

**MASTER SERVICES AGREEMENT IN RESPECT OF THE PROCUREMENT OF
SUITABLE DOGS TO BE TRAINED AS DETECTOR DOGS THROUGH A PANEL OF
SERVICE PROVIDERS**

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

...

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

(hereinafter referred to as “Service Provider”)

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Annexure A – Service Provider's description and details

Annexure B – Letter of placement on the Panel

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1. INTRODUCTION

- 1.1 SARS issued a tender for the procurement of suitable dogs to be trained as detector dogs through a panel of service providers under RFP 28/2023 **(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 as and when required basis.
- 1.4 This Agreement contains the terms and conditions of engagement of the Service Provider by SARS.

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, 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 Representative”** means signatories authorised by SARS and the Service Provider respectively to sign the Agreement and any amendments or addenda hereto on its behalf;
- 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; and
- c) 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 dog supplied by the Service Provider to SARS in the process of or as a result of executing an RFX awarded to the Service Provider pursuant to this Agreement;

2.2.8 **"Delivery Note"** means a written note or document provided by the Service Provider to SARS on the date Deliverables are delivered, detailing the Deliverables being delivered by reference to their description as well as quantity, which document must be signed off by a SARS Designated Official at the Delivery Site;

2.2.9 **"Delivery Site"** means the physical address or location provided by SARS in an RFX, being the place where the Service Provider is required to effect Delivery of the Deliverables specified in that RFX;

2.2.10 **"Designated Representative"** means an employee designated by Service Provider in terms of this Agreement, or his/her appointed delegate, responsible for the oversight and overall

management of this Agreement on behalf of the Service Provider; who shall also act as the central point of contact between the Service Provider and SARS;

- 2.2.11 **“Effective Date”** means ... **2024**, notwithstanding the date of signature of this Agreement;
- 2.2.12 **“Losses”** means all losses, liabilities, costs, expenses, fines, penalties, damages and claims, and all related costs and expenses as determined in Law;
- 2.2.13 **“Panellists”** means service providers placed on the Panel;
- 2.2.14 **“Parties”** means the South African Revenue Service and the Service Provider and “Party” is a reference to any one of them;
- 2.2.15 **“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;
- 2.2.16 **“Personal Information Processing Addendum”** means **Annexure C** hereto, which represents the written agreement between Responsible Party and Operator contemplated in section 21 of POPIA;
- 2.2.17 **“POPIA”** means the Protection of Personal Information Act, 2013 (Act No.4 of 2013);
- 2.2.18 **“Regulatory Authority”** means any organ of state, government agency or institution, International Body or Organisation which has–
 - 2.2.18.1 jurisdiction over the Services or parts thereof; or
 - 2.2.18.2 administrative or oversight responsibility pertaining to any Applicable Law;
- 2.2.19 **“RFP”** refers to SARS’ invitation to service providers to submit proposals for the appointment of a panel of suppliers to supply

the SARS Customs Unit with Detector Dog equipment, Marine equipment and other consumables, incorporating all annexures thereto, bearing number 24/2023 and dated 03 November 2023, which RFP is incorporated herein by reference;

2.2.20 **“RFX”** means a written document by SARS containing service specifications, inviting Panellists to provide dogs and to submit written quotations, as contemplated in this Agreement;

2.2.21 **“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**;

2.2.22 **“SARS’ Designated Official”** means any SARS official indicated as such in any RFX;

2.2.23 **“SARS Designated Representative”** means the SARS employee designated in terms of this Agreement, or his/her appointed delegate, responsible for the oversight and overall management of this Agreement on behalf of SARS; who shall also act as the SARS central point of contact between SARS and the Service Provider;

2.2.24 **“Services”** means the supply and delivery by the Service Provider to SARS of dogs, 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; and

2.2.25 **“Termination Date”** means ... **2029**;

2.2.26 **“VAT Act”** means 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 SARS has appointed the Service Provider to the Panel, as indicated in the letter of placement issued by SARS to the Service Provider in relation to the RFP, attached hereto as **Annexure B**, and the Service Provider has accepted such appointment.
- 3.2 As contemplated in the RFP, SARS does not guarantee that the Service Provider will receive an RFX or be awarded any RFX during the term of this Agreement.

