

**MASTER SERVICES AGREEMENT IN RESPECT OF THE APPOINTMENT OF A
PANEL OF SERVICE PROVIDERS FOR EVENTS MANAGEMENT SERVICES**

Between

The **SOUTH AFRICAN REVENUE SERVICE**, an organ of state established in terms of
Section 2 of the South African Revenue Service Act, 1997 (Act No. 34 of 1997).

(hereinafter referred to as “SARS”)

and

(TO BE ADDED)

A legal entity incorporated as such in terms of the laws of South Africa, of the
description and details indicated in **Annexure A** hereto (herein represented by its
Authorised Signatory who warrants that s/he is duly authorised to do so)

(hereinafter referred to as “Service Provider”)

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Annexures:

Annexure A – Service Provider's addresses and contact details

Annexure B – Personal Information Processing Addendum

1. INTRODUCTION

- 1.1 SARS issued a tender for the appointment of a panel of service providers for events management services (“the Panel”) under **RFP 16/2023** (“RFP”) as more fully described in the RFP.
- 1.2 The Service Provider submitted a proposal in response to the RFP (“the Proposal”).
- 1.3 Pursuant to the RFP and the Proposal, SARS has, subject to conditions indicated in the RFP, placed the Service Provider on the Panel, to provide the Services on an *ad hoc* basis, as and when required by SARS.
- 1.4 This Agreement contains the terms and conditions of engagement by SARS of the Service Provider.

2. INTERPRETATION

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

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

2.2.1 **“Agreement”** means this Master Services Agreement, the RFP and all annexures hereto. Also included are all amendments, variations, and/or substitutions to the Agreement, which have been reduced to writing and signed by both Parties;

2.2.2 **“Applicable Law”** means any of the following to the extent applicable to the Service Provider or the Service Provider’s Personnel, and where applicable, to SARS or the Services:

2.2.2.1 any statute, regulation, by-law, ordinance or subordinate legislation;

- 2.2.2.2 the common law;
- 2.2.2.3 any binding court order, judgment or decree;
- 2.2.2.4 any applicable industry code of conduct, policy or standard enforceable by law, including, without limitation, applicable international standards for quality management published by the International Organization for Standardization and/or the South African Bureau of Standards; or
- 2.2.2.5 any applicable direction, standards, policy or order that is given by a Regulatory Authority;
- 2.2.3 **“Authorised Signatories”** means signatories authorised by SARS and the Service Provider respectively to sign the Agreement and any amendments and/or addenda hereto;
- 2.2.4 **“Business Day”** means any day other than a Saturday, Sunday or public holiday in the Republic of South Africa;
- 2.2.5 **“Commercially Reasonable Efforts”** means taking such steps and performing in such a manner as a well-managed entity would where such entity was acting in a prudent and reasonable manner to achieve the particular result for its own benefit: Provided always that such steps are within reasonable control of the Party;
- 2.2.6 **“Confidential Information”** means Personal Information defined as such in terms of POPIA; SARS Information Technology Infrastructure; any proprietary or confidential information or data of any nature, tangible or intangible, oral or in writing, in any form or on any medium, whether received by direct communication or observation by the Receiving Party. It includes SARS’ Confidential Information and Taxpayer Information as defined in Chapter 6 of the Tax Administration Act, 2011 (Act No. 28 of

2011), as well as any information required to be kept confidential in terms of any other Applicable Law.

Information must be regarded as confidential if by its nature, content, or circumstances of disclosure of the information is, or ought reasonably to have been identified by a receiving party as such by reason of such information not being generally known to, or readily ascertainable by third parties generally. Such information includes-

- a) information regarding personnel, independent contractors and suppliers of the Disclosing Party, processes, procedures, projections, manuals, forecasts and analyses, security or intellectual property owned by or licensed to the Disclosing Party;
- b) information relating to the knowledge, know-how, expertise, trade secrets and activities of the Disclosing Party;
- c) information relating to the Services and any aspect thereof; and
- d) any information which a Party (without creating a presumption that only so designated information is confidential), acting reasonably, may designate in writing, at the time of disclosure to the Receiving Party, as being confidential information;

2.2.7 “**Deliverable**” means any output, outcome, strategy, results, creative conceptualisation, design produced and/or other feedback contemplated in this Agreement or provided by the Service Provider as a product of the Services;

2.2.8 “**Designated Representative**” means the SARS employee designated in terms of this Agreement, or his/her appointed delegate, as the person who will interface with the Service

Provider on all matters relating to the general administration of this Agreement, who will manage the overall performance of the Service Provider over the contract term, and to whom all SARS directed communication regarding this Agreement must be addressed;

2.2.9 “**Effective Date**” means **(TO BE ADDED)**, notwithstanding the date of signature of this Agreement;

2.2.10 “**Force Majeure Event**” means any circumstance arising or action taken beyond the reasonable control of a Party or the Parties hereto, such as but not limited to war, rebellion, riot, civil commotion, acts of terrorism, travel advisory warnings issued by the government of South Africa, lockout, fire, flood, storm or other inclement weather conditions, operation of law, Applicable Law, epidemic, pandemic or any other circumstance preventing the Parties or any of them from the performance of any obligation herein or in an RFX;

2.2.11 “**Intellectual Property**” means any rights associated with works of authorship, including, works protected under the Copyright Act, 1978 (Act No. 98 of 1978), video recordings, audio recordings, photographs, models, designs, samples, substances, trade secrets, formulae, know-how, show-how, moral rights, and mask works; methodologies, technologies, algorithms, techniques, methods, circuit layouts, plans, reports, data, 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, slogans, corporate, business and trade names, domain names, trade dress, brand names and other indicia of origin, regardless of whether Intellectual Property Rights actually inhere in any such items, and any other tangible or intangible items in which Intellectual Property Rights may inhere, as may exist anywhere in the world and any applications for registration of such intellectual property, and includes all

Intellectual Property Rights in any of the foregoing;

2.2.12 **“Intellectual Property Rights”** means all rights of whatever nature and however described in respect of Intellectual Property, including:

2.2.12.1 all patents and other patent rights, including divisional and continuation patents, utility models;

2.2.12.2 rights in and to inventions, whether patentable or not;

2.2.12.3 rights in trademarks, service marks, logos, slogans, corporate, business and trade names, trade dress, brand names and other indicia of origin;

2.2.12.4 rights in designs, topography rights, rights in circuit layouts and mask-works;

2.2.12.5 copyright, including all copyright in and to computer programs;

2.2.12.6 rights in internet domain names, reservations for internet domain names, uniform resource locators and corresponding internet sites;

2.2.12.7 rights in databases and data collections; and

2.2.12.8 know-how, show-how and trade secrets, in each case whether or not registered and including applications for the registration, extension, renewal and re-issuance, continuations in part or divisions of, any of these and the right to apply for any of the foregoing, all claims for past infringements, and all rights or forms of protection of a similar nature or having equivalent or similar effect to any of these which may subsist anywhere in the world;

