

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

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

THIRD PARTY DATA SERVICES AGREEMENT

Between

THE SOUTH AFRICAN REVENUE SERVICE

(“SARS”)

And

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

TABLE OF CONTENTS

1.	PARTIES	6
2.	INTERPRETATION AND DEFINITIONS	6
3.	BACKGROUND AND OBJECTIVES	28
4.	APPOINTMENT AND NON-EXCLUSIVITY	31
5.	NATURE OF RELATIONSHIP AND NON-EXCLUSIVITY	31
6.	SUBCONTRACTORS	32
7.	COMMENCEMENT AND DURATION	34
8.	SCOPE OF THE SERVICES	34
9.	GENERAL PROVISIONS RELATION TO THE SERVICES	39
10.	RESOURCES TO BE PROVIDED BY SARS	43
12.	THIRD PARTY SERVICE PROVIDER CO-OPERATION	46
13.	SERVICE PROVIDER PERSONNEL	47
14.	CONFIGURATION AND IMPLEMENTATION OF THE THIRD PARTY DATA SYSTEM	50
15.	ACCEPTANCE AND REVIEW	50
16.	HEALTH, SAFETY AND SECURITY PROCEDURES AND GUIDELINES 51	
17.	INSURANCE	54
18.	SERVICE PROVIDER STAFF	55
19.	FEES INVOICING AND PAYMENT	56
20.	TAX, DUTIES AND CURRENCY ISSUES	58
21.	DISPUTED FEES AND INVOICING ERRORS	58
22.	SERVICE PROVIDER OBLIGATIONS TO REDUCE COSTS	59
23.	SARS'S RIGHTS AND OBLIGATIONS	59
24.	INTELLECTUAL PROPERTY RIGHTS	60
25.	CONFIDENTIAL UNDERTAKING	62
26.	DATA PROTECTION	65

27.	PROCESSING OF PERSONAL INFORMATION	66
28.	PROTECTION OF PERSONAL INFORMATION	68
29.	AUDITS	72
30.	STEP IN RIGHTS	74
31.	BREACH	76
32.	INDEMNITIES	77
33.	LIMITATION OF LIABILITY	77
34.	TERMINATION	78
35.	TERMINATION FOR CONVENIENCE	79
36.	TERMINATION FOR CAUSE	79
37.	TERMINATION UPON SALE, ACQUISITION, MERGER OR CHANGE OF CONTROL	79
38.	EFFECT OF TERMINATION	80
39.	TERMINATION/EXPIRATION ASSISTANCE	80
40.	FORCE MAJEURE	80
41.	RECORDS RETENTION	81
42.	CONSENTS AND APPROVALS	81
43.	APPLICABLE LAW AND JURISDICTION	82
44.	LEGAL AND REGULATORY COMPLIANCE	82
45.	NON-SOLICITATION	83
46.	GOVERNANCE, MEETINGS AND REPORTS	83
47.	COMPLIANCE WITH LAWS AND REGULATIONS	83
48.	WARRANTIES	85
49.	PUBLICITY	92
50.	CO-OPERATION	92
51.	DISPUTES	92
52.	ADDRESSES	93
53.	BROAD-BASED BLACK ECONOMIC EMPOWERMENT ("BBBEE")	95

54.	TAX COMPLIANCE.....	95
55.	ETHICAL BUSINESS PRACTICES.....	96
56.	CONFLICT OF INTEREST	96
57.	NEW LAWS AND INABILITY TO PERFORM	97
58.	BUSINESS CONTINUITY MANAGEMENT	97
59.	RELATIONSHIP BETWEEN THE PARTIES.....	98
60.	GENERAL	98
61.	COVENANT OF GOOD FAITH.....	100
62.	COSTS	100
63.	AUTHORISED SIGNATORIES	100
	ANNEXURE A	102
	DATA PROTECTION AGREEMENT	102
	ANNEXURE A	103
	ACCEPTANCT TESTING CRITERIA	103
	ANNEXURE B	104
	ANNEXURE C	105
	DELIVERABLES	105
	ANNEXURE C-1	106
	SARS’S DELIVERABLES.....	106
	ANNEXURE C-2.....	107
	SERVICE PROVIDER DELIVERABLES	107
	ANNEXURE D	108
	DOCUMENTATION.....	108
	ANNEXURE E	109
	KEY PERSONNEL.....	109
	ANNEXURE F	110
	SERVICE LEVEL AGREEMENT	110
	ANNEXURE G	111

STANDARD REPORTING INFORMATION	111
ANNEXURE H	112
SYSTEM SPECIFICATION REQUIREMENTS	112
ANNEXURE I	113
ANNEXURE J	114
SERVICE PROVIDER REQUIREMENTS	114
ANNEXURE K	122
BUSINESS CONTINUITY PLAN	122

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 Criteria**” means the criteria, procedures and process of measurement, examination and/or such other activities as set out clause 15 below, required to test and verify that a Service Provider Deliverable (i) meets SARS’s System Specification Requirements and (ii) operates which Acceptance Testing Criteria is as described in **Annexure A**;

- 2.2.3. **“Account Manager”** means the Service Provider’s designated senior manager, who will be in charge of the general administration of the Services and will interface with SARS’s Authorised Representative in connection therewith, and to whom all communications regarding the Agreement must be addressed, and further, who will assist in the resolution of any disputes;
- 2.2.4. **"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;
- 2.2.5. **“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;
- 2.2.6. **"Analytical Report"** means the written report furnished in respect of each Taxpayer upon whose Taxpayer Information the Analytical Services have been applied, which report shall contain, as a minimum, the information contained in the Standard Information for Reporting;

- 2.2.7. **"Analytical Services"** means the Service Provider's provision of services, data and tools for comparing, detecting and reporting on discrepancies between (i) the Taxpayer Information disclosed by SARS to the Service Provider pursuant and subject to this Agreement; and (ii) the Service Provider Data (including information provided to the Service Provider by third parties);
- 2.2.8. **"Agreement"** means this Third Party Data Services Agreement and RFP Document;
- 2.2.9. **"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:
- 2.2.9.1. a subsidiary of such entity, as the term "**subsidiary**" is defined in section 3 of the Companies Act 71 of 2008, as amended; and
- 2.2.9.2. any foreign company which, if it were registered under such Act, would fall within the ambit of such term.
- 2.2.10. **"AFSA"** means the Arbitration Foundation of Southern Africa;
- 2.2.11. **"Applicable Law(s)"** means any statute which includes without being limited thereto, Companies Act, NCA, 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 industry code including without being limited thereto King codes on good governance, 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;
- 2.2.12. **"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, National Credit Regulator, SARB and SARS;

- 2.2.13. **“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;
- 2.2.14. **“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;
- 2.2.15. **“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;
- 2.2.16. **“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;
- 2.2.17. **“Best Industry Practices”** means the best industry practice, quality standards and requirements prescribed by ITIL, NIST and/or ISO;
- 2.2.18. **“Bug-Fixes”** means changes to the Third Party Data System and Link, as the case may be, or any component thereof with a view to correcting any noncompliance with the Documentation thereof;
- 2.2.19. **“Business Day”** means any day other than a Saturday, Sunday, or public holiday in the Republic of South Africa;
- 2.2.20. **“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;
- 2.2.21. **“Companies Act”** means the Companies Act, 2008 (Act No. 71 of 2008), as amended;

2.2.22. **“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 2.2.22 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:

- 2.2.22.1. the onus will at all times rest on the Receiving Party to establish that such information falls within such exclusions;
 - 2.2.22.2. 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;
 - 2.2.22.3. 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
 - 2.2.22.4. 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.
- 2.2.23. **“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;

- 2.2.24. “**Control**” means with regard to any entity, the right or power to dictate the management of and otherwise control such entity by any of:
- 2.2.24.1. 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;
 - 2.2.24.2. controlling the majority of the voting rights in such entity; or
 - 2.2.24.3. 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.
- 2.2.25. “**Consumer Credit Information**” shall bear the meaning assigned thereto in the NCA, being information concerning (i) a person's credit history, including applications for credit, credit agreements to which the person is or has been a party, pattern of payment or default under any such credit agreements, debt rearrangement in terms of the NCA, incidence of enforcement actions with respect to any such credit agreement, the circumstances of termination of any such credit agreement and related matters; (ii) a person's financial history, including the person's past and current income, assets and debts and other matters within the scope of that person's financial means, prospects and obligations, as defined in the NCA and related matters; (iii) a person's education, employment, career, professional or business history, including the circumstances of termination of any employment, career, professional or business relationship and related matters; or (iv) a person's identity, including the person's name, date of birth, identity number, marital status and family relationships, past and current addresses, other contact details and related matters;
- 2.2.26. “**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 B**;

- 2.2.27. **“Data Protection Legislation”** means collectively, POPIA and any other South African legislation prescribing the protection of Personal Information unless the context indicate otherwise;
- 2.2.28. **“Data Subject”** means the person to whom Personal Information relates;
- 2.2.29. **"Deficiency"** means any error, Problem, non-conformity, or defect in the: (i) Third Party Data System; (ii) Link; and/or (iii) Documentation, resulting from any deviation from the System Requirements Specification, or incorrect or incomplete documentation
- 2.2.30. **"Deliverable(s)"** means the deliverables to be delivered by the Service Provider and SARS in terms of this Agreement which deliverables are as fully described in **Annexure C**;
- 2.2.31. **"Designated Representative"** means a person nominated by each of the Parties, whose name appears in the Service Level Agreement to whom all communications regarding this Agreement must be addressed;
- 2.2.32. **"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;