4. DURATION

- 4.1 This Agreement commences on Effective Date and will endure for a period of five (5) years, until the Termination Date, unless otherwise terminated earlier in terms of this Agreement.

5. ENGAGEMENT MODEL

- 5.1 SARS will utilise the Panel on as and when required basis.
- 5.2 In the event a need arises and SARS wishes to procure the Services, it will issue an RFX to all Panellists.
- 5.3 The Service Providers will upon receipt of an RFX, avail the Deliverables to SARS for preselection.

- 5.4 SARS will conduct a preselection evaluation of the Deliverables under the specific RFX before selection and award to the successful Panellist.
- 5.5 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.
- 5.6 The Service Provider may not render the Services without 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 without a purchase order and letter awarding the RFX to the Service Provider.
- 5.7 SARS does not guarantee that any RFX issued will be awarded.

6. PRICING

- 6.1 The Service Provider must invoice SARS for Services rendered according to the pricing awarded with the pertinent RFX and attendant purchase order.
- 6.2 Apart from the awarded price provided in a quotation pertaining to each specified RFX, no other fee, cost or line items will be covered by SARS.
- 6.3 The Service Provider must invoice SARS for Services rendered. In addition to stipulations in Applicable Law, each invoice must reflect –
- i) purchase order number;
 - ii) a detailed description of the Services rendered under the RFX;
 - iii) cost per Deliverable;
 - iv) total price; and
 - v) a Delivery Note signed off by the SARS Designated Official on the pertinent Deliverables.
- 6.4 Provided all necessary supporting documents are attached and the

requirements of this Agreement regarding invoicing are complied with, SARS will pay the invoiced amount within thirty (30) days of receipt of the invoice, unless SARS disputes any item on the invoice, which dispute shall be managed in terms of **Clause 7** below.

7. DISPUTED CHARGES

7.1 SARS may withhold payment of an invoice or costs 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 or costs 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 amount-

7.1.1 SARS shall promptly notify the Service Provider that it is disputing such amount, 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 6.4** above; and

7.1.3 if an invoice contains 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, the Service Provider must ensure that 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 Service Provider's manager or executive for resolution.

7.3 The SARS Chief Procurement Officer or delegate and the Service Provider's manager or executive 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 19** below: Provided that **Clause 19.1** will not apply to disputes contemplated in this **Clause 7**.

8. SERVICE PROVIDER'S OBLIGATIONS

- 8.1 The Service Provider must-

- 8.1.1 timeously respond to any RFX, failing which the Service Provider may be passed over for the specific RFX;
- 8.1.2 only render Services upon receipt of a SARS purchase order;
- 8.1.3 ensure that it adheres to written and reasonable requests or instructions by the SARS Designated Representative: Provided such requests or instructions are lawful, and are within the framework of this Agreement;
- 8.1.4 monitor implementation of the Services against set targets, costs and timeframes that may be prescribed/indicated in an RFX;
- 8.1.5 appoint a Designated Representative and communicate the details of the representative to SARS by Effective Date;
- 8.1.6 ensure that on delivery of the Deliverables, a Delivery Note is provided to the SARS Designated Official for sign off;
- 8.1.7 act impartially and ethically at all times, and where applicable, act in accordance with the code of ethics / conduct of its profession or business;
- 8.1.8 maintain registration as a dog training facility for the duration of this Agreement; and
- 8.1.9 comply with this Agreement, the Personal Information

Processing Addendum and, where applicable, the RFX.

8.2 **AUDIT RIGHTS**

8.2.1 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.

8.2.2 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.

8.2.3 All costs incurred in performing audits under this **Clause 8.2** 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.