- 2.2.13 “**Key Personnel**” means members of staff of the Service Provider and/or its agents, including all interpreters, photographers and videographers, who have been presented to SARS in the Proposal and assigned by the Service Provider to provide the Services to SARS, and on the strength of whose expertise the Service Provider warrants the ability to provide the Services;
- 2.2.14 “**Losses**” means all losses, liabilities, costs, expenses, fines, penalties, damages and claims, and all related costs and expenses as determined in Law;
- 2.2.15 “**Panellist**” means service providers placed on the Panel;
- 2.2.16 “**Parties**” means the South African Revenue Service and the Service Provider and “Party” is a reference to any one of them;
- 2.2.17 “**Personal Information**” means Personal Information as defined in POPIA, relative to the Services and this Agreement; and for the purpose of this Agreement reference to Personal Information includes Special Personal Information as defined in POPIA;
- 2.2.18 “**Personal Information Processing Addendum**” means **Annexure B** hereto, which represents the written agreement between Responsible Party and Operator contemplated in section 21 of POPIA;
- 2.2.19 “**POPIA**” means the Protection of Personal Information Act, 2013 (Act No.4 of 2013);
- 2.2.20 “**Regulatory Authority**” means any organ of state, government agency or institution, International Body or Organisation which has–
- 2.2.20.1 jurisdiction over the Services or parts thereof; or
- 2.2.20.2 administrative or oversight responsibility pertaining to

any Applicable Law;

- 2.2.21 “**RFP**” means SARS’ invitation to service providers, incorporating all annexures thereto, to submit proposals for the appointment to a panel of service providers for events management services dated 29 September 2023, with reference number 16/2023, which is incorporated herein by reference;
- 2.2.22 “**RFX**” means a written document issued by SARS containing service specifications, inviting Panellists to submit written quotations for the provision of Services in response to *ad hoc* SARS needs, as contemplated in this Agreement;
- 2.2.23 “**SARS**” means the South African Revenue Service, an organ of state established in terms of Section 2 of the South African Revenue Service Act, 1997 (Act No. 34 of 1997), with its principal address at Lehae La SARS, 299 Bronkhorst Street, Nieuw Muckleneuk, Pretoria;
- 2.2.24 “**Service Provider’s Personnel**” means Key Personnel, as well as personnel assigned by the Service Provider to the provision of the Services and also includes, for the purpose of this Agreement, the Service Provider’s subcontractors and third-party suppliers who may be involved in the execution of this Agreement;
- 2.2.25 “**Services**” means *ad hoc* events management services as contemplated in the RFP; this Agreement, as well as in any RFX, including those services, functions or responsibilities not specifically mentioned herein but which are reasonably and necessarily required for the proper performance and provision of the Services;
- 2.2.26 “**Team Leader**” means a member of the Service Provider’s Personnel, designated as such by the Service Provider, as contemplated in the RFP, responsible for the oversight and overall management of this Agreement on behalf of the Service

Provider; who shall also act as central point of contact between SARS and the Service Provider;

2.2.27 “**Termination Date**” means **(TO BE ADDED)**; and

2.2.28 “**VAT**” means Value-Added Tax levied in terms of the Value-Added Tax Act, 1991 (Act No. 89 of 1991).

2.3 Any reference in this Agreement to-

2.3.1 “**Clause**” shall, subject to any contrary indication, be construed as a reference to a Clause hereof; and

2.3.2 “**Person**” refers to any person including juristic entities.

2.4 Unless inconsistent with the context or save where the contrary is expressly indicated-

2.4.1 if any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that it appears only in the Definitions Clause, effect shall be given to it as if it were a substantive provision of this Agreement;

2.4.2 in the event that the day for performance of any obligation to be performed in terms of this Agreement should fall on a day which is not a Business Day, the relevant day for performance shall be the subsequent Business Day;

2.4.3 any reference in this Agreement to an enactment is to that enactment as at the signature date and as amended or re-enacted from time to time;

2.4.4 any reference in this Agreement to this Agreement or any other agreement or document shall be construed as a reference to this Agreement or, as the case may be, such other agreement or document as same may have been, or may from time to time be, amended, varied, negotiated or supplemented; and

- 2.4.5 no provision of this Agreement constitutes a stipulation for the benefit of any Person who is not a party to this Agreement.
- 2.5 Unless inconsistent with the context, an expression which denotes-
- 2.5.1 any one gender includes the other gender; and
- 2.5.2 the singular includes the plural and *vice versa*.
- 2.6 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 may not expressly provide for this.
- 2.7 This Agreement is binding on the executors, administrators, trustees, permitted assigns or liquidators of the Parties as fully and effectually as if they had signed this Agreement in the first instance and reference to any Party is deemed to include such Party's executors, administrators, trustees, permitted assigns or liquidators, as the case may be.
- 2.8 Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.
- 2.9 The Parties hereby agree that this Agreement shall not be construed against a Party on the grounds that such Party drafted, or was responsible for drafting any or the majority of the provisions.

3. APPOINTMENT

- 3.1 The Service Provider has, subject to paragraph 2.3 of the RFP and **Clause 3.2** below, been appointed to the Panel, and has accepted such appointment.
- 3.2 SARS does not guarantee that the Service Provider will receive any work or be awarded any RFX during the term of this Agreement.

4. DURATION

4.1 This Agreement commences on the Effective Date and will endure for a period of thirty-six (36) months, until the Termination Date, unless otherwise terminated earlier in terms of this Agreement.

5. ENGAGEMENT MODEL

5.1 SARS will utilise the Panel on an *ad hoc*, as and when required basis.

5.2 In the event a need arises and SARS wishes to procure Services, it will issue an RFX to all Panellists, whereupon responses to the RFX will be evaluated and awarded to the successful Panellist. This Agreement does not entitle the Service Provider to any work contemplated in the RFP, nor does it entitle the Service Provider to the award of any RFX.

5.3 The provisions of this Agreement shall apply to each and every RFX. The Service Provider must, where awarded an RFX, provide the Services subject to the terms and conditions of this Agreement generally, and in particular subject to the specifications set forth in the relevant RFX.

5.4 The Service Provider may not execute any of the Services without a written notification of award of the underlying RFX, as well as receipt of a purchase order issued by SARS. For this purpose, it is expressly recorded that the Service Provider shall not have any right of recourse or claim against SARS, whether financial or otherwise, as a result of any services rendered or work done without a purchase order and letter awarding the RFX to the Service Provider.

5.5 SARS does not guarantee that any RFX issued will be awarded.

6. INVOICING AND PAYMENT

6.1 The Service Provider must invoice SARS for Services rendered according to the pricing awarded with the pertinent RFX and attendant purchase order, in order for any payment to be processed and made.