- 2.2.33. **"Disclosing Party"** means a Party disclosing the Confidential Information to the Receiving Party;
- 2.2.34. **"Documentation"** means a list of documents to be supplied by the Service Provider as contemplated in this Agreement which documents are as fully set out in **Annexure D**;
- 2.2.35. **"ECA"** means the Electronic Communications Act, 2005 (Act No. 36 of 2005), as amended;
- 2.2.36. **"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;
- 2.2.37. **"Enhancement"** means significant changes to the Third Party Data System, Link and/or any component of therefore resulting in the addition of a new feature or capability of the Third Party Data System and Link which feature, or capability is not present in the specifications for such Third Party Data System and Link;
- 2.2.38. **"Fees"** means the fees payable by SARS to the Service Provider for the provision of the Services [DRAFTING NOTE: TO BE UPDATED POST AWARD] and which fees are as set out in **Annexure E**;
- 2.2.39. **"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;

- 2.2.40. **“ICT”** means information communication and technology;
- 2.2.41. **“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 Third Party Data System and/or Link or Service;
- 2.2.42. **“Information Services”** means the Service Provider's provision of information to SARS to assist SARS in complying with its duties described in clause 3.3 below;
- 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. **“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;
- 2.2.46. **“ISO”** means International Standards Organization, specifically in the implementation of quality standards and requirements in line with ISO/IEC 27002 (Controls) and ISO/IEC 27005 (Information Security Risk Management) to increase and continually improve on operational efficiency;

- 2.2.47. **“Key Personnel”** means the personnel of the Service Provider that has been assigned to SARS to provide the Services, whose details are as stated in **Annexure F**;
- 2.2.48. **“Letter of Award”** means the letter of award issued to the Service Provider by SARS, dated [**DRAFTING NOTE: TO BE UPDATED POST AWARD**];
- 2.2.49. **“Link”** means a secure direct and dedicated link provision for SARS’s access to the Third Party Data System;
- 2.2.50. **“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);
- 2.2.51. **“Maintenance Services”** means without being limited thereto, (i) preventative maintenance, scheduled maintenance and emergency maintenance as may be required for the purpose of ensuring continued functionality and operation of the Third Party Data System and/or Link in accordance with the System Specification Requirements including the performance of: (ii) the maintenance activities set out generally in Clause 8.7 below and specially as set out in the scope of the Services as described in 8.7; (iii) the identification and notification of Problems and/or Deficiencies (iv) installing of workarounds, patches, Bug-Fixes, Upgrades, enhancements and New Releases;
- 2.2.52. **“National Credit Act”** means the Credit Act, 2005 (Act No. 34 of 2005, as amended);
- 2.2.53. **“NIST”** means the National Institute of Standard and Technology Cybersecurity Framework [Drafting note: confirm if this is relevant and if that is a NIST standard you want us to insert];
- 2.2.54. **“OHSA”** means the Occupational Health and Safety Act, 1993 (Act No. 85 of 1993) and regulations thereto, amended;

- 2.2.55. **“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;
- 2.2.56. **“PAIA”** means the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000), as amended;
- 2.2.57. **“PAJA”** means the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000);
- 2.2.58. **“Personal Information”** means information relating to an identifiable, living, natural or juristic person as fully defined in section 1 of POPIA;
- 2.2.59. **“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;
- 2.2.60. **“PFMA”** means the Public Finance Management Act, No. 1 of 1999;
- 2.2.61. **“POPIA”** means Protection of Personal Information Act, 2013 (Act No. 4 of 2013);
- 2.2.62. **“Pre-delivery Testing”** means the Service Provider’s testing of the Link and Third Party Data System including any Upgrade and/or Enhancement thereto, which testing is to be performed by the Service Provider prior to submitting or delivering such Link and Third Party Data System including Upgrade and/or Enhancement for SARS’s evaluation;
- 2.2.63. **“Premises”** means any SARS’s environment where the Services will be provided as and when required;
- 2.2.64. **“Privacy and Data Protection Requirements”** means the 8 (eight) requirements for the lawful Processing of personal information contained in Chapter 3 of POPIA;

- 2.2.65. **"Problem"** means the underlying cause of one or more Incidents; or the occurrence of a problem or error in the Third Party Data System and/or Link if applicable, reported by SARS to the Service Provider, including a Deficiency;
- 2.2.66. **"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;
- 2.2.67. **"Return"** means a form, declaration, document or other manner of submitting information to SARS that incorporates a self-assessment or is the basis on which an assessment is to be made by SARS;
- 2.2.68. **"Repo Rate"** means the interest rate (percent per annum) at which the South African Reserve Bank lends money to private banks;
- 2.2.69. **"RFP Document"** means the Request For Proposal number RFP 20/2020 for the provision of the Deliverables issued by SARS which forms an integral part of this Agreement;
- 2.2.70. **"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;
- 2.2.71. **"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;
- 2.2.72. **"SARS Act"** means the South African Revenue Service Act, 1997 (Act No. 34 of 1997);

- 2.2.73. **“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:
- 2.2.73.1. 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
 - 2.2.73.2. 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;
- 2.2.74. **“SARS Deliverables”** means the Standard Reporting Information; System Specification Requirements;

2.2.75. **"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;

- 2.2.76. **“SARS's Information and Data Security Standards”** means SARS’s Information and Data Security Standards to be met by the Service Provider in the (i) establishment of the Link, and/or (ii) customisation of the Third Party Data System which information and data security standards are as set out in **Annexure I**;
- 2.2.77. **“SARS Personnel”** means SARS’s staff, consultants and/or agent employed by SARS for the purposes of the Agreement;
- 2.2.78. **“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;
- 2.2.79. **"Services"** means the functions and responsibilities to be provided by the Service Provider to SARS in respect of the Link and Third Party Data System 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: the (i) Analytical Services, (ii) Verification Service, (iii) the Information Services and (iv) Maintenance Services, (v) Support Services, (vi) Training Services; (vii) Ad Hoc Services any services related to those detailed in (i) to (iv) above;
- 2.2.80. **"Service Level Credit"** means a penalty amount which will be payable by the Service Provider to SARS for its failure to meet a Service Level;
- 2.2.81. **“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**;
- 2.2.82. **"Service Level Agreement"** means the Service Level Agreement attached hereto and marked **Annexure F**;

- 2.2.83. **"Service Provider Data"** means all information and data in the Service Provider's possession and/or to which the Service Provider has access, whether by virtue of its status as a credit bureau, a member of any association or other body, or otherwise;
- 2.2.84. **"Service Provider Deliverables"** means the Services, including the Link, Third Party Data System, Verification Report and Analytical Report, Third Party Data, Information, scores, and other clearly identifiable materials of whatever nature, described in the Service Provider's schedule of Deliverables attached hereto and marked ***Annexure C-2*** For purposes of clarity, SARS Confidential Information shall under no circumstances be included as or constitute Service Provider Deliverables;
- 2.2.85. **"Service Provider Requirements"** means the Service Provider Requirements submitted to SARS which SARS must meet in order to enable the Service Provider to perform the Services, which requirements are as set out in ***Annexure J***;
- 2.2.86. **"Service Provider Personnel"** means the Service Provider's staff, be they permanent, temporary or contractors, performing the Services on behalf of the Service Provider;
- 2.2.87. **"Signature Date"** means the date of signature of this Agreement by the last Party signing;
- 2.2.88. **"Staff"** means collectively, SARS Personnel and Service Provider Personnel;
- 2.2.89. **"Standard Reporting Information"** means SARS's standard information required by SARS for the preparation of the Analytical Report and Verification Report, which Standard Reporting Information is as set out in ***Annexure G***;

- 2.2.90. **"Support Services"** means the provision of services including all support activities as fully set out in Clause 8.8 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 Link and/or Third Party Data System Breakages and Upgrades; and (iv) provides professional services in respect of or related to the Link and Third Party Data System to ensure the continued functionality of the Link and/or Third Party Data System in accordance with System Specification Requirements, which services may be provided via telephonic support;
- 2.2.91. **"System Specification Requirements"** means without limiting the RFP Document, SARS's specification the Service Provider must meet in the enablement of the Link and Third Party Data System, including the config installation and connection requirements, security protocol requirements etc, which specifications will be presented to SARS's Business Unit for approval and be attached to this Agreement as an **Annexure H**;
- 2.2.92. **"Tax Act"** means an Act, or a portion thereof, referred to in section 4 read with Schedule 1 to the SARS Act, as well as the Tax Administration Act No. 28 of 2011; the Mineral and Petroleum Resources Royalty Act No 28 of 2008 and the Mineral and Petroleum Resources Royalty Administration Act No. 29 of 2008 as amended;
- 2.2.93. **"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;
- 2.2.94. **"Term"** means the term of this Agreement defined in Clause 7 below;

- 2.2.95. **“Third Party”** means any person other than SARS, Service Provider, Affiliates or Subcontractor;
- 2.2.96. **“Third Party Data”** means any information collected by an entity that does not have a direct relationship with the user the data is being collected on. Often times, third-party data is collected from a variety of websites and platforms and is then aggregated together by a Third Party Service Provider, an example of Third Party Data required by SARS, is as set out in the RFP Document;
- 2.2.97. **“Third Party Data System”** means a database system customised in line with SARS’s System Specification Requirements for SARS’s exclusive use and shall when enabled, allow access to Third Party Data including the ability by SARS to navigate, search, verify, trace, match and upload such Third Party Data in bulk or single transaction required for the performance of Tax Services via the Link;
- 2.2.98. **“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;
- 2.2.99. **“Third Party Service Provider(s)”** means SARS’s third party service providers authorised to the extent involved: (i) in providing the Services and/or (ii) delivery of the Deliverables under this Agreement with the Service Provider;
- 2.2.100. **“Time and Materials Basis”** means time and material rates which is based on time spent and material utilised to execute Ad Hoc Services and/or services explicitly designated as such. All such time will be billed in accordance with the time and material rates approved by SARS in accordance with SARS’s procurement governance processes and procedures;