8.3 **RISK IN RESPECT OF DELIVERABLES**

8.3.1 Any risk of loss, damage, theft or similar risk to the dogs will remain in the Service Provider until Delivery to SARS is completed. The Parties agree that the Delivery of any Deliverable will only be complete after the Service Provider has successfully transported; offloaded and placed the Deliverables at a spot within the Delivery Site pointed by the SARS Designated Official, and after a Delivery note is signed by the SARS Designated Official.

- 8.3.2 Deliverables in the possession or control of the Service Provider or any of its agents (including couriers, freight companies and the like) will be deemed to be in the possession of the Service Provider.
- 8.3.3 Notwithstanding the provisions of clause 8.3.1 above, the signing of a Delivery Note only completes Delivery and does not indicate acceptance by SARS of the condition of the Deliverables or that the Deliverables meet all of the specifications set out in the RFX or Applicable Law.
- 8.3.4 All Deliverables will be accepted by SARS subject to compliance with the pre-selection evaluation process envisaged in the RFP, where the Deliverables will, within a reasonable time, be evaluated by SARS for compliance with the relevant RFX and this Agreement, including Applicable Law. SARS may, following such evaluation, reject the Deliverables if the condition thereof is non-compliant with Applicable Law or an underlying RFX. In that event, SARS will, in writing, notify the Service Provider of the rejection and request the Service Provider to collect the Deliverables and replace such within a timeframe stipulated in the written notification, at no extra charge to SARS.
- 8.3.5 Should the Service Provider fail to replace the Deliverable with a suitable one within the stipulated timeframe, then the Service Provider must refund SARS the money paid for such Deliverable.

9. SARS' OBLIGATIONS

- 9.1 SARS undertakes to-
- 9.1.1 on Effective Date, nominate a SARS 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 SARS Designated Representative, in which event SARS must give the Service Provider at least 24 hours' written notice of such change;

- 9.1.2 subject to compliance with SARS' access and physical security policies, provide the Service Provider's employees with access to the premises of SARS when implementing an RFX.

10. WARRANTIES

General Warranties

- 10.1 The Service Provider hereby represents and warrants to SARS that-
- 10.1.1 this Agreement has been duly authorised and executed by it and constitutes a legal, valid and binding set of obligations on it;
 - 10.1.2 it is acting as a principal and not as an agent of an undisclosed principal;
 - 10.1.3 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;
 - 10.1.4 it and the Service Provider's employees shall utilise and process all Confidential Information and any other information provided by SARS only for purposes contemplated in this Agreement;
 - 10.1.5 no factual circumstances exist that may materially affect its capacity to perform its obligations under this Agreement;
 - 10.1.6 it will 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;
 - 10.1.7 in providing the Services, it shall not breach or infringe any third-party Intellectual Property rights;

- 10.1.8 it shall at all times have, and comply with all legal requirements and with the terms and conditions of all necessary licenses, certificates, authorisations and consents required under the laws of the Republic of South Africa or under any other applicable jurisdiction for the delivery of the Services;
- 10.1.9 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 employees 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 employees 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.
- 10.1.10 it is familiar with and will comply with Applicable Law as well as the Personal Information Processing Addendum.
- 10.2 It is expressly agreed between the Parties that each warranty and representation given by the Service Provider in its Proposal, in response to the RFP and in this Agreement, is material to this Agreement and induced SARS to conclude this Agreement.
- 10.3 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.
- 10.4 The provisions of this Clause shall survive the termination of this Agreement.
- 10.5 **Title to Supply and Pass Delivery**

The Service Provider warrants that it has title to supply and pass ownership of the Deliverables to SARS.

10.6 **Product Warranties**

- 10.6.1 Notwithstanding the provisions of any Applicable Law, the Service Provider undertakes, at the election of SARS, to refund, or replace any Deliverable that is not fit for purpose.