- 6.2 Apart from the fees or costs indicated in a pertinent purchase order, no other fee or costs will be covered by SARS.
- 6.3 As an Organ of State, SARS does not pay invoices upfront or make any advance payments.
- 6.4 In addition to stipulations in Applicable Law, the invoice must reflect –
- 6.4.1 purchase order number;
 - 6.4.2 a detailed description of the Services rendered under the RFX;
 - 6.4.3 the total costs or fees claimed in respect of the particular invoice;
 - 6.4.4 a document depicting sign-off by the Designated Representative on the pertinent Deliverables; and
 - 6.4.5 any such details as may be reasonably requested by SARS from time to time.
- 6.5 The Service Provider must verify that each invoice is complete and accurate before submission to SARS.
- 6.6 The Service Provider must submit all invoices to the Designated Representative and, where requested to do so by the Designated Representative, send copies to other SARS officials.
- 6.7 Subject to **Clause 7.1** below, SARS shall pay undisputed amounts in an invoice within thirty (30) days after SARS receives such invoice, if the invoice is accurate and meets the requirements of this Agreement.
- 6.8 SARS may request the Service Provider to furnish it with additional information as may be reasonably required by SARS to verify the accuracy of amounts indicated in an invoice. In such event, the Service Provider must furnish SARS with the requested information within two (2) Business Days of SARS' request.

6.9 SARS may set off from any monies due and owing to the Service Provider an amount equal to any amount overpaid, erroneously paid, or otherwise improperly or unduly paid to the Service Provider under this Agreement: Provided that SARS will in such instances furnish the Service Provider with reasonable written details substantiating the setoff.

6.10 A certificate of indebtedness signed by the Chief Financial Officer of SARS reflecting the amount due and payable under **Clause 6.9** above shall be sufficient and conclusive proof of the contents and correctness thereof for the purposes of with-holding, deduction or set off by SARS or for provisional sentence, summary judgment or any other proceedings against the Service Provider in a court of law and shall be valid as a liquid document for such purposes.

7. **DISPUTED FEES**

7.1 SARS may withhold payment of costs or fees that SARS disputes in good faith, including disputes in respect of an error in an invoice or an amount already paid. If the disputed fees have already been paid, SARS may withhold an equal amount from a later payment that may be due to the Service Provider, whether under the same or another RFX that the Service Provider may be awarded. If SARS withholds any such fees-

7.1.1 SARS shall promptly notify the Service Provider that it is disputing such fees, providing a reasonable explanation of the rationale therefore, and the Parties shall promptly first address such dispute in accordance with this **Clause 7** of this Agreement;

7.1.2 if the dispute relates to (or equals in the case of disputed amounts that have already been paid) only a percentage of the invoiced amount, then SARS shall pay the undisputed amount in accordance with **Clause 6.7** above; and

7.1.3 if an invoice contain errors, the Service Provider shall make the necessary attendances to the invoice as prescribed by the VAT Act and submit same to SARS for payment; or if the amount has been paid ensuring SARS is refunded the amount overpaid within

fourteen (14) days should the Service Provider have been overpaid by SARS.

7.2 Any dispute arising in terms of **Clause 7.1** above and which remains unresolved for five (5) Business Days after it has arisen, shall be referred by either Party to SARS' Chief Procurement Officer and the Team Leader for resolution.

7.3 The SARS Chief Procurement Officer or delegate and the Team Leader shall meet within five (5) Business Days of the referral of the dispute to resolve such dispute.

7.4 In the event that the dispute remains unresolved after seven (7) days of its referral to the persons mentioned in **Clause 7.3**, either Party shall be entitled to refer the dispute for resolution in accordance with the provisions of **Clause 21** below: Provided that **Clause 21.1** will not apply to disputes contemplated in this **Clause 7**.

8. SERVICE PROVIDER'S OBLIGATIONS

General Obligations

8.1 The Service Provider must-

8.1.1 when required, timeously respond to any RFX, failing which the Service Provider may be passed over for the specific RFX;

8.1.2 ensure timeous availability of Service Provider's Personnel where an RFX has been awarded to the Service Provider;

8.1.3 ensure that the Service Provider's Personnel are sufficiently qualified, competent and capable to perform Services when so required. In this regard however, SARS reserves the right to interview or otherwise test the capabilities of the Service Provider's Personnel to test their suitability for the execution of any RFX, and to request the Service Provider in writing, to find a suitable replacement where SARS is of the view that any

interviewed or otherwise tested member of the Service Provider's Personnel is not suitable. Where SARS requests a replacement, the Service Provider shall promptly comply with the request, and ensure a suitable replacement within the timeline indicated by SARS in the written request;

8.1.4 ensure that it adheres to written and reasonable requests or instructions by the Designated Representative: Provided such requests or instructions are lawful, and are within the framework of this Agreement;

8.1.5 ensure that the Team Leader is duly assigned as such, and assumes the attendant role and responsibilities for the duration of this Agreement;

8.1.6 ensure that the Service Provider's Personnel observe confidentiality and do not use any information obtained pursuant to this Agreement for any reason other than for reasons envisaged in this Agreement;

8.1.7 comply with this Agreement at all times;

8.1.8 not change or replace the Key Personnel without the prior written consent of SARS, and in this regard-

8.1.8.1 The Service Provider may make a written request to SARS to replace a member of its Key Personnel, where such member has become incapacitated and/or unable to perform his/her duties under the Agreement;

8.1.8.2 The Service Provider's request to SARS for the substitution of the Key Personnel shall include the reason for the request and a proposal to replace the Key Personnel with a person of equal or better qualification(s), skills and experience. Such proposal must include the *curriculum vitae* of the proposed substitute;

- 8.1.8.3 SARS may only approve a substitute which has similar or better qualifications, skills and experience; and
- 8.1.8.4 Should SARS in its discretion reasonably consider a member of the Key Personnel to be incompetent or unsatisfactory, the Service Provider will have to replace at its cost, that member with one having equal or better qualification(s), skills and experience and in line with the timeframes then stipulated by SARS; and
- 8.1.9 act impartially and ethically at all times, and where applicable, act in accordance with the code of ethics / conduct of its profession or business.

Service Provider's obligations when executing an RFX

- 8.2 The Service Provider shall, when executing an RFX-
 - 8.2.1 comply with the RFX and any conditions indicated therein;
 - 8.2.2 observe and adhere to all the Service Levels that may be prescribed/indicated in or pursuant to an RFX;
 - 8.2.3 monitor implementation of the Services against set targets, costs and timeframes;
 - 8.2.4 furnish the Designated Representative with reports contemplated in the RFP and where applicable, the RFX;
 - 8.2.5 take Commercially Reasonable Efforts to prevent, overcome and mitigate any adverse effects that might ensue, to the extent required to achieve the relevant outcome; and
 - 8.2.6 familiarise itself with pertinent Applicable Law and comply accordingly, and ensure that the Service Provider's Personnel also comply therewith.

Regulatory Compliance and Standard of Care

- 8.3 As contemplated in the RFP, SARS requires the Services to be rendered in a professional manner, consistent with a professional image. To this end, the Service Provider must-
- 8.3.1 use its best endeavours to execute the Services in a professional manner and according to best industry standards; and
 - 8.3.2 ensure that when executing an awarded RFX, it familiarises itself and complies with Applicable Law germane to the specific RFX. The Service Provider must therefore, when executing an RFX, on commencement date of such RFX –
 - a. prepare and submit to SARS a legal and regulatory compliance matrix depicting –
 - i. all Applicable Law and compliance measures taken or due to be taken by itself to ensure compliance or observance;
 - ii. subject to stipulations in the RFX, statutory compliance action required of SARS; and
 - iii. confirmation of the sufficiency of compliance with Applicable Law in so far as matters which are the subject of an RFX are concerned.
- 8.4 SARS may, in an RFX, call upon Panellists to submit a project plan, in which event the Service Provider must, where awarded the pertinent RFX, comply with the project plan approved by SARS pursuant to the underlying RFX.
- 8.5 The Service Provider must co-operate as may be requested by SARS, to enable SARS to, amongst other things, comply with an enquiry from a Regulatory Authority, which enquiry is in relation to the Services.