- 2.2.101. **“Training Services”** means the training services provided by the Service Provider to SARS’s Personnel to enable SARS’s Personnel to access and use the Third Party Data System which consists of (i) ongoing training required by SARS from time to time in writing; and (ii) once-off training required during the implementation of the Link and Third Party Data System for use by SARS;
- 2.2.102. **“Verification Report”** means written reports generated by the Service Provider pursuant to and as part of the Verification Services, which reports shall contain, as a minimum, the information contained in the Standard Information for Reporting; and
- 2.2.103. **"Verification Services"** means, for purposes of ascertaining whether a Taxpayer has filed or submitted correct Returns, information or documents in compliance with the provisions of a Tax Act, the matching and verification by the Service Provider of Taxpayer Information, SARS Data and/or (to the extent relevant) SARS Information received by it from SARS against the Service Provider Data, and the reporting to SARS of the outcome thereof by way of the Verification Report, including any deviation, and “Verification” and “Verify” shall have a similar meaning.
- 2.2.104. **"Upgrade"** means any change or improvement to the Third Party Data System and Link that relates to or affects the operating performance of the Third Party Data System and Link or an aspect of such Third Party Data System and Link but does not change the basic operation or functionality of the Third Party Data System and Link. 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
- 2.2.105. **"Work Arounds"** means a methodology applied, and/or change made, to the Third Party Data System and Link, as the case may be, with a view to furnishing SARS with a temporary means to make use of the Third Party Data System and Link, 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 User Licenses and Support Services Agreement and any other document that is part of or executed under this User 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. BACKGROUND AND OBJECTIVES

- 3.1. SARS has a statutory mandate which includes the effective and efficient collection of revenue and the widest possible enforcement of and compliance with the legislation it administers. The vision of SARS is to be an innovative revenue collection Service Provider that enhances economic growth and social development and supports South Africa's integration into the global economy.
- 3.2. In pursuit of its objective to ensure the widest possible enforcement of Tax laws and to maintain confidence in the integrity of the Tax system, SARS also has a duty to actively target and pursue increasingly sophisticated tax evaders and tax evasion schemes. Tax evasion undermines compliant Taxpayers' morale and places an unfair burden on the compliant Taxpayers and fiscus if it is not countered effectively.
- 3.3. It is part SARS's functions in administering the Tax Acts to verify Taxpayer information to ensure that:
 - 3.3.1. It is correct and current;
 - 3.3.2. Taxpayers are duly registered for and pay Tax; and
 - 3.3.3. Information required to be submitted by Taxpayer in return, including information relating to income derived and deductions claimed by the Taxpayer, is true and correct and correlates with other information relative to the return, including that Taxpayer's true income, deductible expenditure, assets and liabilities, spending patterns, debt servicing and lifestyle.

- 3.4. The Service Provider has disposal over a large body of data relating to Taxpayers, their address, personal particulars, assets, spending patterns, indebtedness, and other information. The Service Provider further has analytical tools and other methods that will enable it to assist and support SARS in the carrying out of its functions as contemplated in paragraph 3.3 above, by comparing the Taxpayer information, SARS data and/or (to the extent relevant) SARS Information which may be provided to it by SARS and the information submitted by a Taxpayer in a Return, including information relating to income derived and deductions claimed by Taxpayer, with the Service Provider Data, in order to assess the veracity of such information and to identify any aberrations.
- 3.5. SARS has the authority in terms of section 5 of the SARS Act to appoint the Service Provider to perform specific acts or functions, in this case to provide Analytical Services and Verification Services. Furthermore, under the Tax Acts, the Commissioner for SARS may engage the Service Provider to carry out the powers conferred, and duties imposed upon the Commissioner by or under the provisions of the Tax Acts under the control, direction, or Supervision of the Commissioner.
- 3.6. The Service Provider has represented to SARS that it is able, willing, and legally authorised to provide the Services.
- 3.7. In reliance on the representations made by the Service Provider and subsequent discussions between the Parties, and as a result of the unique ability of the Service Provider to provide the Services as a result of it having access to and/or being a custodian of the Service Provider Data, SARS has selected the Service Provider to provide SARS with the Services.
- 3.8. The Parties wish to record in writing their agreement in respect of the above and matter ancillary thereof.
- 3.9. This Agreement supersedes and replaces any and all agreements between the Parties (and other persons, as may be applicable) and undertakings given to or on behalf of the Parties (and other persons, as may be applicable) in relation to the subject matter hereof.

3.10. 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.

3.11. Therefore, the Parties wish to record the above and other matters relevant thereto, as set out below.

4. APPOINTMENT AND NON-EXCLUSIVITY

4.1. The Service Provider is hereby appointed in accordance with the Letter of Award, to provide the Services to SARS under this Agreement.

4.2. Subject to the provisions of the RFP, the Agreement generally and the provisions of Clause 8 specifically, SARS hereby appoints the Service Provider, on a non-exclusive basis, to provide the Services on the terms and conditions of this Agreement, and the Service Provider hereby accepts such appointment.

4.3. 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.

4.4. SARS shall not be precluded from obtaining services that may be similar or identical to the Services from any other Service Provider and nothing contained herein shall in any way be construed or constitute a guarantee in favour of the Service Provider that the Service Provider will receive any work or contract for services in the future, whether under this Agreement or otherwise from SARS.

5. NATURE OF RELATIONSHIP AND NON-EXCLUSIVITY

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

5.1.1. 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

- 5.1.2. 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
- 5.1.3. 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.

- 5.2. 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.

6. SUBCONTRACTORS

- 6.1. 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.
- 6.2. 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.

- 6.3. 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.
- 6.4. In the event of SARS's approval of subcontracting, the Service Provider undertakes to ensure :
- 6.4.1. A subcontractor, comply with the applicable provisions of this Agreement, including in particular the terms and conditions relating to confidentiality, data security, and intellectual property rights;
- 6.4.2. that 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'.
- 6.4.3. 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 6 without obtaining prior written consent from SARS.

- 6.5. 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 33, be fully responsible for the acts and omissions of all subcontractors as if they were the acts and omissions of the Service Provider.
- 6.6. Notwithstanding the foregoing, the Service Provider acknowledges that it shall be fully responsible for the payment of all fees and charges payable to subcontractors.

7. COMMENCEMENT AND DURATION

- 7.1. This Agreement will commence on the Effective Date and, unless extended as provided in clause 7.3 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**").
- 7.2. SARS shall have the option, in its sole discretion, to extend the Agreement beyond the Initial Period for a further period of **[DRAFTING NOTE: TO BE UPDATED POST AWARD]** ("**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*.
- 7.3. 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.

8. SCOPE OF THE SERVICES

- 8.1. The Service Provider shall for the Term, use its Commercial Reasonable Efforts to provide Services to SARS on the terms and conditions of this Agreement and subject to the Service Levels.
- 8.2. The Service Provider undertakes to ensure that the following Services are provided in accordance with the Best Industry Practice and attaining the Service Level and Performance Criteria/Standards at all times
- 8.3. The Service Provider will in the provision of the Services to SARS use industry leading levels of functionality and performance.
- 8.4. The Service Provider will, to the extent reasonably practicable, maintain competitiveness in the quality and scope of Services available to SARS. The Service Provider will also keep the Services under this Agreement current with industry advances and leading technology standards.
- 8.5. **Third Party Data Services:**
- 8.5.1. SARS requires various mechanisms for the provision of the Information Services, Verification Services and Analytical Services (collectively referred to herein as “**Third Party Data Services**”).
- 8.5.2. To this end, the Service Provider will with effect from the Delivery Date, provide SARS with a bulk data download of all required records and fields as set out in the RFP Document in line with SARS’s requirements, being the data field set out in the RFP Document and as updated in **Annexure K**.
- 8.5.3. From time to time, SARS will make supplemental bulk information requests based on the data field set out in the RFP Document including updated records thereof as specified in **Annexure K**.
- 8.5.4. The Service Provider shall ensure that the Third Party Data Services are provided via secure Link with encryption technology which link has been configured in accordance with SARS Information and Data Security Requirements.
- 8.5.5. The Service Provider must ensure that SARS is provided with the ability:

8.5.6. to make specific transactional enquiries directly from SARS systems to the Service Provider's databases over a secure link with secure delivery of the results of the enquiry..

8.5.7. The Service Provider undertakes to ensure that SARS has rights to store and perpetual rights to access the Third Party Data contained in the bulk download information and/or supplemental information requests including information obtained via the Third Party Data System.

8.6. **Administration of Access to Third Party Data System**

8.6.1. The Service Provider shall ensure that:

8.6.1.1. SARS and SARS Users are provided with administration permissions to perform transactional queries which permission must be controlled at a user level.

8.6.1.2. SARS is provided with the administrative functionality to grant or remove permissions to perform query transactions to individual SARS Users who have access to the Third Party Data System. Access to the Third Party Data System must be provided on a user ID/password basis.