11. RELATIONSHIP BETWEEN THE PARTIES

- 11.1 The Service Provider is an independent contractor and under no circumstances will it or the Service Provider's employees be construed to be a partner, joint venture partner, agent, or employees of SARS in the performance of its duties and responsibilities pursuant to this Agreement.
- 11.2 The Service Provider's employees 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.
- 11.3 The Service Provider is liable to SARS for the performance, malperformance, acts and or omissions of the Service Provider's employees.
- 11.4 It is expressly recorded that the provisions of section 197 of the Labour Relations Act, 1995 (Act No. 66 of 1995) ("LRA") will not apply to this Agreement. The Service Provider undertakes to take necessary steps as contemplated in section 197(6) of the LRA, to ensure that no employment relationship or employment contract of any of the Service Provider's employees is transferred to SARS upon termination of this Agreement.
- 11.5 Notwithstanding the above undertaking, however, in the event that SARS suffers any claim, damage, loss or expense in relation to and/or arising from the operation of section 197 of the LRA as aforementioned (collectively "Labour Claims"), the Service Provider hereby indemnifies and holds SARS harmless in respect of and/or against all and any such Labour Claims.

12. THIRD PARTY COOPERATION

- 12.1 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, 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.
- 12.2 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.

13. SECURITY VETTING OF SERVICE PROVIDER'S EMPLOYEES

- 13.1 SARS may, subject to Applicable Law, at any time prior to or during the implementation of an RFX, and in terms of its prevailing SARS Policies, Protocol and Standard Operating Procedures, request that the Service Provider, at its own costs –
- 13.1.1 send any or all of the Service Provider's employees for security vetting with a competent service provider and provide SARS with security clearance certificates.

14. CONFLICT OF INTERESTS

- 14.1 The Service Provider and the Service Provider's employees must not have or take on obligations or interests that create or might reasonably be anticipated to create an actual or perceived conflict with their obligations and duties towards SARS as contemplated in this Agreement.
- 14.2 The Service Provider or the Service Provider's employees may not participate in any decision relating to anything contemplated in this Agreement or an RFX where such decision affects his or her personal interests or the interests of any entity in which he or she holds a direct or indirect interest.

- 14.3 The Service Provider must have systems in place to identify potential conflicts either on itself or the Service Provider's employees and timeously bring them to the attention of SARS.
- 14.4 The Service Provider must comply with and ensure that the Service Provider's employees comply with Applicable Law in so far as issues related to conflict of interests are concerned.
- 14.5 SARS may, on an *ad hoc* basis, request the Service Provider or any member of the Service Provider's employees to declare any interest they may have in a particular matter.

15. NON-SOLICITATION

- 15.1 During the term of this Agreement and for two (2) years after termination for whatever reason, neither Party may, 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.

16. CONFIDENTIALITY

- 16.1 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.
- 16.2 The Service Provider shall ensure that the Service Provider's employees 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 SARS Designated Representative or the SARS Designated Official.
- 16.3 The Service Provider must protect the interests of SARS and its Confidential Information by-
- 16.3.1 making available such Confidential Information only to those of

the Service Provider's employees who are actively involved in the execution of its obligations under this Agreement or an RFX and then only on a "need to know" basis;

16.3.2 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 employees who are given access to Confidential Information, the secret and confidential nature thereof;

16.3.3 ensuring that it or the Service Provider's employees do not use any Confidential Information of SARS, or disclose directly or indirectly any Confidential Information of SARS to third parties, whether during the subsistence of this Agreement or thereafter; and

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

16.4 Where the Service Provider or the Service Provider's employees are 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 24 hours from the time of receipt of such request, demand or court papers, transmit all such document(s) served on it to the SARS Designated Representative, and where an RFX is involved, also to the SARS Designated Official, whereupon SARS will respond as necessary.

16.5 The Service Provider or the Service Provider's employees shall not remove from SARS' premises any Personal Information, documents or material relating to the Services or SARS' business without first obtaining the written consent of SARS.

