.2. Should either Party be prevented from carrying out any contractual obligation by any circumstance described above, such obligation will be postponed provided the Party suffering such circumstance notifies the other Party to this Agreement within 7 (seven) days of becoming aware thereof. The Parties will thereupon promptly meet to determine whether an equitable solution can be found. If the event continues or is likely to continue for more than 30 (thirty) days, then SARS shall be entitled to terminate the Services by delivering a written notice to that effect to the Service Provider.
- 37.3. Should such Force Majeure Event last continuously for a period of 14 (fourteen) days, and no mutually acceptable arrangement is arrived at by the parties within a period of 7 (seven) days thereafter, either Party will be entitled to terminate the Agreement with immediate effect.

### **38. RECORDS RETENTION**

- 38.1. 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) 5 (five) years after expiration or termination of the Agreement; (ii) all pending matters related to the Agreement are closed; or (iii) such other period as required by Applicable Law.

### **39. CONSENTS AND APPROVALS**

- 39.1. 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.
- 39.2. 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.

### **40. APPLICABLE LAW AND JURISDICTION**

- 40.1. This Agreement will be governed by and construed in accordance with the Law of the Republic of South Africa and all disputes, actions and other matters relating thereto will be determined in accordance with such law.
- 40.2. The Parties hereby irrevocably and unconditionally consent to the non-exclusive jurisdiction of the North Gauteng High Court, Pretoria in regard to all matters arising from this Agreement.

### **41. LEGAL AND REGULATORY COMPLIANCE**

- 41.1. The Service Provider warrants that it is and will for the duration of this Agreement remain fully cognisant of and compliant with any relevant Applicable Laws (as may be amended from time to time in writing) and/or rulings or codes of practice of any competent Authority or industry body that has jurisdiction over the provision of or is relevant to the Deliverables and/or Services under this Agreement.
- 41.2. The Service Provider will, within 14 days (or any other period agreed by the Parties in writing) from the Effective Date, furnish SARS with copies of all regulated licences and/or accreditation (as specified in the RFP), and which are required by the 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.

## **42. GOVERNANCE, MEETINGS AND REPORTS**

- 42.1. Unless otherwise agreed in writing, the parties shall conduct the following meeting:
- 42.1.1. ad hoc meetings as reasonably required to ensure that the Services are performed effectively:
- 42.1.2. a monthly meeting between:
- 42.1.2.1. operational staff representing each of SARS and the service provider to discuss daily performance and planned or anticipated activities and otherwise address, review, and discuss matters specific to SARS; and
- 42.1.2.2. the parties' designated representatives to discuss any proposed changes that might adversely affect performance and to review the service provider's performance of the services as measured by the service levels. At such meetings, the service provider shall identify the actions it will take to rectify any failures to perform the services in accordance with the service specifications, which actions shall be subject to SARS's review and approval; and

42.1.2.3. a quarterly senior management meeting by the parties to review relevant relationship, contractual and performance issues.

42.2. The Service Provider will provide SARS with all reports pertaining to the meetings above as well as Services.

#### **43. WARRANTIES**

##### **43.1. Service Provider Personnel:**

43.1.1. The Service Provider warrants that it will for the duration of this Agreement: (i) use adequate numbers of qualified staff with suitable training, accreditation, education, experience and skill to perform the Services; (ii) use and adopt any standards and processes required under this Agreement; and (iii) provide the Services with promptness and diligence and in a workmanlike manner and in accordance with the practices and high professional standards used in well-managed operations performing services similar to the Services.

##### **43.2. Intellectual Property warranties:**

43.2.1. The Service Provider warrants that it will at all times perform its responsibilities under this Agreement in a manner that does not infringe, or constitute an infringement or misappropriation of, any Intellectual Property or other proprietary rights of any Third Party