8.6.1.3. there is no limitation to the number of SARS Users who have access to the Third Party Data System. Users must be granted permissions based on one of two profiles which correspond to permission to run contact view queries and/or credit view queries.

8.6.1.4. a further administrative profile is provided for a SARS User to administer access to other SARS Users.

8.7. **Maintenance Services:**

8.7.1. The Service Provider shall for the duration of this Agreement provide the Maintenance Services in accordance with the provisions of this Agreement. In providing the Maintenance Services, the Service Provider shall:

- 8.7.1.1. promptly notify SARS of any Upgrades or New Release of the Link and/or Third Party Data System;
- 8.7.1.2. 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;
- 8.7.1.3. ensure that it is available at all times during any SARS evaluation period to provide assistance to SARS in this respect; and
- 8.7.1.4. continue to provide any Maintenance 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.
- 8.7.2. SARS will (subject to the provisions of Clause 14 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.
- 8.7.3. For the avoidance of doubt, the Parties record and agree that the Service Provider will provide the Maintenance Services from the Effective Date and in respect of Link and Third Party Data System already installed on SARS's environment prior to the Effective Date;

8.8. **Support Services:**

- 8.8.1. In providing the Support Services, SARS shall request the assistance of the Service Provider with regard to any Deficiencies in the Link and/or Third Party Data System which it may identify.

8.8.2. The Service Provider undertakes that in providing such Support Services it shall use Commercially Reasonable Efforts to ensure that the Link and/or Third Party Data System functions error-free, maintain the Link in such a manner as to its continued compliance with its the System Requirements Specification, 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.

8.8.3. 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, 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 procedures and at SARS's expense.

8.8.4. The Service Provider undertakes that in providing the Support Services it will use its Commercially Reasonable Efforts to ensure that the Link and/or Third Party Data System functions error-free and to maintain the Software continued compliance with its Functional Specifications and the Documentation. 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 Software 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, advice SARS thereof and provide SARS with future avoidance advice as well as undertaking any necessary preventative measures to minimise recurrence of the Problem.

8.9. **Training Services:**

8.9.1. The Service Provider will provide Training Services related to the Third Party Data System at no additional costs to SARS and/or the SARS Personnel the scope of which is set out in the Service Provider's proposal to the RFP and as amended by the Parties in writing from time to time, subject to the provisions of the RFP.

8.10. **Ad Hoc Services:**

- 8.10.1. 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 Software, as may be reasonably requested by SARS from time to time in writing, subject to SARS's procurement processes and procedures.

9. GENERAL PROVISIONS RELATION TO THE SERVICES

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

- 9.2. The Third Party Data System used by the Service Provider to provide the Analytical Services and the Verification Services must as a minimum include the following:

- 9.2.1. a dedicated stand-alone server that is not connected to any other part of the Service Provider's system;

- 9.2.2. adequate and effective safeguards to ensure that all Confidential Information and Personal Information is and remains separate and isolated from the Service Provider's other systems, and that only duly authorised Staff of the Service Provider who are involved in the processing of Taxpayer Information, SARS Data and/or (to the extent relevant) SARS Information, shall have access thereto; and

- 9.2.3. the ability to process data (either "pushed" or "pulled") from a SARS network server in flat files, XML or MQ formats (but not limited to those formats).

- 9.3. The Service Provider shall:

- 9.3.1. 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 25, 26, 27 and 28 below, as well as Data Protection Agreement, which documents will once signed by the Parties, be incorporated herein by reference.
- 9.3.2. 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 Third Party Data System and Link, User 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.
- 9.3.3. in providing the Services to SARS:
- 9.3.3.1. comply with SARS's information and data security standards as communicated in writing from time to time, which includes without being limited thereto, Privacy and Data Protection Requirements;
- 9.3.3.2. 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;

9.3.3.3. at its own costs provide, maintain and, where required, upgrade such computer systems, data bases and software as may be necessary, for the provision of the Services. In particular, the Service Provider shall ensure that all hardware and software used to provide the Services will be kept at levels supported by the respective manufacturers, and equipment will be upgraded or replaced as required to meet the Service Levels, manufacturer end-of-life policies and timelines and manufacturer-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 Service provision at all times remains compatible with SARS's architectural technology standards and strategies

9.3.3.4. at its own cost, maintain and as required, upgrade its computer based security systems to counteract fraudulent claims, in accordance with SARS's information and data security standards set out in **Annexure "I"**.

9.3.3.5. at its own costs, implement and/or use network management and maintenance applications and tools and appropriate intrusion detection, identity management, and encryption technologies when providing the Services.

9.3.3.6. 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.

9.4. 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:

9.4.1. to use industry leading levels of functionality and performance as prescribed by the Best Industry Practice in the provision of the Third Party Data System and Link and Services to SARS;

- 9.4.2. to implement such new technologies as it deems appropriate to deliver the Third Party Data System and Link 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 Third Party Data System and Link and Services under this Agreement current with industry advances and leading technology standards; and
- 9.4.3. 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 Third Party Data System and Link, Network and the Services including, without limitation, in the areas of increased efficiency, increased quality and/or reduced costs.
- 9.5. 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.
- 9.6. 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.
- 9.7. Without limiting the provisions of this Clause 9, the Parties undertake to perform all reasonable 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.

9.8. The Parties acknowledge that it is not the intention of this clause 9 to interfere in any way with or compromise the normal operations of the Service Provider's business, its compliance with Applicable Law(s), or its provision of Services to its other customers. Where Service Provider is reasonably of the view that strict compliance with this clause will have such aforementioned effect, it will immediately raise such view with SARS in writing and the Service Provider will be excused from such compliance until the matter has been resolved by agreement or through dispute resolution processes as provided herein; provided that where SARS is reasonably of the view that such non-compliance may compromise the security of SARS's Confidential Information, it will be entitled to suspend the relevant Service, require the Service Provider to cease the provision of the Service to the extent that such Services may compromise the security of SARS's Confidential Information and/or to vacate the SARS Premises for the duration of the Service Provider's non-compliance, or until the matter has been resolved as contemplated above.

10. RESOURCES TO BE PROVIDED BY SARS

10.1. Subject to the provisions of this Agreement, SARS shall provide the Service Provider with Taxpayer Information, SARS Information and SARS Data to the extent necessary, relevant, and proportionate in relation to the purpose of such disclosure (as determined under this Agreement) for the purpose of enabling the Service Provider to render the Services.

- 10.2. SARS shall allow the Service Provider reasonable access to and use of SARS-owned hardware, software, equipment, and other resources, reasonably and necessarily required by the Service Provider to perform the Services for SARS, provided that the Service Provider shall have provided SARS with the Service Provider Requirements. All SARS's resources shall be provided to the Service Provider by SARS in the form which SARS, in its sole discretion, deems necessary and appropriate for the provision of the Services, having specific regard to the nature of the Services and the Service Provider's reasonable requirements. The SARS resources shall be provided in reasonable working order on an "as is, where is" basis with no warranties whatsoever. No lien over any SARS resources shall be established in favour of the Service Provider under any circumstances whatsoever and the Service Provider waives all its rights in this regard.
- 10.3. The Service Provider may use the SARS resources only to perform Services for SARS and only as follows:
- 10.3.1. The Service Provider shall comply with SARS's Information and Data Security Standards including SARS PPS&G, for purposes of which, and without limiting the generality of any other provisions of this Agreement, any information or data to which the Service Provider has access will be regarded as 'secret', and procedures as made available to the Service Provider from time to time regarding access to and use of the SARS resources. Without limiting the generality of the foregoing, the Service Provider shall keep the SARS resources in good order and shall not use such resources for any purpose other than the Services as contemplated under this Agreement. In particular, the Service Provider shall not use the resources for any unlawful purpose or act.
- 10.3.2. Subject always to the limitations and exclusions of liability contained in clause 33 the Service Provider shall be responsible for any damage to the SARS resources resulting from the abuse, misuse, neglect or negligence of the Service Provider (including Service Provider Staff) or other failure to comply with its obligations in respect of the SARS resources. In the event of the SARS resources being damaged beyond repair, the Service Provider shall replace such SARS resources with new facilities of equal or better standard, quality, and specification.

10.3.3. The Service Provider shall not make any changes to the SARS resources without SARS's prior written approval. SARS reserves the right to give or withhold such approval in its sole discretion. Any such changes shall be done at the Service Provider's expense and shall not be recoverable from SARS. Severable improvements shall belong to the Service Provider, and non-severable improvements shall belong to SARS.

10.4. When any of the SARS resources are no longer required for the performance of the Services, the Service Provider shall return such SARS resources to SARS in the same condition in which they were received (including, if SARS so requires, reversing any changes effected), fair wear and tear excepted.

11. SERVICE LEVELS AND PENALTIES

11.1. 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 practices and professional standards used in well-managed operations performing Services similar to the Services.

11.2. 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.

11.3. SARS may recover the applicable Service Level Credit from the Service Provider. In the event that SARS is entitled to a Service Level Credit, 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.

- 11.4. 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.
- 11.5. If the Service Provider fails to meet any Service Level, the Service Provider shall:
- 11.5.1. investigate and report on the root causes of the Service Level failure;
 - 11.5.2. promptly correct the failure and begin meeting the Service Levels;
 - 11.5.3. 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
 - 11.5.4. take appropriate preventive measures to prevent the recurrence of the Service Level failure.
- 11.6. 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.
- 11.7. 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.