- 16.6 Upon completion of an RFX, the Service Provider and the Service Provider's employees must promptly return all Personal Information, documents, material, information, or data relating to the Services to SARS.
- 16.7 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.
- 16.8 The Service Provider fully indemnifies SARS, SARS Contractors and SARS employees against all and any third party liability claims, whether direct or indirect, 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 employees to comply with this **Clause 16**.
- 16.9 The provisions of this Clause shall survive the termination or cancellation of this Agreement for any reason whatsoever.

17. INTELLECTUAL PROPERTY RIGHTS

- 17.1 The Parties will each retain ownership of their pre-existing intellectual property rights.
- 17.2 The Service Provider hereby indemnifies and holds SARS harmless against Losses, claims, proceedings and expenses of whatsoever nature in respect of any infringement by the Service Provider or the Service Provider's employees of Intellectual Property rights of any third party.
- 17.3 The Service Provider may not reproduce SARS' logo in any form or

medium.

18. BREACH

18.1 If a Party (the “Defaulting Party”) is in default or breach of any obligation which arises in terms of this Agreement and that Defaulting Party fails to remedy such default or breach within seven (7) Business Days 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-

18.1.1 claim specific performance;

18.1.2 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

18.1.3 claim any money due and payable in terms of this Agreement and claim damages from the Defaulting Party.

18.2 The remedies set out in this Clause shall not be construed to be exhaustive of any other remedies available to the Parties.

19. DISPUTE RESOLUTION

19.1 In the event of any dispute other than a dispute relating to matters dealt with under **Clause 7** above 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.

19.2 If the dispute has not been resolved by such negotiation as contemplated above, the Parties may submit the dispute to the Arbitration Foundation of Southern Africa (“AFSA”), for resolution through AFSA administered mediation, failing which the dispute shall be determined as below.

- 19.3 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 AFSA or its successor, by an arbitrator or arbitrators appointed by AFSA.
- 19.4 This Clause will be 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.
- 19.5 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 7.1.2**, SARS shall not pay any invoice in respect of which there is a pending dispute.
- 19.6 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.

20. LIABILITY OF THE PARTIES

- 20.1 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.
- 20.2 The Service Provider shall further be liable to SARS for all indirect and consequential or special damages and/or Losses suffered by or brought against SARS as a result of the gross negligence, wilful misconduct, breach by the Service Provider or the Service Provider's employees of confidentiality provisions in this Agreement, breach of Applicable Laws, infringement of third party Intellectual Property rights or a criminal act committed by the Service Provider or the Service Provider's employees.

21. INDEMNITY BY THE SERVICE PROVIDER

- 21.1 The Service Provider hereby indemnifies, holds harmless and agrees to defend SARS and its officers, employees, agents, successors-in-title, and assigns, from any and all Losses arising from, or in connection with, any of the following-
- 21.1.1 third Party claims attributable to any breach of the provisions of this Agreement by the Service Provider or the Service Provider's employees;
 - 21.1.2 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 employees and claims attributable to errors and/or omissions;
 - 21.1.3 third Party claims arising from or related to the death or bodily injury of any SARS agent, employee, business invitee, or business visitor or other person on SARS' premises caused by the negligent acts or omissions of the Service Provider or the Service Provider's employees; and
 - 21.1.4 third Party claims arising from damage to property owned or leased by SARS or a third party caused by the negligence or misconduct of the Service Provider or the Service Provider's employees.
- 21.2 The Service Provider assumes all risks of bodily injury, death, Losses, breach of statutory duty, breach of Applicable Law, breach of SARS Policies, Protocols and Standard Operating Procedures and any claim by the Service Provider's employees or their estates associated with performance of the Service Provider's obligations under this Agreement or an RFX, and holds SARS harmless against any such claims relating to but not limited to any matter arising out of this Agreement.