Deliverables

- 8.6 The Service Provider shall obtain SARS' sign-off for every Deliverable contemplated in the RFP and/or an awarded RFX.

- 8.7 The Service Provider must, when executing an RFX, present Deliverables which are free from disclaimers, conditions, or qualification to SARS for acceptance and sign-off.
- 8.8 The Service Provider shall bear the risk of loss or errors in respect of Deliverables not yet accepted by SARS.
- 8.9 SARS shall have the right to review and accept or reject all Deliverables and/or any components of such Deliverables to be provided by the Service Provider to SARS under this Agreement.
- 8.10 The Service Provider undertakes to avail itself to liaise with SARS regarding any queries arising regarding a Deliverable, and to assist SARS with its review of the Deliverable.
- 8.11 Should SARS not accept the Deliverable, SARS will provide the Service Provider with written notice of its non-acceptance, as well as reasons therefore. The Service Provider must correct any deficiencies raised by SARS within one (1) Business Day (or such other shorter period as the prevailing circumstances may require) of receiving SARS' notice, where after the Deliverable will be resubmitted to SARS for another review.
- 8.12 If SARS finds that the Service Provider is still unable to correct the deficiency, then SARS may in its sole discretion elect to—
- 8.12.1 direct the Service Provider to continue its efforts to make the Deliverable acceptable to SARS, in which case the Service Provider shall continue such efforts;
 - 8.12.2 invoke step-in rights as contemplated in **Clause 29** below; or
 - 8.12.3 reject the Deliverable for non-conformity and declare a dispute to be dealt with in terms of the dispute resolution clause below.

9. SERVICE LEVELS

- 9.1 SARS may, in an RFX, determine and/or prescribe certain performance

standards (Service Levels) required in the execution of the requisite Services, along with corresponding penalties applicable to any failure to comply with the Service Levels: Provided that exposure to penalties in respect of an RFX shall be subject to the ten percent (10%) maximum amount indicated in the RFP.

9.2 Where a project plan is required in terms of an RFX, the Service Provider shall, in preparing such project plan consider and align the project plan with Service Levels that may have been indicated by SARS in an RFX.

9.3 In the event that the Service Provider fails to adhere to the Service Levels due to reasons solely attributable to the Service Provider, SARS may, without prejudice to its other remedies under this Agreement or in law, levy a financial penalty against the Service Provider for the performance failure.

9.4 **Audit Rights**

9.4.1 The Service Provider must, in implementing this Agreement, and for a period of five (5) years or such other longer period as may be prescribed by Applicable Law, reckoned from the date on which work in respect of a particular RFX was completed, maintain an audit trail of the Services performed under this Agreement, sufficient to permit a complete audit thereof, by or on behalf of SARS.

9.4.2 The Service Provider shall provide SARS and SARS' auditors access at all reasonable times to information, records and documentation, relating to the Services for the purpose of performing audits, examinations and inspections in order to verify the Service Provider's compliance with the terms of this Agreement and/or to enable SARS to comply with the requirements of any Regulatory Authority and/or regulators and governmental entities having jurisdiction.

9.4.3 All costs incurred in performing audits under this **Clause 9.4** will be borne by SARS unless audit findings reveal the Service Provider's non-compliance with the terms of this Agreement

and/or Applicable Law, in which event such costs shall be borne by the Service Provider.

10. SARS' OBLIGATIONS

10.1 SARS undertakes to-

10.1.1 on the Effective Date, nominate a Designated Representative, and communicate the names and contact details of such person to the Service Provider in writing. SARS may from time to time change the Designated Representative, in which event SARS must give the Service Provider at least twenty-four (24) hours' written notice of such change;

10.1.2 subject to Applicable Law, make available to the Service Provider all relevant information and data at its disposal, which is reasonably required for the rendering of the Services;

10.1.3 provide the Service Provider with timeous management decisions and any necessary approvals or authorisations to enable the Service Provider to fulfil its obligations under this Agreement;

10.1.4 subject to compliance with SARS' access and physical security policies, provide the Service Provider's Personnel with access to the premises of SARS, if necessary, for the purposes of rendering the Services;

10.1.5 monitor and review the Service Provider's performance in terms of this Agreement. SARS however, reserves the right subject to Applicable Law, to appoint a third party to monitor and review the Service Provider's performance in terms of this Agreement; and

10.1.6 comply with Applicable Law.

11. MEETINGS AND REPORTING

11.1 The Parties may hold *ad hoc* meetings at the reasonable request of either Party to discuss the execution of the Services. Such meetings shall be at no cost to either Party.

11.2 The Service Provider shall, when executing an RFX –

11.2.1 prepare and timeously submit all reports, outlined in the RFP or an RFX to SARS; and

11.2.2 ensure that any information provided by the Service Provider in meetings or report(s) is accurate, relevant and sufficiently detailed.

12. WARRANTIES

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

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

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

12.1.3 the execution 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, articles of association 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;

12.1.4 it has not, in submitting its Proposal, breached any third party Intellectual Property Right; and it shall not, in executing the Services breach or infringe any third-party Intellectual Property

Right;

- 12.1.5 it, along with the Service Provider's Personnel, shall at all times have, and comply with all legal requirements and with the terms and conditions of all permits, necessary licenses, certificates, authorisations and consents required or given under Applicable Law or under any other applicable jurisdiction for the delivery of the Services;
- 12.1.6 it is familiar with and will comply with Applicable Law as well as the Personal Information Processing Addendum;
- 12.1.7 it is and will, for the duration of this Agreement, remain fully cognisant of and compliant with POPIA, and in this regard, the Service Provider warrants further that: (i) the Service Provider's Personnel have been trained on POPIA compliance and are aware of the provisions and implications of POPIA, and will ensure compliance therewith; and (ii) the Service Provider's Personnel who may be exposed to Personal Information have agreed to comply with POPIA and completed all necessary written undertakings or agreements with the Service Provider in that regard;
- 12.1.8 it will, when executing an awarded RFX, provide the Services in a cost-effective and expedient manner, thereby ensuring that no unnecessary or extraordinary costs are incurred and passed on to SARS;
- 12.1.9 it acknowledges that time is of the essence in every RFX, further that it will ensure all Services are completed timeously when executing an RFX;
- 12.1.10 it has in place and will, throughout the duration of the Agreement, maintain security safeguards contemplated in section 19 of POPIA; and
- 12.1.11 no factual circumstances exist that may materially affect its

capacity to perform its obligations under this Agreement.

12.2 It is expressly agreed between the Parties that each warranty and representation given by the Service Provider in its Proposal, and in this Agreement, is material to this Agreement and induced SARS to conclude this Agreement.

12.3 By bidding, the Service Provider is deemed to have satisfied itself regarding all conditions affecting this Agreement, and must at all times comply with the manifest intent and obligations of this Agreement.

12.4 The provisions of this Clause shall survive termination of this Agreement.

13. RELATIONSHIP BETWEEN THE PARTIES

13.1 The Service Provider is an independent contractor and under no circumstances will it be considered a partner, joint venture partner or employee of SARS in the execution of this Agreement.

13.2 The Service Provider's Personnel and other personnel engaged by the Service Provider will be the Service Provider's employees, contractors or agents, and the entire management, direction and control of all such persons will be the responsibility of the Service Provider. The Service Provider is liable to SARS for the performance, malperformance, acts and/or omissions of any of the Service Provider's Personnel or other Service Provider procured personnel involved in the execution of this Agreement.

14. THIRD PARTY COOPERATION

14.1 As part of the Services, where appropriate and when requested by SARS to do so, the Service Provider shall provide full co-operation to any third party that might be contracted by SARS on the same or related engagement or for purposes contemplated in **Clause 10.1.5** above, to the extent that the co-operation does not create a conflict of interests, breach of professional ethics or compromise the Service Provider's Intellectual Property Rights or interests.

14.2 It is, however, agreed that the relationship between the Service Provider and any such third party will not constitute an alliance or partnership and that neither the Service Provider nor the third party will be required to perform quality checks on the work of the other party, except where the third party is appointed for purposes contemplated in **Clause 10.1.5** above.

15. SECURITY VETTING OF SERVICE PROVIDER'S RESOURCES

15.1 SARS may, subject to Applicable Law, at any time, prior to or during the implementation of an awarded RFX, in terms of its prevailing Policies, Procedures and Practices, request that the Service Provider, at its own costs –

15.1.1 send any or all of the Service Provider's Personnel for security vetting with a competent service provider and provide SARS with security clearance certificates; and

15.1.2 provide a personal background screening report from a reputable screening agency on personal status such as but not limited to the following:

- a) citizenship status report;
- b) criminal activity report; and
- c) credit worthiness report,

of any or all of the Service Provider's Personnel.

15.2 SARS may also, at its sole and absolute discretion, at any time prior to or during implementation of an RFX, perform a security check (vetting) or any personal background screening on any or all of the Service Provider's Personnel.

15.3 Where SARS establishes the Service Provider's Personnel to be a security risk, SARS will inform the Service Provider accordingly and the Service Provider shall replace such Service Provider's Personnel with another one of equal or better qualification(s) and experience.

15.4 The provisions of this Clause will not exonerate the Service Provider from

compliance with the provisions of clause 2.2.2 of the Personal Information Processing Addendum.

16. CONFLICT OF INTERESTS

16.1 The Service Provider must not have or undertake duties or interests that create or might reasonably be anticipated to create an actual or perceived conflict with its duties and interests in executing this Agreement.

16.2 The Service Provider must have systems in place to identify potential conflicts, bring them to the attention of SARS and withdraw participation in matters which are the subject of the conflict.

16.3 The Service Provider or any member of the Service Provider's Personnel may not participate in any decision relating to anything contemplated in this Agreement or an RFX where such decision affects its private interests or personal interests of the member of the Service Provider's Personnel, or the interests of any entity in which the Service Provider or member of the Service Provider's Personnel holds a direct or indirect interest.

16.4 SARS may, on an *ad hoc* basis, request the Service Provider or any member of the Service Provider's Personnel to declare any interest they may have in a particular matter.

17. NON-SOLICITATION

17.1 Neither Party may, either during the term of this Agreement and for twelve (12) months after termination for whatever reason, without the prior written consent of the other Party, either directly or indirectly, solicit or attempt to solicit, any Person employed by a Party: Provided that, either Party may employ any Person employed by a Party, where the Person employed responded to a publicly accessible advertisement or similar online publicity without being directly solicited by the other Party.

18. CONFIDENTIALITY

18.1 Neither Party may, both during the term of this Agreement and after its

expiration, disclose any Confidential Information to any third party without the prior written consent of the other.

18.2 The Service Provider shall ensure that the Service Provider's Personnel individually take the SARS Oath / Declaration of Secrecy before commencing with execution of this Agreement or an RFX, as may be required, and shall submit the original copies of such Oath / Declaration to the Designated Representative.

18.3 SARS reserves the right to, as it deems appropriate, monitor and verify that the Service Provider's Personnel have individually taken the SARS Oath / Declaration of Secrecy.

18.4 The Service Provider must protect the interests of SARS and its Confidential Information by-

18.4.1 making available such Confidential Information only to those of the Service Provider's Personnel who are actively involved in the execution of its obligations under this Agreement and then only on a "need to know" basis;

18.4.2 putting in place information security practices and procedures reasonably acceptable to SARS to prevent unauthorised disclosure and taking all practical steps to impress upon the Service Provider's Personnel who need to be given access to Confidential Information, the secret and confidential nature thereof;

18.4.3 not using any Confidential Information of SARS, or disclosing directly or indirectly any Confidential Information of SARS to third parties, whether during the subsistence of this Agreement or thereafter; and

18.4.4 ensuring that all Confidential Information of SARS which has or will come into the possession of the Service Provider and the Service Provider's Personnel, will at all times remain the sole and absolute property of SARS.

- 18.5 Where the Service Provider is served with a request, demand or court papers which seek the disclosure of Confidential Information of SARS, the Service Provider shall, without disclosing such Confidential Information, forthwith and no later than twenty-four (24) hours from the time of receipt of such request, demand or court papers, transmit all such document(s) served on it to the Designated Representative, whereupon SARS will respond as necessary.
- 18.6 The Service Provider shall not remove from SARS' premises any documents or material relating to the Services or SARS' business without first obtaining the written consent of SARS.
- 18.7 Upon completion of an RFX, the Service Provider must promptly return all Personal Information, documents, material, information, or data relating to the Services to SARS.
- 18.8 The Service Provider may not disclose / share any of SARS' Confidential Information with any Person, including its affiliates, outside the borders of South Africa, unless it obtains prior, written consent from SARS, which consent will, if granted (at the sole discretion of SARS), be subject to section 72 of POPIA. In this regard and in the event the written consent is obtained, the Service Provider fully indemnifies SARS and its employees against all and any third party damages, liability claims, Losses or the like occasioned by or as a result of i) the Service Provider exchanging, sharing or having exchanged or shared SARS' Confidential Information; ii) the Service Provider failing to comply with POPIA in its exchange / sharing of SARS' Confidential Information or iii) breach by the recipient of the information of POPIA or POPIA equivalent laws.
- 18.9 The Service Provider fully indemnifies SARS and its employees against all and any third party damages, liability claims, Losses or the like which may be occasioned by or as a result of any failure by the Service Provider and/or the Service Provider's Personnel to comply with this **Clause 18**.
- 18.10 The provisions of this Clause shall survive the termination or cancellation of this Agreement for any reason whatsoever.

19. INTELLECTUAL PROPERTY RIGHTS

- 19.1 The Parties will each retain ownership of their pre-existing Intellectual Property Rights.
- 19.2 SARS shall acquire, with effect from commencement of an awarded RFX, all rights, title, and interests in all Intellectual Property developed or generated by the Service Provider and/or the Service Provider's Personnel pursuant to this Agreement ("**Developed Intellectual Property**").
- 19.3 The Service Provider hereby, without additional consideration, irrevocably assigns, transfers and conveys to SARS all such rights, title and interests, including such rights, title or interest that would otherwise in law devolve to the Service Provider.
- 19.4 The Service Provider undertakes to cooperate with SARS as may be necessary to execute all documents, make all applications, give all assistance and do all acts and things as may, in the opinion of SARS, be necessary or desirable to vest the Developed Intellectual Property Rights in SARS, and/or to protect and maintain the Developed Intellectual Property.
- 19.5 The Service Provider warrants to SARS that-
- 19.5.1 it has not given and will not give permission to any third party to use any of the Developed Intellectual Property, nor any of the Intellectual Property Rights therein; and
- 19.5.2 the use of the Developed Intellectual Property will not infringe the rights of any third party.
- 19.6 The Service Provider waives all moral rights in the Developed Intellectual Property to which the Service Provider and/or the Service Provider's Personnel may be entitled to or in future become entitled to either under Applicable Law or relevant provisions of law in any jurisdiction, and agrees not to institute, or permit the institution or maintenance of any action or claim to the effect that any treatment, exploitation or use of such Developed

Intellectual Property infringes the moral rights of the Service Provider or those of the Service Provider's Personnel.

19.7 The Service Provider and the Service Provider's Personnel shall retain all pre-existing Intellectual Property Rights. Without derogating from the provisions of **Clause 19.3** above, in the event of the Service Provider's Intellectual Property being incorporated into any aspect of the Services the Service Provider hereby grants SARS an irrevocable, perpetual, fully paid-up, royalty-free, non-exclusive licence to enable SARS to receive and realise the benefit of the Services.

19.8 The Service Provider warrants to SARS that it holds the right, title and interest to the intellectual property it will be utilizing to render the Services, alternatively it has procured the necessary rights from the relevant third party and indemnifies SARS against any claim of infringement, which any third party may make or bring against SARS as a result of this Agreement.

19.9 **Co-branding**

19.9.1 The Parties will not engage in any co-branding pursuant to this Agreement or the Services.

19.9.2 The Service Provider or the Service Provider's Personnel may not put up or place any of its branding or place a copyright mark or logo on any of the Deliverables or location where they are required to render the Services.

20. BREACH

20.1 Subject to **Clause 28** below, if a Party (the "Defaulting Party") is in default or breach of any term of this Agreement and that Defaulting Party fails to remedy such default or breach within seven (7) Business Days or such shorter period as the prevailing circumstances may dictate due to the nature of the Services, after receipt of a written notice given by the other Party (the "Aggrieved Party") calling upon the Defaulting Party to remedy such default or breach, then the Aggrieved Party may, without prejudice to any other rights which it may have in terms hereof or at law-

- 20.1.1 claim specific performance;
 - 20.1.2 cancel this Agreement and claim damages from the Defaulting Party, such cancellation to be effective immediately on receipt by the Defaulting Party of a written notice to that effect; or
 - 20.1.3 claim any money due and payable in terms of this Agreement and claim damages from the Defaulting Party.
- 20.2 The remedies set out in this Clause shall not be construed to be exhaustive of any other remedies available to the Parties.
- 20.3 Notwithstanding the implementation of any penalty contemplated in this Agreement, SARS reserves the right and without derogation from any other remedies it may have in law, to-
- 20.3.1 terminate this Agreement for breach;
 - 20.3.2 terminate an RFX with immediate effect;
 - 20.3.3 reallocate an RFX to another service provider. In such an event, the Service Provider shall be obliged, and for its own account, to assist with the seamless transition of the RFX to the incoming service provider; or
 - 20.3.4 invoke step in rights contemplated in this Agreement.
- 20.4 Cancellation or reallocation of an RFX as contemplated in **Clause 20.3** above shall be without any liability to SARS except for any outstanding payment for Services already rendered by the Service Provider, less any deductible penalty.

21. DISPUTE RESOLUTION

- 21.1 In the event of any dispute arising out of or in connection with this Agreement, the Parties shall try to resolve the dispute by negotiation. This

entails that the one Party invites the other in writing to a meeting and attempts to resolve the dispute within seven (7) days from date of the written invitation.

21.2 If the dispute has not been resolved by such negotiation as contemplated above, or in **Clause 7**, the Parties shall submit the dispute to the Arbitration Foundation of Southern Africa (“AFSA”) administered mediation, failing which the dispute shall be determined as below.

21.3 Save in respect of those provisions of this Agreement which provide for their own remedies which would be incompatible with arbitration, any dispute arising from, or in connection with this Agreement and not resolved as contemplated above will finally be resolved by arbitration in accordance with the Rules of the AFSA or its successor, by an arbitrator or arbitrators appointed by AFSA.

21.4 Neither Party shall be entitled to withhold performance of any of their obligations in terms of this Agreement pending the settlement of, or decision in, any dispute arising between the Parties and each Party shall, in such circumstances continue to comply with their obligations in terms of this Agreement: Provided that, subject to **Clause 6.7**, SARS shall not pay any invoice in respect of which there is a pending dispute.

21.5 The provisions of this Clause shall not preclude any of the Parties from accessing and obtaining any interim relief on an urgent basis or other conservatory relief from a court of competent jurisdiction.

21.6 This Clause is severable from the rest of the provisions of this Agreement so that it will operate and continue to operate notwithstanding any actual or alleged voidness, voidability, unenforceability, termination, cancellation, expiry or accepted repudiation of this Agreement.

22. LIABILITY OF THE PARTIES

22.1 The Service Provider shall be liable to SARS, where SARS has suffered any direct damages and/or Losses as a result of the Service Provider’s failure to observe its obligations in terms of this Agreement.

22.2 The Service Provider shall further be liable to SARS for all indirect and consequential or special damages and/or Losses suffered by SARS as a result of gross negligence, wilful misconduct or breach by the Service Provider or the Service Provider's Personnel of confidentiality provisions in this Agreement, breach of Applicable Law, infringement of third party Intellectual Property Rights or a criminal act committed by the Service Provider or the Service Provider's Personnel.

23. RISK OF LOSS OF ASSETS

23.1 The Service Provider and the Service Provider's Personnel are responsible for the safety and security of any property or asset brought by them onto SARS premises or any site where any work in relation to this Agreement or RFX is executed. SARS or SARS employees will not carry any risk in relation to such assets or property, and the Service Provider and the Service Provider's Personnel will be responsible for any, loss, damage, or destruction thereto.

24. DATA PROTECTION AND NON-DISCLOSURE AGREEMENTS

24.1 The Service Provider may, where awarded an RFX, be required by SARS to enter into an RFX specific data protection or non-disclosure agreement with SARS, depending on the nature of the Services envisaged in the RFX. Where such is required, SARS will, at the time of issuing the relevant RFX, indicate in the RFX that the successful Panellist would need to enter into a data protection or non-disclosure agreement with SARS. Such data protection or non-disclosure agreement must, where applicable, be signed by the Authorised Signatories, and will be limited to the RFX and be subject to this Agreement.

25. INSURANCE

25.1 The Service Provider shall, on or before the Effective Date and for the duration of this Agreement, have and maintain in force adequate insurance cover consistent with acceptable and prudent business practices and acceptable to SARS, which shall include, without limitation, insurance cover

as may be prescribed by Applicable Law in respect of Services which are the subject of an awarded RFX; public liability insurance; and/or cover against all actions, suits, claims or other expenses arising in connection with damages or Losses for which it may be liable in terms of this Agreement or an RFX.

- 25.2 Any additional applicable insurance cover will be indicated in an RFX.
- 25.3 The Service Provider shall provide SARS with certificates of insurance, evidencing that the insurance covers and policy endorsements required under this Agreement are maintained in force, on the date of signing this Agreement and on the date of commencement of the execution of an awarded RFX and provide evidence of renewal of such insurance at least three (3) Business Days prior to expiration thereof.
- 25.4 In the case of loss, damage or other event that requires notice or other action under the terms of any insurance coverage indicated herein or in an RFX, the Service Provider shall be solely responsible to take such action. The Service Provider shall provide SARS with contemporaneous notice and with such other information as SARS may request regarding the event.
- 25.5 Without limiting the generality of SARS' rights and remedies in this Agreement, in the event of a failure by the Service Provider to take out or maintain any insurance required hereunder, or to provide evidence of renewal within the period indicated herein, SARS may purchase the requisite insurance and deduct or offset the costs thereof from any monies due to the Service Provider by SARS under this Agreement.

26. INDEMNITY BY THE SERVICE PROVIDER

26.1 The Service Provider hereby indemnifies, holds harmless and agrees to defend SARS and its officers, employees, agents, successors and assigns, against all claims or Losses arising from or in connection with, any of the following-

- 26.1.1 third party claims attributable to any breach of the provisions of this Agreement by the Service Provider;

- 26.1.2 third party claims attributable to theft, fraud or other unlawful activity or any negligent, wilful or fraudulent conduct by the Service Provider or the Service Provider's Personnel and claims attributable to errors and/or omissions;
- 26.1.3 third party claims arising from or related to the death or bodily injury of any agent, employee, business invitee, or business visitor or other Person caused by the delictual conduct of the Service Provider or the Service Provider's Personnel; and
- 26.1.4 third party claims arising from damage to property owned or leased by SARS or belonging to a third party caused by the acts or omissions of the Service Provider or the Service Provider's Personnel.

27. FORCE MAJEURE

27.1 Business continuity plan

- a. SARS may, in certain instances, depending on the nature of the Services required in an RFX, require Panellists to prepare and submit a business continuity plan to facilitate and preserve business continuity in the event of a *Force Majeure* Event, which SARS shall approve with the award of an RFX.
- b. The Service Provider must, in the event of a *Force Majeure* Event, ensure that it seamlessly, without disruption to the Services, activates the business continuity plan.
- c. The Service Provider must, prior to invoking the provisions of **Clause 27.4** below, demonstrate to the satisfaction of SARS that it activated the approved business continuity plan but was unable to circumvent the *Force Majeure* Event.
- d. The provisions of this **Clause 27.1** shall only apply where there is a SARS approved business continuity plan in place submitted

by the Service Provider pursuant to an awarded RFX.

- 27.2 Subject to the provisions of **Clauses 27.1, 27.3** and **27.4** herein, in the event of a *Force Majeure* Event, the affected Party shall, for the duration of the *Force Majeure* Event, be relieved of its obligations under an RFX or this Agreement: Provide that such relief is only to the extent the affected Party is so prevented; and to the extent that the affected Party is not the cause of the *Force Majeure* Event. Such affected Party shall not be liable for any delay or failure in the performance of any obligations hereunder or Losses or damages which the other Party may suffer due to or resulting from the *Force Majeure* Event.
- 27.3 Should a *Force Majeure* Event arise, the affected Party shall notify the other Party within the timelines indicated in **Clause 27.4** below, of the *Force Majeure* Event, giving sufficient details thereof, including details of how the event has impacted the affected Party's ability to perform in terms of the Agreement, as well as the estimated duration of the *Force Majeure* Event.
- 27.4 Where such *Force Majeure* Event commences or is discovered by the affected Party at any time post an RFX award or during implementation thereof, notification to the other Party must be within eight (8) hours of such commencement or discovery by the affected Party of the *Force Majeure* Event, or; within five (5) days of the discovery or commencement of the *Force Majeure* Event in all other cases.
- 27.5 The affected Party shall use Commercially Reasonable Efforts to remove the disturbance with the least possible delay so that its obligations can be fulfilled as soon as reasonably possible, in the manner provided for in this Agreement.
- 27.6 It is expressly recorded that failure to comply with Applicable Law shall not constitute a *Force Majeure* Event.
- 27.7 SARS shall be entitled to, without any liability to the Service Provider –
- 27.7.1 terminate an RFX awarded to the Service Provider or postpone execution thereof following a *Force Majeure* Event declared by

itself: Provided that any termination must be reasonable in light of the declared *Force Majeure* Event; or

27.7.2 use the services of other Panellists or parties after a *Force Majeure* Event is declared by the Service Provider.

28. TERMINATION

28.1 Termination for cause by SARS

28.1.1 SARS may, by giving notice of immediate termination to the Service Provider, terminate this Agreement or the rendering of the Services in whole or in part, immediately as of a date set out in the said notice of termination, in the event that the Service Provider-

28.1.1.1 commits an act of insolvency as defined in the Insolvency Act, 1936 (Act No. 24 of 1936) or is placed under voluntary or compulsory liquidation (whether provisional or final) or business rescue proceedings are commenced against the Service Provider;

28.1.1.2 breaches the confidentiality provisions of this Agreement or the SARS Oath / Declaration of Secrecy;

28.1.1.3 breaches the Personal Information Processing Addendum;

28.1.1.4 has committed any act or omission which, in the reasonable opinion of SARS, may either bring SARS into disrepute, damage its reputation or negatively impact taxpayer and public confidence in SARS;

28.1.1.5 breaches Applicable Law;

28.1.1.6 is found guilty of an offence in terms of Applicable Law;
or

28.1.1.7 commits or participates in any unlawful, dishonest or unethical act in executing this Agreement.

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

28.2.1 In the event of a sale, acquisition, merger, or other change of control of the Service Provider (a "Change Event") where such Change Event is achieved, directly or indirectly, in a single transaction or series of related transactions, or in the event of a sale of all or substantially all of the assets of the Service Provider in a single or series of related transactions, then the Service Provider shall notify SARS of such Change Event within ten (10) Business Days after the Change Event is achieved.