12. THIRD PARTY SERVICE PROVIDER CO-OPERATION

- 12.1. As part of the Services, where appropriate and when requested by SARS to do so, and subject to the Service Provider's entitlement to reasonably protect its Confidential Information and Intellectual Property, the Service Provider shall work in co-ordination and co-operate with, all other Third Party Service Providers providing Services to SARS so that the Services are provided seamlessly to SARS. For the avoidance of doubt, the Service Provider will never be compelled to cooperate with any other registered Credit Bureau, or any other entity listed in **Annexure "J"** to this Agreement in a manner that could result in the exposure of that entity to the Service Provider's Confidential Information and/or Intellectual Property.
- 12.2. The Service Provider shall, immediately upon becoming aware thereof, notify SARS in writing if an act or omission of such a Third Party Service Provider may cause a delay, interruption, or deficiency in the Services.
- 12.3. SARS acknowledges that the co-operation contemplated under this clause 12 is not intended to result in any compromise of the Intellectual Property rights or Confidential Information of the Service Provider provided by the Service Provider to SARS under this Agreement. SARS shall, where required by the Service Provider, procure undertakings, in a form reasonably acceptable to the Service Provider, from its Third Party Service Providers in order to give effect to the protection of the Service Provider's Confidential Information and Intellectual Property by such Third Party Service Providers in accordance with this Agreement. If SARS is unable to procure such undertakings, and the Service Provider has reasonable concerns that its Confidential Information and/or Intellectual Property may be compromised, it shall be entitled to refuse to co-operate with such Third Party Service Provider.

13. SERVICE PROVIDER PERSONNEL

- 13.1. Account Manager and Key Personnel
- 13.2. During the currency of the Agreement, the Service Provider shall nominate a representative who shall be referred to as the Account Manager to manage the SARS account.

- 13.3. The Account Manager shall interface with SARS Authorised Representative with regard to the Service performance including the overall management of the Services and proper discharge of the duties contemplated herein by the Service Provider Personnel in line with the provisions of this Agreement. the Services.
- 13.4. The Account Manager shall remain responsible for:
- 13.4.1. Remain responsible for ensuring proper performance of Services including the timely execution thereof as and when requested by SARS in writing;
 - 13.4.2. Remain responsible for ensuring that the Information requested by SARS is at all times, accurate, correct and complete; and
 - 13.4.3. On-going stakeholder relationship management for the Term.
- 13.5. The management of the Agreement by the Account Manager is key to SARS and in the event that SARS is
- 13.6. The Service Provider shall:
- 13.6.1. 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;
 - 13.6.2. 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);
 - 13.6.3. 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
 - 13.6.4. ensure that a Key Personnel signs the Consent and Data Protection Agreement (**Annexure A**), prior to entering the Premises.

- 13.7. The Service Provider shall duly comply with its contractual arrangements with all Service Provider Personnel to ensure uninterrupted provision of Services.
- 13.8. Notwithstanding the above, the Service Provider shall not appoint, assign, designate or subsequently re-assign any Staff member to occupy the position or perform the duties of an Account Manager or Key Personnel member in terms of the Agreement without SARS's prior written consent.
- 13.9. The Service Provider shall not voluntarily remove an individual filling an Account Manager or Key Personnel position prior to obtaining SARS's approval of a suitable replacement in terms of clause 13.8 and such replacement being properly trained and made familiar with the Services by the Service Provider.
- 13.10. SARS shall be entitled, if SARS believes that the performance or conduct of an Account Manager or Key Personnel member is unsatisfactory for any reason or is not in compliance with the provisions of the Agreement, by giving no less than 48 (forty eight) hours written notice thereof to the Service Provider, require the Service Provider to address the issue or to remove any such Account Manager or Key Personnel member, and the Service Provider shall take such steps as may be necessary to give effect to such notice, including promptly addressing the performance or conduct of the Account Manager or Key Personnel member or, at SARS's request, immediately replacing such Account Manager or Key Personnel member in accordance with clause 13.8 with another Service Provider's Staff member acceptable to SARS and with sufficient knowledge and expertise to perform the Services in accordance with the Agreement.

13.11. 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.

14. CONFIGURATION AND IMPLEMENTATION OF THE THIRD PARTY DATA SYSTEM

14.1. Following delivery of Solution to SARS, the Service Provider shall work together with SARS to configure and implement the Link and Third Data Party Data System in accordance with System Specifications Requirements.

14.2. The Service Provider shall during the configuration process prepare a User Manual for use by SARS Users.

14.3. The Service Provider undertake to configure the Link and Third Party Data System in order to ensure that Link and Third Party Data System meet SARS's System Specification Requirements and in doing so, the Service Provider undertakes not to and without limiting the provisions of clause 24 below, utilise any Third Party Intellectual Property Rights without SARS's written consent

15. ACCEPTANCE AND REVIEW

15.1. SARS shall have the right to review and accept or reject all Service Provider Deliverables and any components of such Service Provider Deliverables to be provided by the Service Provider to SARS under this Agreement, pursuant to the methodology set forth in this clause. SARS's criteria for the acceptance or rejection of a Service Provider Deliverable must be agreed between the Parties and recorded in the Acceptance Testing Criteria, and in undertaking a review, SARS shall have strict regard to the agreed criteria.

- 15.2. The Service Provider will be available to liaise with SARS regarding any queries arising with regard to a Service Provider Deliverable and will assist SARS with its evaluation of the Service Provider Deliverable.
- 15.3. Should SARS not accept the Service Provider Deliverable, SARS will provide the Service Provider with written notice of its non-acceptance, and the reasons, therefore. The Service Provider will, unless otherwise stipulated in the relevant Acceptance Testing Procedure or otherwise agreed by the Parties at the time, correct any Deficiencies within 48 (forty eight) hours or such longer period as SARS may reasonably prescribe, where after the Service Provider Deliverable will be resubmitted to SARS for review and evaluation in accordance with this clause.
- 15.4. If the Service Provider is still unable to correct the Deficiency within this period, then SARS may in its sole discretion elect to -
- 15.4.1. direct the Service Provider to continue its efforts to make the Service Provider Deliverable acceptable to SARS, in which case the Service Provider shall continue such efforts; or
- 15.4.2. accept the Deficient Service Provider Deliverable, in which event the charges with respect to such Service Provider Deliverable shall be equitably reduced or refunded, to reflect the presence of such Deficiency; or
- 15.4.3. without limiting the generality of SARS's right to terminate this Agreement for cause under clause 36 or to claim damages or to claim a reduction or the refund of part of or the whole fee under this clause, terminate a Service component so affected without liability by providing written notice to the Service Provider.
- 15.5. Should SARS be entitled to claim for the reduction of fees or a refund under this clause 14, and where the Service Provider is also liable to pay damages to SARS under this Agreement in respect of the breach to or from which the refund or reduction relates arises then SARS's claims for damages will be subject to the limitation of liability in clause 33.

16. HEALTH, SAFETY AND SECURITY PROCEDURES AND GUIDELINES

- 16.1. SARS has in terms of OHS Act,
- 16.1.1. 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
 - 16.1.2. controls in place required to respond to any health safety risk which controls are regularly updated in line with the applicable provisions of the OHS Act and where required, standards and guides as published by the aforesaid prescript and/or National Institute for Communicable Diseases (NICD).
- 16.2. The Service Provider hereby agrees and undertakes:
- 16.2.1. in terms of section 37(2) of the OHS Act, to ensure that the Service Provider and the Service Provider's Personnel comply in all respects, with the aforesaid OHS Act 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.

16.2.2. 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.

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

16.3.1. 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), an Appointment, furnish to SARS a copy of a certificate of good standing issued by the Compensation Commissioner appointed in terms of COIDA;

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

16.3.3. 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;

16.3.4. 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;

- 16.3.5. 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
- 16.3.6. 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.
- 16.4. 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;
- 16.5. The Service Provider hereby indemnifies and agrees to hold SARS harmless against any loss, damages, liability, or expense suffered or incurred by SARS:
 - 16.5.1. as a result of any breach in terms of this clause 16.1.1; and
 - 16.5.2. in terms of the OHSA as a result of any Service Provider Personnel failing to comply with SARS PPS&G as contemplated in clause 16.2 above;
 - 16.5.3. 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.
- 16.6. The indemnity referred to in clause 16.4 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.

17. INSURANCE

- 17.1. For the duration of this Agreement, the Service Provider shall maintain a public liability insurance policy, reasonably acceptable to SARS, in respect of all risks normally associated with the business of the Service Provider including fraud and theft by either third parties or staff. The Service Provider will on the effective date provide SARS with an extract from the aforesaid insurance policy, or a suitable letter from the Service Provider's insurance brokers, confirming compliance with this clause.

18. SERVICE PROVIDER STAFF

- 18.1. As part of its provision of the Services, the Service Provider shall at all times ensure that all Service Provider staff are suitable and appropriately qualified, trained, experienced and available to render the Services in terms of this Agreement.
- 18.2. the Service Provider shall be responsible for ensuring the authenticity of all personnel credentials of the Service Provider staff.
- 18.3. The Service Provider hereby undertakes to procure that all Service Provider staff who are exposed to SARS information and/or Taxpayer information and/or SARS Data will comply with all secrecy and confidentiality obligations with which SARS officials and employees are obliged to comply in terms of the SARS Act, Tax Acts and all other relevant legislation and that they will in particular all execute and adhere to the prescribed declaration/oath of secretary.
- 18.4. Neither the Service Provider nor the Service Provider's staff, subcontractors or other agents are or shall be deemed to be staff of SARS. The Service Provider and any of its subcontractors, shall be responsible for their own staff assigned to provide Services under this Agreement, including that the Service Provider shall be required to comply with and/ or ensure compliance with all applicable laws, including in relation to employment and tax as they relate to and apply in respect of its staff and in respect of the staff of the subcontractors.
- 18.5. The Service Provider shall ensure that Key Personnel are assigned to perform the Services in terms of the Agreement in an efficient and timely manner.

- 18.6. The Service Provider shall not appoint, assign, designate or subsequently reassign any staff member to occupy the position or to perform the duties of a Key Personnel member in terms of the Agreement without SARS's prior written consent.
- 18.7. The Service Provider shall not voluntarily remove an individual filling a Key Personnel position prior to obtaining SARS's approval of a suitable replacement in terms of the clause of the Service Provider and such a replacement being properly trained and made familiar with the Services of the Service Provider.
- 18.8. SARS shall be entitled, if SARS believes that the performance or conduct of any Key Personnel member is unsatisfactory for any reason or its not compliance with the provisions of this Agreement, by giving no less than 48 hours written notice thereof to the Service Provider, require the Service Provider to address the issue or to remove any Key Personnel member, and the Service Provider shall take such steps as may be necessary to give effect to such notice, including promptly addressing the performance or the conduct of the Key Personnel member or, at SARS's request, immediately replacing such Key Personnel member in accordance with the clause of the Service Provider with another Service Provider staff member acceptable to SARS and with sufficient knowledge and expertise to perform the service in accordance with the Agreement.

19. FEES INVOICING AND PAYMENT

- 19.1. In general, the Fees applicable to the Services are set out in **Annexure D** hereto.
- 19.2. SARS shall for the Term, pay the Service Provider for the provision of the Services to the total value of R **[DRAFTING NOTE: TO BE INSERTED POST AWARD]**, which amount will paid **[DRAFTING NOTE: TO BE UPDATED POST AWARD]**, **DRAFTING NOTE: TO BE UPDATED POST AWARD]** within days of receipt of the Service Provider's invoice.

- 19.3. The Service Provider will (subject to the provisions of this Clause 19), 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.
- 19.4. 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 E**.
- 19.5. 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.
- 19.6. 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 21 and/or automatically be referred to dispute resolution in terms of Clause 51.
- 19.7. 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.
- 19.8. Notwithstanding the provision of Clause 21 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 fully without any set off, including any interest thereon, calculated at Repo Rate.

20. TAX, DUTIES AND CURRENCY ISSUES

- 20.1. 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.
- 20.2. All Fees set out in this Agreement are inclusive of any export and import tax.
- 20.3. 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.

21. DISPUTED FEES AND INVOICING ERRORS

- 21.1. 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:
- 21.1.1. SARS will promptly notify the Service Provider that it is disputing such Fees; and
- 21.1.2. the Parties will promptly address such dispute in accordance with Clause 51 of the Agreement.
- 21.2. 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.

- 21.3. 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.
- 21.4. 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.

22. SERVICE PROVIDER OBLIGATIONS TO REDUCE COSTS

- 22.1. In consultation with SARS, the Service Provider will continuously investigate methods to reduce the Fees whilst maintaining Performance Standards.
- 22.2. Without limiting the generality of its obligations under Clause 22.1 above, the Service Provider will:
- 22.2.1. 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;
 - 22.2.2. Model the effect of the methodologies, processes, solutions and technologies at different levels and mixes of consumption; and
 - 22.2.3. 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.

23. SARS'S RIGHTS AND OBLIGATIONS

- 23.1. 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.
- 23.2. SARS undertakes to:
- 23.3. ensure that a Key Personnel is allocated a work area including Resources required for the performance of the Services at the Premises; and
- 23.4. 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.

24. INTELLECTUAL PROPERTY RIGHTS

24.1. SARS Intellectual Property:

- 24.1.1. 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.

24.2. Intellectual Property developed during the Term:

- 24.2.1. 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**").

24.2.2. 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.

24.2.3. 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:

24.2.3.1. 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

24.2.3.2. 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.

24.2.4. 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”).

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

24.3.1. Subject to Clause 24.2.3.2, 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”).

24.4. **Third Party Intellectual Property:**

24.4.1. 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.

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

24.5.1. 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.

25. CONFIDENTIAL UNDERTAKING

25.1. 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.

- 25.2. 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.
- 25.3. 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.
- 25.4. 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.
- 25.5. 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.
- 25.6. The Service Provider will protect the interests of SARS in its Confidential Information by:
- 25.6.1. 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;
 - 25.6.2. 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;

- 25.6.3. 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;
 - 25.6.4. 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;
 - 25.6.5. 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;
 - 25.6.6. 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;
 - 25.6.7. providing reasonable evidence of the Service Provider's compliance with its obligations under this Clause 25.6.6 to SARS on reasonable notice and request; and
 - 25.6.8. 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.
- 25.7. 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 25.

- 25.8. 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.
- 25.9. The provisions of this Clause 25 shall survive the termination or cancellation of this Agreement for any reason whatsoever.

26. DATA PROTECTION

- 26.1. 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.
- 26.2. 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 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 26.2 on reasonable notice and request.
- 26.3. 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.
- 26.4. 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.

- 26.5. The security measures to be taken by the Service Provider in terms of Clause 26.2 must –
- 26.5.1. 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
- 26.5.2. 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.
- 26.6. 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 26.

27. PROCESSING OF PERSONAL INFORMATION

- 27.1. 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.
- 27.2. 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.
- 27.3. The Service Provider agrees that, in regard to the Personal Information, it shall –

- 27.3.1. 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);
- 27.3.2. 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;
- 27.3.3. 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;
- 27.3.4. 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;
- 27.3.5. keep all Personal Information and any analyses, profiles or documents derived therefrom separate from all other data and documentation of the Service Provider;

27.3.6. 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

27.3.7. 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.

27.4. 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.

27.5. 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 27.

28. PROTECTION OF PERSONAL INFORMATION

28.1. 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.

28.2. Each Party shall only provide, collect and/or Process the Personal Information:

28.2.1. in compliance with POPIA and where binding on a Party;

28.2.2. as is necessary for the Third Party Data System and Link and the Services;

- 28.2.3. for maintaining its internal administrative processes, including quality, risk, client, or vendor management processes;
 - 28.2.4. for internal business-related purposes; and
 - 28.2.5. in accordance with the lawful Purpose and reasonable instructions of SARS as the Responsible Party.
- 28.3. Both Parties shall:
- 28.3.1. 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
 - 28.3.2. 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;
 - 28.3.3. 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.
- 28.4. 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.

- 28.5. 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.
- 28.6. 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.
- 28.7. 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.
- 28.8. 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.
- 28.9. The Service Provider shall not Process the Personal Information to:
- 28.9.1. an outsourced information technology service provider; or
 - 28.9.2. 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
 - 28.9.3. an Affiliate unless approved by SARS in writing and provided a Data Protection Agreement has been signed by SARS;

- 28.9.4. without prior written consent of SARS and the Data Subject or existing Data Protection Agreement.
- 28.10. Where consent has been granted in terms of Clause 28.9 above, the Service Provider undertakes in relation to Clauses 28.7 and 28.8 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 26.3 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.
- 28.11. 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.
- 28.12. 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.
- 28.13. The Service Provider represents and warrants in favour of SARS that:
- 28.13.1. 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

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

28.14. 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 26, 27 and 28.

29. AUDITS

29.1. Audit Rights:

29.1.1. 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;

- 29.1.2. 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.
- 29.1.3. SARS reserves the right to appoint a third party to perform an audit under this Clause 29.1 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.
- 29.1.4. 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.
- 29.1.5. 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.

29.2. Audit Follow-Up:

- 29.2.1. 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.

- 29.2.2. 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.
- 29.2.3. 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.
- 29.2.4. Promptly after the issuance of any audit report or findings issued under Clause 29.2.3 the Parties will meet to review such report or findings and to agree on how to respond to the suggested changes.

30. STEP IN RIGHTS

- 30.1. In addition to the right to terminate this Agreement, SARS may in its sole discretion elect to (i) call for an urgent senior level meeting with the Service Provider; and/or (ii) launch an audit investigation into the Service Provider's operations in accordance with the audit provisions detailed in clause 29; and/or (iii) temporarily take over the Services as contemplated in clause 30.2 below, immediately upon SARS identification or the Service Provider's notification of the occurrence of any event which SARS considers, in its sole discretion, to be an event which may affect the continuity of the Services.
- 30.2. For purposes of this clause 30, SARS may temporarily take over the provision of the Services until such time as SARS is able to make permanent alternate arrangements for the provision of the Services, which right shall apply for a period of no more than 180 (one hundred and eighty) days from the date that SARS temporarily takes over the provision of the Services. The Service Provider shall, upon the request of SARS, fully co-operate with and assist SARS in the performance of the Services during any such temporary take-over of the Services by SARS. For the avoidance of doubt, during a temporary take-over of the Services pursuant to the provisions of this clause 30.2, SARS shall not be entitled to access any equipment, materials, software or data which belong to the Service Provider's other clients; and in the case of any infrastructure that may be shared with other Service Provider clients, SARS may only access and use such infrastructure with the consent of the other clients with whom it is sharing such infrastructure.

