**note to bidders**

**This Agreement INCLUDING ITS SCHEDULES AND/or APPENDICES 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.**

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**HARDWARE SUPPLY AND SUPPORT SERVICES AGREEMENT**

**(PADS4 SMART DISPLAY)**

**BETWEEN**

**THE SOUTH AFRICAN REVENUE SERVICE**

**(“SARS”)**

**And**

**[INSERT THE NAME OF THE SERVICE PROVIDER]**

**(“Service Provider”)**

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1. **PARTIES**
   1. The Parties to this Agreement are:
      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 address at 299 Bronkhorst Street, Nieuw Muckleneuk, Pretoria (“**SARS**”); and
      2. **[Insert the name of the Service Provider]**, **Registration Number**: [**Insert the Registration Number**], a private company registered in terms of the Companies Act, 2009 (Act No. 71 of 2008) with its principal address at [**Insert the Address of the Service Provider**] (the “**Service Provider**”);

(Collectively referred to as “**Parties**” and individually as a “**Party**”)

1. **INTERPRETATION AND DEFINITIONS**
   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. Unless inconsistent with the context, the words and expressions have the following meanings and similar expressions will have corresponding meanings:
      1. **"Acceptance Testing"** means the testing by SARS of a specific Deliverable or set of Deliverables for the purposes of determining whether such Deliverable(s) complies with the Documentation;
      2. **"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;
      3. **“Ad Hoc Services”** means additional services required by SARS from time to time, that are related to the Services;
      4. **“AFSA”** means the Arbitration Foundation of Southern Africa;
      5. **“Agreement”** means this Hardware Supply and Support Services Agreement including its annexures and/or schedules thereto as amended and/or added from time to time by the Parties in writing and RFP;
      6. **“Applicable Law(s)”** means any statute which includes without being limited thereto, Companies Act, PAIA, POPIA, ECA, including any regulation, directive, or subordinate legislation; the common law; any binding court order as between the Parties, judgment; any applicable securities industry code, standard enforceable by law; or any applicable direction, policy or order that is given by the Authority where there is an onus on the Parties to adhere to the aforesaid;
      7. **“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;
      8. **“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;
      9. **“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;
      10. **“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;
      11. **“Best Industry Practices”** means the best industry practice, quality standards and requirements prescribed by ITIL and/or ISO;
      12. **"Bug-Fixes"** means changes to the Hardware, as the case may be, or any component thereof with a view to correcting any noncompliance with the Documentation thereof;
      13. **“Business Day”** means any day other than a Saturday, Sunday or public holiday in the Republic of South Africa;
      14. **“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;
      15. **“Companies Act”** means the Companies Act, 2008 (Act No. 71 of 2008), as amended;
      16. **“Confidential Information”** means
          1. means in relation to SARS, subject to sub-Clause 2.2.16.2 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:
             1. SARS Information;
             2. SARS data;
             3. Taxpayer Information;
             4. Information as defined in section 68 of the Tax Administration Act, 2011 (Act No. 28 of 2011) (hereinafter referred to as **“TAACT”**);
          2. information which by its nature, content, or circumstances of disclosure is or ought reasonably to be identifiable by the Service Provider as confidential (including by reason of such information not being generally known to, or readily ascertainable by, third parties generally) and/or proprietary to SARS, including (i) information regarding SARS Personnel, independent contractors and suppliers of SARS; processes and plans of SARS and governmental entities; projections, manuals, forecasts, and analyses of SARS; Intellectual Property owned by or licensed to SARS; (ii) information relating to the knowledge, know-how, expertise, trade secrets and activities of SARS; (iii) any information which SARS (without creating a presumption that only so designated information is confidential), acting reasonably, may designate in writing, at the time of disclosure to the Service Provider, as being confidential information; and (iv) and any other information of SARS which would be regarded by a reasonable person to be confidential or proprietary in nature;
          3. in terms of Applicable Laws or by its nature, content, or circumstances of disclosure is or ought reasonably to be identifiable by the Service Provider as confidential (including by reason of such information not being generally known to, or readily ascertainable by, third parties generally) and/or proprietary to SARS, including: (i) data, financial information, information regarding taxpayers; information regarding employees, independent contractors and suppliers of SARS and Governmental Entities; processes and plans of SARS and Governmental Entities; projections, manuals, forecasts, and analysis of SARS and Governmental Entities; Intellectual Property owned by or licensed to SARS or a Governmental Entity; (ii) information relating to the knowledge, know-how, show-how, expertise, trade secrets and activities of SARS; (iii) any information which SARS (without creating a presumption that only so designated information is confidential), acting reasonably, may designate in writing, at the time of disclosure to the Service Provider, as being confidential information; and (iv) any other information of SARS or Governmental Entities which would be regarded by a reasonable person to be confidential or proprietary in nature; SARS or any person acting on behalf of SARS discloses or provides (or has previously disclosed or provided) to the Service Provider (including Service Provider Personnel, Service Provider affiliates, Subcontractors, Third Party suppliers or agents, as applicable) or which the Service Provider (including the Service Provider’s Personnel, Affiliates, Subcontractors, Third Party suppliers or agents, as applicable), otherwise becomes aware of in connection with this Agreement or as a result of the provision or receipt of the Services under this Agreement, and which information will include this Agreement;
          4. means 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;
          5. 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:
             1. the onus will at all times rest on the Receiving Party to establish that such information falls within such exclusions;
             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;
             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
             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.
      17. **“Control”** means with regard to any entity, the right or power to dictate the management of and otherwise control such entity by any of:
          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. controlling the majority of the voting rights in such entity; or
          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.
      18. **“Data Protection Legislation”** means any other legislation applicable to the protection of Personal Information in the Republic of South Africa;
      19. **“Data Subject”** means the person to whom Personal Information relates;
      20. **"Deliverable(s)"** means the Hardware, Support and/or Documentation, including any other material, specification, documentation which are provided by the Service Provider to SARS as part of the Services pursuant to this Agreement;
      21. **"Destructive Element"** means any "back door", "time bomb", "time lock", "trojan horse", "worm", "drop dead device", "virus" or other computer Hardware routine, code or device intended or designed to: (a) permit access to or the use of any Hardware, 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 Hardware, 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 Hardware, 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;