28.2.2 No sale, acquisition, merger or other change of control shall be effective against and legally binding on SARS if the Service Provider failed to notify SARS, as required by **Clause 28.2.1** above.

28.2.3 SARS may terminate this Agreement, at any time after being notified by the Service Provider of the Change Event, by giving the Service Provider an immediate thirty (30) days' written notice designating a date upon which such termination shall become effective.

28.2.4 In the event that the Service Provider fails to notify SARS, as required by **Clause 28.2.1** above, then SARS may upon discovery of the Change Event terminate the Agreement by giving the Service Provider thirty (30) days' written notice and designating a date upon which such termination shall be effective.

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

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

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

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

28.3 SARS shall have no liability to the Service Provider with respect to a termination under this **Clause 28**, except for amounts actually due and payable in respect of the completion of any matters pertaining to an RFX.

28.4 Any termination of this Agreement pursuant to the provisions of this Clause shall be without prejudice to any prior claim, which either Party may have.

29. STEP IN RIGHTS

29.1 In addition to any other rights and remedies that it may have in terms of this Agreement or otherwise, including the right to terminate this Agreement, SARS may in its sole discretion elect to step in and take over the execution of an RFX immediately upon SARS' identification or the Service Provider's notification to SARS of the occurrence of any adverse event which SARS considers, in its reasonable opinion, to be an event which may affect the execution of an RFX or the Services.

29.2 For the purposes of this Clause, SARS may (at its option), either itself or by the procurement of an alternative service provider or Panellist, take over the provision of the Services in terms of the particular RFX, to ensure that the objectives of an RFX and this Agreement are timeously and successfully achieved. The Service Provider must, upon the request of SARS, fully co-operate with and assist SARS during any take-over of an RFX.

29.3 To the extent that SARS exercises its right in terms of this **Clause 29**, the Service Provider shall not be entitled to any fees and/or payment during the period for which SARS, another Panellist or service provider assumes the Services. SARS shall not, under any circumstances, by virtue of any assumption, be obliged, deemed or required to take over or assume responsibility for the conduct of the Service Provider's business operations.

30. ADDRESSES

30.1 Each Party chooses the addresses set out below its name as its address 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.

30.2 SARS' physical address for **service of notices and legal processes** is as indicated in **Clause 2.2.23** above.

30.3 Service Provider's physical address for **service of notices and legal processes** is as indicated in **Annexure A**.

30.4 SARS' email address for communications, and/or correspondences in connection with the performance of the Services: fft-professionalservices@sars.gov.za and carbon copy **(TO BE ADDED)**.

30.5 The Service Provider's email address for communications, and/or correspondences in connection with the performance of the Services is set out in **Annexure A**.

30.6 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 chosen address of *domicilium*, provided that documents in legal proceedings in connection with this Agreement may only be served at a Party's physical address.

30.7 Any Party may by written notice to the other Party, change its chosen address to another address, provided that-

30.7.1 the change shall become effective on the tenth (10th) Business Day after the receipt or deemed receipt of the notice by the addressee; and

30.7.2 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*.

30.8 Any notice to a Party delivered by hand at a Party's chosen address shall be deemed to have been received on the day of delivery, unless the contrary is proved.

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

31. TAX COMPLIANCE

31.1 The Service Provider represents and warrants, that as of the Effective Date, it is and will remain compliant for the duration of this Agreement with all Applicable Law relating to taxation in the Republic of South Africa.

32. GENERAL

32.1 Advertising and Marketing

Except in so far as herein expressly provided, the Service Provider shall not make or issue any formal or informal announcement (with the exception of Stock Exchange announcements), advertisement, or statement to the media in connection with this Agreement or otherwise disclose the existence of this Agreement or the subject matter thereof to any other Person without the prior written consent of SARS.

32.2 Authorised Signatories

This Agreement shall not be valid unless signed by all Authorised

Signatories.

32.3 **Costs**

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

32.4 **Counterparts**

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

32.5 **Covenant of Good Faith**

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.

32.6 **Governing Law and Jurisdiction**

32.6.1 This Agreement shall be governed by and construed in accordance with the laws of the Republic of South Africa and all disputes, actions and other matters relating thereto will be determined in accordance with such law.

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

32.7 **No Cession or Assignment Without Consent**

Subject to Applicable Law, neither Party may assign, cede, subcontract, delegate, or in any other manner transfer any benefit, rights and/or obligations arising from this Agreement, without the prior written consent of

the other Party, which consent shall not be unreasonably withheld.

32.8 **No Withholding of Consents**

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

32.9 **Severability**

If any Clause or provision of this Agreement is found to be invalid, illegal or unenforceable in any way, such Clause or provision shall be deemed to be separate and severable from the remaining provisions of this Agreement, and the validity and enforceability of such remaining provisions shall not be affected. If, however, any invalid term is capable of amendment to render it valid, the Parties agree to negotiate in good faith an amendment to remove the invalidity.

32.10 **Subcontracting**

32.10.1 All subcontracting shall be subject to Applicable Law and this Agreement.

32.10.2 Where the Service Provider had proposed to subcontract a portion of the Services and presented a proposed subcontractor and subcontracting value in its Proposal, the Service Provider shall only subcontract as contemplated in the Proposal.

32.10.3 Where the Service Provider had not presented any subcontractor or value in its Proposal but wishes to subcontract, or had presented a subcontractor and value in its Proposal but wishes to engage a different subcontractor and/or alter the subcontracting value, the Service Provider shall, subject to the

criteria set out in the RFP as may be applicable, submit a written request to SARS to subcontract. Such request must contain-

- 32.10.3.1 full details and business references of the subcontractor;
- 32.10.3.2 a full description of the part of the Services it proposes for subcontracting;
- 32.10.3.3 full details of how the Service Provider will manage the performance of the Services by the subcontractor;
- 32.10.3.4 the value of the Services proposed to be subcontracted, expressed as a percentage; and
- 32.10.3.5 a CSD report for the proposed subcontractor.

SARS reserves the right to call upon additional information when assessing a request for subcontracting.

32.10.4 Notwithstanding the provisions of this **Clause 32.10**, the Service Provider shall remain the only Party wholly responsible for the due performance of its obligations in terms of this Agreement and compliance with the terms and conditions thereof.

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

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

Provider.

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

32.11 Waiver

No change, waiver or discharge from the terms and conditions of this Agreement shall be valid unless in writing and signed by the Authorised Signatories, and any such change, waiver or discharge will be effective only in that specific instance and for the purpose given. No failure or delay on the part of either Party 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.

32.12 Whole Agreement and Amendment

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 Authorised Signatories. Any document executed by the Parties purporting to amend, substitute or revoke this Agreement or any part hereof, shall be titled an "Addendum" to this Agreement and accordingly annexed hereto.

SIGNED FOR AND ON BEHALF OF SARS

FULL NAMES: _____

DESIGNATION: _____

PLACE:

DATE:

FULL NAMES: _____

DESIGNATION: _____

PLACE:

DATE:

SIGNED FOR THE SERVICE PROVIDER

FULL NAMES: _____

CAPACITY: _____

PLACE:

DATE:

DRAFT