##### **43.3. Service Provider authority and Licensor undertaking:**

- 43.3.1. The Service Provider warrants (for the duration of the Term of this Agreement), that it: (i) is the duly appointed distributor of the Software in the Republic of South Africa during the subsistence of this Agreement; (ii) is authorised to procure the Products from Licensor on SARS's behalf and in SARS's name; (iii) is authorised to maintain and support the Solution by Licensor; (ii) 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 Software and/or Services under this Agreement; (iii) will comply with all legal requirements and with the terms and conditions of all licences, certificates, authorisations and consents required for the provision the Services; and (iv) will ensure that upon the date of delivery of the Deliverables or use of the Licence thereof by SARS at the Premises in which SARS takes receipt thereof will not breach any law or regulation of those territories or of the territory from which the Products were sourced.
- 43.3.2. Should the Service Provider, for whatsoever reason and at any time during the Term of this Agreement, no longer be appropriately accredited or authorised to provide the Services, the Service Provider will immediately inform SARS thereof in writing in which event, this Agreement may, at SARS's option, be terminated immediately or on such date as determined by SARS. The Service Provider will be required to repay any pre-paid amounts that SARS may have paid in respect of the Services.

43.3.3. The Service Provider warrants that it has in place a business continuity plan in place which will ensure that in the event the Service Provider ceases to provide the Services to SARS in terms of this Agreement (whether as a result of the Service Provider losing its accreditation or distributorship rights with Licensor, as a result of the Service Provider ceasing to trade or going into liquidation or as a result of a material breach by the Service Provider of this Agreement), SARS (i) remains supported by the OEM in accordance with the terms of this Agreement or (ii) able to enlist a third party service provider (acceptable to SARS) to do so on its behalf, such that there is a minimal or no disruption in the Service provision to SARS. A copy of the Service Provider's business continuity plan is attached hereto as **Annexure "F"**.

43.4. **Product Specific Warranties:**

43.4.1. The Service Provider warrants that the Software is designed to operate in conformance with the Functional Specifications as set out in the Documentation and that it will at all times: (i) ensure that the Software and the Documentation will be free as reasonably possible from Deficiencies and will comply in all respects with the technical and functional specifications therefore as agreed by the Parties; (ii) remedy any non-conformity of the Software to the Functional Specifications (iii) take all reasonable and necessary steps to ensure that the Services and the Software (including Upgrade, New Releases, Bug Fixes, Enhancements, Work Arounds) will be free of Destructive Elements and such Destructive Element will be recorded in writing by the Parties and will not constitute a breach of this warranty.

43.4.2. In the event of a breach of this warranty, the Service Provider will immediately take all reasonable steps to remedy such breach or, if not possible, ameliorate the impact of the Destructive Element; and (iii) the Software and/or all components thereof, once installed and/or implemented, will process any date and time data correctly and all date-related output and results produced by the Software will comply with the Gregorian calendar.



**43.5. Service Delivery:**

43.5.1. The Service Provider represents and warrants that it shall for the duration of this Agreement: (i) use adequate numbers of qualified Service Provider Personnel with suitable training, education, experience and skill to perform the Services; (ii) use and adopt any standards and processes required under this Agreement; (iii) provide the Services with promptness and diligence and in a workmanlike manner and in accordance with the practices and high professional standards used in well-managed operations performing services similar to the Services; and (iv) provide and maintain such documentation as is authored by or on behalf of the Service Provider so that it: (a) accurately reflects the operations and capabilities of the Software; (b) is accurate, complete and written in a manner easily understood by SARS; and (c) is promptly updated from time to time to reflect any changes.

**43.6. Security Clearance:**

43.6.1. Without limiting the generality of the foregoing, the Service Provider represents and warrants that it will ensure that the Service Provider Personnel engaged in the provision of the Services are suitable and pose no risk to SARS. Any member of the Service Provider Personnel who is engaged, or is to be engaged, in providing the Services must, if requested by SARS, comply with SARS's internal security clearance requirements, including submitting a security clearance certificate, failing which SARS shall be entitled to require the Service Provider to replace such member of the Service Provider Personnel with someone who does so comply. The Service Provider undertakes to indemnify SARS against any claims that may be brought by any of the Service Provider Personnel who may be affected as a result of SARS exercising its rights under this Clause.

- 43.6.2. As a confirmation that the Service Provider Personnel engaged to provide the Services are suitable and appropriately qualified, trained, experienced, skilled and available to render such services in terms of this Agreement including confirmation of such Service Provider Personnel's citizenship, criminal record status and/or credit worthiness, the Service Provider represents and warrants that it has conducted a background screening exercise on every member of the Service Provider Personnel whom is assigned to SARS for the fulfilment of its obligations in terms of this Agreement and shall if requested by SARS provide the report from a reputable screening agency which shall verify the following:
- 43.6.2.1. Citizenship including residency status;
  - 43.6.2.2. Criminal activity report; and
  - 43.6.2.3. Credit worthiness.
- 43.6.3. The Service Provider shall ensure that the validity of such report shall not be older than 3 (three) months as at the date of request or as at the commencement of such Service Provider Personnel duties to SARS in terms of this Agreement, as the case may be, and shall be updated as required by SARS from time to time.
- 43.6.4. In the event that the report reveals evidence that the Service Provider Personnel assigned to perform the Services are not qualified and/or do not possess the level of skills required for the performance of the Services, the Service Provider shall ensure a replacement of such member of the Service Provider Personnel with one whose background screening meets the requirements of SARS. The Service Provider undertakes to indemnify SARS against any claims that may be brought by any of the Service Provider's Staff who may be affected as a result of SARS exercising its rights under this Clause.

43.6.5. The Service Provider shall further ensure that its Staff assigned to provide the Services to SARS as envisaged in this Agreement shall for the duration of this Agreement, be subject to SARS's "Anti-Corruption and Security Internal Policy: Security Vetting" as amended from time to time, as well as other security legislation and policies applicable to the entities providing the services to the organs of State.

43.6.6. A breach by the Service Provider of any warranty, representation or other provision of this Clause 42 or of any express or implied warranty or representation contained elsewhere in this Agreement, shall be a material breach of this Agreement which shall confer on SARS the right, in its sole discretion, to utilise any remedy created in this Agreement for the enforcement of SARS's rights, including termination in terms of Clause 31 above.

43.7. **POPIA Compliance:**

43.7.1. The Service Provider warrants that it is and will remain for the duration of this Agreement, fully cognisant of and compliant with POPIA including any other Data Protection Legislation applicable to the Services.

43.7.2. The Service Provider warrants that it has implemented POPIA compliance programme within its organisation and further that, the Service Personnel in their role as Processors, have been trained on POPIA compliance and are aware of the importance of Protection of Personal Information and commit to ensure compliance thereof when at SARS in their role as Processors.

43.7.3. The Service Provider warrants that all Service Provider Personnel in particular the Key Personnel and subcontractors who will be exposed to the Personal Information have agreed to sign a Data Protection Agreement (Annexure B) and a copy thereof will be submitted to SARS.

43.8. **Regulatory requirements:**

43.8.1. The Service Provider warrants that it is and will remain for the duration of this Agreement, fully cognisant of and compliant with any relevant legislative or regulatory requirements and/or rulings or codes of practice of any competent authority or industry body that has jurisdiction over the provision of or is relevant to the Services and/or Software. The Service Provider will be responsible for any fines and penalties arising from any non-compliance with any law, legislative enactment or regulatory requirement, code or ruling of any competent authority or industry body relating to the delivery or use of the Services.

43.9. **Documentation:**

43.9.1. The Service Provider warrants that it will provide and maintain Documentation so that it: (i) accurately reflects the operations and capabilities of any and all Software and training courses; (ii) is accurate, complete and written in a manner easily understood by SARS; and (iii) is promptly updated from time to time to reflect any change.

43.10. **General Warranties:**

43.10.1. The Service Provider hereby represents and warrants to SARS that-

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

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

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

- 43.10.1.4. it will provide the Services in a cost-effective manner, thereby ensuring that no unnecessary or extraordinary costs are incurred and passed on to SARS;
- 43.10.1.5. it will have the requisite insurance to cover for professional liability claims (to the extent that it may be applicable), that may be instituted against it;
- 43.10.1.6. it has the necessary resources, skills and experience to render the Service and/or deliver the Deliverables to SARS; and
- 43.10.1.7. it is expressly agreed between the Parties that each warranty and representation given by the Service Provider in this Agreement is material to this Agreement and induced SARS to conclude this Agreement.
- 43.10.1.8. The provisions of this Clause 42 shall survive the termination of this Agreement.

#### **44. PUBLICITY**

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

#### **45. CO-OPERATION**

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

#### **46. DISPUTES**

- 46.1. In the event of there being a dispute, but save where otherwise provided in this Agreement, such dispute will be resolved in accordance with the rules of the AFSA as provided for below.

- 46.2. In the event of any such dispute arising between the Parties relating to or arising out of this Agreement, including a dispute as to the validity, implementation, execution, interpretation, rectification, termination or cancellation of this Agreement, the Parties will forthwith meet to attempt to settle such dispute, and failing such settlement within a period of 14 (fourteen) days of first meeting, the said dispute will on written demand by either Party be submitted to arbitration in Johannesburg in accordance with the rules of AFSA.
- 46.3. Should the Parties fail to agree in writing on an arbitrator within 10 (ten) days after arbitration has been demanded, the arbitrator will be nominated at the request of a disputant by AFSA.
- 46.4. The decision of the arbitrator will be binding on the Parties to the arbitration after the expiry of the period of 20 (twenty) days from the date of the arbitrator's ruling if no appeal has been lodged by any Party. A decision which becomes final and binding in terms of this Clause 46 may be made an order of court at the instance of any Party to the arbitration.
- 46.5. Nothing herein contained will be deemed to prevent or prohibit a disputant from applying to the appropriate Court for urgent relief or for judgment in relation to a liquidated claim.
- 46.6. Any arbitration in terms of this Clause 46 will be conducted in camera and the Parties will treat as confidential and not disclose to any Third Party details of the dispute submitted to arbitration, the conduct of the arbitration proceedings or the outcome of the arbitration, without the written consent of all the disputants.
- 46.7. The provisions of this Clause 46 will continue to be binding on the Parties notwithstanding any termination or cancellation of the Agreement.

#### **47. ADDRESSES**

- 47.1. Each Party chooses the addresses set out below its name as its addresses to which all notices and other communications must be delivered for the purposes of this Agreement and its domicilium citandi et executandi (“domicilium”) at which all documents in legal proceedings in connection with this Agreement must be served.
- 47.2. SARS’s physical address for service of notices and legal processes -
- Group Executive: Corporate Legal Services
- 299 Bronkhorst Street
- Block A, Le Hae La SARS
- Nieuw Muckleneuk
- Pretoria
- 47.3. The Service Provider’s physical address for service of notices and legal processes shall be as follows: **[DRAFTING NOTE: TO BE INSERTED POST AWARD]**
- 47.4. Any notice or communication required or permitted to be given to a Party pursuant to the provisions of this Agreement shall be valid and effective only if in writing and sent to a Party’s domicilium.
- 47.5. Any Party may by written notice to the other Party, change its chosen address to another address, provided that-
- 47.6. the change shall become effective on the tenth (10th) Business Day after the receipt or deemed receipt of the notice by the addressee; and
- 47.7. any change in a Party’s domicilium shall only be to an address in South Africa, which is not a post office box or a poste restante.
- 47.8. Any notice to a Party contained in a correctly addressed envelope and sent by prepaid registered post to it at a Party’s domicilium shall be deemed to have been received on the fifth (5th) Business Day after posting.

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

**48. BROAD-BASED BLACK ECONOMIC EMPOWERMENT ("BBBEE")**

- 48.1. The Service Provider acknowledges that Broad-Based Black Economic Empowerment is a business and social imperative in order to achieve a non-racial, non-sexist and equitable society in South-Africa.
- 48.2. In pursuance of this objective the Service Provider commits and warrants to comply in all respects with the requirements of the BBBEE and BBBEE Codes issued in terms of the BBBEE.
- 48.3. Upon signature of this Agreement and one (1) calendar month after the expiry of a current certificate for a particular year, the Service Provider shall provide SARS with a certified copy of its BEE Status from an agency accredited by SANAS or IRBA.
- 48.4. During the currency of this Agreement (including any extension or renewal hereof which may apply), the Service Provider shall use reasonable endeavours to maintain and improve its current BEE Status.
- 48.5. A failure to provide a certified copy of its BEE Status or a failure to comply with provisions of this Clause will entitle SARS to terminate the Agreement by giving the Service Provider one (1) month's written notice.

**49. TAX COMPLIANCE**

- 49.1. The Service Provider warrants that as of the Effective Date it is in full compliance with and shall throughout the Term of this Agreement (including any Extended Period) shall remain in full compliance with Tax Act.
- 49.2. Notwithstanding Clause 49.1 above, the Service Provider acknowledges and agrees that to be appointed as the preferred service provider, compliance with the Tax Act is required and as such, the Service Provider is encouraged to monitor and maintain its Tax Act compliance status during the Term.