      22. **"Disclosing Party"** means a Party disclosing the Confidential Information to the Receiving Party;
      23. **"Documentation"** means the Functional Specification, installation and/or user manuals, , including any other documentation relating to a Deliverable under this Agreement which will be furnished by the Service Provider to SARS as envisaged in this Agreement;
      24. **“ECA”** means the Electronic Communications Act, 2005 (Act No. 36 of 2005), as amended;
      25. **“Effective Date”** means [**DRAFTING NOTE: TO BE INSERTED POST AWARD**], being the date upon which the Service Provider commences with the provision of the Services or any part thereof notwithstanding the Signature Date;
      26. **"Enhancement"** means significant changes to the Hardware or any component thereof resulting in the addition of a new feature or capability of the Hardware which feature, or capability is not present in the specifications for such Hardware;
      27. **“Fees”** means the fees payable by SARS to the Service Provider for the Hardware procured and supplied to SARS and Support Services which fees are as set out in **Schedule 1**;
      28. **“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;
      29. **“Functional Specification”** means without limiting SARS’s business requirements specifications as set out in the RFP which includes amongst others, KNOX security capability, SOC (System On Chip), advanced UHD (Ultra High Definition), 49 inch #24/7’ commercial display, Wireless and LAN connectivity, PADS 4 smart display
      30. **“Hardware”** means the PADS4 certified Smart Display to be supplied and supported by the Service Provider in terms of this Agreement which Hardware is as listed in Schedule 2;
      31. **“ICT”** means information communication and technology;
      32. **“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 that Hardware or Service;
      33. **“Intellectual Property”** means all computer programs, Hardware, 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;
      34. **“Intellectual Property Rights”** means all rights of whatever nature and however described in respect of Intellectual Property, including:
          1. all patents and other patent rights, including divisional and continuation patents, utility models;
          2. rights in and to inventions, whether patentable or not;
          3. rights in trademarks, service marks, logos, slogans, corporate, business and trade names, trade dress, brand names and other indicia of origin;
          4. rights in designs, topography rights, rights in circuit layouts and mask-works;
          5. copyright, including all copyright in and to computer programs;
          6. rights in internet domain names, reservations for internet domain names, uniform resource locators and corresponding internet sites;
          7. rights in databases and data collections; and
          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.
      35. **“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);
      36. **“Loan Hardware”** means the loan equipment supplied by the Service Provider to SARS on loan and for use by SARS whilst SARS Hardware is being repaired;
      37. **“OHSA”** Occupational Health and Safety Act, 85 of 1993;
      38. **“PAIA”** means the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000), as amended;
      39. **"Personal Information"** means information relating to an identifiable, living, natural or juristic person as fully defined in section 1 of POPIA;
      40. **“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;
      41. **“POPIA”** means Protection of Personal Information Act, 2013 (Act No. 4 of 2013);
      42. **"Pre-delivery Testing"** means the Service Provider’s testing of a Deliverable, which testing is to be performed by the Service Provider prior to submitting or delivering such Deliverable to SARS for SARS’s evaluation;
      43. **“Premises”** means the premises at which the Hardware will be delivered and installed by the Service Provider, which premises are as specified in **Annexure B** (Service Request);
      44. **“Privacy and Data Protection Requirements”** means the 8 (eight) requirements for the lawful Processing of Personal Information contained in Chapter 3 of POPIA;
      45. **"Problem"** means the underlying cause of one or more Incidents; or the occurrence of a problem or error in the Hardware if applicable, reported by SARS to the Service Provider, including a Deficiency;
      46. **“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;
      47. **“Service Request”** means the order form signed by SARS for the order of the Hardware in terms of this Agreement;
      48. **“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;
      49. **“RFP”** mean the Request for Proposal issued by SARS for the provision of the Deliverables contemplated in this Agreement;
      50. **“SARS Personnel”** means SARS’s staff, consultants and/or agent employed by SARS for the purposes of the Agreement;
      51. **“SARS PPS&G”** means SARS’s policies, procedures, processes, standards, guidelines, and other similar issuances (including any updates, amendments or revisions) that are applicable to the Services or the Service Provider from time to time;
      52. **"Services"** means the functions and responsibilities to be provided by the Service Provider to SARS in respect of the Hardware which services include : (i) the Support Services (ii) Ad Hoc Services and/or (iii)any services related to those detailed in (i) to (ii) above;
      53. **“Service Level”** means a quantitative standard of performance of the Services that Service Provider is required to satisfy in its performance of the Services which Service Levels are as set out in Annexure A hereto;
      54. **“Service Provider Personnel”** means the Service Provider’s staff, consultants, subcontractors and/or agent employed by the Service Provider for the purposes of the Agreement;
      55. **“Service Request”** means a service request logged by SARS via Remedy describing the details of the Incident and Support Service required and managed by the Service Provider in terms of the Service Level Agreement
      56. **“Signature Date”** means the date of signature of this Agreement by the last Party signing;
      57. **"Support Services"** means the provision of services including all support activities as fully set out in Clause 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 Hardware Breakages and Upgrades; and (iv) provides professional services in respect of or related to the Hardware to ensure the continued functionality of the Hardware in accordance with the Functional Specification and/or Documentation, which services may be provided via telephonic support;
      58. **“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;
      59. **“Third Party”** means any person other than SARS, Affiliates, Service Provider or Subcontractor;
      60. **“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;
      61. **“Third Party Service Provider(s)”** means the Service Provider or authorised to the extent involved: (i) in providing the Services and/or (ii) delivery of the Deliverables under this Agreement with the Service Provider;
      62. **"Time and Materials Basis"** means the basis on which the Service Provider will charge SARS for Ad Hoc Services and/or services explicitly designated as such and which is based on the time spent and the materials utilised to execute such services. All such time will be billed in accordance with the time and material rates approved by SARS in accordance with SARS’s procurement processes and procedures;
      63. **“Term”** means the term of this Agreement defined in Clause 6 below;
      64. **“Training Services”** means the ad hoc training, advisory and professional services provided by the Service Provider to SARS’s Personnel to enable SARS’s Personnel to maintain and support the Hardware; and
      65. **"Upgrade"** means any change or improvement to the Hardware, Operating System, or any component thereof that relates to or affects the operating performance of the Hardware or Hardware or an aspect of such Hardware but does not change the basic operation or functionality of the Hardware. 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
      66. **“Warranty”** means the warranty provided by the OEM on the Hardware including any component thereof;
      67. **“Warranty Period”** means a period of 5 (years) from the installation date of the Hardware;