- 30.3. To the extent that SARS exercises its rights to assume the rendering of the Services or part thereof itself, or procures that a third party service provider renders some or all of the Services pursuant to the provisions of clause 30.2 above, the Service Provider shall not be entitled to any consideration during the period for which SARS assumes the Services. SARS shall be obliged to also assume, for that period, any direct costs and expenses solely attributed to any such temporary rendering of part or all of the Services, incurred by SARS in accordance with this clause, including the salary costs for Service Provider Staff that SARS may require to assist it in so rendering the Services or part thereof, and any relevant software license or hardware maintenance fees. SARS shall not under any circumstances by virtue of such assumption, be obliged or deemed or required to also take over or assume responsibility for the conduct of the Service Provider's business operations or the employment of any Service Provider Staff, in terms of this clause.
- 30.4. SARS's rights under this clause are subject, at all times, to its obligations of confidentiality contained in this Agreement.

31. BREACH

- 31.1. 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.
- 31.2. For the purposes of Clause 31.1 a breach will be deemed to be a material breach if :-
- 31.2.1. it is capable of being remedied, but is not so remedied within the Notice Period; or
 - 31.2.2. it is incapable of being remedied within the Notice Period; or
 - 31.2.3. if payment in money will compensate for such breach, but payment is not made within the Notice Period; or
 - 31.2.4. the Service Provider commits numerous, repeated breaches even if cured; or

- 31.2.5. 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.

32. INDEMNITIES

- 32.1. 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 45 including the provisions of this Agreement by the Service Provider or Service Provider Personnel.
- 32.2. 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:
- 32.3. any or action arising from the Service Provider's breach of any obligation with respect to Confidential Information and/or Personal Information; and/or.
- 32.4. any claim, action, or demand by a Third Party that the use by SARS of the Third Party Data System and Link and its related Documentation supplied by the Service Provider infringes the Intellectual Property rights of that Third Party.

33. LIMITATION OF LIABILITY

- 33.1. 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.
- 33.2. Subject to Clauses 33.3 and 33.4, 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.

- 33.3. Notwithstanding anything to the contrary set forth in Clause 33.2 above or the Agreement in general, the Parties agree that they will not be liable to the other for -
- 33.3.1. 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
 - 33.3.2. all Losses which arise out of their dishonesty or gross negligence regardless of whether such Losses arise out of contract or delict; and/or
 - 33.3.3. 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.
- 33.4. Notwithstanding anything to the contrary set forth in Clauses 33.1, 33.2 and 33.3 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 24; 25; 26; 27 and 27 and 28 above.

34. TERMINATION

- 34.1. 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.

34.2. If the Service Provider fails to adhere to any legal requirement or breaches the provisions of Clause 34.1 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.

34.3. A Party's remedies in terms of this Clause 34 are without prejudice to any other remedies to which such Party may be entitled in law.

35. TERMINATION FOR CONVENIENCE

35.1. 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.

36. TERMINATION FOR CAUSE

36.1. SARS may (subject to Clause 31.1), 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:

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

36.1.2. commits an Acts of Insolvency.

36.2. Notwithstanding Clause 36.1 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.

37. TERMINATION UPON SALE, ACQUISITION, MERGER OR CHANGE OF CONTROL

37.1. 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.

38. EFFECT OF TERMINATION

38.1. 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.

39. TERMINATION/EXPIRATION ASSISTANCE

39.1. 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.

39.2. 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.

40. FORCE MAJEURE

40.1. 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.

- 40.2. 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.
- 40.3. 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.

41. RECORDS RETENTION

- 41.1. 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.

42. CONSENTS AND APPROVALS

- 42.1. 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.

42.2. 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.

43. APPLICABLE LAW AND JURISDICTION

43.1. 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.

43.2. 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.

44. LEGAL AND REGULATORY COMPLIANCE

44.1. 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.

44.2. 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.

45. NON-SOLICITATION

- 45.1. The Service Provider shall not, without the prior written consent of SARS, either during, or within 12 months after termination or expiration of this Agreement, solicit for employment, whether directly or indirectly, any person who, at any time during the duration of this Agreement, was a member of SARS's staff who was directly involved with any activity relating to the Services.

46. GOVERNANCE, MEETINGS AND REPORTS

- 46.1. Unless otherwise agreed in writing, the parties shall conduct the following meeting:
- 46.1.1. ad hoc meetings as reasonably required to ensure that the Services are performed effectively;
 - 46.1.2. a monthly meeting between:
 - 46.1.2.1. 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
 - 46.1.2.2. 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
 - 46.1.2.3. a quarterly senior management meeting by the parties to review relevant relationship, contractual and performance issues.
- 46.2. The Service Provider will provide SARS with all reports reasonably required by SARS and specified in a statement of work.

47. COMPLIANCE WITH LAWS AND REGULATIONS

- 47.1. The Service Provider warrants that it shall render the Services in accordance with all laws, regulations, and industry codes of conduct applicable thereto, including but not limited to the following:
- 47.1.1. the procedures contained in internal policy (Information Life Cycle Security Policy) attached hereto marked annexure _____ and as amended or replaced by SARS from time to time; and
 - 47.1.2. all applicable South African laws relating to tax and data privacy.
- 47.2. The Service Provider shall at its own cost (unless otherwise agreed) ensure, and take all legal advice necessary to ensure, that in providing the Services the Service Provider shall not infringe any third party rights and that the provision of the Services shall be lawful and in compliance with all applicable laws, regulations and/or industry codes of practice. This shall be in addition to any legal procedures and checks that SARS may carry out.
- 47.3. SARS undertake that:
- 47.3.1. it shall use the Services lawfully, for its own internal purposes, and only as contemplated in this Agreement.
 - 47.3.2. Subject to clause 22.4 below, it will not sell, transfer, sub-license, distribute, commercially exploit, or otherwise make available to, or use for the benefit of, any third party any aspect of the Services or any information provided to it by the Service Provider; and
 - 47.3.3. it will not (and will not allow any third party to) copy, adapt, alter, modify, reverse engineer, de-compile or otherwise interfere with the Services or deliverables.
- 47.4. SARS may, with the written consent of the Service Provider (such consent not to be unreasonably withheld or delayed), and for the purposes permitted in this Agreement, share data that it is received from the Service Provider as part of the Services with the government departments listed in schedule I, provided that such data is shared within three months of receipt thereof by SARS.

47.5. the permitted purposes for which SARS may share data under this Agreement are restricted to the following:

47.5.1. to promote the responsible spending of public funds in terms of the Public Finance Management Act 1 of 1999, and then only in instances where not sharing data will directly cause SARS to incur or fail to prevent fruitless and wasteful, unauthorised, or irregular expenditure (as these terms are defined in that act); or

47.5.2. to promote the prevention of crime in South Africa, by way of compliance with any Act of parliament in terms of which SARS is compelled to report information to another enforcement agency.

48. WARRANTIES

48.1. Service Provider Personnel:

48.1.1. 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.

48.2. Intellectual Property warranties:

48.2.1. 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

48.3. Service Provider authority undertaking:

- 48.3.1. The Service Provider warrants (for the duration of the Term of this Agreement), that it: (i) is duly licensed and authorised by the National Credit Regulator to provide the Services; (ii) is authorised to give SARS access to Third Party Data and to enable the Processing thereof by SARS; (iii) has all the necessary licences, certificates, authorisations and consents required under the laws of the Republic of South Africa or under any other applicable jurisdiction for the provision of the Services under this Agreement; (iv) 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 (v) will ensure that upon the date of delivery of the Service Provider Deliverables in which SARS takes receipt thereof will not breach any law or regulation of.
- 48.3.2. 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.
- 48.3.3. 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 license or accreditation, 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), the Service Provider has an existing agreement with its Affiliates who upon acceptance by SARS, will be able to perform the Services 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 "K"**.

48.4. **Product Specific Warranties:**

48.4.1. The Service Provider warrants that the Third Party Data System and Link is designed to operate in conformance with SARS's System Specification Requirements and that it will at all times: (i) ensure that the Third Party Data System and Link and the 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 Third Party Data System and Link to the Functional Specifications (iii) take all reasonable and necessary steps to ensure that the Services and the Third Party Data System and Link (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.

48.4.2. 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 Third Party Data System and Link 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 Third Party Data System and Link will comply with the Gregorian calendar.

48.5. **Service Delivery:**

48.5.1. 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 Third Party Data System and Link; (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.

48.6. **Security Clearance:**

48.6.1. 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.

48.6.2. 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:

48.6.2.1. Citizenship including residency status;

48.6.2.2. Criminal activity report; and

48.6.2.3. Credit worthiness.

48.6.3. 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.

48.6.4. 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.

48.6.5. 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.

48.6.6. A breach by the Service Provider of any warranty, representation or other provision of this Clause 45 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 34 above.

48.7. **POPIA Compliance:**

48.7.1. 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.

48.7.2. 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.

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

48.8. **Regulatory requirements:**

48.8.1. 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 Third Party Data System and Link. 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.

48.9. **Documentation:**

48.9.1. 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 Third Party Data System and Link 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.

48.10. **General Warranties:**

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

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

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

48.10.1.3. 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;

- 48.10.1.4. 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;
- 48.10.1.5. 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;
- 48.10.1.6. it has the necessary resources, skills, and experience to render the Service and/or deliver the Deliverables to SARS; and
- 48.10.1.7. 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.
- 48.10.1.8. The provisions of this Clause 45 shall survive the termination of this Agreement.

49. PUBLICITY

- 49.1. 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.

50. CO-OPERATION

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

51. DISPUTES

- 51.1. 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.

- 51.2. 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.
- 51.3. 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.
- 51.4. 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 51 may be made an order of court at the instance of any Party to the arbitration.
- 51.5. 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.
- 51.6. Any arbitration in terms of this Clause 51 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.
- 51.7. The provisions of this Clause 51 will continue to be binding on the Parties notwithstanding any termination or cancellation of the Agreement.

52. ADDRESSES

- 52.1. 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.
- 52.2. 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
- 52.3. The Service Provider’s physical address for service of notices and legal processes shall be as follows: **[DRAFTING NOTE: TO BE INSERTED POST AWARD]**
- 52.4. 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.
- 52.5. Any Party may by written notice to the other Party, change its chosen address to another address, provided that-
- 52.6. the change shall become effective on the tenth (10th) Business Day after the receipt or deemed receipt of the notice by the addressee; and
- 52.7. 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.
- 52.8. 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.

52.9. 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.

53. BROAD-BASED BLACK ECONOMIC EMPOWERMENT ("BBBEE")

53.1. 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.

53.2. 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.

53.3. 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.

53.4. 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.

53.5. 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.

54. TAX COMPLIANCE

54.1. 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.

54.2. Notwithstanding Clause 54.1 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.

55. ETHICAL BUSINESS PRACTICES

- 55.1. 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).
- 55.2. 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.
- 55.3. 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.
- 55.4. 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.

56. CONFLICT OF INTEREST

- 56.1. 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.

- 56.2. 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.

57. NEW LAWS AND INABILITY TO PERFORM

- 57.1. 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.

- 57.2. 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.

58. BUSINESS CONTINUITY MANAGEMENT

- 58.1. 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.

- 58.2. 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.
- 58.3. 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.

59. RELATIONSHIP BETWEEN THE PARTIES

- 59.1. 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.
- 59.2. 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.

60. GENERAL

60.1. Whole Agreement and Amendment

- 60.1.1. 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.

60.2. No Assignment Without Consent

60.2.1. 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.

60.3. **Severability**

60.3.1. 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.

60.4. **Advertising and Marketing**

60.4.1. 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.

60.5. **Waiver**

60.5.1. 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.

61. COVENANT OF GOOD FAITH

61.1. 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.

62. COSTS

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

63. AUTHORISED SIGNATORIES

63.1. 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.

63.2. This Agreement is signed by the Parties on the dates and at the places indicated below.

63.3. 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.

63.4. 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

Signature

Name of Signatory

Designation of Signatory

SIGNED at _____ **on** _____ **2020**

For and on behalf of

SERVICE PROVIDER

Signature

Name of Signatory

Designation of Signatory

ANNEXURE A

DATA PROTECTION AGREEMENT

ANNEXURE A

ACCEPTANCT TESTING CRITERIA

ANNEXURE B

DATA PROTECTION AGREEMENT

ANNEXURE C

DELIVERABLES

ANNEXURE C-1

SARS'S DELIVERABLES

ANNEXURE C-2

SERVICE PROVIDER DELIVERABLES

ANNEXURE D

DOCUMENTATION

ANNEXURE E

KEY PERSONNEL

ANNEXURE F

SERVICE LEVEL AGREEMENT

ANNEXURE G

STANDARD REPORTING INFORMATION

ANNEXURE H

SYSTEM SPECIFICATION REQUIREMENTS

ANNEXURE I

SARS INFORMATION AND DATA SECURITY STANDARDS

ANNEXURE J

SERVICE PROVIDER REQUIREMENTS

ANNEXURE K
SARS INFORMATION REQUIREMENTS

1. SARS needs to source accurate, updated individual, company (business) and trust data to trace, search, verify, match, and communicate effectively with all taxpayers. The Service Provider must provide SARS with the following information, including, but not limited to:

- 1.1. Individual demographic data:

- 1.1.1. Individual identification (name(s), surname, Date Of Birth (DOB) and ID number)
 - 1.1.2. ID number validity and verification inclusive of ID photo
 - 1.1.3. Education level
 - 1.1.4. Race
 - 1.1.5. Nationality
 - 1.1.6. Gender
 - 1.1.7. Deceased information and records
 - 1.1.8. Possible relatives/dependants' detail(s)
 - 1.1.9. Marital status, marital type (in or out of community) and spouse details (current and history)
 - 1.1.10. Passport details and movement control details
 - 1.1.11. Emigration applications
 - 1.1.12. Employment status and previous history (previous three (3) employers) and
 - 1.1.13. Employer details (current and previous three (3) employers).

- 1.2. Updated and valid individual contact details:

- 1.2.1. Telephone numbers (landline and cellular phone numbers)
 - 1.2.2. E-mail addresses

- 1.2.3. Postal box addresses
- 1.2.4. Street or physical addresses
- 1.2.5. Provinces/regions
- 1.2.6. Taxpayer areas
- 1.2.7. Employer addresses and
- 1.2.8. Next of kin addresses.

1.3. Property, deeds, and estate details:

- 1.3.1. Property and bonds registered in an individual's name
- 1.3.2. Property valuations
- 1.3.3. Property verifications
- 1.3.4. Property history
- 1.3.5. Searches for a property per Owner, "erf" number, title deed number, sectional scheme, or farm name
- 1.3.6. Property transfer and ownership details
- 1.3.7. Tax liabilities against any property owned
- 1.3.8. Property details in the report should include Google images of the property, a comparable sales table, transfer history as well as suburb trends
- 1.3.9. Deceased estate information inclusive of dates and
- 1.3.10. Insolvent estates.

1.4. Vehicle and any other moveable asset data:

- 1.4.1. Vehicles makes and vehicles models
- 1.4.2. Vehicles finances (current and history)

- 1.4.3. Vehicles book values and value verifications and
- 1.4.4. Vehicles, yachts and/or planes ownership (current and history).

1.5. Consumer and commercial financial data:

- 1.5.1. Correct and complete bank accounts data
- 1.5.2. Bank account verification
- 1.5.3. Updated and valid banking details
- 1.5.4. Bank code representing the bank's opinion of account conduct
- 1.5.5. Other financial organisation accounts data
- 1.5.6. Financial information including financial year end, payroll date as well as previous and current turnover figures
- 1.5.7. Actual payment details on accounts
- 1.5.8. Payment analysis, including at least three (3) trade references
- 1.5.9. Updated trade references conducted on major suppliers to establish current payment trend
- 1.5.10. Payment profile: Factual information pertaining to the payment profile of the consumer
- 1.5.11. Historical payment data which reflects payment trend to specific suppliers over an extended period of time
- 1.5.12. Ledger information, which provides an additional payment analysis and is designed to show the monthly overdue percentage
- 1.5.13. Creditor types and creditor rankings
- 1.5.14. Credit checks, credit report files, credit records and credit scores/profiles based on risk ratings. Credit report files should contain negative payment history and credit risk rating

- 1.5.15. Credit risk information: Delphi risk scores as well as a visual display (e.g. green, amber, red)
- 1.5.16. Monthly debt obligations
- 1.5.17. Debt review records
- 1.5.18. An indication of Debt Beyond Terms (DBT)
- 1.5.19. Registered bonds and notarial bonds
- 1.5.20. All the businesses that the individual is a director/member of
- 1.5.21. Default records
- 1.5.22. Adverse summary
- 1.5.23. Indication of conflict of interest
- 1.5.24. Judgement summary information e.g. High Court judgements, court records, civil court judgements and provisional and final liquidations, notarial bonds, sales, and transfers of businesses
- 1.5.25. Notices summary information
- 1.5.26. Filings for bankruptcy
- 1.5.27. Collections summary
- 1.5.28. Negative summary (Negative news and Politically Exposed People)
- 1.5.29. Southern African Fraud Prevention Service (SAFPS) records and
- 1.5.30. SAFPS Protective Registration.

1.6. Companies, corporates and trusts data (business data)

- 1.6.1. Names of business entities
- 1.6.2. Details of company name changes and company registration name changes

- 1.6.3. Registration details of companies, including registration number/registration date and tax numbers
- 1.6.4. Company and director status (active/inactive/suspended/estate/dormant)
- 1.6.5. Age (or average) of owner(s)
- 1.6.6. Company structure including holding and subsidiary companies
- 1.6.7. Linked entities and links to other companies
- 1.6.8. Details of previously linked entities and/or directorships
- 1.6.9. Companies and directorships (current and historic (previous six months), local and international)
- 1.6.10. Overview of company history and operations including import/export details, fleet and staff count
- 1.6.11. Industry description
- 1.6.12. Sub activity description
- 1.6.13. Shareholdings (number and percentage), share trading and disposal
- 1.6.14. Changes of shareholding
- 1.6.15. Directors other interests
- 1.6.16. Connected person(s)
- 1.6.17. Company properties/premises, ownership, and lease agreements
- 1.6.18. Trade references
- 1.6.19. Statutory information and principal details (inclusive of ID numbers)
- 1.6.20. Registered addresses and all contact details of directors and members
- 1.6.21. Company auditor's history (previous two years)
- 1.6.22. Non-active principals' names and ID numbers

- 1.6.23. Registered addresses and all contact details of auditors
- 1.6.24. Trust deeds and search functionality
- 1.6.25. Trust accounts data
- 1.6.26. Company defaults
- 1.6.27. Company judgments
- 1.6.28. Liquidations
- 1.6.29. Government blacklisted entities and
- 1.6.30. Summary of due diligence report.

1.7. Lifestyle assessment and audit data

- 1.7.1. A high level overview of the consumer's profile which includes the consumer's living and credit profile status
- 1.7.2. Foreign investments and
- 1.7.3. Summary fraud, risk, and financial indicators.

ANNEXURE K

BUSINESS CONTINUITY PLAN