## **50. ETHICAL BUSINESS PRACTICES**

- 50.1. SARS has a policy of zero tolerance regarding corrupt activities. The Service Provider will promptly report to SARS or the relevant authorities any suspicion of corruption on the part of their personnel in relation to the Services provided under this Agreement, as well as any behaviour in relation to the Services provided under this Agreement 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).
- 50.2. Neither Party will offer, promise or make any gift, payment, loan, reward, inducement benefit or other advantage to any of the other Party's personnel
- 50.3. If the results of any audit of the Services conducted by or on behalf of SARS indicates the possibility of unethical conduct which includes amongst others, corrupt activities, improper or fraudulent practices or theft in relation to the Services provided under this Agreement, SARS will, after allowing the Service Provider reasonable opportunity to investigate that possibility, have the right either by itself, or by its agents, or by requesting the police, to investigate all the relevant circumstances, to question any relevant personnel of the Service Provider or a third party and the Service Provider will use all reasonable efforts to facilitate any such investigation or enquiry. In the event that an act of corruption, fraud or theft is proven, SARS will be entitled, on written notice to the Service Provider, to immediately terminate this Agreement.
- 50.4. SARS reserves the right to withdraw an award or to cancel this Agreement should it be established, at any time, that the Service Provider, its personnel, its Subcontractor or the personnel of its Subcontractor has been blacklisted by National Treasury or by another government institution.

## **51. CONFLICT OF INTEREST**

- 51.1. The Service Provider undertakes to immediately notify SARS in the event that a conflict of interest is identified, upon entering of the Agreement by SARS and the Service Provider.

- 51.2. The Service Provider further warrants that it will not disclose any Confidential Information it obtained in rendering the Services to SARS to any client or third party unless required by law.

## **52. NEW LAWS AND INABILITY TO PERFORM**

- 52.1. It is recorded that the Parties are aware of various new Bills that are to be presented to Parliament which, if passed into law, may have an effect on the provisions of this Agreement and the Services. Therefore, the Parties record and agree that, if any law comes into operation subsequent to the signature of this Agreement which law affects any aspect or matter or issue contained in this Agreement, the Parties undertake to comply with such laws as if they had been in force on the Effective Date; provided that if such compliance renders it impossible to comply with the letter and spirit of this Agreement, the Parties undertake to enter into negotiations in good faith regarding a variation of this Agreement in order to ensure that neither this Agreement nor its implementation constitutes a contravention of such law.
- 52.2. If any law comes into operation subsequent to the commencement of the Services notwithstanding the Effective Date, which law affects any aspect or matter or issue contained in the is Agreement and/or performance of the Services, the Parties undertake to enter into negotiations in good faith regarding a variation of the Services in order to ensure that neither the Services nor implementation constitutes a contravention of such law by either Party.

## **53. BUSINESS CONTINUITY MANAGEMENT**

- 53.1. To mitigate the effects of any disaster incident, the Service Provider shall implement and maintain a proven business continuity plan that is satisfactory to SARS which ensure continuity of the Services in the event of early termination of this Agreement for any reason whatsoever, which business plan shall when acceptance by SARS, be attached to this Agreement as Annexure “F”. For the avoidance of doubt the cost of implementing and maintaining the business continuity plan shall be for the account of the Service Provider.

- 53.2. On an annual basis, SARS, or its nominated appointee, shall have the right to review and assess the Service Provider's business continuity plan in respect of the Services.
- 53.3. The Service Provider shall immediately, or as soon as is reasonably or practically possible, inform SARS in writing of any internal or external incidents that impact on, or may impact on, or prevent it from providing the Services and how it plans to resolve such incidents to ensure a sustained Service provision in line with the Service Level Agreement.

#### **54. RELATIONSHIP BETWEEN THE PARTIES**

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

#### **55. GENERAL**

##### **55.1. Whole Agreement and Amendment**

- 55.1.1. This Agreement constitutes the whole of the Agreement between the Parties relating to the subject matter hereof and no amendment, alteration, addition, variation or consensual cancellation will be of any force or effect unless reduced to writing and signed by the Parties hereto or their duly Authorised Representatives. Any document executed by the Parties purporting to amend, substitute or revoke this Agreement or any part hereof, shall be titled an "Addendum" to the applicable Service Agreement and assigned a sequential letter to be included in the title.

##### **55.2. No Assignment Without Consent**

55.2.1. The Service Provider shall not be entitled to assign, cede, sub-contract, delegate or in any other manner transfer any benefit, rights and/or obligations in terms of this Agreement, without the prior written consent of SARS which consent shall if approved by SARS in its sole discretion, be in compliance with the provisions of the PFMA and SARS's procurement policies and procedures.

**55.3. Severability**

55.3.1. Should any of the terms and conditions of this Agreement be held to be invalid, unlawful or unenforceable, such terms and conditions shall be severable from the remaining terms and conditions which shall continue to be valid and enforceable. If any term or condition held to be invalid is capable of amendment to render it valid, the Parties agree to negotiate an amendment to remove the invalidity.

**55.4. Advertising and Marketing**

55.4.1. The Service Provider shall not make or issue any formal or informal announcement (with the exception of Authority announcements), advertisement or statement to the press in connection with this Agreement or otherwise disclose the existence of this Agreement or the subject matter thereof to any other person without the prior written consent of SARS.

**55.5. Waiver**

55.5.1. No change, waiver or discharge of the terms and conditions of this Agreement shall be valid unless in writing and signed on behalf of the Party against which such change, waiver or discharge is sought to be enforced, and any such change, waiver or discharge will be effective only in the specific instance and for the purpose given. No failure or delay on the part of either Party hereto in exercising any right, power or privilege under this Agreement will operate as a waiver thereof, nor will any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof, or the exercise of any other right, power or privilege.

**56. COVENANT OF GOOD FAITH**

- 56.1. Each Party agrees that, in its respective dealings with the other Party under or in connection with this Agreement, it shall act in good faith.

**57. COSTS**

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

**58. AUTHORISED SIGNATORIES**

- 58.1. The Parties agree that this Agreement and any contract document concluded in terms hereof shall not be valid unless signed by all authorised signatories of SARS.
- 58.2. This Agreement is signed by the Parties on the dates and at the places indicated below.
- 58.3. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same Agreement as at the date of signature of the Party last signing one of the counterparts.
- 58.4. The persons signing this Agreement in a representative capacity warrant their authority to do so.

**SIGNED at** \_\_\_\_\_ **on** \_\_\_\_\_ **2020**

For and on behalf of

**SOUTH AFRICAN REVENUE SERVICE**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name of Signatory

\_\_\_\_\_  
Designation of Signatory

**SIGNED at** \_\_\_\_\_ **on** \_\_\_\_\_ **2020**

For and on behalf of

**SOUTH AFRICAN REVENUE SERVICE**

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Signature

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Name of Signatory

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Designation of Signatory

**SIGNED** at \_\_\_\_\_ **on** \_\_\_\_\_ **2020**

For and on behalf of

**SERVICE PROVIDER**

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Signature

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Name of Signatory

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Designation of Signatory

**ANNEXURE A**

**DATA PROTECTION AGREEMENT**

## **ANNEXURE B**

### **FEEES**



## **ANNEXURE B-1**

### **PAYMENT MILESTONE PLAN**

- 1.** The Parties have entered into an Agreement in terms of which the Service Provider will provide the Implementation Services in accordance with the Project Plan.
- 2.** All fees due to the Service Provider in respect of the Implementation of the Services shall notwithstanding the provision of clause () of the Agreement (Fees and Payment), be paid by SARS in accordance with the Payment Milestone Plan set out in the table below.
- 3.** Further, SARS shall be entitle to retain 25% (twenty five percent) of the total value of the costs of Implementation Fees, for the due an proper performance of the Service Provider's obligation which fee shall be retained for a period of 4 (four) months from the date of Acceptance Testing and will only be released within 14 (fourteen) days after acceptance of the close out report by SARS
- 4. PAYMENT MILESTONE**

|  | Milestone | Total Price for milestone | Payment Trigger |
|--|-----------|---------------------------|-----------------|
|  |           |                           |                 |
|  |           |                           |                 |
|  |           |                           |                 |
|  |           |                           |                 |

## **ANNEXURE C**

### **FUNCTIONAL SPECIFICATION**

## **ANNEXURE D**

### **MANUALS**

**ANNEXURE E**

**PROJECT PLAN**

## **ANNEXURE F**

### **SERVICE LEVEL AGREEMENT**

**ANNEXURE G**

**SUBSCRIPTION LICENSES**