      68. **"Work Arounds"** means a methodology applied, and/or change made, to the Hardware, as the case may be, with a view to furnishing SARS with a temporary means to make use of the Hardware, as the case may be, or any component thereof until such time as a permanent solution is provided.
   3. Any reference in this Agreement to:
      1. **“Clause”** shall, subject to any contrary indication, be construed as a reference to a Clause in this Agreement.
      2. **“Person”** refers to any person including juristic entities.
   4. Unless inconsistent with the context or save where the contrary is expressly indicated:
      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. 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;
      3. no provision of this Agreement constitutes a stipulation for the benefit of any Person who is not a Party to this Agreement; and
      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.
   5. Unless inconsistent with the context, an expression which denotes:
      1. any one gender includes the other gender; and
      2. the singular includes the plural and vice versa.
   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.
   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.
   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.
   9. Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.
   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.
   11. In the event of a conflict between the terms and condition contained in various clauses of the Hardware Licence Support and Maintenance Services Agreement and any other document that is part of or executed under this Hardware Licence Support and Maintenance Services Agreement, these terms and conditions of this Hardware Licence Support and Maintenance Services Agreement shall prevail; and/or
   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.
2. **recordal**
   1. The Service Provider distributes and provides maintenance and support services of the Hardware.
   2. SARS has acquired a license to use the Hardware and requires the Services in order to ensure the continued operation of the Hardware.
   3. This Agreement supersedes all prior written and oral agreements between the Parties related to the subject matter.
   4. Accordingly, this Agreement sets out the terms and conditions on which the Service Provider will provide the Services to SARS and the Parties agree as set out hereunder.
3. **Appointment**
   1. SARS requires the Service Provider to supply Hardware and to perform the Support Services for the Term. The Service Provider represents that it has the necessary expertise, skill, know how, qualifications and ability to undertake the work required in terms of the Agreement.
   2. The Service Provider is hereby appointed in accordance with the Letter of Award to provide the Services to SARS under the RFP.
   3. SARS hereby appoints the Service Provider on a non-exclusive basis, and the Service Provider hereby accepts such appointment, to provide the Services on the terms and subject to the conditions of this Agreement.
   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.
4. **NATURE OF RELATIONSHIP and non-exclusivity**
   1. The Parties act for all purposes in terms of the Agreement as independent contractors. Without limiting the aforegoing:
      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
      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
      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.
      4. In no circumstances whatsoever shall any of the Service Provider Personnel be deemed an employee, agent or sub-contractor of SARS. There shall be no legal relationship whatsoever deemed to arise between SARS and the Service Provider Personnel by virtue of the rendering of the Services and/or the presence of the Service Provider Personnel at the Premises. The Provider warrants and undertakes to ensure that all the Service Provider Personnel are duly informed of the fact that they are and remain employees, sub-contractors, agents and/or consultants of the Service Provider and that the Service Provider remains in all instances liable for the remuneration and grievances of such Service Provider Personnel.
      5. In the event that the Labour Relations 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 Relations Act.
5. **SUBCONTRACTORS** 
   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.
   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 sub-contractors. 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.
   3. The Service Provider will supervise the activities and performance of each sub-contractor and will be jointly and severally liable with each such sub-contractor for any act or failure to act by such subcontractor.
6. **COMMENCEMENT AND DURATION**
   1. The term of this Agreement will commence on the Effective Date and will terminate on the [**DRAFTING NOTE: TO BE UPDATED POST AWARD**] Insert the Termination Date) (the “**Renewal** **Term**”), unless terminated earlier by the Parties.
7. **SCOPE OF THE Services**
   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.
   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 at all times.
   3. **Hardware Supply:**
      1. The Service Provider will upon receipt of a signed Service Request Service Request from SARS, procure the Hardware in SARS’s name as well as supply and deliver the aforesaid Hardware at the Premises.
      2. The Service Provider shall ensure that the Hardware procured is:
         1. an original and not grey product;
         2. under OEM Warranty which warranty shall continue for the Warranty Period; and
         3. is procured directly from the OEM.
      3. The Service Provider shall ensure that any Hardware which fails to operate without any material defect or deficiency during the Warranty Period will be replaced and/or repaired at no costs to SARS.
      4. Notwithstanding the aforesaid, any Hardware which fails to operate within 6 (six) months from installation date will be replaced and not repaired.
   4. **Support Services:** 
      1. In providing the Support Services, SARS shall request the assistance of the Service Provider with regard to any Deficiencies in the Hardware which it may identify.
      2. The Service Provider undertakes that in providing such Services it shall use Commercially Reasonable Efforts to ensure that the Hardware functions error-free, maintain the Hardware in such a manner as to its continued compliance with its Documentation, 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.
      3. The Service Provider shall, at its expense, supply all items necessary or required for the Support Services, except for consumables, which shall be supplied by SARS.
   5. **Loan Hardware:**
      1. No lien over any Loan Equipment shall be established in favour of SARS whilst in possession of such Loan Hardware.
      2. SARS shall be entitled to retain such Loan Hardware for use as agreed between the Parties. During the loan period, SARS shall: (i) take proper and diligent care of such Loan Hardware; (ii) mark all items owned by the Service Provider uniquely; (iii) accept all risk in the Loan Hardware taking reasonable steps to protect the Loan Hardware from loss and/or damage.
      3. The Service Provider shall be entitled to make reasonable inspections of the Installation Area in order to establish whether or not the installation and/or use of the Loan Hardware is in accordance with SARS’s obligations in terms of this clause 8.5.
      4. Upon termination of the load period and/or delivery of the repaired or replaced part or component of the Hardware, the Service Provider shall after Acceptance Testing of the repaired or replaced part or component of the Hardware, remove the Loan Hardware from the Installation Area.
      5. Ownership and Risk of Loss:
8. **OWNERSHIP, RISK OF LOSS AND DAMAGE**
   1. Ownership in of each Hardware supplied, will pass to SARS upon the delivery and successful installation of the Hardware at the Premises.
   2. The risk of damage to the Hardware (limited only to damage due to negligence on the part of SARS) shall pass to SARS upon installation at the Premises.
   3. Notwithstanding the above, ownership of any Loan Hardware whilst at SARS Premises, will remain with the Service Provider.
   4. Each Party will be responsible for risk of loss of, and damage to, the Hardware in its possession or under its control. Any Hardware in the possession or control of the Service Provider’s subcontractors or agents (including couriers, freight companies and the like) will be deemed to be under the control of the Service Provider.
9. **PROVISION OF THE SERVICES** 
   1. The Service Provider will provide ongoing professional services and/or Training Services in the Service Provider’s specialist fields of activity related to the operation and improved/increased use of the Hardware, as may be reasonably requested by SARS from time to time in writing, subject to SARS’s procurement processes and procedures.
   2. The Services will at all times be provided in accordance with and subject to the terms and conditions of this Agreement and the Performance Standards, subject to the Service Levels.
   3. The Service Provider will perform the Services diligently, in a timely manner, and to the highest professional standards used in well-managed operations performing services similar to the aforesaid services; and in accordance with the Performance Standards and Service Levels set forth or referred to in this Agreement and the Service Level Agreement.
   4. The Service Provider will promptly notify SARS upon becoming aware of any Incident, Event or circumstances that may reasonably be expected to jeopardise the performance or timely performance of the Services and/or any aspect thereof and Support Services.
   5. The Service Provider will for the duration of this Agreement-
      1. use all Commercially Reasonable Efforts to improve the quality and efficiency of the provision of the Services, and
      2. continue to perform its obligations under this Agreement, including the performance of the Services, without any interruptions, including during any dispute between the Parties.
      3. timeously notify SARS of any Enhancement(s), Bug-Fix(es)es and/or Break-Fix(es), Workarounds required and the scheduled installation thereof.
10. service request
    1. Where an Incident has been logged with SARS or where SARS wishes to order Support Services or Deliverable(s), it will issue a Service Request to the Service Provider. The form of a Service Request Template is set out in **Annexure B** (Form of a Service Request).
    2. The Service Request will-
       1. identify the Deliverable required;
       2. identify the Support Service required and if same will be performed remotely or onsite;
       3. identify the Location where, and the Support Service is to be performed;
       4. identify Break-Fix(es) or Bug-Fix(es) to be repaired and components of the Hardware to be fixed or repaired;
       5. identify the Part to be installed;
       6. set forth (or have attached thereto) a template identifying the basic specifications for the works and/or services; and
       7. establish the date by which the Service Provider is to deliver the Deliverable(s) (including any related options, works and/or services) and the date by which the Service Provider is to install and test the Deliverable(s).
    3. If SARS issues a Service Request, the resulting Service Request that is agreed by the Parties shall be deemed to be a Service Request under this Agreement. The Service Provider shall deliver the Deliverable(s) at the price set forth in the Service Request.
11. **SERVICE LEVELS AND ESCALATION PROCEDURE**
    1. The purpose of the Service Levels is to provide a framework against which the quality of the Services and operation and functionality of Hardware will be measured.
    2. Escalation of matters related to this Agreement will be in accordance with the escalation procedure set out in the Service Levels.
12. **Service Compatibility**
    1. The Service Provider shall in providing the Services as envisaged in this Agreement, cooperate with all Third-Party Service Providers of SARS to coordinate its provision of the Services with the services and systems of such Third-Party Service Providers. Subject to reasonable confidentiality requirements, such cooperation will include providing:
       1. applicable written information concerning any or all of the Service Provider resources, data and technology strategies used in providing the Services;
       2. reasonable assistance and support services to such Third-Party Service Providers; and
       3. access to systems and architecture configurations of the Service Provider to the extent reasonably required for the activities of such Third-Party Service Providers. SARS will procure that relevant Third-Party Service Providers to SARS provide the Service Provider with their reasonable cooperation, where reasonably requested by the Service Provider.
    2. In order to prevent disruption to the Services, the Service Provider will immediately notify SARS if an act or omission of a Third-Party Service Provider may cause a problem (including a Problem) or delay in providing the Services and will work with SARS to prevent or circumvent such problem or delay.
13. **SARS’s Rights and Obligations** 
    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.
    2. SARS shall:
       1. prior to the delivery date, ensure that the Premises including the installation area has been prepared for installation purposes;
       2. assign a SARS Personnel to work with the Service Provider during the installation day and time and to provide the Service Provider with the necessary information required to install the Hardware; and
       3. provide the Service Provider with the necessary power supply required for installation purposes.
14. **acceptance testing and delivery** 
    1. **Pre-delivery Testing**
       1. Prior to presenting Hardware to SARS for Acceptance Testing, the Service Provider will carry out Pre-delivery Testing in order to ensure that the Hardware functions in accordance with the relevant specifications and the Documentation for same.
    2. **Delivery Testing:**
       1. Following delivery of Hardware to SARS, SARS shall in its discretion, conduct Acceptance Testing thereof (collectively referred to as “**Tested Deliverable(s)**”).
       2. During Acceptance Testing, the Service Provider shall (if required by SARS), assist SARS, to the extent necessary and reasonable, in conducting the Acceptance Testing and respond to any queries relating to the Hardware , within a reasonable time. Without limiting the aforegoing, the Service Provider shall be available to liaise with SARS regarding any queries arising with regard to the Tested Deliverables.
       3. Should SARS not accept the Tested Deliverables, SARS shall provide the Service Provider with written notice of its non-acceptance of such Tested Deliverables.
       4. Once SARS is satisfied with the outcome of Acceptance Testing, SARS will furnish the Service Provider with a formal acceptance of the functionality of the Tested Deliverable.
       5. Notwithstanding Acceptance Testing any of the Deliverables which fails testing shall be replaced immediately.
15. **Health, safety and security procedures and guidelines**
    1. SARS has in terms of OHSA:
       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
       2. controls in place required to respond to any health safety risk which controls are regularly updated in line with the applicable provisions of the OHSA and where required, standards and guides as published by the aforesaid prescript and/or National Institute for Communicable Diseases (NICD).
    2. The Service Provider:
       1. is an employer in its own right with duties as prescribed in the OHSA and accordingly undertakes to comply with all the obligations of an employer as required in terms of the aforesaid OHSA;
       2. warrants and represents to SARS that its business complies in all respect with the OHSA provisions binding on the Service Provider and to this end, undertakes, in terms of section 37(2) of the OHSA read together with the Hazardous Biological Agents Regulations passed in term of the OHSA, to ensure that the Service Provider and the Service Provider's Staff comply in all respect, with the aforesaid OHSA and regulations and accept sole responsibility for all health and safety matters relating to the provision of the Services, or in connection with or arising out of such Services, for the Term of this Agreement, including with regard to the Service Provider Personnel and ensuring that neither SARS's Personnel nor any Third Party service providers staff's health and safety is endangered in any way by the Service Provider's activities or conduct in providing the Services whilst at the Premises.
       3. undertakes 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.
    3. The Service Provider undertakes and warrants to SARS that:
       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;
       2. it shall at all times comply with the provisions of COIDA and the OHSA;
       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;
       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;
       5. 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;
       6. 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
       7. 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.
    4. The Service Provider hereby indemnifies and agrees to hold SARS harmless against any loss, damages, liability or expense suffered or incurred by SARS:
       1. as a result of any breach in terms of this clause 16.4; and
       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;
       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.
    5. 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.
16. **FEES invoicing and PAYMENT**
    1. In general, the Fees applicable to the Services are set out in the issued purchase order and detailed in **Annexure A**.
    2. The fees are payable annually in advance, within 30 (thirty) days of receipt of the Service Provider’s invoice.
    3. The Service Provider will (subject to the provisions of this Clause 17), 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.
    4. Each invoice will consist of or have attached statement of the total amount due which will be itemised per Service.
    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.
    6. SARS may withhold any amounts that it disputes in good faith, provided that such dispute shall either be discussed in the meeting as provided for in Clause 19 and/or automatically be referred to dispute resolution in terms of Clause 41.
    7. If an invoice is identified as incorrect, then the Service Provider shall, at SARS’s election: (i) issue a corrected invoice; or (ii) issue a credit note to SARS and forthwith refund to SARS the overpayment (if any); or (iii) make a correction on the invoice for the month following the month in which the incorrect invoice was issued. If (ii) or (iii) applies the Service Provider shall calculate the credit note or invoice correction (as the case may be) on the basis that interest calculated at the Repo Rate shall accrue in favour of SARS for the number of days from the date of SARS’s payment to the date of the refund (in the case of (ii) and the date of the payment of the corrected invoice (in the case of (iii)) (assuming a 365 day year). SARS shall not be responsible for paying interest on undercharged amounts, if any.
    8. 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.
    9. Within 10 (ten) days after SARS’s request, the Service Provider will provide SARS with any other documentation or information reasonably required in order to verify the accuracy of the Fees on an invoice and its compliance with the requirements of the Agreement.
17. **Tax, Duties and Currency issues**
    1. Unless otherwise specified, all Fees and expenses are recorded inclusive 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.
    2. All Fees set out in this Agreement are inclusive of any export and import tax.
    3. The Fees are stated in South African Rand and will be quoted, invoiced and paid in South African Rand.
18. **Disputed Fees and Invoicing Errors**
    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:
       1. SARS will promptly notify the Service Provider that it is disputing such Fees; and
       2. the Parties will promptly address such dispute in accordance with Clause 41 of the Agreement.
    2. 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.
    3. For the avoidance of doubt, the Parties record and agree that the Service Provider shall not be entitled to suspend or interrupt the provision of the Services until the dispute is resolved by the Parties and such resolution is recorded in writing.
19. **Intellectual Property Rights**
    1. **SARS Intellectual Property**:
       1. SARS retains all right, title and interest in and to 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.
20. **Confidential UNDERTAKING**
    1. 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.
    2. 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.
    3. 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.
    4. 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.
    5. The Service Provider will protect the interests of SARS in its Confidential Information by:
       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;
       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;
       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;
       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;
       5. notifying SARS promptly of any unauthorised or unlawful use, disclosure and/or Processing (as defined by POPIA) of the Confidential Information of which the Service Provider becomes aware;
       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;
       7. providing reasonable evidence of the Service Provider’s compliance with its obligations under this Clause 21 to SARS on reasonable notice and request; and
       8. ensuring that all Confidential Information of SARS which has or will come into the possession of the Service Provider and its personnel, will at all times remain the sole and absolute property of SARS.
    6. 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 whatsoever nature, suffered or sustained by SARS pursuant to a breach by the Service Provider of provisions of this Clause 21.
    7. 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.
    8. The provisions of this Clause 21 shall survive the termination or cancellation of this Agreement for any reason whatsoever.
21. **processing of personal information**
    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 Privacy Legislation binding on SARS and/or Service Provider.
    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.
    3. 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.
    4. 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 and/or breach of any of the provisions of this Clause 22.
22. **PROTECTION OF PERSONAL INFORMATION**
    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.
    2. Each Party shall only provide, collect and/or Process the Personal Information:
       1. in compliance with POPIA and where binding on a Party;
       2. as is necessary for the purposes of this Agreement and the Services;
       3. for maintaining its internal administrative processes, including quality, risk, client or vendor management processes;
       4. for internal business-related purposes; and
       5. in accordance with the lawful Purpose and reasonable instructions of SARS as the Responsible Party.
    3. Both Parties shall:
       1. in dealing with the Personal Information either as the Operator and/or Responsible Party 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 Applicable Laws; and/or
       2. where applicable, comply with the specific obligations imposed on them in terms of POPIA and/or where applicable, 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;
       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 Privacy 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.
    4. No Personal Information of the Data Subject shall be collected, Processed and/or shared with any other third party without obtaining written consent of the Responsible Party supported by the Data Processing Agreement signed with the Responsible Party.
    5. The Operator shall not be entitled to Process the Personal Information with any other third party except for the Service Provider Personnel (subject to signing of the Data Processing Agreement by Data Subject or 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.
    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.
    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.
    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.
    9. The Service Provider shall not Process the Personal Information to:
       1. an outsourced information technology service provider; or
       2. another country, including the use of cloud-based solutions (unless those solution are approved by SARS and compliant with POPIA); or
       3. an affiliate;

without prior written consent of SARS and the Data Subject or existing Data Processing Agreement.

* 1. Where consent has been granted in terms of Clause 23.9 above, the Service Provider undertakes in relation to Clauses 23.7 and 23.8 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 23.3 and the provision of the POPIA and/or Data Legislation binding on it (where applicable).
  2. The Service Provider as the Operator shall be held accountable for Personal Information further Processed by their respective Staff, for the purposes set out in the Agreement.
  3. SARS as the Responsible Party warrants that it has obtained written consent from all applicable 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.

1. **Audits**
   1. **Audit Rights**:
      1. The Service Provider will maintain a complete audit trail of financial and non-financial transactions resulting from the Agreement. The Service Provider will provide to SARS, its internal or external auditors, inspectors and regulators access at all reasonable times to such facility or part of a facility at which either the Service Provider is providing the Deliverables and/or Services, to Service Provider Personnel, and to equipment, Hardware, personnel, data, records and documentation relating to the Deliverables and/or Services for the purpose of performing audits and inspections of the Service Provider to: (i) verify the accuracy of the Service Provider’s Fees and invoices; (ii) verify the accuracy of payments by or credits from the Service Provider; (iii) verify the accuracy of price changes to the extent such changes are determined by reference to Service Provider’s costs or changes thereto; (v) examine the Service Provider’s performance of the Services or Deliverables, including verifying compliance with the industry standards; (vi) verify compliance with the terms of the Agreement; (vii) satisfy the requirements of any Applicable Law;
      2. SARS reserves the right to appoint a third party to perform an audit under this Clause 24.
      3. The Service Provider will provide to the auditors, inspectors and regulators such assistance as they may require. In the case of audits, SARS’s audits will not unreasonably interfere with the Service Provider’s normal course of business and will comply with the Service Provider’s reasonable confidentiality requirements.
      4. Unless SARS has a good faith suspicion of fraud, SARS will provide the Service Provider with reasonable notice for audits.
      5. All costs incurred by SARS in performing audits of the Service Provider will be borne by SARS unless any such audit reveals a material inadequacy or material deficiency in respect of the scope of the audit exercise conducted, in which event the cost of such audit will be borne by Service Provider.
      6. 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.
   2. **Audit Follow-Up**:
      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.
      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.
      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.
      4. Promptly after the issuance of any audit report or findings issued under Clause 24.2.4 the Parties will meet to review such report or findings and to agree on how to respond to the suggested changes.
2. **Breach**
   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.
   2. For the purposes of Clause 25.1 a breach will be deemed to be a material breach if ‑
      1. it is capable of being remedied, but is not so remedied within the Notice Period; or
      2. it is incapable of being remedied within the Notice Period; or
      3. if payment in money will compensate for such breach, but payment is not made within the Notice Period; or
      4. the Service Provider commits numerous, repeated breaches even if cured; or
      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.
3. **Indemnities**
   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 38 including the provisions of this Agreement by the Service Provider or Service Provider Personnel.
   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:
   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.
   4. any claim, action or demand by a Third Party that the use by SARS of the Hardware and its related Documentation supplied by the Service Provider infringes the Intellectual Property rights of that Third Party.
4. **Limitation of Liability**
   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.
   2. Subject to Clauses 27.3 and 27.4, 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.
   3. Notwithstanding anything to the contrary set forth in Clause 27.2 above or the Agreement in general, the Parties agree that they will not be liable to the other for -
      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
      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
      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.
   4. Notwithstanding anything to the contrary set forth in this Clause 27 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 20; 21; 22; and 23 above.
5. **TERMINATION**
   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.
   2. If the Service Provider fails to adhere to any legal requirement or breaches the provisions of Clause 28.1 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.
   3. A Party's remedies in terms of this Clause 28 are without prejudice to any other remedies to which such Party may be entitled in law.
6. **Termination for Cause**
   1. SARS may (subject to Clause 25.1), 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:
      1. is placed under voluntary or compulsory liquidation (whether provisional or final) or business rescue proceedings are commenced against the Service Provider; and/or
      2. commits an Acts of Insolvency.
   2. Notwithstanding Clause 29.1 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.
7. **Termination upon Sale, Acquisition, Merger or Change of Control**
   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.
8. **Effect of TERMINATION**
   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.
9. **termination/expiration assistance**
   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.
10. **Force Majeure**
    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 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.
    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.
    3. Should such force majeure circumstance 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.
11. **Records Retention**
    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.
12. **Consents and Approvals**
    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.
    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.
13. **Applicable Law and Jurisdiction**
    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.
    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.
14. **Legal and Regulatory Compliance**
    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.
    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, 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.
15. **Warranties**
    1. **Service Provider Personnel**
       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.
    2. **Service Provider authority and Licensor undertaking**
       1. The Service Provider warrants (for the duration of the Term of this Agreement), that: (i) it is authorised to procure Hardware from Service Provider on SARS’s behalf and in SARS’s name as the reseller; (ii) it has all the necessary licences, certificates, authorisations and consents required under the laws of the Republic of South Africa or under any other applicable jurisdiction to provide the Services; (iii) the Licensor is authorised to support and maintain the Hardware; (iv) the Licensor 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 Hardware; (v) it will comply with all legal requirements and with the terms and conditions of all licences, certificates, authorisations and consents required for the provision of the Services; and (iv) will ensure that upon the date of delivery of the Deliverables or use of the Hardware thereof by SARS at the Premises in which SARS takes receipt thereof will not breach any law or regulation of those territories or of the territory from which the Hardware Licence was sourced.
    3. **Product Specific Warranties**
       1. The Service Provider warrants that the Hardware is designed to operate in conformance with the Functional Specifications as set out in the Documentation and that it will at all times: (i) ensure that the Hardware and the Documentation will be free as reasonably possible from deficiencies and will comply in all respects with the technical and functional specifications therefore as agreed by the Parties; (ii) remedy any non-conformity of the Hardware to the Functional Specifications (iii) take all reasonable and necessary steps to ensure that the Services and the Hardware (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. 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 Hardware 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 Hardware will comply with the Gregorian calendar.
    4. **Service Delivery**:
       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) is accurate, complete and written in a manner easily understood by SARS; and (b) is promptly updated from time to time to reflect any changes.
    5. **Security Clearance**:
       1. Without limiting the generality of the aforegoing, 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.
    6. **Regulatory requirements**:
       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. 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.
    7. **General Warranties**:
       1. The Service Provider hereby represents and warrants to SARS that-
          1. this Agreement has been duly authorised and executed by it and constitutes a legal, valid and binding set of obligations on it;
          2. it is acting as a principal and not as an agent of an undisclosed principal;
          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;
          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;
          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;
          6. it has the necessary resources, skills and experience to render the Service and/or deliver the Deliverables to SARS; and
          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.
    8. The provisions of this Clause 38 shall survive the termination of this Agreement.
16. **PUBLICITY**
    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.
17. **CO-OPERATION**
    1. The Parties undertake at all times to co-operate with each other in good faith in order to carry out this Agreement.
18. **DISPUTES**
    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.
    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.
    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.
    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 41.4 may be made an order of court at the instance of any Party to the arbitration.
    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.
    6. Any arbitration in terms of this Clause 41 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.
    7. The provisions of this Clause 41 will continue to be binding on the Parties notwithstanding any termination or cancellation of the Agreement.
19. **Addresses**
    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.
    2. SARS’s physical address for service of notices and legal processes-

Chief Officer: Legal Counsel

299 Bronkhorst Street

Block A, Le Hae La SARS

Nieuw Muckleneuk

Pretoria

* 1. The Service Provider‘s physical address for service of notices and legal processes shall be as follows:

[**Drafting Note: To be updated post award**]

* 1. 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*.
  2. Any Party may by written notice to the other Party, change its chosen address to another address, provided that-
  3. the change shall become effective on the tenth (10th) Business Day after the receipt or deemed receipt of the notice by the addressee; and
  4. 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.
  5. 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.
  6. 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.

1. **Tax Compliance** 
   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.
   2. Notwithstanding Clause 43.1 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.
2. **Ethical Business Practices**
   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).
   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.
   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.
   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.
3. **Conflict of Interest**
   1. The Service Provider undertakes to immediately notify SARS in the event that a conflict of interest is identified, pursuant to a Specific Services Agreement being entered into between the Service Provider and SARS.
   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.
4. **new laws and inability to perform**
   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.
5. **Relationship between the Parties**
   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.
   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.
6. **General**
   1. **Whole Agreement and Amendment**
      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.
   2. **No Assignment Without Consent** 
      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.
   3. **Severability**
      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.
   4. **Advertising and Marketing**
      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.
   5. **Waiver**
      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.
7. **Covenant of Good Faith**
   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.
8. **Costs**
   1. Each Party shall bear and pay its own costs of or incidental to the drafting, preparation and execution of this Agreement.
9. **Authorised Signatories**
   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.
   2. This Agreement is signed by the Parties on the dates and at the places indicated below.
   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.
   4. The persons signing this Agreement in a representative capacity warrant their authority to do so.

**SIGNATURE OF THE PARTIES IN THE NEXT PAGE**

**SIGNED at\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_2021 FOR AND ON BEHALF OF SARS**

**SOUTH AFRICAN REVENUE SERVICE**

|  |
| --- |
| Signature |
| Name of Signatory |
| Designation of Signatory |

**SIGNED at\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_2021 FOR AND ON BEHALF OF SARS**

**SOUTH AFRICAN REVENUE SERVICE**

|  |
| --- |
| Signature |
| Name of Signatory |
| Designation of Signatory |

**SIGNED at\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_2021 FOR AND ON BEHALF OF THE SERVICE PROVIDER**

**SERVICE PROVIDER**

|  |
| --- |
| Signature |
| Name of Signatory |
| Designation of Signatory |

**annexure A**

**Service levels**

1. **INTRODUCTION**
   1. The purpose of the Service Levels is to provide a framework against which the quality of the Services and operation and functionality of Hardware will be measured.
   2. The Service Provider will with effect from the Effective Date, render the necessary Support on the Hardware in terms of this Agreement and the Service Levels.
   3. The Service Provider will deliver the Support required on the Hardware in accordance with the Service Levels which refers to the hours during which SARS will be provided with the Service including the necessary response and turnaround times for such Service.
2. **Definitions and Interpretation**
   1. **“First Line Support”** means basic customer response;
   2. **“Second Line Support”** means Problem determination;
   3. **“Third Line Support”** means the creation of a solution to an Incident or Problem that has not been encountered previously;
   4. **“Support Hours”** means 7h00 to 17h00, during Business Hours;.
3. **SUPPORT OBLIGATIONS**
   1. **Support Lines**:
      1. **First Line Support**:
         1. SARS through SARS Third Party Service Provider shall be responsible to answer support tickets logged by SARS via Remedy regarding any Problems SARS may have with the Hardware.
         2. SARS Third Party Service Provider shall then do a basic search for the Problem in a shared knowledge base to see if there is a known solution. If there is a known solution available, SARS Third party Service Provider will respond to SARS inquiry directly, via Remedy. If there is no known solution available, the Problem and SARS information must be forwarded promptly to a Second Line Support of the Service Provider for processing via Remedy.
      2. **Second Line Support**:
         1. The Second Line Support will be provided by the Service Provider. The Service Provider undertakes to attend to and/or resolve any questions or defects concerning the Hardware during Support Hours as logged by SARS via Remedy, in terms of this Service Level Agreement and within the Service Levels.
         2. The Service Provider shall work with SARS and/or SARS Third Party Service Provider to identify and verify the causes of suspected errors or Problems in the Hardware and to document the errors and Problems thoroughly. If a solution is identified during the discovery process, the Service Provider shall respond to SARS’s inquiry directly via Remedy. If no solution is identified the Problem and SARS information must be forwarded promptly to a Third Line Support for processing.
      3. **Third Line Support**:
         1. The Third Line Support will be provided by the Service Provider. The Service Provider undertakes to attend to and/or resolve any questions or defects concerning the Hardware during Support Hours as logged by the Service Provider’s Second Line Support, in terms of this Service Level Agreement and within the Service Levels.
         2. The Service Provider’s Third Line Support shall work with SARS and/or SARS Third Party Service Provider to identify and verify the causes of suspected errors or Problems in the Hardware and to document the errors and Problems thoroughly. If a solution is identified during the discovery process, the Service Provider shall respond to SARS’s inquiry directly via Remedy. If no solution is identified the Problem and SARS information must be forwarded promptly to a Third Line Support for processing.
4. **SERVICE REQUESTS, CALL LOGGING PROCEDURE AND PROCESS**
   1. All Service Request and/or query including technical support will be logged by SARS via Remedy to the Service Provider’s Helpdesk.
   2. The following procedures must be followed by SARS when logging a call for Service Request. Adherence to these procedures will ensure the best possible response and timeous response.
   3. SARS shall contact the Service Provider’s Helpdesk support by means of any of the following methods:
      1. By telephone on:
      2. By email to:
      3. The Service Provider will require the following standard information from SARS in order to expedite the call:
      4. Organisation name:
      5. contact name & e mail:
      6. severity
      7. brief description of support request
5. AVAILABILITY
   1. The Service Provider will ensure that the service is available 24x7/365 days.
6. SERVICE PERFORMANCE
   1. All Problems logged with the Service Provider’s Service Desk will first be evaluated according to the Severity Levels for each specific Problem as set out in this point 4. The Severity Level may also be reassigned by mutual agreement with the support personnel and will be communicated to the relevant role players.
   2. The technical support will be notified immediately following initial investigation of a severity 1 problem.
   3. The Service Provider will keep SARS informed of the progress of the Problem resolution and endeavour to adhere to the following times with regard to response:

|  |  |
| --- | --- |
| SEVERITY LEVEL | |
|  | Response target | Time to Fix |
| Severity Level 1/ Critical | 4 hrs | 5 business days |
| Severity Level 2/ Major | 24 hrs | Next Schedules Release |
| Severity Level 3/ Moderate | 24hrs | Next Schedules Release |
| Severity Level 3/ Minor | 24 hrs | Next Schedules Release |

1. RESPONSE
   1. The Service Provider undertakes to:
      1. **qualify** a call for assistance will within **30 (thirty) minutes** of receipt thereof from SARS.
      2. attend to calls during Support Hours on Business Days. Any Service Request outside Support Hours will be attended to on next Business Day unless an afterhours fee has been approved by SARS following governance processes and procedures. The Service Provider acknowledges that no payment in respect of any Service outside Support Hours will not be paid for; and
      3. resolve all Incidents raised by SARS to the satisfaction of SARS and within the response target set out in the table above.
   2. In order to ensure effective performance of the Service by the Service Provider, SARS will provide the Service Provider’s technical Staff with reasonable access to the Premises and the Hardware during Business Hours and/or hours agreed upon by the Parties in writing.
   3. All Service Requests and/or queries including technical support will be logged by SARS within Support Hours.
   4. Only logged Incidents or Problem will constitute a call. Incidents or Problem communicated directly to engineer, or other service personnel will not be recognized as an official call until logged with the Service Desk.
   5. The Service Provider will ensure that the Service is available during Business Hours and during Support Hours. All Faults logged outside Support Hours will be supported telephonically.
   6. All Incidents logged with the Service Provider’s service desk will first be evaluated in discussion with SARS to determine if such Incident requires remote or onsite support.
   7. The Service Provider will ensure that a qualified person will be available and contactable via telephone and/or email during Support Hours and on Business Days, to provide corrective support and urgent assistance to SARS including telephonic support outside Support Hours.
   8. The Service Provider will keep SARS informed of the progress of the Incident or Problem resolution and endeavour to adhere to resolution thereof during Support Hours.
   9. The Service performance will be measured by SARS using the Remedy.
   10. The Parties will hold every six (6) months a service review meeting to discuss the overall Service performance.
   11. The Service Provider will make monthly performance reports available to SARS on request.
   12. A Service review meeting will be held on a six (6) month basis between SARS and the Service Provider, to cover the following:
       1. SLA performance;
       2. Incidents;
       3. Enhancement Requests;
       4. Training requirements;
       5. Service requirements.
   13. **Contact Details:**
       1. The Service Provider Help Desk Details*:*

|  |  |  |
| --- | --- | --- |
| **Helpdesk details** | **Primary Number** | **Alternative Number** |
| Helpdesk Number |  |  |
| Helpdesk e-mail address |  |  |

* 1. **Escalation of Service Level Failures**
     1. The Service Provider

|  |  |  |
| --- | --- | --- |
| **Escalation** | **Contact Name** | **Contact Number** |
| Helpdesk |  |  |
| Hardware Support |  |  |
| Service Delivery Manager |  |  |
| Executive Account Manager |  |  |

* + 1. SARS

|  |  |  |
| --- | --- | --- |
| **Escalation** | **Contact Name** | **Contact Number** |
| Business Owner |  |  |
| SARS Senior Official |  |  |

1. SERVICE MEASUREMENTS
   1. The Service performance will be measured by SARS using the Service Provider monthly service reports that will be made available to SARS on request.
   2. The Parties will hold quarterly service review meeting to discuss the overall Service performance.
2. SERVICE LEVEL MANAGEMENT

|  |  |  |  |
| --- | --- | --- | --- |
| Meeting | Frequency | SARS  Representative | The Supplier  Representative |
| Service Relationship  Review | Annually | Supplier Management | Service Delivery Manager |
| Service Review | Quarterly | Business Relation: Enterprise Service & Support Products and Services | Service Delivery Manager |
| Ad hoc | When need basis | Business Relation: Enterprise Service & Support Products and Services | Account manager |

**annexure b**

Form of a SERVICE REQUEST

1. INTRODUCTION
   1. This Service Request Number. \_\_\_\_\_\_\_\_\_\_\_\_\_\_ dated as of [\_\_\_\_\_\_\_\_\_\_\_\_] (the ‘**Service Request Commencement Date’**) is being executed pursuant to the Hardware Supply and Support Services Agreement between South African Revenue Service ("**SARS**”) and [\_\_\_\_\_\_\_\_\_\_\_\_] (Proprietary) Limited, (Registration No. [\_\_\_\_\_\_\_\_\_\_\_\_]) ("the **Service Provider**”) dated as of [\_\_\_\_\_\_\_\_\_\_\_\_], the terms of which are incorporated herein by reference (the “**Service Request**”).
   2. Capitalised terms used but not defined herein shall have the meanings given to them under to the aforesaid Agreement.
2. DESCRIPTION OF THE deliverable(s)

**[Note to the Parties: Please insert a description of the Deliverable(s) under this Hardware Supply and Support Services Agreement. Identify Hardware to be provided by the Service Provider]**

1. applicable TIMELINEs

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

* 1. The Service Provider shall procure the delivery of the Hardware within [Drafting Note: to be inserted] of Service Request and shall inform SARS of any other installation requirements.

| **Table -1** | | |
| --- | --- | --- |
| **Name of Deliverable(s)** | **Description** | **Timeline** |
|  |  |  |
|  |  |  |
|  |  |  |

1. fees

The Service Provider ’s Fees for Deliverable(s) of this Service Request under the Hardware Supply and Support Services Agreement shall be the amount specified in the table below:

|  |  |
| --- | --- |
| **Table-2** | |
| **Name of Deliverable(s)/** | **Price** |
|  |  |
|  |  |
| **Total:** |  |

**[Signature blocks appear on the next page.]**

The Parties’ duly authorised representatives hereby confirm their acceptance of this Service Request.

|  |  |
| --- | --- |
| **[Bidder Name]**  By:  Printed:  Title:  Date:  **[Bidder Name]**  By:  Printed:  Title:  Date: | **South African Revenue Service**  By:  Printed:  Title:  Date:  **South African Revenue Service**  By:  Printed:  Title:  Date: |

**SCHEDULE 1**

**FEES**

**SCHEDULE 2**

**hardware type**