22. FORCE MAJEURE

- 22.1 In the event of 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, lockout, fire, accident, operation of law, Applicable Law, epidemic, pandemic or any other circumstance preventing the Parties or any of them from the performance of any obligation in terms of this Agreement (any such event hereinafter called "*force majeure* event"), then the Party affected by such *force majeure* event shall, subject to **Clauses 22.2** and **22.3** herein, be relieved of its obligations hereunder during the period that such *force majeure* subsists.
- 22.2 Should a *force majeure* event arise, the affected Party shall within seven (7) days of the commencement of the event notify the other Party of the 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 event or disturbing circumstances.
- 22.3 The affected Party's relief is only to the extent so prevented and to the extent that the affected Party is not the cause of the *force majeure* event. Such Party shall not be liable for any delay or failure in the performance of any obligations hereunder or loss or damage which the other Party may suffer due to or resulting from the *force majeure* event.
- 22.4 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 or an RFX.
- 22.5 SARS shall be entitled to use the services of other parties during *force majeure* events declared by the Service Provider.
- 22.6 It is expressly recorded that a strike or industrial action by the Service Provider's employees will not constitute a *force majeure* event.

23. TERMINATION

23.1 Termination for cause by SARS

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

23.1.1.1 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;

23.1.1.2 breaches the confidentiality provisions of this Agreement;

23.1.1.3 is found guilty of an offence in terms of Applicable Law;

23.1.1.4 commits an act of professional misconduct as contemplated in Applicable Law;

23.1.1.5 commits or participates in any unlawful, dishonest or unethical act in performing its obligations under this Agreement; or

23.1.1.6 fails to maintain or loses its registration with a Regulatory Authority.

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

23.2.1 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.

23.2.2 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 23.2.1** above.

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

23.2.4 In the event that the Service Provider fails to notify SARS, as required by **Clause 23.2.1** 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.

23.2.5 "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-

23.2.5.1 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;

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

23.2.5.3 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.

- 23.3 SARS shall have no liability to the Service Provider with respect to a termination under **Clause 23** except for amounts actually due and payable in respect of the completion of any matters pertaining to an RFX.

24. ADDRESSES

- 24.1 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.
- 24.2 SARS' physical address for **service of notices and legal processes** is as indicated in **Clause 2.2.21** above.
- 24.3 Service Provider's physical address for **service of notices and legal processes** is as indicated in **Annexure B**.
- 24.4 SARS' email address for communications, and/or correspondences in connection with the performance of the Services: pmsshengu@sars.gov.za
- 24.5 The Service Provider's email address for communications, and/or correspondences in connection with the performance of the Services is set out in **Annexure B**.
- 24.6 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.
- 24.7 Any Party may by written notice to the other Party, change its chosen address to another address, provided that-
- 27.1.1 the change shall become effective on the tenth (10th) Business Day after the receipt or deemed receipt of the notice by the addressee; and

27.1.2 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*.

24.8 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.

24.9 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.

25. TAX COMPLIANCE

25.1 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.

26. GENERAL

26.1 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 any RFX to any other person without the prior written consent of SARS.

26.2 Authorised Representatives

This Agreement shall not be valid unless signed by the Authorised Representatives.

26.3 **Costs**

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

26.4 **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.

26.5 **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.

26.6 **Governing Law and Jurisdiction**

26.6.1 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.

26.6.2 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.

26.7 **No Cession or Assignment Without Consent**

Subject to Applicable Law, neither Party may assign, cede, 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.

26.8 No Withholding of Consents

Subject to Applicable Law, 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.

26.9 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.

26.10 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 Representatives, 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.

26.11 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 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 this Agreement and accordingly annexed hereto.

SIGNED AT PRETORIA BY THE SARS' AUTHORISED REPRESENTATIVES

NAME:

DESIGNATION:

DATE:

NAME:

DESIGNATION:

DATE:

SIGNED BY THE SERVICE PROVIDER'S AUTHORISED REPRESENTATIVE

NAME:

CAPACITY:

PLACE:

DATE: