

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

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

DIGITAL FORENSIC REVIEW PLATFORM AGREEMENT

Between

THE SOUTH AFRICAN REVENUE SERVICE

(“SARS”)

And

_____ **(PTY) LIMITED**

(“Service Provider”)

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DRAFT

1. PARTIES

1.1. The Parties to this Agreement are:

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

1.1.2. _____ (**PTY**) **Ltd**, Registration Number: _____ a private company registered in terms of the Companies Act, 2009 (Act No. 71 of 2008) with its principal place of business situated at _____, (the **Service Provider**").

(collectively referred to herein as the "**Parties**" and individually as a "**Party**")

2. BACKGROUND AND OBJECTIVES

2.1. SARS has identified the need to acquire a Digital Forensic Review Platform Software solution. By utilising this solution, it should deliver the industry's fastest processing engine within a collaborative web-based platform to dramatically accelerate workflow. The solution should therefore empower more collaborative efforts between DFI (Digital Forensics Investigation) specialists, reviewers' auditors, and investigators to work together to find evidence faster and produce results quickly. The evidence should be forensically sound and enable presentation in a court of law and/or internal disciplinary proceedings in a simplified format.

2.2. In terms of the above-mentioned purchase (clause **Error! Reference source not found.** above), SARS is:

2.2.1. granted a subscription license to use, move, deploy and install the Software as purchased by SARS on a world-wide, non-exclusive and transferable basis, within SARS's own business environment and for its personal use;

- 2.2.2. allowed to change role players within the agreement, which includes the addition or removal of super users of the tool, and change user roles;
- 2.2.3. not allowed to exceed the total license allocation which is listed in the RFP and/or Agreement; and
- 2.2.4. allowed to make and maintain backup copies of the Software and may make such number of copies of part or all of the Software as is necessary for such purposes at no extra costs;
- 2.2.5. is allowed to continuously be provided with End of Life (EOL) and End of Support (EOS) dates, by the Service Provider from the Original Equipment Manufacturer (OEM) as soon as they are available.

(the provisions of Clauses 2.2.1, 2.2.2, 2.2.4 and 2.2.5 are collectively referred to as the “**Software License**”). **[Note to Bidder: Form of licensing will be confirmed].**

2.3. By responding to the RFP, the Service Provider:

- 2.3.1. warrants and represents (without limiting the provisions of the RFP Document) that, throughout the Term, it shall have the resources, capacity, skills, qualification, and experience necessary to supply maintenance and support services including any other ancillary service as proposed in the RFP Document and defined in clause 3 below.
- 2.3.2. undertakes to procure the license and that the license is purchased on SARS’s behalf as contemplated in the RFP Document,
- 2.3.3. In reliance on these representations, SARS has selected the bidder as a preferred Service Provider for the provision of the Software and Services, during the Term in accordance with the provisions of this Agreement.

3. INTERPRETATION AND DEFINITIONS

- 3.1. The headings in this Agreement are for reference purposes only and will not govern or affect the interpretation of nor modify nor amplify the terms of this Agreement.
- 3.2. Unless inconsistent with the context, the words and expressions have the following meanings and similar expressions will have corresponding meanings:
- 3.2.1. **“Acceptance Certificate”** means the document signed by SARS, indicating its acceptance of the Digital Forensic Review Platform, Software and/or Services.
- 3.2.2. **“Acceptance Testing”** means the criteria and process of measurement, examination and/or such other activities, required to verify the Deliverables;
- 3.2.3. **“Acts of Insolvency”** means when a Party is unable to pay its debts, becomes insolvent, is going through business rescue, is the subject of any order made or a resolution passed for the administration, winding-up or dissolution (otherwise than for the purpose of a solvent amalgamation or reconstruction), has an administrative or other receiver, manager, trustee, liquidator, administrator, or similar officer appointed over all or any substantial part of its assets, enters into or proposes any composition or arrangement with its creditors generally or is the subject of any events or circumstances or analogous to the foregoing in the Republic of South Africa, as fully defined in the Insolvency Act, 1936 (Act No. 24 of 1936), as amended;
- 3.2.4. **“Ad Hoc Services”** means additional services required by SARS from time to time, that are related to the Services and procured by SARS during the Term, subject to SARS’s procurement governance processes and procedures which shall if approved, remain compliant with **Annexure A**;
- 3.2.5. **“Agreement”** means collectively, the Main Agreement and the RFP Document;

- 3.2.6. **“Affiliate(s)”** means, with respect to any entity, any other entity Controlling, Controlled by or under common Control with such entity. The term **“Affiliate”** will also include:
- 3.2.6.1. a subsidiary of such entity, as the term "subsidiary" is defined in section 3 of the Companies Act 71 of 2008, as amended; and
- 3.2.6.2. any foreign company which, if it were registered under such Act, would fall within the ambit of such term.
- 3.2.7. **“AFSA”** means the Arbitration Foundation of Southern Africa;
- 3.2.8. **“Annexures”** means annexures to this Agreement;
- 3.2.9. **“Applicable Law(s)”** means any statute which includes without being limited thereto, Companies Act, PFMA, PAJA, PAIA and POPIA, including any regulation, directive, or subordinate legislation; the common law; any binding court order as between the Parties, judgment; any applicable securities industry code, standard enforceable by law; or any applicable direction, policy or order that is given by the Authority where there is an onus on the Parties to adhere to the aforesaid;
- 3.2.10. **“Authority”** means any agency, tribunal, commission, regulator, self-regulatory body or other similar body having jurisdiction over the Deliverables and/or Services activities or operations of any of the Parties in any territory that is applicable to this Agreement, including without limitation, Information Regulator, SARB and SARS;
- 3.2.11. **“Award Date”** means the date of the award of RFP to the Service Provider which date is as set out in the Letter of Award;
- 3.2.12. **“B-BBEE”** means broad-based black economic empowerment as defined in the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003) as amended from time to time;

- 3.2.13. **“BEE Codes”** means the Codes of Good Practice on Black Economic Empowerment gazetted by the Minister of Trade and Industry under section 9 of the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003), as amended, applicable to and binding on the Service Provider;
- 3.2.14. **“BEE Status”** means the BEE Status of the Service Provider based on its generic scorecard as measured and certified by a verification agency in accordance with the applicable BEE Codes;
- 3.2.15. **“BEE Verification Certificate”** means a certificate issued by a Verification Agency, verifying the Service Provider's BEE Status level, the details of its scorecard performance, as may be applicable, and any other aspect of its BEE performance under the Codes;
- 3.2.16. **“Best Industry Practices”** means the best industry practice, quality standards and requirements prescribed by ISO;
- 3.2.17. **“Bug-Fixes”** means changes to the Software, as the case may be, or any component thereof with a view to correcting any noncompliance with the Documentation thereof;
- 3.2.18. **“Business Day”** means any day other than a Saturday, Sunday or public holiday in the Republic of South Africa;
- 3.2.19. **“Commercially Reasonable Efforts”** means taking such steps and performing in such a manner as a well-managed firm / consultancy would undertake where such firm / consultancy was acting in a prudent and reasonable manner to achieve the particular result for its own benefit, provided always that such steps are within the reasonable control of the Party;
- 3.2.20. **“Companies Act”** means the Companies Act, 2008 (Act No. 71 of 2008), as amended;
- 3.2.21. **“Confidential Information”** means

- 3.2.21.1. in relation to SARS, subject to sub-Clause 3.2.21.4 immediately below in this definition any information or data of any nature, whether provided orally or in writing or otherwise obtained and in any format or medium, which constitutes:
- 3.2.21.2. SARS Information;
 - 3.2.21.2.1. SARS Data;
 - 3.2.21.2.2. Taxpayer Information;
 - 3.2.21.2.3. Information as defined in section 68 of the Tax Administration Act, 2011 (Act No. 28 of 2011) (hereinafter referred to as “**TAACT**”);
 - 3.2.21.2.4. information which by its nature, content, or circumstances of disclosure is or ought reasonably to be identifiable by the Service Provider as confidential (including by reason of such information not being generally known to, or readily ascertainable by, third parties generally) and/or proprietary to SARS, including (i) information regarding SARS Personnel, independent contractors and suppliers of SARS; processes and plans of SARS and governmental entities; projections, manuals, forecasts, and analyses of SARS; Intellectual Property owned by or licensed to SARS; (ii) information relating to the knowledge, know-how, expertise, trade secrets and activities of SARS; (iii) any information which SARS (without creating a presumption that only so designated information is confidential), acting reasonably, may designate in writing, at the time of disclosure to the Service Provider, as being confidential information; and (iv) and any other information of SARS which would be regarded by a reasonable person to be confidential or proprietary in nature;

3.2.21.2.5. in terms of Applicable Laws or by its nature, content, or circumstances of disclosure is or ought reasonably to be identifiable by the Service Provider as confidential (including by reason of such information not being generally known to, or readily ascertainable by, third parties generally) and/or proprietary to SARS, including: (i) data, financial information, information regarding taxpayers; information regarding employees, independent contractors and suppliers of SARS and Governmental Entities; processes and plans of SARS and Governmental Entities; projections, manuals, forecasts, and analysis of SARS and Governmental Entities; Intellectual Property owned by or licensed to SARS or a Governmental Entity; (ii) information relating to the knowledge, know-how, show-how, expertise, trade secrets and activities of SARS; (iii) any information which SARS (without creating a presumption that only so designated information is confidential), acting reasonably, may designate in writing, at the time of disclosure to the Service Provider, as being confidential information; and (iv) any other information of SARS or Governmental Entities which would be regarded by a reasonable person to be confidential or proprietary in nature; SARS or any person acting on behalf of SARS discloses or provides (or has previously disclosed or provided) to the Service Provider (including Service Provider Personnel, Service Provider affiliates, subcontractors, Third Party suppliers or agents, as applicable) or which the Service Provider (including the Service Provider's Personnel, Affiliates, Subcontractors, Third Party suppliers or agents, as applicable), otherwise becomes aware of in connection with this Agreement or as a result of the provision or receipt of the Services under this Agreement, and which information will include this Agreement;

- 3.2.21.3. means in relation to the Service Provider, any information or data of any nature, whether provided orally or in writing and in any format or medium, which is clearly designated in writing by Service Provider, at the time of disclosure to SARS, as being Confidential Information, and which written designation is, in each case acknowledged by SARS, by SARS initialling such designation, or which information by its nature could reasonably be expected to be confidential under the circumstances in which it is disclosed;
- 3.2.21.4. Confidential Information does not include information that is lawfully publicly available to, or lawfully in the Receiving Party's possession, at the time of disclosure thereof by the Disclosing Party (whether before or after the Effective Date) to the Receiving Party; or (ii) is independently developed or learned by the Receiving Party without reference to or use of the Confidential Information of the Disclosing Party; or (iii) is in or enters the public domain without breach of this Agreement or any other obligation owed by the Receiving Party to the Disclosing Party; or (iv) the Receiving Party receives from a Third Party without restriction on disclosure and without breach of a non-disclosure obligation; provided always that notwithstanding the foregoing:
- 3.2.21.4.1. the onus will at all times rest on the Receiving Party to establish that such information falls within such exclusions;
- 3.2.21.4.2. the information disclosed will not be deemed to be within the foregoing exclusions merely because such information is embraced by more general information that is publicly available or in a Party's possession;
- 3.2.21.4.3. any combination of features will not be deemed to be within the foregoing exclusions merely because individual features are publicly available or in a Party's possession, but only if the combination itself is publicly available or in a Party's possession; and

- 3.2.21.4.4. the determination of whether information is Confidential Information will not be affected by whether or not such information is subject to, or protected by, common law or statute related to copyright, patent, trademarks or otherwise.
- 3.2.22. **“Control”** means with regard to any entity, the right or power to dictate the management of and otherwise control such entity by any of:
- 3.2.22.1. holding directly or indirectly the majority of the issued share capital or stock (or other ownership interest if not a corporation) of such entity ordinarily having voting rights;
 - 3.2.22.2. controlling the majority of the voting rights in such entity; or
 - 3.2.22.3. 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.
- 3.2.23. **“Data Protection Agreement”** means the data protection agreement to be signed by the Service Provider as the Operator as part of the provision of the Services attached hereto as **Annexure F**;
- 3.2.24. **“Data Protection Legislation”** means collectively, POPIA and any other legislation applicable to the protection of Personal Information in the Republic of South Africa;
- 3.2.25. **“Data Subject”** means the person to whom Personal Information relates;
- 3.2.26. **“Deficiency”** means any error, Problem, non-conformity or defect in the: (i) Software; (ii) License; (iii) Operating System; (iv) Hardware; and/or (iv) Documentation, resulting from any deviation from the Functional Specification, or incorrect or incomplete documentation;

- 3.2.27. **"Deliverable(s)"** means the Digital Forensic Review Platform and associated licenses, all deliverables outlined in the RFP document; Software Maintenance and Support Services, Professional Services, Training, Knowledge Transfer, Consulting Services, License Documentation and/or Ad Hoc Services, including any other material, documentation which are provided by the Service Provider to SARS as part of the Services pursuant to this Agreement;
- 3.2.28. **"Destructive Element"** means any "back door", "time bomb", "time lock", "trojan horse", "worm", "drop dead device", "virus" or other computer software routine, code or device intended or designed to: (a) permit access to or the use of any software, firmware, hardware and peripherals, wide area network, or local area network by an unauthorised person; or (b) disable, damage, erase, disrupt or impair in any way the operation of any software, firmware, hardware and peripherals, wide area network, or local area network, including by the elapsing of a period of time, exceeding an authorised number of copies, advancement to a particular date or other numeral; or (c) damage, erase or corrupt data, storage media, programmes, equipment or communications or otherwise interfere with operations of any software, firmware, hardware and peripherals, wide area network, or local area network; and/or (d) any other form of destructive coding and/or device, including those which result in aesthetical disruptions or distortions;
- 3.2.29. **"Disclosing Party"** means a Party disclosing the Confidential Information to the Receiving Party;
- 3.2.30. **"Disengagement Assistance"** has the meaning set out in clause 1.1 of the Schedule H (Disengagement Assistance).
- 3.2.31. **"Disengagement Assistance Manager"** has the meaning set out in clause 1.8.1 of the Schedule H (Disengagement Assistance).

- 3.2.32. **“Disengagement Assistance Period”** means the period commencing 6 (six) months prior to expiration of this Agreement, or commencing on any notice of termination and continuing through the effective date of expiration (as it may be extended in terms of this Agreement) or, if applicable, through the effective date of termination (as such effective date may be extended in terms of the Agreement) and ending up to 12 (twelve) months after such date as is necessary to successfully complete Disengagement Assistance.
- 3.2.33. **“Disengagement Assistance Plan”** means the disengagement assistance plan(s) to be developed in accordance with Schedule H (Disengagement Assistance).
- 3.2.34. **“Documentation”** means the Functional Specification, user manuals, training manuals, support manuals, including any other documentation relating to a Deliverable under this Agreement which will be furnished by the Service Provider to SARS as envisaged in this Agreement.
- 3.2.35. **“Effective Date”** means _____ notwithstanding the Signature Date;
- 3.2.36. **“Enhancement”** means significant changes to the Software or any component of the Software resulting in the addition of a new feature or capability of the Software which feature, or capability is not present in the specifications for such Software;
- 3.2.37. **“Fees”** means the Professional Services fees, annual license Maintenance and Support Services fees payable by SARS to the Service Provider for the Software including provision of the Services and Upgrades which fees are as set out in Clause 16 below and **Annexure A**;

- 3.2.38. **“Force Majeure Event”** means any circumstances beyond a Party’s reasonable control and includes, without limitation: (i) acts of God, public enemy, fire, explosion, earthquake, perils of the sea, flood, storm or other adverse weather conditions, war declared or undeclared, civil war, revolution, civil commotion or other civil disorder, sabotage, riot, strikes, lock-outs or other labour disputes, blockade, embargo, sanctions, epidemics, pandemics, act of any Government or other Authority, compliance with law, regulations or demands of any Government or Governmental agency, limitations imposed by exchange control or foreign investment or other similar regulations or any other circumstances of like or different nature beyond the reasonable control of the Party so failing;
- 3.2.39. **“Functional Specification”** means the document specifying the technical functionality and operation of the Software;
- 3.2.40. **“ICT”** means information communication and technology;
- 3.2.41. **“Incident”** means any event that is not part of the standard operation of a service and which causes, or may cause, an interruption to, or a reduction in, the quality of that Software or Service;

3.2.42. **“Intellectual Property”** means all computer programs, software, source code, object code, programmer interfaces, specifications, operating instructions, compilations, lists, databases, systems, operations, processes, methodologies, technologies, algorithms, techniques, methods, designs, circuit layouts and mask-works, plans, reports, data, works protected under the Copyright Act 98 of 1978, works of authorship, video recordings, audio recordings, photographs, models, samples, substances, trade secrets, formulae, know-how, show-how, Confidential Information, concepts and ideas of any nature (including of a technical, scientific, engineering, commercial, strategic, financial, marketing or organisational nature), inventions, discoveries, drawings, notes, manuals, documentation, training materials, job aids, trademarks, service marks, logos, slogans, corporate, business and trade names, domain names, trade dress, brand names and other indicia of origin, regardless of whether Intellectual Property Rights actually inhere in any such items, and any other tangible or intangible items in which Intellectual Property Rights may inhere, as may exist anywhere in the world and any applications for registration of such intellectual property, and includes all Intellectual Property Rights in any of the foregoing;

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

- 3.2.43.1. all patents and other patent rights, including divisional and continuation patents, utility models;
- 3.2.43.2. rights in and to inventions, whether patentable or not;
- 3.2.43.3. rights in trademarks, service marks, logos, slogans, corporate, business and trade names, trade dress, brand names and other indicia of origin;
- 3.2.43.4. rights in designs, topography rights, rights in circuit layouts and mask-works;

- 3.2.43.5. copyright, including all copyright in and to computer programs;
- 3.2.43.6. rights in internet domain names, reservations for internet domain names, uniform resource locators and corresponding internet sites;
- 3.2.43.7. rights in databases and data collections; and
- 3.2.43.8. know-how, show-how, trade secrets and confidential information, in each case whether or not registered and including applications for the registration, extension, renewal and re-issuance, continuations in part or divisions of, any of these and the right to apply for any of the foregoing, all claims for past infringements, and all rights or forms of protection of a similar nature or having equivalent or similar effect to any of these which may subsist anywhere in the world.
- 3.2.44. **“ISO”** means International Standards Organization, specifically in the implementation of quality standards and requirements of the Software in line with and of no less quality than, ISO/IEC 27001:2013 ISO/IEC 27017:2015 and ISO/IEC 27018:2019 to increase and continually improve on operational efficiency;
- 3.2.45. **“Letter of Award”** means the letter of award issued to the Service Provider by SARS, dated _____, attached hereto as **Annexure B**;
- 3.2.46. **“Licensor”** means the license owner and OEM of the Software licensed to SARS as contemplated in this Agreement, being _____;
- 3.2.47. **“Losses”** means all losses, liabilities, costs, expenses, fines, penalties, damages and claims, and all related costs and expenses (including legal fees on the scale as between attorney and own client, tracing and collection charges, costs of investigation, interest and penalties);

- 3.2.48. **“Main Agreement”** means this Digital Forensic Review Platform Agreement, as well as Annexures, Appendices and Schedules thereto and the RFP document;
- 3.2.49. **“Maintenance Services”** means without being limited thereto, (i) corrective maintenance, adaptive maintenance, preventative maintenance, scheduled maintenance and emergency maintenance as may be required for the purpose of ensuring continued functionality and operation of the Software in accordance with the Functional Specification and Documentation, including the performance of: (ii) the maintenance activities set out generally in Clause 8 below and specially as set out in the scope of the Services as described in 8; (iii) the identification and notification of Problems and/or Deficiencies (iv) installing of workarounds, patches, Bug-Fixes, Upgrades, enhancements and New Releases (v) the solution support, update Software catalogues, update Software signatures and Software rules or use rights.;
- 3.2.50. **“New Release”** means a new release of the Software incorporating Upgrades, Bug Fixes, Software Breakages or Enhancements to the Software and which is generally a replacement for the Software. For the sake of clarity, New Releases are usually identified by a change in the version number, for instance a change from version 1 to version 2;
- 3.2.51. **“OHSA”** means the Occupational Health and Safety Act, 1993 (Act No. 85 of 1993) and regulations thereto, amended;
- 3.2.52. **“Operator”** means a person who processes personal information for a Responsible Party in terms of a contract or mandate, but does not come under the direct authority or control of the Responsible Party; Agreement,
- 3.2.53. **“PAIA”** means the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000), as amended;

- 3.2.54. **"PAJA"** means the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000);
- 3.2.55. **"Personal Information"** means information relating to an identifiable, living, natural or juristic person as fully defined in section 1 of POPIA;
- 3.2.56. **"Personal Information Breach"** means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of or access to, Personal Information transmitted, stored or otherwise Processed;
- 3.2.57. **"PFMA"** means the Public Finance Management Act, No. 1 of 1999;
- 3.2.58. **"POPIA"** means Protection of Personal Information Act, 2013 (Act No. 4 of 2013);
- 3.2.59. **"Pre-delivery Testing"** means the Service Provider's testing of a Deliverable, which testing is to be performed by the Service Provider prior to submitting or delivering such Deliverable to SARS for SARS's evaluation;
- 3.2.60. **"Premises"** means any SARS's offices where the Services are required;
- 3.2.61. **"Privacy and Data Protection Requirements"** means the 8 (eight) requirements for the lawful Processing of personal information contained in Chapter 3 of POPIA;
- 3.2.62. **"Problem"** means the underlying cause of one or more Incidents; or the occurrence of a problem or error in the Software if applicable, reported by SARS to the Service Provider, including a Deficiency;
- 3.2.63. **"Process" and "Processing"** means process and/or processing of Personal information as defined in section 1 of POPIA;

- 3.2.64. **“Professional Service (s)”** means collectively, implementation, project management, advisory and training services to be provided by the Service Provider to SARS as contemplated in this Agreement, which project planning and execution is set out in the RFP document and Schedule 1;
- 3.2.65. **“RFP Document”** means the Request for Proposal number RFP 30-2023 for the provision of the Deliverables and/or Services issued by SARS which forms an integral part of this Agreement attached as **Annexure G**;
- 3.2.66. **“Repo Rate”** means the interest rate (percent per annum) at which the South African Reserve Bank lends money to private banks;
- 3.2.67. **“Responsible Party”** means the party who determines the purpose of and means for Processing Personal Information and for the purposes of this Agreement, Responsible Party shall mean SARS;
- 3.2.68. **“SANAS”** means the South African National Accreditation System established in terms of Section 3 (1) of the Accreditation for Conformity Assessment Calibration and Good Laboratory Practice Act, 2006 (Act No. 19 of 2006) and recognised by the South African Government as the national accreditation body;
- 3.2.69. **“SARS Act”** means the South African Revenue Service Act, 1997 (Act No. 34 of 1997);
- 3.2.70. **“SARS Data”** means any information and/or data including but not limited to data or any information owned and created by SARS, whether or not Confidential Information in any format, being information of SARS relating to SARS’s business operations, a taxpayer, its employees, contractors and Service Provider which information and/or data includes without being limited thereto, personal information as defined in the Tax Acts, POPIA, or any other Applicable Legislation, including:

- 3.2.70.1. all reports, documentation, software or inventions in material form, irrespective of media on which they occur, entered into, contained in and/or stored, collected, accessed or processed by the Service Provider for the purpose of providing the Services to SARS; and
- 3.2.70.2. all other records, data, files, input materials, reports, forms and other such items that may be received, computed, developed, used or stored by the Service Provider or any of the Service Provider Personnel, Subcontractors, for or on behalf of SARS or in connection with the Services;
- 3.2.71. **“SARS’s Designated Representative”** means any SARS official who is authorised to enter into this Agreement with the Service Provider;
- 3.2.72. **“SARS Disengagement Assistance Manager”** has the meaning set out in clause 1.8.2 of the Schedule H (Disengagement Assistance);

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

secrets, of SARS, the disclosure of which would be likely to cause harm to the financial interests of SARS; (k) information the disclosure of which could reasonably be expected to put SARS at a disadvantage in contractual or other negotiations; and (l) information relating to the security of SARS buildings, property, structures or systems;

- 3.2.74. **“SARS Personnel”** means SARS’s staff, consultants and/or agent employed by SARS for the purposes of the Agreement;
- 3.2.75. **“SARS PPS&G”** means the SARS’s policies, procedures, processes, standards, guidelines, and other similar issuances (including any updates, amendments or revisions) that are applicable to the Services or the Service Provider from time to time as may be amended, updated and/or replaced by SARS;
- 3.2.76. **“Services”** means the functions and responsibilities to be provided by the Service Provider to SARS in respect of the Software as detailed in the RFP as they may evolve or be supplemented, enhanced, modified, amended or replaced in accordance with the terms of this Agreement, and in particular means: (i) the on premise installation and support to make it SARS environmentally compatible (ii) procurement of the Software and Software Licence(s); (iii) the Professional Services (iv) the Maintenance Services; (v) the Support Services; (iv) Training Services; (vii) Ad Hoc Services and any services related to those detailed in (i) to (vii) above;
- 3.2.77. **“Service Level”** means a quantitative standard of performance of the Services that Service Provider is required to satisfy in its performance of the Services, as are detailed under **Annexure D**;
- 3.2.78. **“Service Level Agreement”** means the Service Level Agreement attached hereto and marked **Annexure D**;

- 3.2.79. **“Service Provider Personnel”** means the Service Provider’s staff, be they permanent, temporary or contractors, performing the Services on behalf of the Service Provider;
- 3.2.80. **“Signature Date”** means the date of signature of this Agreement by the last Party signing;
- 3.2.81. **“Software”** refers to the Digital Forensic Review Platform Solution which solution shall without limitation allow for the industry’s fastest processing engine within a collaborative web-based platform to dramatically accelerate workflow and should empower more collaborative efforts between DFI specialists, reviewers’ auditors, and investigators to work together to find evidence faster and produce results quickly.
- 3.2.82. **“Software License”** means the license(s) required by SARS to access and use the Software which license(s) is as fully described in **Annexure C** hereto;
- 3.2.83. **“Software Breakages”** means individually and/or collectively, the bug fixes, Work-Arounds and temporary fixes, patches relating to the Software;
- 3.2.84. **“Solutions Implementation”** means End to End Solution Implementation set out in Schedule 1;
- 3.2.85. **“Solutions Reporting”** means the continuous reporting by the Service Provider on the service/ provision and utilisation of the Solution as detailed in Annexure D the SLA;
- 3.2.86. **“SPOC”** means a Single Point of Contact designated by either Party to ensure the implementation of the Agreement in accordance with the terms hereof and to resolve any operational issues pertaining thereto who details are as fully set out in the Service Level Agreement (**Annexure D**);

- 3.2.87. **"Support Services"** means the provision of services including but not limited to support activities outlined in the RFP; as fully set out in Annexure D, the SLA and Clause 8 below, by the Service Provider to SARS whereby the Service Provider: (i) attends to all service request logged by SARS and escalated to the Service Provider; (ii) resolves all Incidents and Problems logged by SARS in accordance with the Service Levels; (iii) the installation and repair of all Software Breakages and Upgrades and (iv) provides professional services in respect of, or related to the Software to ensure the continued functionality of the Software in accordance with the Functional Specification and/or Documentation, which services may be provided remotely, on site or via telephonic support. For the avoidance of doubt, the provisions of this Clause 3.2.87 will apply in respect of all copies of the Software including the Software Licenses used by SARS, including those used by SARS for disaster recovery purposes;
- 3.2.88. **"Tax Act"** means an Act, or a portion thereof, referred to in section 4 read with Schedule 1 to the SARS Act, as well as the Tax Administration Act No. 28 of 2011; the Mineral and Petroleum Resources Royalty Act No 28 of 2008 and the Mineral and Petroleum Resources Royalty Administration Act No. 29 of 2008 as amended;
- 3.2.89. **"Taxpayer Information"** means any relevant material, including details of a Taxpayer's bank account, Tax reference number; identity number and/or any information, document or thing that is reasonably foreseeable to be relevant to enable the performance of the Services as envisaged in this Agreement (and as may be more fully described in the Agreement), provided by a Taxpayer or obtained by SARS in respect of a Taxpayer;
- 3.2.90. **"Term"** means the term of this Agreement defined in Clause 7 below;
- 3.2.91. **"Third Party"** means any person other than SARS, Affiliates or Subcontractor;

- 3.2.92. **“Third Party Intellectual Property”** means Intellectual Property owned by a third party and licensed for use by the Service Provider in the provision of the Services subject to SARS’s written consent;
- 3.2.93. **“Third Party Service Provider(s)”** means the Licensor or authorised reseller to the extent involved: (i) in providing the Services and/or (ii) delivery of the Deliverables under this Agreement with the Service Provider;
- 3.2.94. **“Time and Materials Basis”** means the basis on which the Service Provider will charge SARS for Ad Hoc Services as set out in Annexure A, explicitly designated as such and which is based on the time spent and the materials utilised to execute such services. All such time will be billed in accordance with the time and material rates approved by SARS in accordance with SARS’s procurement governance processes and procedures;
- 3.2.95. **“Training Services”** means the training, advisory and professional services provided by the Service Provider to SARS’s Personnel as set out in clause 8 enable SARS’s Personnel to maintain and support the Software and Software Licenses, which training services shall when required, be subject to SARS’s procurement governance processes and procedures; and
- 3.2.96. **“Upgrade”** means any change or improvement to the Software that relates to or affects the operating performance of the Software or an aspect of such Software but does not change the basic operation or functionality of the Software. For the sake of clarity, Upgrades are usually identified by a change in the version number, for instance a change from version 1.1 to version 1.2; and
- 3.2.97. **“Work Arounds”** means a methodology applied, and/or change made, to the Software, as the case may be, with a view to furnishing SARS with a temporary means to make use of the Software, as the case may be, or any component thereof until such time as a permanent solution is provided.

- 1.2. Any reference in this Agreement to:
 - 3.2.98. “**Clause**” shall, subject to any contrary indication, be construed as a reference to a Clause in this Agreement.
 - 3.2.99. “**Person**” refers to any person including juristic entities.
- 3.3. Unless inconsistent with the context or save where the contrary is expressly indicated:
 - 3.3.1. if any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that it appears only in the definition Clause, effect shall be given to it as if it were a substantive provision of this Agreement;
 - 3.3.2. when any number of days is prescribed in this Agreement, such a period shall be computed by excluding the first and including the last day unless the last day falls on a day which is not a Business Day, in which case the last day shall be the next succeeding Business Day;
 - 3.3.3. no provision of this Agreement constitutes a stipulation for the benefit of any Person who is not a Party to this Agreement; and
 - 3.3.4. a reference to a Party includes that Party’s successors-in-title and permitted assignees, including any other persons contemplated in Clause 3.7 of this Agreement.
- 3.4. Unless inconsistent with the context, an expression which denotes:
 - 3.4.1. any one gender includes the other gender; and
 - 3.4.2. the singular includes the plural and vice versa.
- 3.5. Unless it is clear from a specific Clause in which a term has been defined that such definition has limited application to the relevant Clause, any term defined within the context of any particular Clause in this Agreement shall bear the same meaning as ascribed to it throughout the Agreement, notwithstanding that that term has been defined in a specific Clause.

- 3.6. 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 do not expressly provide for this.
- 3.7. This Agreement is binding on the executors, administrators, trustees, permitted assignees or liquidators of the Parties as fully and effectually as if they had signed this Agreement in the first instance and reference to any Party is deemed to include such Party's estate, heirs, executors, administrators, trustees, permitted assigns or liquidators, as the case may be.
- 3.8. Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.
- 3.9. None of the provisions hereof shall be construed against or interpreted to the disadvantage of the Party responsible for the drafting or preparation of such provision.
- 3.10. Subject to Clause 3.10.2 below in the event of a conflict between:
- 3.10.1. the terms and condition contained in various clauses of the Main Agreement and any other document that is part of or executed under the Main Agreement, the terms and conditions of the Main Agreement shall prevail; and/or
 - 3.10.2. terms and conditions contained in the Annexures, Appendices, Schedules and Main Agreement, the terms and conditions of the Main Agreement will prevail;
 - 3.10.3. the Main Agreement and RFP, the provision of the RFP will prevail.
- 3.11. This Agreement shall govern the relationship between the Parties for Services to be provided by the Service Provider to SARS. Any terms and conditions imposed by the Service Provider (whether in a quotation, offer, proposal, invoice, etc., as the case may be) and purporting to bind SARS, shall not (to the extent that they contradict the provisions of this Agreement) override this Agreement, unless agreed to by SARS in writing and such agreement is confirmed and signed by SARS.

4. APPOINTMENT AND NON-EXCLUSIVITY

- 4.1. The Service Provider is hereby appointed in accordance with the Letter of Award, to provide the Services to SARS under the RFP.
- 4.2. Subject to the provisions of the RFP, the Agreement generally and the provisions of Clause 8 specifically, SARS hereby appoints the Service Provider, on a non-exclusive basis, to provide the Services on the terms and conditions of this Agreement, and the Service Provider hereby accepts such appointment.
- 4.3. Nothing contained herein will in any way be construed or constitute a guarantee in favour of the Service Provider that the Service Provider will receive any work or contract from SARS for services in the future, whether under this Agreement or otherwise.
- 4.4. SARS shall not be precluded from obtaining services that may be similar or identical to the Services from any other service provider and nothing contained herein shall in any way be construed or constitute a guarantee in favour of the Service Provider that the Service Provider will receive any work or contract for services in the future, whether under this Agreement or otherwise from SARS.

5. NATURE OF RELATIONSHIP AND NON-EXCLUSIVITY

- 5.1. The Parties act for all purposes in terms of the Agreement as independent contractors. Without limiting the foregoing:
 - 5.1.1. neither Party shall be entitled to contract on behalf of or bind the other Party in any manner whatsoever or to incur any liability or debt on behalf of the other Party; and
 - 5.1.2. the Service Provider shall not publish or cause to be published any advertisement or other information relating to SARS or SARS's business without the prior written approval of SARS; and

- 5.1.3. neither Party's Personnel shall be deemed Personnel of the other Party for any purpose whatsoever and for these purposes, where the Service Provider has utilised the fixed term contractors, temporary employees and/or consultants either as Service Provider Personnel, the Service Provider undertakes to ensure that its contracts with the aforesaid Service Provider Personnel, specifically states that the assignment to SARS is only for a project and is by no means a reflection of SARS as an intended employer of the Service Provider Personnel or deemed employer in terms of the deeming provision introduced by section 198 the Labour Act, 1995 (Act No. 66 of 1995 as amended) ("**the Labour Relations Act**"), in the event of termination of this Agreement for any reason whatsoever.
- 5.1.4. In the event that the Labour Act, deems the Service Provider Personnel to be employees for the purposes of the aforesaid section 198, the Service Provider undertakes to indemnify SARS in full against all costs, expenses (including legal expenses on an attorney own client scale), damages, loss (including loss of business or loss of profits), liabilities, demands, claims, actions or proceedings, which the Service Provider may incur arising as a result of the aforesaid Labour Act.

6. **SUBCONTRACTORS**

- 6.1. The Service Provider may not in any way (including by entering into a partnership, alliance or outsourcing arrangement for this purpose) subcontract its obligations under the Agreement without the prior written consent of SARS.
- 6.2. SARS will be entitled at its sole discretion to withhold approval in respect of the appointment of any Subcontractor to whom the Service Provider intends to delegate the performance of a material part of the Deliverables.

- 6.3. Where SARS has consented to the appointment of a Subcontractor as contemplated in Clause 6.1 above, the agreements between the Service Provider and its Subcontractors relating to the subcontracting of the Deliverables (“**Subcontract**”) will contain materially the same terms and conditions as this Agreement to the extent such terms and conditions are relevant to the services to be provided by the Subcontractor (including a restriction on the Subcontractor’s right to further subcontract its obligations without SARS’s prior written consent).
- 6.4. In no event will the Service Provider be relieved of its obligations under this Agreement as a result of its use of any Subcontractors. Supplier will at all times be responsible to SARS for fulfilment of all the Service Provider’s obligations under this Agreement and will remain SARS’s sole point of contact regarding the Deliverables, including with respect to payment.
- 6.5. The Service Provider will supervise the activities and performance of each Subcontractor and will be liable for any act or failure to act by such Subcontractor which causes any harm, loss or damage to SARS.
- 6.6. If SARS determines that the performance or conduct of any Subcontractor is unsatisfactory or if it can be reasonably established or determined that concerns exist regarding the Subcontractor’s ability to render future performance because of changes in the ownership, management, and/or financial condition of the Subcontractor, or there have been material misrepresentations regarding the Subcontractor on the strength of which SARS’s consent was granted for the appointment of such Subcontractor, SARS may notify the Service Provider of its determination in writing, indicating the reasons therefore, in which event the Service Provider will promptly take all necessary actions to remedy the performance or conduct of such Subcontractor or, subject to the terms of this Clause 6, replace such Subcontractor with another Subcontract.
- 6.7. The Service Provider will not disclose SARS’s Confidential Information to a Subcontractor unless and until such a Subcontractor or prospective Subcontractor has executed an agreement including provisions at least as rigorous and restrictive as the confidentiality provisions set out in this Agreement.

7. COMMENCEMENT AND DURATION

- 7.1. The term of this Agreement will commence on the Effective Date and will terminate on _____ (the "**Term**"), unless extended as contemplated in Clause 7.2 below in which case, the Agreement will expire at the end of such Renewal Term.
- 7.2. Upon giving notice to Service Provider no less than 60 (sixty) days prior to the then-existing expiration date of this Agreement, SARS will have the right to extend the Term of this Agreement, for a further period approved by SARS in terms of SARS's procurement governance processes and procedures applicable to the renewal of contracts or agreements, on the same terms and conditions then in effect ("**Renewal Term**") except for the Fees which shall be aligned to approved fees chargeable for the Renewal Term.
- 7.3. For the avoidance of doubt, it is recorded by the Parties that where procurement approval has not been obtained for the renewal of this Agreement, this Agreement shall automatically terminate at the expiry of the Term.

8. SCOPE OF THE SERVICES

- 8.1. The Service Provider shall for the Term, use its Commercial Reasonable Efforts to provide Services to SARS on the terms and conditions of this Agreement and subject to the Service Levels.
- 8.2. The Service Provider undertakes to ensure that the following Services are provided in accordance with the Best Industry Practice and attaining the Service Level and Performance Criteria/Standards at all times.
- 8.3. SARS Digital Forensic Investigation is currently using Forensic Tool Kit (FTK) and Magnet AXIOM Review tools for imaging, processing, and analysis of digital media within the computer forensic environment. The Software must therefore be able to support the current tools in use within the DFI environment. The solution should ensure a seamless integration of current work environment, process, and tools.

8.4. Professional Services:

- 8.4.1. The Service Provider shall provide Professional Services as prescribed in the RFP document.
- 8.4.2. The Service Provider shall where required, provide SARS with all the necessary documents for SARS's signature to ensure the vesting of the products in SARS.
- 8.4.3. For the avoidance of doubt, the Parties record and agree that all Software Licence(s) on Effective date or at SARS election shall be delivered and installed as contemplated in this Agreement.
- 8.4.4. The Service Provider shall provide the Digital Forensic Review Platform implementation, project management, advisory and training services for the Term of this Agreement.
- 8.4.5. The following performance attributes shall form an integral part of the Services:
 - 8.4.5.1. Centralised processing:
 - 8.4.5.1.1. Centralised processing should allow multiple processing/indexing to run concurrently on multiple devices at high speed, which will release workstations for the DFI specialist to perform analysis and investigations and not be held-back by the processing stage.
 - 8.4.5.2. Real time interactive investigation:

8.4.5.2.1. The solution should allow for web-based interaction between the DFI Specialist and the investigator/auditor, which will enhance efficiency regarding investigation turnaround times. Evidence files can be shared securely. The remote login process must be permissible, thus enabling work to be carried out from various working sites.

8.4.5.3. Leverage SARS investigation related to big data:

8.4.5.3.1. Past, present, and future data will be mined to build a more intelligent picture of understanding taxpayer and taxpayer behaviours. Currently, DFI has high volumes of historical data relating to some of the current tax investigation focus areas, it can be used to enhance current and future investigations. This solution will enable in-depth mining and analysis of DFI's database, cross-case information search and analyses. Estimated quantity of data will be 100 to 300 terabytes within a financial year and an additional 700 terabytes of historical data.

8.4.5.4. Case and information management:

8.4.5.4.1. The system must allow for effective management of the cases and the usage of evidence collected. The system must allow for delegation of control and separation of information access by classification. Information managed in a secure environment and be subject to a limited time-based access, thereof eliminating sensitive information left on investigators computers, thereby limiting the risk of possible data leaks.

8.4.5.5. Artificial intelligence

8.4.5.5.1. Information overload is the biggest hurdle to overcome when searching for evidence. Predictive coding functionality is required to efficiently identify the most relevant data. Artificial intelligence in digital forensics includes the elimination of manual review processes that include neural network-based machine learning algorithms that automatically detect previously unknown images and video clips related to key categories. The solution needs to be able to search and identify persons of interest with advanced facial recognition capabilities, including advanced case data filtering with unique facets.

8.4.5.6. Data presentation and visualisation

- 8.4.5.6.1. The system must enable interactive and integrated geographic mapping, chart, and link analysis tools to make sense of large data from diverse sources, structured and unstructured data sets.
- 8.4.6. The expected deliverables shall include but not limited to the following and must be compatible with leading digital forensic suites and current licensed software packages:
 - 8.4.6.1. The software should have the ability to collaborate in real time with multiple devices (i.e laptops, desktops, and mobile devices).
 - 8.4.6.2. The software must support the forensic portable package extraction and analysis;
 - 8.4.6.3. The software must have case management capabilities and user management capabilities;
 - 8.4.6.4. The software must have the ability to ingest evidence sources which had previously been processed without extra manual work and evidence should be readily available to review.
- 8.4.7. The Service Provider must further provide SARS with ad hoc advisory services related to the services, including advising and recommending continuous improvements and possible technological enhancements to SARS at no additional cost, which form part of the Agreement.
- 8.4.8. Formal additional consulting assignment may be engaged on a paid-for basis. Formal paid-for consulting assignments will only be provided upon written authorization by SARS to the Service Provider.

8.5. Maintenance Services:

- 8.5.1. The Service Provider shall for the duration of this Agreement provide the Maintenance Services in accordance with the provisions of this Agreement. In providing the Maintenance Services, the Service Provider shall:
- 8.5.1.1. Ensure that the Software Licenses are in place on Effective Date or at SARS election;
 - 8.5.1.2. promptly notify SARS of any Upgrades or New Release of the Software;
 - 8.5.1.3. notify SARS within 18 months prior to end of support and end of life dates in respect of the Software, Upgrades or New Release. The service provider will provide SARS with mitigation plan in favour of SARS and implement such in consultation with SARS and at no cost to SARS in the event that it fails to give the required notice. The said mitigation plan shall be implemented until an agreed period in line with SARS procurement policies and procedures. SARS shall not be compelled to migrate to the new software/New Release provided by the Service Provider.
 - 8.5.1.4. provide SARS with each notification and/or release specifying: (i) the nature of such Upgrades or New Release; and (ii) any adverse effects which the Upgrades or New Release may be expected to have, including, without limitation, any expected degradation in performance. The Service Provider undertakes that while such release notes may not be equivalent to a detailed specification of the Upgrades or New Release, it shall contain sufficient information to enable SARS to determine whether such Upgrade or New Release will be appropriate to SARS's requirements;

- 8.5.1.5. ensure, within 7 (seven) days of receipt of such notification, that it delivers to SARS the object code of the Upgrade or New Release in machine-readable form together with any amendments to the documentation which shall be necessary to describe and enable proper use of the improved facilities and functions of the Upgrade or New Release;
- 8.5.1.6. ensure that it is available at all times during any SARS evaluation period to provide assistance to SARS in this respect; and
- 8.5.1.7. continue to provide any Maintenance Services to SARS in respect of the release in use by SARS in the event that SARS elects not to evaluate and/or install the Upgrades or New Release.
- 8.5.2. For the avoidance of doubt, the Parties record and agree that the Service Provider will provide the Maintenance Services:
 - 8.5.2.1. from the Effective Date and in respect of Software already installed on SARS's environment prior to the Effective Date;
 - 8.5.2.2. in respect of Products procured by the Service Provider on behalf of SARS under this Agreement, from the date of installation of the Product by SARS; and
 - 8.5.2.3. in respect of Products procured by a Third-Party Service Provider on behalf of SARS after the Effective Date, from the date that SARS informs the Service Provider of the installation of the Product.
- 8.6. **Support Services:**
 - 8.6.1. In providing the Support Services, SARS shall request the assistance of the Service Provider with regard to any Deficiencies in the Software which it may identify in accordance with the procedures set forth by the Licensor.

- 8.6.2. The Service Provider undertakes that in providing such Support Services it shall use Commercially Reasonable Efforts to ensure that the Software functions error-free, maintain the Software in such a manner as to its continued compliance with its Documentation, identify the nature and cause of the Problem (corrective maintenance), advise SARS thereof and provide SARS with future avoidance advice as well as undertaking any necessary preventative measures to minimise recurrence of the Problem.
- 8.6.3. The Service Provider shall, at its expense, supply all items necessary or required for the Support Services, provided that should the Services be provided at SARS's offices, supplies of electricity, network connectivity and telephone services reasonably required by the Service Provider to provide such Services will be made available to the Service Provider in accordance with SARS's procedures and at SARS's expense.
- 8.6.4. The Service Provider will, on an ongoing basis apply Best Industry Practices to provide proactive preventative maintenance and advice in an effort to ensure that the Software will function error-free and will continue to comply with its Functional Specifications. In addition, the Service Provider will pro-actively identify issues which may cause a Problem and take any and all necessary preventative measures to avoid the Problem from happening.

8.7. Training Services:

- 8.7.1. Training of DFI specialists and transitional understanding to this Digital Review Platform will be a natural progression and knowledge building and capability on the tools currently used. The software must be highly compatible with FTK and Magnet Review image ingestion.

- 8.7.2. The Service Provider will provide formal classroom and/or online Training Services related to the Digital Forensic Review Platform to SARS and/or the SARS Personnel, the scope of and as amended by the Parties in writing from time to time, subject to SARS's procurement governance processes and procedures.

8.8. Knowledge Transfer

- 8.8.1. The Service Provider will be required, during the Term, to provide knowledge transfer to SARS, including its personnel, which shall be planned appropriately in accordance with SARS' knowledge and skills gaps and needs. The Service Provider will work together with SARS to design and develop a knowledge transfer plan, including the scope and performance measurement thereof.

8.9. Ad Hoc Services:

- 8.9.1. The Service Provider will provide ongoing professional services in the Service Provider's specialist fields of activity related to the operation and improved/increased use of the Digital Forensic Review Platform Solution and Training Services, as may be reasonably requested by SARS from time to time in writing, subject to SARS's procurement processes and procedures.

8.10. Technical and Functional Requirements:

- 8.10.1. The Digital Forensic Review Platform must meet the minimum technical and functional requirements as specified in the RFP document.

8.11. Administrative Ordering and Reporting:

- 8.11.1. The Service Provider must have ordering procedures that are efficient and user friendly.

9. PROVISION OF THE SERVICES

9.1. Without limiting the generality of the Service Provider's obligations detailed elsewhere in this Agreement, the Service Provider undertakes as part of the Services for the Term:

9.1.1. to comply with SARS's information and data security standards as communicated in writing from time to time;

9.1.2. maintain and, where required, upgrade Software as may be necessary, and as required by SARS, for the provision of the Services. In particular, the Service Provider shall ensure that all Software will be kept at levels supported by the Licensor and will be Upgraded as required to meet the Services, Licensor end of support and end-of-life policies and timelines and Licensor-recommended requirements. The Service Provider shall schedule all such Upgrades and replacements in advance and implement them in such a way as to prevent/minimise any interruption or disruption of, or diminution in, the nature or level of any portion of the Services. The Service Provider shall ensure that its internal systems and infrastructure and the Service provision at all times remains compatible with SARS's architectural technology standards and strategies; and

9.1.3. without limiting the generality of Clause 9.1.1 above, at its own cost, maintain its computer based security systems to counteract fraudulent claims in as far as it is in accordance with the Best Industry Practice or security level that is no less secure than the security SARS provided as of the Effective Date or the security the Service Provider then provides for its own systems and data, whichever is greater.

9.2. The Service Provider undertakes for the Term, to provide the Services as fully outlined in Clause 8 to SARS in accordance with the provisions of this Agreement.

- 9.3. The Service Provider shall perform the Services contemplated in this Agreement remotely or where required, onsite, at the Premises. In instances where SARS discloses Confidential Information for the provision of the Services, the Service Provider shall not remove any of the so disclosed Confidential Information from the Premises without SARS's express prior written permission, which SARS may, in its sole discretion, withhold.
- 9.4. The Service Provider shall provide all Services utilising security technologies and techniques in accordance with Best Industry Practice and SARS PPS&G including those relating to the prevention and detection of inappropriate use or access of Software, systems and networks. For the avoidance of doubt, the Service Provider will not be under any obligation to find such suitable software, systems or networks if it is not currently using it in the provision of services to its other clients. Should the Service Provider, however, be using certain software or programmes for similar services rendered to other clients, SARS has the expectation that such software will also be used in the provision of the Services under this Agreement, where appropriate.
- 9.5. The Service Provider undertakes for the Term:
- 9.5.1. to use industry leading levels of functionality and performance as prescribed by the Best Industry Practice in the provision of the Services to SARS;
 - 9.5.2. to implement such new technologies as it deems appropriate to deliver the Services to SARS in order to maintain competitiveness in the quality and scope of Services available to SARS and to take advantage of market cost efficiencies. The Service Provider will also keep the Services under this Agreement current with industry advances and leading technology standards; and
 - 9.5.3. to provide SARS with information regarding any newly improved or enhanced commercially available information technologies that the Service Provider becomes aware of, and which reasonably could be expected to have a positive impact on the Services including, without limitation, in the areas of increased efficiency, increased quality and/or reduced costs.

- 9.6. Without limiting the generality of the foregoing, the Service Provider shall implement and/or use network management and maintenance applications and tools and appropriate intrusion detection, identity management, and encryption technologies when providing the Services. The Service Provider shall maintain the security of the Services and the systems relating to such Services at a level that is generally acceptable in the marketplace and/or as prescribed by Best Industry Practice.
- 9.7. The risk of and liability for any erroneous Deliverables or any errors which may occur due to fraud or unlawful activity on the part of the Service Provider's Personnel shall lie with the Service Provider.
- 9.8. In the event that any installation, connection and/or configuration of the systems is required for the performance of the Services, the Parties shall record and agree on the technical specification required for the installation, connection and configuration of such systems used for the provision of the Services in order to ensure Services performance and delivery.
- 9.9. The Service Provider undertakes to take all reasonable steps and put in place necessary preventative measures to ensure that SARS does not exceed the total license allocation which is listed in the RFP Document and SARS shall not be liable for over-utilisation of the total license allocation.
- 9.10. Without limiting the provisions of this Clause 9, the Parties undertake to do all reasonable things, perform all reasonable actions and take all reasonable steps and, where necessary, to procure the doing of same as may be open to them and necessary for or incidental to the putting into effect or maintenance of the terms, conditions and/or import of this Agreement where such things, actions, steps and procurement shall not materially and/or adversely affect such Party being expected to so perform.

10. ACCEPTANCE TESTING AND DELIVERY

- 10.1. To ensure the successful implementation of the Digital Forensic Review Platform Solution and/or Services within SARS's environment.

10.2. The Service Provider shall:

- 10.2.1. conduct Acceptance Testing of the Services in order to ensure that once implemented, the Digital Forensic Review Platform and/or Services will conform to the functional specification required by SARS in terms of the RFP Document.
- 10.2.2. in conducting Acceptance Testing comply with the process and procedures set out below.

10.3. Pre-delivery Testing:

- 10.3.1. Prior to presenting any Deliverable to SARS for Acceptance Testing, the Service Provider will carry out Pre-delivery Testing in order to ensure that the Deliverable functions in accordance with the relevant functional specifications and complies with the business requirement specification set out in the RFP Document.

10.4. Acceptance Testing Procedure:

- 10.4.1. Following delivery of the Services, SARS shall in its discretion, conduct Acceptance Testing thereof (collectively referred to as "Tested Deliverable(s)").
- 10.4.2. During Acceptance Testing, the Service Provider shall (if required by SARS), assist SARS, to the extent necessary and reasonable, in conducting the Acceptance Testing and respond to any queries relating to the Services and/or Tested Deliverables, within a reasonable time. Without limiting the foregoing, the Service Provider shall be available to liaise with SARS regarding any queries arising with regard to the Tested Deliverables and its related documentation and shall assist SARS with its evaluation of such Tested Deliverables and its related Documentation.

- 10.4.3. Should SARS not accept the Tested Deliverables and/or its related Documentation, SARS will provide written notice to the Service Provider with detailed reasons for it not being acceptable within 30 (thirty) days' of its non-acceptance of such Tested Deliverables and/or its related functional specification. The Service Provider shall correct any deficiencies in such Tested Deliverables and functional specification within 30 (Thirty) days' from the date of receipt of such notice to ensure that such Tested Deliverable is free from deficiencies and conform to SARS's business and security requirements, where after such Tested Deliverable will be resubmitted to Acceptance Testing in accordance with this Clause.
- 10.4.4. The acceptance of the functionality of the Tested Deliverables shall be governed by a test and acceptance procedure and criteria, which shall demonstrate the correct and satisfactory operation and functioning of the relevant functionality of the Tested Deliverables in accordance with the Documentation.
- 10.4.5. SARS shall have the right within 30 (thirty) days' to review and accept or reject all Tested Deliverables and any components of such Tested Deliverables to be provided by the Service Provider to SARS under this Agreement, pursuant to the methodology set forth in this Clause.
- 10.4.6. The Service Provider will be available to liaise with SARS regarding any queries arising with regard to a Deliverable and will assist SARS with its evaluation of Tested Deliverables.
- 10.4.7. If the Service Provider is still unable to correct the Deficiency within this period, then SARS may in its sole discretion elect to –
- 10.4.8. direct the Service Provider to continue its efforts to make the Tested Deliverables acceptable to SARS, in which case the Service Provider shall continue such efforts; or

- 10.4.8.1 accept the deficient Tested Deliverables, in which event the Services Fees with respect to such Tested Deliverables shall be equitably reduced to reflect the presence of such Deficiency; or
- 10.4.8.2 without limiting the generality of SARS's right to terminate the Services Agreement for cause or to claim damages, without liability by providing written notice to the Service Provider, in which case the Service Provider shall refund to SARS all amounts paid by SARS to the Service Provider in respect of that Tested Deliverables. Such refund shall be made within 14 (fourteen) days of receiving SARS's notice.

11. SERVICE COMPATIBILITY

11.1. The Service Provider shall in providing the Services as envisaged in this Agreement, cooperate with all Third-Party Service Providers of SARS to coordinate its provision of the Services with the services and systems of such Third-Party Service Providers. Subject to reasonable confidentiality requirements, such cooperation will include providing:

- 11.1.1. applicable written information concerning any or all of the Service Provider resources, data and technology strategies used in providing the Services;
- 11.1.2. reasonable assistance and support services to such Third-Party Service Providers; and
- 11.1.3. access to systems and architecture configurations of the Service Provider to the extent reasonably required for the activities of such Third-Party Service Providers. SARS will procure that relevant Third-Party Service Providers to SARS provide the Service Provider with their reasonable cooperation, where reasonably requested by the Service Provider.

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

12. **SERVICE PROVIDER PERSONNEL**

12.1. The Service Provider shall:

- 12.1.1. ensure that the Service Provider Personnel who perform the Services are appropriately skilled, experienced and qualified to render the specific services for which they are responsible, and that each of them strictly comply with this Agreement including the Service Level Agreement in the performance of the Service;
- 12.1.2. duly comply with its contractual arrangements with all Service Provider Personnel to ensure uninterrupted provision of Services.
- 12.1.3. be liable for any criminal activity, delicts, misconduct, failure to comply with any law and/or wrongdoing or on the part of a Service Provider Personnel committed (or omitted) by a Service Provider Personnel in the course of the Agreement and the Service Provider hereby (in addition to any other indemnities recorded elsewhere in the Agreement), indemnifies SARS and holds SARS harmless against any costs, liabilities, expenses or damages of whatever nature suffered or incurred by SARS, and caused directly by any Service Provider Personnel.
- 12.1.4. The Service Provider should provide a Service Delivery Manager and Account Manager for the management of the SARS account;
- 12.1.5. The Service Delivery Manager is not required to maintain a presence at a SARS site. SARS will neither provide office space for the Service Delivery Manager, nor for any other Service Provider staff, if required;

12.1.6. SARS may also require the presence of the Service Delivery Manager at ad hoc meetings at SARS' premises with reasonable advance notice. Reasonable advance notice will be determined considering the urgency with which the subject matter of a meeting is to be addressed.

12.1.7. No separate charge is to be levied by the Service Provider for the Service Delivery Manager and/or for any time spent by the Service Delivery Manager servicing the SARS account.

13. **DISENGAGEMENT ASSISTANCE**

13.1. The Service Provider will provide Disengagement Assistance and only charge for same in accordance with the provisions of Schedule H (Disengagement Assistance).

14. **SERVICE LEVELS**

14.1. The Service Provider shall perform the Services with promptness and diligence, where possible, and courtesy on a best effort basis and ensuring that all Service request logged are attended to during Business Hours and/or Support Hours as stated in the Service Level Agreement (**Annexure D**).

15. **Health, safety and security procedures and guidelines**

15.1. SARS has in terms of OHS Act,

15.1.1. established and provided a safe working environment for SARS's Personnel and visitors to its Premises and further maintains the work environment, which is safe, without risks to the health of SARS's Personnel and visitors, in as far as is reasonably practical to eliminate or mitigate any health and safety hazard or potential health and safety hazard; and

15.1.2. controls in place required to respond to any health safety risk which controls are regularly updated in line with the applicable provisions of the OHSA and where required, standards and guides as

published by the aforesaid prescript and/or National Institute for Communicable Diseases (NICD).

15.2. The Service Provider hereby agrees and undertakes:

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

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

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

15.3.1. it shall ensure that all Service Provider Personnel are and remain adequately and validly insured in terms of the Compensation for Occupational Injury and Diseases Act, 1993 ("**COIDA**"), and shall deliver proof to that effect to SARS as and when required to do so.

In addition, the Service Provider shall, before commencement of the Services (notwithstanding the Effective Date), an Appointment, furnish to SARS a copy of a certificate of good standing issued by the Compensation Commissioner appointed in terms of COIDA;

- 15.3.2. it shall at all times comply with the provisions of COIDA and the OHSA;
- 15.3.3. it shall, at the request of SARS, furnish to SARS a copy of its own health, safety and environmental plan, policy and procedures pertaining to occupational health and safety, and amend such policy if SARS can reasonably demonstrate that the plan, policy and/or procedures are incomplete or inadequate;
- 15.3.4. it shall ensure that no Service Provider Personnel brings intoxicating drugs or liquor onto the Premises, and that no Service Provider Personnel arrives at the Premises under the influence of intoxicating drugs or liquor;
- 15.3.5. it shall supply all personal protective equipment and clothing, and other safety measures and equipment, as may be necessary in the circumstances (or as may be requested by SARS from time to time) in order to protect Service Provider Personnel while they are at the Premises; and
- 15.3.6. all equipment, tools and materials brought onto the Premises for use by the Service Provider Personnel, are in good working order for the Term, and that they meet the requirements contemplated in the OHSA.

- 15.4. SARS reserves (where applicable), the right to undertake audit(s) at any given time at the Service Provider's and its sub-contractor's premises to assess the Service Provider's compliance with its health and safety plan;
- 15.5. The Service Provider hereby indemnifies and agrees to hold SARS harmless against any loss, damages, liability or expense suffered or incurred by SARS:
 - 15.5.1. as a result of any breach in terms of this clause 15.1; and
 - 15.5.2. in terms of the OHSA as a result of any Service Provider Personnel failing to comply with SARS PPS&G as contemplated in clause 15.2 above;
 - 15.5.3. as a result of any charge that may be brought against SARS in terms of Section 37 and related provisions of the OHSA, in the event that any of its personnel commit any offense in terms of the OHSA, while on the Premises.
- 15.6. The indemnity referred to in clause 15.3.6 is in addition to the general indemnity contained elsewhere in this agreement and does not limit the ambit of the general indemnity in any way whatsoever.

16. FEES INVOICING AND PAYMENT

- 16.1. In general, the Fees applicable to the Services are set out in **Annexure A** hereto.
- 16.2. SARS shall for the Term, pay the Service Provider for the provision of the Services annually in advance, within 30 (thirty) days of receipt of the Service Provider's invoice.
- 16.3. The Service Provider will (subject to the provisions of this Clause 16), not be entitled to: (i) impose or seek payment of any amounts or charges under the Agreement other than the Fees; (ii) establish any new types of charges under the Agreement; or (iii) modify any of the Fees (except for annual escalation adjustments as indicated in **Annexure A** if and where applicable.

- 16.4. Each invoice will consist of or have attached statement of the total amount due which will be itemised per Service. The Service Provider will provide to SARS the calculation of the Fees in accordance with **Annexure A**.
- 16.5. The Service Provider will verify that each invoice is complete and accurate and that it conforms to the requirements of the Agreement (including by carrying out detailed checks of each invoice) before issuing the invoice to SARS.
- 16.6. SARS may withhold any amounts pertaining to Services rendered that it disputes in good faith, provided that such dispute shall either be discussed in the meetings as provided for in Clause 18 and/or automatically be referred to dispute resolution in terms of Clause 40. The Service Provider will maintain complete and accurate records of, and supporting documentation for, the amounts invoiced to and payments made by SARS hereunder in accordance with generally accepted South African accounting practice (compliant with Financial Advisory and Intermediary Services Act, No. 37 of 2002() ISA and International Finance Reporting Standard) applied on a consistent basis.
- 16.7. Notwithstanding the provision of Clause 18 below, SARS may as and when it deems necessary audit the Fees that have been paid to the Service Provider during the Term. For these purposes, the Service Provider shall within 10 (ten) days after SARS's request, provide SARS with response to any payment queries raised by SARS including any other documentation or information reasonably required in order to verify the accuracy of the Fees invoiced and paid by SARS including compliance by the Service Provider with the requirements of the Agreement. In the event that SARS determines, at any time during the Term and/or expiry thereof that SARS has overpaid the Service Provider, the Service Provider shall refund such overpaid Fees to SARS in fully without any set off, including any interest thereon, calculated at Repo Rate.

17. TAX, DUTIES AND CURRENCY ISSUES

- 17.1. Where applicable, all Fees and expenses are inclusive of Value Added Tax. The Service Provider will be financially responsible for all taxes associated with the Services and will comply with all applicable laws relating to tax and tax invoices.

17.2. All Fees set out in this Agreement are inclusive of any export and import tax.

17.3. The Fees are stated in South African Rand and will be quoted, invoiced and paid in South African Rand. The Fees are inclusive of rate of exchange and shall apply for the duration of the Agreement.

18. INVOICING ERRORS

18.1. If an invoice is identified as incorrect by SARS, the Service Provider will either (i) issue a correct invoice if the amount stated on the invoice has not yet been paid; or (ii) make a correction on the next invoice if the amount has been paid by SARS, provided however, that the Service Provider will refund any overpayments,

18.2. For the avoidance of doubt, the Parties record and agree that the Service Provider is not entitled to suspend or interrupt the provision of the Services until the dispute is resolved by the Parties and such resolution is recorded in writing.

19. SERVICE PROVIDER OBLIGATIONS TO REDUCE COSTS

19.1. In consultation with SARS, the Service Provider will continuously investigate methods to reduce the Fees whilst maintaining Performance Standards.

19.2. Without limiting the generality of its obligations under Clause 19.1 above, the Service Provider will:

19.2.1. use Commercially Reasonable Efforts to identify methodologies, processes and solutions and technologies that SARS or the Service Provider may employ to reduce consumption, costs and to claim applicable discounts;

19.2.2. Model the effect of the methodologies, processes, solutions and technologies at different levels and mixes of consumption; and

19.2.3. periodically report (but no less frequently than quarterly) on such efforts and make recommendations to SARS regarding the steps SARS, the Service Provider or both may take to reduce the Fees.

20. SARS'S RIGHTS AND OBLIGATIONS

20.1. SARS undertakes to furnish the Service Provider with any relevant information necessary for the Service Provider to perform the Services in compliance with the terms and conditions of this Agreement.

20.2. Where applicable, SARS undertakes to:

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

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

21. INTELLECTUAL PROPERTY RIGHTS

21.1. **SARS Intellectual Property:**

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

21.2. Intellectual Property developed during the Term:

- 21.2.1. SARS will have all right, title and interest in all Intellectual Property developed or generated for SARS in the course of supplying the Deliverables and/or Services ("**Developed Intellectual Property**").
- 21.2.2. The Service Provider hereby irrevocably assigns, transfers and conveys to SARS without further consideration all of its right, title and interest in such Developed Intellectual Property.
- 21.2.3. The Service Provider hereby grants SARS (subject to payment of all fees regarding the Developed Intellectual Right), all rights, title and ownership to the Developed Intellectual Property and to perfect such title, the Service Provider undertakes to:
 - 21.2.3.1. execute any documents or take any other actions as may be reasonably necessary, or as SARS may request in writing, to cede and assign such Developed Intellectual Property in order to vest all rights, title and ownership thereto, to SARS; and
 - 21.2.3.2. not to claim any such rights, title and ownership in such work whether during and/or after the expiry of this Agreement for any reason whatsoever.
- 21.2.4. Unless otherwise agreed, where Developed Intellectual Property incorporates the Service Provider Intellectual Property and/or systems, and processes that Service Provider did not develop in the course of supplying Deliverables and/or Services under the Agreement, the Service Provider hereby grants SARS an irrevocable, perpetual, world-wide, fully paid-up, royalty-free, non-exclusive licence for SARS including SARS Personnel to perform any lawful act, including the right to use, copy, maintain, modify, enhance and create derivative works of such Service Provider Intellectual Property insofar as it forms part of the Developed Intellectual Property ("**SARS's License**").

21.3. The Service Provider Intellectual Property:

21.3.1. Subject to Clause 21.2.3.2, the Service Provider retains all right, title and interest in and to Service Provider Intellectual Property that is used in connection with the Deliverables and/or Services. The Service Provider grants to SARS an irrevocable, perpetual, fully paid-up, royalty-free, non-exclusive licence for SARS to receive and realise the benefit of the Deliverables and/or Services during the Term and during the Disengagement Assistance Period (“**SARS Licence**”).

21.4. Third Party Intellectual Property:

21.4.1. The Service Provider will neither, for the Term, incorporate any Third-Party Intellectual Property into any Developed Intellectual Property nor introduce into SARS’s environment any Third-Party Intellectual Property without first obtaining SARS’s written consent thereto. The Service Provider will be responsible for obtaining a licence on behalf of SARS, at Service Provider’s cost and in SARS’s name, to use such Third-Party Intellectual Property from the Third Party. The Service Provider is required to supply the Deliverables and Services in accordance with the Service Levels notwithstanding any decisions by SARS to withhold its consent to the use of Third-Party Intellectual Property and/or failure to assist in procuring the required consents.

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

- 21.5.1. The Service Provider will not, without SARS's express prior written consent, use any Third-Party Intellectual Property licensed to SARS whether to provide the Deliverables and/or Services to SARS or for any other purpose whatsoever. The Service Provider acknowledges that such unauthorised use of Third-Party Intellectual Property licensed to SARS may constitute a breach of the provisions of the licence agreement/s in terms of which such Third-Party Intellectual Property is licensed to SARS. Should consent be granted to the Service Provider to use Third Party Intellectual Property licensed to SARS, the Service Provider undertakes that it will only use such Intellectual Property strictly in accordance with the provisions of the relevant consent. The Service Provider is required to perform the Services in accordance with the Service Levels, notwithstanding any decisions by SARS to withhold its consent.

22. CONFIDENTIAL UNDERTAKING

- 22.1. The Parties shall ensure that prior to commencing the performance of the Services all the Service Provider Personnel involved in the rendering of the Services, sign the SARS Oath of Secrecy and submit the original thereof to SARS for record keeping purposes.
- 22.2. The Service Provider undertakes that for the duration of this Agreement and after the expiration or earlier termination of this Agreement for any reason, it will keep confidential all SARS's Confidential Information. This includes the knowledge acquired by the Service Provider Personnel as a result of the work performed by the Service Provider in terms of this Agreement and which by its nature, is intended to be kept confidential.
- 22.3. The Parties agree that no trade and/or business secrets, Confidential Information or methods of work supplied by one Party to the other shall be disclosed to any third party, without first obtaining the written consent of the other Party, unless required by law or competent court or Authority.

- 22.4. The Service Provider specifically acknowledges that all information relating to the Services, including and not limited to, literary works produced thereunder are of a sensitive nature and must be kept confidential. The Service Provider undertakes not to disclose such information without first obtaining the written consent of SARS unless required by law or competent court.
- 22.5. If the Service Provider is uncertain about whether information is to be treated as confidential in terms of this Clause, it shall be obliged to treat it as such until advised otherwise, in writing, by SARS.
- 22.6. The Service Provider will protect the interests of SARS in its Confidential Information by:
- 22.6.1. making available such Confidential Information only to Service Provider Personnel who are actively involved in the execution of its obligations under this Agreement and then only on a “need to know” basis;
 - 22.6.2. putting in place internal security procedures in accordance with current industry standards and/or Applicable Law to prevent unauthorised disclosure and taking all practical steps to impress upon those personnel who need to be given access to Confidential Information, the secret and confidential nature thereof;
 - 22.6.3. using the Confidential Information only for the purposes of and to the extent necessary for the Service Provider to comply with its obligations under this Agreement. In particular, the Service Provider shall not use the Confidential Information for the purpose of updating, supplementing or verifying its own data bases;
 - 22.6.4. not using any Confidential Information of SARS, or disclosing directly or indirectly any Confidential Information of SARS to third parties, whether during this Agreement or thereafter, unless required by law;

- 22.6.5. notifying SARS promptly of any unauthorised or unlawful use, disclosure and/or Processing (as defined by POPIA) of the Confidential Information of which the Service Provider becomes aware;
 - 22.6.6. deleting or returning (at the request of SARS) the Confidential Information as may be required by SARS, without keeping copies thereof, immediately upon first written demand for deletion or the return thereof by SARS, whether or not the Service Provider has completed the provision of the Services in respect of any such Confidential Information, and in any event promptly after the use thereof in the provision of the Services;
 - 22.6.7. providing reasonable evidence of the Service Provider's compliance with its obligations under this Clause 22.6.7 to SARS on reasonable notice and request; and
 - 22.6.8. ensuring that all Confidential Information of SARS which has or will come into the possession of the Service Provider and its personnel, will at all times remain the sole and absolute property of SARS.
- 22.7. The unauthorised disclosure by the Service Provider of the Confidential Information to a third party may cause irreparable loss, harm, and damage to SARS, and may lead to criminal sanction. As such, the Service Provider indemnifies and holds SARS harmless against all Losses and any action, or damage, of whatever nature, suffered or sustained by the SARS pursuant to a breach by the Service Provider of provisions of this Clause 22.
- 22.8. No announcements of any nature whatsoever will be made by or on behalf of a Party relating to this Agreement without the prior written consent of the other Party.
- 22.9. The provisions of this Clause 22 shall survive the termination or cancellation of this Agreement for any reason whatsoever.

23. DATA PROTECTION

- 23.1. The Service Provider acknowledges that in the course of the provision of the Services it may become privy to SARS's Confidential Information.
- 23.2. To the extent that the SARS's Confidential Information needs to be stored on the Service Provider's information technology systems, the Service Provider shall take appropriate technical safeguards and organisational measures and/or measures prescribed by the Data Protection Agreement, Data Protection Legislation (where applicable), SARS Act and/or Applicable Laws against unauthorised access to, unlawful Processing, accidental loss, destruction or damage of the SARS's Confidential Information and shall provide SARS, with reasonable evidence of the Service Provider's compliance with its obligations under this Clause 23.2 on reasonable notice and request.
- 23.3. The Service Provider shall institute and operate all necessary back-up procedures to its information technology systems to ensure that, in the event of any information system malfunction or other loss of SARS's Confidential Information can be recovered promptly and that the integrity thereof and any database containing such material can be maintained.
- 23.4. The Service Provider shall ensure that all SARS's Confidential Information and information provided to it by SARS in order to render the Services is stored separately and isolated from data and property relating to the Service Provider or any third party (including any other entity with whom the Service Provider may conduct business) in accordance with the POPIA, SARS Act and the Applicable Laws.
- 23.5. The security measures to be taken by the Service Provider in terms of Clause 23.2 must –
- 23.5.1. not be less rigorous than the security safeguards, measures and practices generally maintained by SARS in respect of its data (and as communicated by SARS to the Service Provider), or maintained by the Service Provider with respect to its own confidential information of a similar nature and/or as prescribed by the Applicable Laws, POPIA and/or Data Protection Legislation; and

23.5.2. enable SARS and the Service Provider to conform to Applicable Law, including:

23.5.2.1. Data Protection Legislation;

23.5.2.2. the Electronic Communications and Transactions Act, 2002 (Act No 25 of 2002); and

23.5.2.3. the Tax Acts.

23.6. The Service Provider hereby indemnifies and holds SARS harmless against all Losses incurred by SARS as a result of any breach by the Service Provider of the provisions of this Clause 23.

24. PROTECTION OF PERSONAL INFORMATION

24.1. The Parties record and agree that during the term of this Agreement and the Parties will be exposed to Personal Information. Each Party is responsible to protect Personal Information of the other and shall fully comply with the statutory obligations contained in POPIA, with which the Parties warrant that they are fully conversant with at the Effective Date, when Processing Personal Information obtained by the other Party and such Personal Information is entered into a Record. Without limiting the generality of the aforesaid each Party shall ensure that the Privacy and Data Protection Conditions are strictly adhered to when Processing the Data Subject's Personal Information as stated in the Data Protection Agreement.

24.2. Each Party shall comply with its obligations under POPIA in respect of Personal Information collected and/or Processed in connection with the Agreement and the Services.

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

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

24.3.2. as is necessary for the purposes of this Agreement and the Services;

- 24.3.3. for maintaining its internal administrative processes, including quality, risk, client or vendor management processes;
 - 24.3.4. for internal business-related purposes; and
 - 24.3.5. in accordance with the lawful Purpose and reasonable instructions of SARS as the Responsible Party.
- 24.4. Both Parties shall:
- 24.4.1. in dealing with the Personal Information either as the Responsible Party, Operator comply with the specific security safeguards or measures set out in Condition 7 of POPIA and data protection obligations imposed on them in terms of POPIA or Applicable Laws; and/or
 - 24.4.2. where applicable, comply with the specific obligations imposed on them in terms of POPIA in terms of providing the Services as agreed between the Parties;
 - 24.4.3. take, implement and maintain all such technical and organisational security procedures and measures as prescribed by Condition 7 of POPIA and/or relevant articles of Data Privacy Legislation where applicable, necessary or appropriate to preserve the security and confidentiality of the Personal Information in its possession and to protect such Personal Information against unauthorised or unlawful collection, disclosure, access or Processing, accidental loss, destruction or damage.
- 24.5. No Personal Information of the Data Subject shall be collected, Processed and/or shared with any other third party without obtaining written consent of the Responsible Party.
- 24.6. The Service Provider shall not be entitled to Process the Personal Information with any other third party except for the Service Provider Personnel, where necessary in order to enable the provision of the Services in connection with this Agreement and the Services.

- 24.7. The Service Provider may notify SARS about important developments, proposals and services which it thinks may be relevant to SARS for Service improvement etc., however, the Service Provider undertakes for the Term, not to use or Process the Personal Information to send business offering to SARS and/or Data Subject including newsletters, invitations to seminars and similar marketing material or other communications from the Service Provider.
- 24.8. Electronic communications between the Service Provider and SARS (limited only where the Service Provider Personnel are using the Service Provider's resources), may be monitored by the Service Provider to ensure compliance with its professional standards and internal compliance policies pertaining to this Agreement and not for any other purpose.
- 24.9. Electronic communications between SARS and the Service Provider and SARS Personnel (limited only where the Service Provider Personnel are using SARS's resources), may be monitored by SARS to ensure compliance with its professional standards and internal compliance policies pertaining to this Agreement and not for any other purpose.
- 24.10. The Service Provider shall not Process the Personal Information to:
- 24.10.1. an outsourced information technology service provider; or
 - 24.10.2. another country, including the use of cloud-based solutions (unless those solution are approved by SARS and compliant with POPIA);
or
 - 24.10.3. an Affiliate;
 - 24.10.4. without prior written consent of SARS.

24.11. Where consent has been granted in terms of Clause 24.10 above, the Service Provider undertakes in relation to Clauses 24.8 and 24.9 and for the Term to require that any third party, outsourced service provider, foreign legal entity or other Affiliate involved in the Processing or storage of Personal Information, to ensure that such Personal Information is protected with the same Best Industry Practices and/or protection as is required in terms of Clause 23.3 and the provision of the POPIA Act and/or Data Legislation binding on it (where applicable).

24.12. The Service Provider shall be held accountable for Personal Information further Processed by the Service Provider Personnel for the purposes set out in the Agreement.

24.13. The Service Provider represents and warrants in favour of SARS that:

24.13.1. it has used reasonable measures to ensure POPIA compliance by the Service Provider Personnel when at its offices or assigned to customers on a project basis which measures includes, POPIA training and awareness; and

24.13.2. it has establishment POPIA compliance programme to manage and maintain POPIA compliance.

24.14. For these purposes, , the Service Provider hereby indemnifies and holds SARS harmless against all Losses incurred by SARS as a result of any Personal Information Breaches by the Service Provider and/or breach of any of the provisions of Clauses 22, 23 and 24.

25. **AUDITS**

25.1. Audit Rights:

- 25.1.1. The Service Provider will maintain a complete audit trail of financial and non-financial transactions resulting from the provision of the Services (the “**Transactional Information**”). Where SARS requires to audit the Transactional Information, the Service Provider will provide SARS with access to such Transactional Information including personnel, data, records and documentation relating thereto for the purpose of performing audits and inspections of the Transactional Information to: (i) verify the accuracy of the Service Provider’s Fees and invoices; (ii) verify the accuracy of payments by SARS or credits from the Service Provider; (iii) verify the accuracy of price changes to the extent such changes are determined by reference to Service Provider’s costs or changes thereto;
- 25.1.2. The Service Provider will maintain complete records of Service Provider accreditation including qualifications (the “**Technical Information**”) submitted as proof of Service Provider ability to provide the Services. Where SARS requires to audit the Technical Information, the Service Provider will provide SARS with access to such Technical Information including personnel, data, records and documentation relating thereto for the purpose of performing audits and inspections of the Technical Information to: (i) verify the accuracy of the Service Provider and/or Service Provider Personnel’s accreditation, qualification and/or experience; (ii) examine the Service Provider’s performance of the Services, including verifying compliance with the Best Industry Standards; (vi) verify compliance with the terms of the Agreement; (vii) satisfy the requirements of any Applicable Law.
- 25.2. SARS reserves the right to appoint a third party to perform an audit under this Clause 25.1 and the Service Provider will provide to the auditors, inspectors and regulators such assistance as they may require. Unless SARS has a good faith suspicion of fraud, SARS will provide the Service Provider with reasonable notice for audits.

- 25.3. All costs incurred by SARS in performing audits of the Service Provider will be borne by SARS unless any such audit reveals a material inadequacy or material deficiency in respect of the Services including compliance with the relevant Applicable Laws, in which event the cost of such audit will be borne by Service Provider.
- 25.4. If an audit reveals an overcharge, the Service Provider will promptly refund the overcharge plus interest at Repo Rate, from the date of payment of the overcharge through the date the overcharge is refunded by Service Provider.
- 25.5. Audit Follow-Up:
- 25.5.1. Following an audit or examination, SARS or its external auditors will meet with the Service Provider to obtain factual concurrence with issues identified in the audit or examination.
- 25.5.2. Within 10 (ten) Business Days following the provision to the Service Provider of the findings of an audit, whether by way of a meeting or the delivery of the audit report by the auditors, or an audit report by the Service Provider's auditors, the Service Provider will provide SARS with a plan ("**Audit Response Plan**") to address shortcomings or deficiencies raised in such audit findings attributable to the Service Provider. The Audit Response Plan will identify the steps that the Service Provider will take to remedy such shortcomings and deficiencies and include a completion date for such steps detailed in the Audit Response Plan. With SARS approval, the Service Provider will implement such Audit Response Plan at the Service Provider's cost and expense. If required and agreed between the Service Provider and SARS, the Service Provider will report monthly to SARS on the status of the implementation of any Audit Response Plan. Failure to complete the Audit Response Plan on or before the completion date included in such Audit Response Plan will be deemed to be a material breach of the Agreement.

25.5.3. The Service Provider will promptly make available to SARS the results of any reviews or audits conducted by the Service Provider, its Affiliates agents or representatives (including internal and external auditors) to the extent such findings reflect conditions and events relating to the Services.

25.5.4. Promptly after the issuance of any audit report or findings issued under Clause 25.5.3 the Parties will meet to review such report or findings and to agree on how to respond to the suggested changes.

26. BREACH

26.1. A Party (the "**Aggrieved Party**") may terminate this Agreement if the other Party (the "**Defaulting Party**") commits a material breach of this Agreement and fails to remedy such breach within 14 (fourteen) Business Days (the "**Notice Period**") of being notified of the breach and, if the Aggrieved Party so elects, the steps required to remedy such breach.

26.2. For the purposes of Clause 26.1 a breach will be deemed to be a material breach if :-

26.2.1. it is capable of being remedied, but is not so remedied within the Notice Period; or

26.2.2. it is incapable of being remedied within the Notice Period; or

26.2.3. if payment in money will compensate for such breach, but payment is not made within the Notice Period; or

26.2.4. the Service Provider commits numerous, repeated breaches even if cured.

27. INDEMNITIES

27.1. Without in any way detracting from the rights of SARS in terms of this Agreement, the Service Provider hereby indemnifies and holds SARS harmless from any and all Losses which may be suffered as a result of any breach of the warranties set out in Clause 37 including the provisions of this Agreement by the Service Provider or Service Provider Personnel.

27.2. In addition to any other remedy available to SARS, the Service Provider agrees to indemnify in full and on demand and to keep SARS so indemnified from and against all claims, demands, actions, proceedings and all Losses, which are made or brought against or incurred or suffered by SARS resulting from:

27.2.1. any or action arising from the Service Provider's breach of any obligation with respect to Confidential Information and/or Personal Information; and/or.

27.2.2. any claim, action or demand by a Third Party that the use by SARS of the Software and its related Documentation supplied by the Service Provider infringes the Intellectual Property rights of that Third Party.

28. **TERMINATION**

28.1. If a Party commits a material breach of this Agreement and fails to remedy such breach within 14 (fourteen) Business Days of written notice requiring the breach to be remedied, then the Party giving the notice will be entitled, at its option, either to claim specific performance of the defaulting Party's obligations whether or not such obligations have fallen due for performance (with or without claiming damages) or to cancel this Agreement (with or without claiming damages) in which case the cancellation will take effect on the date of the notice.

28.2. If the Service Provider fails to adhere to any legal requirement or breaches the provisions of Clause 28.1 above and/or any term or condition of any licence, authorisation or consent required for the provision of the Services and which failure or breach, then SARS will be entitled, but not obliged, to terminate this Agreement on written notice to the Service Provider, in which event such termination will be without any liability to SARS and without prejudice to any claims which SARS may have for damages against the Service Provider.

28.3. A Party's remedies in terms of this Clause 28 are without prejudice to any other remedies to which such Party may be entitled in law.

29. TERMINATION FOR CAUSE

29.1. SARS may (subject to Clause 26.1), by giving notice to the Service Provider, terminate this Agreement in whole or in part, as of a date set out in the notice of termination, in the event that the Service Provider commits a material breach of this Agreement or:

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

29.1.2. commits an Acts of Insolvency.

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

30.1. In the event of a sale, acquisition, merger, or other change of Control of the Service Provider where such Control is acquired, directly or indirectly, in a single transaction or series of related transactions, or in the event of a sale of all or substantially all of the assets of the Service Provider in a single or series of related transactions, then SARS may terminate this Agreement by giving the Service Provider at least 90 (ninety) days prior notice and designating a date upon which such termination will be effective. SARS will have no liability towards the Service Provider with respect to such termination save for the settlement of any outstanding fees for the Services rendered as at the date of termination.

31. TERMINATION/EXPIRATION ASSISTANCE

31.1. Upon termination of this Agreement, the Service Provider will, at no additional cost, provide all reasonable information and assistance to SARS to enable SARS or a Third Party designated by SARS to take over the Service Provider's obligations under this Agreement.

31.2. For these purposes, the Service Provider shall deliver to SARS a termination assistance plan for SARS's review and approval in accordance with Schedule H.

32. FORCE MAJEURE

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

33. RECORDS RETENTION

- 33.1. The Service Provider will maintain and provide SARS with access to the records, documents and other information required to meet SARS's audit rights under the Agreement until the later of: (i) 5 (five) years after expiration or termination of the Agreement; (ii) all pending matters related to the Agreement are closed; or (iii) such other period as required by Applicable Law.

34. CONSENTS AND APPROVALS

- 34.1. Any approval, acceptance, consent or similar action required to be given by either Party in terms of this Agreement will, unless specifically otherwise stated or stated to be at the discretion of a Party, not be unreasonably withheld.

- 34.2. An approval, acceptance, consent or similar action by a Party (including of a plan or deliverable) under this Agreement will not relieve the other Party from responsibility for complying with the requirements of this Agreement, nor will it be construed as a waiver of any rights under this Agreement, except as and to the extent otherwise expressly provided in such written approval or consent. For example, where this Agreement sets forth a standard by which a plan is to be developed, the Service Provider will be responsible for complying with such requirement and will not be deemed to be relieved of it merely because SARS has approved such plan.

35. APPLICABLE LAW AND JURISDICTION

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

36. LEGAL AND REGULATORY COMPLIANCE

- 36.1. The Service Provider warrants that it is and will for the duration of this Agreement remain fully cognisant of and compliant with any relevant Applicable Laws (as may be amended from time to time in writing) and/or rulings or codes of practice of any competent Authority or industry body that has jurisdiction over the provision of or is relevant to the Deliverables and/or Services under this Agreement.
- 36.2. The Service Provider will, within 14 days (or any other period agreed by the Parties in writing) from the Effective Date, furnish SARS with copies of all regulated licences and/or accreditation (as specified in the RFP), and which are required by the Service Provider for the provision of the Services to SARS. The details of all licence terms and conditions and other obligations imposed on the Service Provider which are not contained in the Service Provider's licences must be furnished in writing by the Service Provider to SARS.

37. WARRANTIES

37.1. Service Provider Personnel:

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

37.2. Intellectual Property warranties:

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

37.3. Service Provider authority and Licensor undertaking:

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

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

37.4. Product Specific Warranties:

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

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

37.5. Service Delivery:

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

37.6. Security Clearance:

- 37.6.1. Without limiting the generality of the foregoing, the Service Provider represents and warrants that it will ensure that the Service Provider Personnel engaged in the provision of the Services are suitable and pose no risk to SARS. Any member of the Service Provider Personnel who is engaged, or is to be engaged, in providing the Services must, if requested by SARS, comply with SARS's internal security clearance requirements, including submitting a security clearance certificate, failing which SARS shall be entitled to require the Service Provider to replace such member of the Service Provider Personnel with someone who does so comply. The Service Provider undertakes to indemnify SARS against any claims that may be brought by any of the Service Provider Personnel who may be affected as a result of SARS exercising its rights under this Clause.
- 37.6.2. As a confirmation that the Service Provider Personnel engaged to provide the Services are suitable and appropriately qualified, trained, experienced, skilled and available to render such services in terms of this Agreement including confirmation of such Service Provider Personnel's citizenship, criminal record status and/or credit worthiness, the Service Provider represents and warrants that it has conducted a background screening exercise on every member of the Service Provider Personnel whom is assigned to SARS for the fulfilment of its obligations in terms of this Agreement and shall if requested by SARS provide the report from a reputable screening agency which shall verify the following:
- 37.6.2.1. Citizenship including residency status;
 - 37.6.2.2. Criminal activity report; and
 - 37.6.2.3. Credit worthiness.

- 37.6.3. The Service Provider shall ensure that the validity of such report shall not be older than 3 (three) months as at the date of request or as at the commencement of such Service Provider Personnel duties to SARS in terms of this Agreement, as the case may be, and shall be updated as required by SARS from time to time.
- 37.6.4. In the event that the report reveals evidence that the Service Provider Personnel assigned to perform the Services are not qualified and/or do not possess the level of skills required for the performance of the Services, the Service Provider shall ensure a replacement of such member of the Service Provider Personnel with one whose background screening meets the requirements of SARS. The Service Provider undertakes to indemnify SARS against any claims that may be brought by any of the Service Provider's staff who may be affected as a result of SARS exercising its rights under this Clause.
- 37.6.5. The Service Provider shall further ensure that its staff assigned to provide the Services to SARS as envisaged in this Agreement shall for the duration of this Agreement, be subject to SARS's "Anti-Corruption and Security Internal Policy: Security Vetting" as amended from time to time, as well as other security legislation and policies applicable to the entities providing the services to the organs of State.
- 37.6.6. A breach by the Service Provider of any warranty, representation or other provision of this Clause 37 or of any express or implied warranty or representation contained elsewhere in this Agreement, shall be a material breach of this Agreement which shall confer on SARS the right, in its sole discretion, to utilise any remedy created in this Agreement for the enforcement of SARS's rights, including termination in terms of Clause 28 above.

37.7. POPIA Compliance:

- 37.7.1. The Service Provider warrants that it is and will remain for the duration of this Agreement, fully cognisant of and compliant with POPIA including any other Data Protection Legislation applicable to the Services.
- 37.7.2. The Service Provider warrants that it has implemented POPIA compliance programme within its organisation and further that, the Service Personnel including the Service Provider Personnel have been trained on POPIA compliance and are aware of the importance of protection of Personal Information and commit to ensure compliance thereof when at SARS and whilst providing the Services.

37.8. Regulatory requirements:

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

37.9. Documentation:

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

37.10. General Warranties:

- 37.10.1. The Service Provider hereby represents and warrants to SARS that-
 - 37.10.1.1. this Agreement has been duly authorised and executed by it and constitutes a legal, valid and binding set of obligations on it;
 - 37.10.1.2. it is acting as a principal and not as an agent of an undisclosed principal;
 - 37.10.1.3. the execution and performance of the terms and conditions of this Agreement does not constitute a violation of any statute, judgment, order, decree or regulation or rule of any court, competent authority or arbitrator or competent jurisdiction applicable or relating to the Service Provider, its assets or its business, or its memorandum of incorporation or any other documents or any binding obligation, contract or agreement to which it is a party or by which it or its assets are bound;
 - 37.10.1.4. it will provide the Services in a cost-effective manner, thereby ensuring that no unnecessary or extraordinary costs are incurred and passed on to SARS;
 - 37.10.1.5. it will have the requisite insurance to cover for professional liability claims (to the extent that it may be applicable), that may be instituted against it;
 - 37.10.1.6. it has the necessary resources, skills and experience to render the Service and/or deliver the Deliverables to SARS; and
 - 37.10.1.7. it is expressly agreed between the Parties that each warranty and representation given by the Service Provider in this Agreement is material to this Agreement and induced SARS to conclude this Agreement.
- 37.10.2. The provisions of this Clause 37 shall survive the termination of this Agreement.

38. **PUBLICITY**

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

39. **CO-OPERATION**

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

40. **DISPUTES**

- 40.1. In the event of there being a dispute, but save where otherwise provided in this Agreement, such dispute will be resolved in accordance with the rules of the AFSA as provided for below.
- 40.2. In the event of any such dispute arising between the Parties relating to or arising out of this Agreement, including a dispute as to the validity, implementation, execution, interpretation, rectification, termination or cancellation of this Agreement, the Parties will forthwith meet to attempt to settle such dispute, and failing such settlement within a period of 14 (fourteen) days of first meeting, the said dispute will on written demand by either Party be submitted to arbitration in Johannesburg in accordance with the rules of AFSA.
- 40.3. Should the Parties fail to agree in writing on an arbitrator within 10 (ten) days after arbitration has been demanded, the arbitrator will be nominated at the request of a disputant by AFSA.
- 40.4. The decision of the arbitrator will be binding on the Parties to the arbitration after the expiry of the period of 20 (twenty) days from the date of the arbitrator's ruling if no appeal has been lodged by any Party. A decision which becomes final and binding in terms of this Clause 40 may be made an order of court at the instance of any Party to the arbitration.
- 40.5. Nothing herein contained will be deemed to prevent or prohibit a disputant from applying to the appropriate Court for urgent relief or for judgment in relation to a liquidated claim.

40.6. Any arbitration in terms of this Clause 40 will be conducted in camera and the Parties will treat as confidential and not disclose to any Third Party details of the dispute submitted to arbitration, the conduct of the arbitration proceedings or the outcome of the arbitration, without the written consent of all the disputants.

40.7. The provisions of this Clause 40 will continue to be binding on the Parties notwithstanding any termination or cancellation of the Agreement.

41. ADDRESSES

41.1. Each Party chooses the addresses set out below its name as its addresses to which all notices and other communications must be delivered for the purposes of this Agreement and its domicilium citandi et executandi ("domicilium") at which all documents in legal proceedings in connection with this Agreement must be served.

41.2. SARS's physical address for service of notices and legal processes-

Head: Corporate Legal Services

299 Bronkhorst Street

Block A, Le Hae La SARS

Nieuw Muckleneuk

Pretoria

41.3. The Service Provider's physical address for service of notices and legal processes shall be as follows:

.....

.....

.....

- 41.4. Any notice or communication required or permitted to be given to a Party pursuant to the provisions of this Agreement shall be valid and effective only if in writing and sent to a Party's domicilium.
- 41.5. Any Party may by written notice to the other Party, change its chosen address to another address, provided that-
- 41.6. the change shall become effective on the tenth (10th) Business Day after the receipt or deemed receipt of the notice by the addressee; and
- 41.7. any change in a Party's domicilium shall only be to an address in South Africa, which is not a post office box or a poste restante.
- 41.8. Any notice to a Party contained in a correctly addressed envelope and sent by prepaid registered post to it at a Party's domicilium shall be deemed to have been received on the fifth (5th) Business Day after posting.
- 41.9. Any notice to a Party in a correctly addressed envelope and which is delivered by hand to a Party's chosen address shall be deemed to have been received on the day of delivery unless the contrary is proved.

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

- 42.1. The Service Provider undertakes and warrants that it and its Subcontractors are and will remain for the duration of this Agreement, fully cognisant of and compliant with the obligations detailed in the Appendix I (BBBEE).

43. TAX COMPLIANCE

- 43.1. The Service Provider warrants that as of the Effective Date it and its Subcontractors are in full compliance, and throughout the Term will remain in full compliance, with all Applicable Laws relating to taxation in South Africa.
- 43.2. The Service Provider undertakes that it will inform SARS should it become aware that the Service Provider and/or any of its Subcontractors are not tax compliant.

43.3. If SARS becomes aware of any such tax non-compliance of the Service Provider and/or its Subcontractors and should such non-compliance not be remedied within 3 (three) months (or such other shorter period as the Applicable Law may prescribe) after SARS has given notice to the Service Provider or its Subcontractors to remedy such non-compliance, such non-compliance will be deemed to constitute a material breach of this Agreement by the Service Provider.

43.4. SARS will be entitled to all remedies (including termination for cause) provided for in this Agreement pursuant to a material breach hereof by the Service Provider or SARS may in the alternative (at its sole discretion) upon written notice, require the Service Provider to remedy the material breach. In the case of non-compliance by any Subcontractor procure that the Subcontractor immediately ceases providing Deliverables pursuant to the subcontract and that the Service Provider terminates the subcontract between the Service Provider and that Subcontractor. SARS will have no liability to the Service Provider with respect to a termination under this clause 43.4.

44. ETHICAL BUSINESS PRACTICES

44.1. SARS has a policy of zero tolerance regarding corrupt activities. The Service Provider will promptly report to SARS or the relevant authorities any suspicion of corruption on the part of their personnel in relation to the Services provided under this Agreement, as well as any behaviour in relation to the Services provided under this Agreement by any of those persons that is likely to constitute a contravention of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004).

44.2. Neither Party will offer, promise or make any gift, payment, loan, reward, inducement benefit or other advantage to any of the other Party's personnel.

44.3. If the results of any audit of the Services conducted by or on behalf of SARS indicates the possibility of unethical conduct which includes amongst others, corrupt activities, improper or fraudulent practices or theft in relation to the Services provided under this Agreement, SARS will, after allowing the Service Provider reasonable opportunity to investigate that possibility, have the right either by itself, or by its agents, or by requesting the police, to investigate all the relevant circumstances, to question any relevant personnel of the Service Provider or a third party and the Service Provider will use all reasonable efforts to facilitate any such investigation or enquiry. In the event that an act of corruption, fraud or theft is proven, SARS will be entitled, on written notice to the Service Provider, to immediately terminate this Agreement.

44.4. SARS reserves the right to withdraw an award or to cancel this Agreement should it be established, at any time, that the Service Provider, its personnel, its Subcontractor or the personnel of its Subcontractor has been blacklisted by National Treasury or by another government institution.

45. **CONFLICT OF INTEREST**

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

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

46. **NEW LAWS AND INABILITY TO PERFORM**

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

47. **BUSINESS CONTINUITY MANAGEMENT**

- 47.1. To mitigate the effects of any disaster incident, the Service Provider shall implement and maintain a proven business continuity plan that is satisfactory to SARS which ensure continuity of the Services in the event of early termination of this Agreement for any reason whatsoever, which business continuity plan shall when acceptance by SARS, be attached to this Agreement as **Annexure E**. For the avoidance of doubt the cost of implementing and maintaining the business continuity plan shall be for the account of the Service Provider.
- 47.2. On an annual basis, SARS, or its nominated appointee, shall have the right to review and assess the Service Provider's business continuity plan in respect of the Services.

- 47.3. The Service Provider shall immediately, or as soon as is reasonably or practically possible, inform SARS in writing of any internal or external incidents that impact on, or may impact on, or prevent it from providing the Services and how it plans to resolve such incidents to ensure a sustained Service provision in line with the Service Level Agreement.

48. RELATIONSHIP BETWEEN THE PARTIES

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

49. OEM RELATIONSHIP

- 49.1. The Service Provider must have a back-to-back agreement in place with an applicable Original Equipment Manufacturer (or their official representatives) in support of the equipment / licenses for which the Service Provider is contracted to provide services to SARS.
- 49.2. The Service Provider must ensure that the back-to-back agreement remains effective throughout the term of this Agreement.
- 49.3. During the term of the Agreement, SARS may elect to change the equipment/licenses currently used within SARS or introduce new equipment / licenses from a new supplier.

50. GENERAL

- 50.1. **Whole Agreement and Amendment:**

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

50.2. No Assignment Without Consent:

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

50.3. Severability:

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

50.4. Advertising and Marketing:

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

50.5. Waiver:

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

51. COVENANT OF GOOD FAITH

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

52. COSTS

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

53. AUTHORISED SIGNATORIES

53.1. The Parties agree that this Agreement and any contract document concluded in terms hereof shall not be valid unless signed by all authorised signatories of SARS.

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

53.3. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same Agreement as at the date of signature of the Party last signing one of the counterparts.

53.4. The persons signing this Agreement in a representative capacity warrant their authority to do so.

SIGNED at _____ **on** _____ **2023**

For and on behalf of

SOUTH AFRICAN REVENUE SERVICE

Signature

Name of Signatory

Designation of Signatory

SIGNED at _____ **on** _____ **2023**

For and on behalf of

SOUTH AFRICAN REVENUE SERVICE

Signature

Name of Signatory

Designation of Signatory

SIGNED at _____ **on** _____ **2023**

For and on behalf of

SERVICE PROVIDER

Signature

Name of Signatory

Designation of Signatory

ANNEXURE A

FEES

**[NOTE TO BIDDER: PRICING PROPOSAL WILL BE INCLUDED ON
CONTRACTING].**

DRAFT

ANNEXURE B**LETTER OF AWARD**

DRAFT

ANNEXURE C

SOFTWARE LICENSE

DRAFT

ANNEXURE D

SERVICE LEVEL AGREEMENT

1. PURPOSE

- 1.1. The purpose of this Service Level Agreement (SLA) is to provide a framework against acquisition and maintenance and support services on all Software Licenses procured in terms of this Agreement.

2. Glossary TABLE

- 2.1. The capitalised terms in this document appearing in the glossary table below will have their corresponding meanings. For the avoidance of doubt, all capitalised terms not defined and used herein shall bear the meaning as set out in the Agreement.

Term	Meaning
Agreement	Digital Forensic Review Platform Agreement, Professional Services, Maintenance and Support Services Agreement
Business Day	All days that are not Saturdays, Sundays or public holidays.
Business Hours	7:00-17:00 on Business Days.
Contract Obligation Tracker	SARS Supplier Management contract governance document.
PMBOK	Project management body of knowledge methodology
SARS PPS&G	SARS Policies, Procedures, Standards and Guidelines
SDM	Service Delivery Manager
Services	The services to be delivered by the Service Provider as per this Agreement
SP	Service Provider
SnM	Support and Maintenance Services
Solution	Software as defined in the Main Agreement
Solution Implementation	shall mean solution implementation as set out in Schedule 1 of the Agreement
Solutions Reporting	means the continuous reporting by the Service Provider on the service/ provision and utilisation of the Solution as detailed in this SLA
Support	Means the Support Services as defined in the Agreement.
Technical Support	Means the support required by SARS which is of a technical nature
Term	The term of the Software Management Asset Agreement Tool, Professional Services, Maintenance and Support Services Agreement
OEM	Original Equipment Manufacturer

3. PROVISION OF SERVICES

- 3.1. The Service Provider must render the Services to SARS in accordance with the Service Levels set out in this SLA.
- 3.2. The primary responsibility for rendering the Services vests with the Service Provider and the Service Provider shall not transfer any obligation in terms of this SLA without SARS's prior written approval.

- 3.3. The Service Provider will provide CV's of the resources that are in line with their bid response and if they are found acceptable, SARS will approve such resources.
- 3.4. If found acceptable by SARS, the Service Provider undertakes to provide the full complement of all required resources for the successful implementation of the Services.
- 3.5. The Service Provider undertakes to ensure that all resources (both for Solution implementation and Solution Maintenance and Support) commence and remain so engaged for the Term of the Agreement.
- 3.6. The Service Provider undertakes to ensure that all assigned resources fulfil the resource certification and resource experience requirements in line with the RFP Document. SARS reserves the right to verify the resources certification and experience in line with the RFP Document. SARS's obligations in terms of the contract will remain suspended until all professionally qualified resources are on site at the same time.

4. TRAINING

- 4.1. The Service Provider will be required to provide Training to SARS staff including on the proposed Solution. As and when required by SARS, the Service Provider may be required to provide ad hoc technical Training, for example, as part of a Services.

5. CONSULTING

5.1. The Service Provider will be required to provide SARS with ad hoc advisory services related to the Professional Services, including advising and recommending continuous improvements and possible technological enhancements to SARS at no additional cost.

5.1.1. Adhere to all SARS PPS&G when providing the Services.

6. SERVICE PROVIDER'S GENERAL RESPONSIBILITIES

6.1. Without limiting the generality of this SLA, the Service Provider shall, inter alia, have the following responsibilities under this SLA, namely to:

6.1.1. Implement its obligations in terms of the Agreement in line with the scope of work as set out in RFP document, this SLA and the Service Provider's bid response.

6.1.2. Assign the appropriate core resources to the contract based on the timelines and the skills required to deliver on the contract scope. The Service Provider can only change its core resources (technical and management) assigned in terms of this Agreement with the approval of SARS.

6.1.3. Provide details of its employees who are working during the term of the Agreement for the purpose of enabling the Service Provider access to SARS systems and data.

6.1.4. Ensure that all its resources involved in the execution of the Agreement will sign all necessary documents provided by SARS to ensure security of SARS Data/Personal Information and Confidential Information, including but not limited to non-disclosure agreements / Oath of Secrecy and shall abide thereby.

6.1.5. Ensure that resources have access to other resources at the disposal of the Service Provider in order to ensure good quality service delivery. This may include the assignment of

additional resources/skills when required to meet set deliverable timelines.

- 6.1.6. Ensure proper management of all documents related to the Agreement, for audit purposes.
- 6.1.7. Ensure that documentation submitted to SARS is of good quality and includes relevant stakeholder consultations and communications during the documentation compilation.
- 6.1.8. Apply proper project management skills, in line with SARS's project management frameworks (Project Management Body of Knowledge (PMBOK)).
- 6.1.9. Cause itself and its resources to adhere to SARS's policies (e.g. health and safety, ICT usage, security (IT and physical)), despite the absence of any employer – employee relationship between SARS and the Service Provider's resources.
- 6.1.10. Work at SARS's premises as and when requested to do so. The following shall apply when working at SARS's premises:
 - 6.1.10.1. When requested to work at SARS's premises, the Service Provider shall report to SARS's premises on the day after the request, unless otherwise agreed to by SARS.
 - 6.1.10.2. The Service Provider shall provide its own Information communication technology equipment for its resources assigned to the contract (e.g. desktops, laptops).
 - 6.1.10.3. The Service Provider shall be responsible for providing vehicle details to the SARS personnel for the purpose of parking arrangement.
 - 6.1.10.4. No travel and/or subsistence costs can be claimed, unless the contrary is expressly stated in the

Agreement between the parties and approved in accordance with SARS procurement policies and procedures.

- 6.1.11. Ensure the continuous transfer of knowledge to SARS's resources where the Service Provider's and SARS's resources work alongside (to ensure successful knowledge transfer).
- 6.1.12. Direct and facilitate engagements with all relevant stakeholders necessary for the successful implementation of the Agreement.
- 6.1.13. Assume responsibility for, amongst others, the following during the Software Implementation phase of the Agreement :
 - 6.1.13.1. Adherence to an agreed project plan with deliverable milestones, determining all risks and issues impacting upon the plan, as soon as possible. The project plan is to be baselined and is to be used as a basis to execute on the engagement.
 - 6.1.13.2. All changes to the project plan timelines, which are to be based on an agreement and sign-off by both parties.
 - 6.1.13.3. To provide a dedicated project manager and team to manage the implementation of the project. SARS reserves the right to instruct the Service Provider to change the project manager and team in the event of unsatisfactory performance, within a period of 1 month from the date of such persons commencing their work. The cost of this service is

included in the Service Provider's pricing schedule as part of the Services.

6.1.14. Provide project management and oversight, including (but not limited to):

6.1.14.1. Deliverable, milestone, task and timeline management.

6.1.14.2. On-going evaluation against timelines and objectives.

6.1.14.3. Where decisions are required, SARS, together with the Service Provider, must involve all necessary persons able to make timeous decisions in alignment with the project plan.

6.1.14.4. Escalate any concerns relating to service delivery immediately to the Service Provider's management for resolution.

6.1.15. During the Software Maintenance and Support phase of the Agreement, Service Provider will provide Service Provider's Personnel who will serve as Service Delivery Management representative(s) to manage the Maintenance and Support Services. SARS reserves the right to instruct the Service Provider to change its representative(s) in the event of unsatisfactory performance. The replacement must be effected within a period of 2 months after such instruction. The cost of a dedicated service delivery management representative(s) is included in the Service Provider's bid price for maintenance and support services.

6.1.16. In the discharging of its obligations in terms of this Agreement, no costs incurred in travelling, parking and accommodation

will be claimed by the Service Provider. SARS will not accommodate any claims whatsoever for travelling, parking and accommodation or any other costs relating thereto.

- 6.1.17. Where required, services may be performed by the Service Provider after hours at no cost to SARS (e.g. scheduled maintenance windows, resolution of major incidents, etc.)
- 6.1.18. In the event that the Service Provider procures Software licences on behalf of SARS, such licences will be procured in the name of SARS and will be owned by SARS.
- 6.1.19. In the event that software licences are overprovisioned by the Service Provider, without having been formally agreed to by SARS, the Service Provider accepts that the cost of the overprovisioning will be borne by the Service Provider.

7. SARS'S GENERAL RESPONSIBILITIES

- 7.1. Without limiting the generality of the provisions of this SLA, SARS shall have the following responsibilities, including but not limited to:
 - 7.1.1. Provide the Service Provider with documentation and material required for the implementation of the Agreement, where such documentation exists and is available to SARS.
 - 7.1.2. Provide the Service Provider with all equipment required for the implementation and Maintenance and Support of the solution at SARS's premises (e.g. solution hosting equipment, training facilities, network infrastructure, etc.). This however, does not include the provision of the equipment required by the Service Provider's resources (e.g. desktops, laptops, etc.) during the contract period.
 - 7.1.3. Currently available and relevant documentation, material and or equipment will be provided, however, where certain information for the project deliverables is required but is not

documented, the Service Provider will be required to solicit and document this information at no extra charge to SARS, as part of the current state analysis.

- 7.1.4. In accordance with the technical needs of the contract, allow the Service Provider reasonable access to the areas required for the proper discharge of its obligations by the Service Provider.
- 7.1.5. Ensure that the Service Provider and all its resources working on the contract sign a Non-Disclosure Agreement / Oath of Secrecy, provided that the Service Provider has timeously provided SARS with a list of such employees. Where the Service Provider's resources are required to be security vetted, as per SARS and National Intelligence Agency requirements, such vetting shall be at the cost of the Service Provider.
- 7.1.6. Ensure that the Service Provider's property (e.g. auxiliary equipment and any intellectual property that belongs to the Service Provider) is reasonably protected and not made available for use by other Service Providers, without the prior consent of the Service Provider.
- 7.1.7. Direct and facilitate engagements with all relevant stakeholders necessary for the successful implementation of the contract.
- 7.1.8. SARS will manage the required change management and communication processes to ensure the successful implementation of the project.
- 7.1.9. Ensure that the right stakeholders attend the necessary workshops and meetings in accordance with the project plan and sign off deliverables in accordance with such project plan.

8. AVAILABILITY

- 8.1. The Service Provider will ensure that the Services including Support Services is available during business hours between 07h00 up until 17h00 South African time zone.

9. MAINTENANCE AND SUPPORT, SERVICE LEVELS AND PENALTIES

- 9.1. Maintenance and Support services are required post implementation of Solution. Maintenance and Support Services include the following services:

- (i) Functional Application Support
- (ii) Corrective Maintenance
- (iii) Adaptive Maintenance
- (iv) Preventative Maintenance

- 9.2. In providing Maintenance and Support Services, resources assigned by the Service Provider will be required to work alongside SARS's resources and/or other Service Providers. The minimum requirements for Maintenance and Support services are the following:

- (i) The Service Provider shall be responsible for the provision of all Maintenance and Support services, for the implementation of the Solution.
- (ii) The Service Provider shall be responsible for the optimal functioning of the Solution in compliance with the business requirements of SARS;

- 9.3. In the event that resources used for Maintenance and Support are also used for Solution Implementation or Enhancements, the Maintenance and Support activities will take precedence and the Service Provider will still be required to meet the Maintenance and Support service levels.

- 9.4. Maintenance and Support services must be carried out in adherence to SARS IT Service Management Processes.

- 9.5. **Functional Application Support** – is the provision of assistance and maintenance for software applications to ensure their proper functioning and usability. It involves addressing issues, answering user queries and resolving technical problems related to the application's functionality and used to manage incidents and service requests.
- 9.6. **Corrective Maintenance** - is required for the restoration of services, in the event that any component of the solution malfunctions and is required to be redeveloped/configured.
- 9.7. **Adaptive Maintenance** - The management of any modification to an implemented solution/product inclusive of: business processes changes; functionality modifications; adapting existing solution configuration to suit a new business requirement.
- 9.8. **Preventative Maintenance** – must be carried out by the Service Provider to pro-actively monitor and prevent issues from happening.
- 9.9. The table below stipulates the Service Level Measurements that apply for Solution Maintenance and Support services:

Maintenance and Support Services					
Description	Mean Time To Respond <i>(from the time the call is assigned)</i>	Mean Time To Resolve <i>(from the time the call is assigned)</i>	Target	Penalty	Notes
Solution Availability	n/a	n/a	99% availability per month	5% of monthly Maintenance and Support costs	Ensure solution availability for normal business operations

Maintenance and Support Services					
Description	Mean Time To Respond <i>(from the time the call is assigned)</i>	Mean Time To Resolve <i>(from the time the call is assigned)</i>	Target	Penalty	Notes
Quality	n/a	n/a	95% of all calls resolved per month that is not re-opened after resolution.	3% of monthly Maintenance and Support costs	Ensure good quality resolutions, by improving accuracy and reducing re-work of the implemented resolutions
Root Cause Analysis report.	n/a	5 days after major incident and/or problem resolution.	100% of all Root Cause Analysis reports provided within 5 days of major incident and/or problem resolution.	1% of monthly Maintenance and Support costs	
Root Cause Analysis recommendation(s) implementation.	n/a	n/a	100% of all Root Cause Analysis recommendations implemented in line with SARS's approval & timeframes.	None	

Maintenance and Support Services					
Description	Mean Time To Respond <i>(from the time the call is assigned)</i>	Mean Time To Resolve <i>(from the time the call is assigned)</i>	Target	Penalty	Notes
Change and Release Management	n/a	n/a	100% of changes or releases must be approved in line with SARS's change and release process.	10% of monthly Maintenance and Support costs	All changes or releases must be approved in line with SARS's change and release processes, prior to deployment

Service Category	Service Category Description	Service Measures	Definition of service measures	Service Level Metrics
1. Corrective Maintenance Maintenance task to identify, isolate and resolve a particular issue, to fix problems or bugs in the solution	Severity Level 1: A Critical Defect/Error in an application that caused down time; A Data Fix that may have legal or/and financial implications for SARS for which a work around does not exist.	1. Mean time to resolve (MTTR) 2. This may constitute an Emergency Change 3. A Temporary work around may be found to bring system up 4. Permanent Fix to be in next Scheduled Release	8 Hours MTTR (resolve)	95% of all corrective maintenance calls received for the month implemented within 8 hours (Permanent Fixes only)
	Severity Level 2: A High Severity Defect that may have legal or/and financial implications to SARS for which a work around does exist or;	1. Mean time to resolve (MTTR) 2. Permanent Fix to be in next Scheduled Release	16 Hours MTTR (resolve)	95% of all corrective maintenance calls received for the month implemented within 16 hours (Permanent Fixes only)

Service Category	Service Category Description	Service Measures	Definition of service measures	Service Level Metrics
	A Data Fix that may have legal or/and financial implications for which a work around does exist			
	Severity Level 3: A Medium Severity Defect or Data Fix that does not stop the processing of transaction but might be creating unintended results / work / additional process. This also covers Functional Application Support	Mean time to resolve (MTTR)	24 Hours MTTR (resolve)	95% of all medium corrective maintenance calls received for the month implemented within 24 hours (Permanent fixes only)
2. Adaptive Maintenance	The management of any modification to an implemented solution/product inclusive of: 1. Solution Enhancements 2. Business processes changes.	1. Successful Release into Production	98% of Successful Releases into production	No more than 2 recurring defects that passed testing should occur in production

Service Category	Service Category Description	Service Measures	Definition of service measures	Service Level Metrics
	3. Functionality modifications 4. Adapting existing code to suit a new functionality /task or business requirement. 5. Application Releases			
3. Preventative Maintenance	Proactive monitoring and maintenance of the solution to correct errors and install required updates to prevent incidents and problems from happening.	Preventative Maintenance Resolution time defined and approved on the Change and Release Schedule		100% Compliance to Change and Release Management Schedule
4. Rollback of Release	Rollback of a release	Successful Rollback of an application release	Timeous Rollback of an application release	Within 8 Hours from request to rollback a failed release

9.10. PENALTIES

- 9.10.1. Penalties shall not be levied to the Service Provider where non delivery was as a result of SARS delays.
- 9.10.2. The maximum penalties for maintenance and support costs will be limited to 15% per month of the total monthly maintenance and support costs.
- 9.10.3. Should the 15% limit be reached four (4) times during the term of the Agreement SARS reserves the right to utilise any remedy created in the Agreement for the enforcement of SARS's rights, including termination in terms of Clause 29 of the Agreement, which may result in the termination of the contract.
- 9.10.4. The Service Provider must issue credit notes against penalties levied. Credit notes must be issued on a quarterly or annual basis.

10. SERVICE DELIVERY MANAGEMENT

10.1. Service Delivery Management Services are required for the overall management of the solution post the implementation. These services will be performed alongside SARS's IT Service and Supplier Management team. The Service Provider's Service Delivery Management team will, amongst others, execute all operational activities, manage all deliverables to be implemented by the Service Provider, including managing interfaces with other stakeholders in order to ensure smooth operation of the implemented solution. The minimum requirements for Service Delivery Management services are the following:

- 10.1.1. Service Delivery Management Team - is required to manage the overall operations of the implemented solution. This includes the management of, amongst others, the following services:

- (i) Maintenance and Support

- (ii) Solution reporting,
- (iii) Solution review,
- (iv) Solution health-check,
- (v) Solution documentation upkeep

10.1.2. Technical Account Manager / Success Account Manager: is required for the overall management of the Maintenance and Support services on behalf of the Service Provider and for the escalation of issues. The Service Provider must, amongst others, provide for the following:

- (i) The Service Provider's Technical Account Manager / Success Account Manager may be required to be located at SARS's premises. This decision will be at SARS's discretion.
- (ii) The Service Provider can only change this resource(s) (as responded to in the bid) with the approval of SARS.
- (iii) SARS reserves the right to instruct the Service Provider to change this resource in the event of unsatisfactory or non-performance.

10.1.3. Service Delivery Management Reports - the Service Provider shall provide standard technical and executive management reports on a monthly or ad-hoc basis as required, as defined by SARS.

10.1.4. In providing services, resources assigned by the Service Provider will be required to work alongside SARS's resources.

10.1.5. The table below stipulates the Service Level Measurements that apply for Service Delivery Management Services:

Service Delivery Management Services			
Service	Service Description	Target	Penalty
Service Delivery Management Services	Technical Account Manager / Success Account Manager Availability	100% availability of the Technical Account Manager / Success Account Manager unless unavailability has been approved and contingencies in place.	5% of monthly Maintenance and Support costs
	Service Delivery Management team	100% availability of Service Provider Representative(s) when required unless unavailability has been approved and contingencies in place.	4% of monthly Maintenance and Support costs
	Service Delivery Management Reports	100% of all standard and executive reports provided within the predefined timeframes.	No financial penalty
		95% of all ad-hoc reports provided within stipulated timeframes	No financial penalty
	Finance Management	100% of all invoices submitted within 40 hours after month end	No financial penalty, however service disputes may be imposed by SARS should this service standard not be achieved

11. SOLUTION REPORTING

11.1. Solution Reporting - is required for the monitoring and reporting on the service provision and utilisation of the Solution. The minimum requirements for Solution Reporting are the following:

11.1.1. Report Types - the solution must have the ability to generate predefined operational and statistical reports and must, amongst others, provide for the following:

11.1.1.1. Reports in order to measure the utilisation of the solution.

11.1.1.2. Reports in order to measure the performance of the implemented solution.

11.1.1.3. Customised reports.

11.1.1.4. The reports must be available on a number of levels (office, area, region and national).

11.1.2. Reports Generation - the reporting must be implemented in such a manner that it does not hamper the performance of the system, when generated.

11.1.3. Reports Format - the reports must allow for the export of data into other file formats, for reporting presentation options e.g. MS Excel, CSV, PDF

11.1.4. The table below stipulates the Service Level Measurements that apply for Solution Reporting services:

Solution Reporting Services			
Service	Description	Target	Penalty
Reporting	Solution Reporting Service	100% of all standard reports provided within the predefined timeframes.	No financial penalty
		95% of all ad-hoc reports provided within stipulated timeframes	No financial penalty

12. SOLUTION HEALTH CHECKS

12.1. **Solution Health Checks** - are required to ensure that the solution in use is in accordance with the OEM's best practices. Health Checks must be independently performed, by the OEM of the solution, or its authorised partner (and signed off by the OEM), when required. At a minimum, the Solution health Check must be performed after Solution Implementation.

12.2. The minimum requirements for Solution Health Checks are the following:

12.2.1. Health Check Reports and Recommendation Implementation - health check reports and implementation recommendations must be reviewed and approved by SARS. SARS, together with the Service Provider, will prioritize the implementation of the health check recommendations. Implementation of recommendations must be performed as part of Maintenance and Support services.

12.2.2. The table below stipulates the penalty structure that applies for Solution Health Check services:

Solution Health Check services			
Service	Description	Target	Penalty
Solution Health Check Service	Solution Health Check performed when requested	100% of all Solution Health Checks performed when requested or as per the agreement between SARS and Service Provider	1% of annual Maintenance and Support costs.

13. SOLUTION DOCUMENTATION UPKEEP

13.1. Solution Documentation Upkeep - Is required for the continuous updating of documentation as a result of changes or enhancements made to the solution in production. It must be noted that these documents are required to be updated prior to the implementation of the changed or enhanced solution in production. The minimum requirements for Solution Documentation Upkeep services are the following:

- (i) Documentation Approval - any updates to the documents will only be accepted once approved by SARS.
- (ii) Documentation Repository - all approved documents must be stored in SARS's document repository.
- (iii) Documentation Update Cost - the cost of solution documentation upkeep services must form part of the monthly Maintenance and Support service cost.

The table below stipulates Service Level Measurements for Solution Documentation:

Solution Documentation Upkeep Services

Service	Description	Target	Penalty
Solution Documentation Upkeep Service	Solution Documentation	100% of all solution documents or updated documents must be provided within 10 days after solution implementation or enhancements	2% of monthly Maintenance and Support costs

14. ALIGNMENT WITH SARS SERVICE MANAGEMENT PROCESSES

14.1. **Service Management Processes** - The Service Provider shall be responsible for the provision of all Maintenance and Support services, for the solution that is implemented at SARS. The Service Provider shall be responsible for the optimal functioning of the solution. The Service Provider must, amongst others, provide for the following:

14.1.1. Corrective, Adaptive, and Preventative services:

- (i) providing corrective, adaptive, and preventative Maintenance and Support services in order to ensure an acceptable level of uptime and availability when the service is required.
- (ii) Providing for the continuous improvement of the solution.

14.1.2. Incident and Problem Management:

- (i) Resolving incidents and problems within predetermined timeframes (e.g. improved response times, resolution times and uptime).
- (ii) Providing root cause analyses of all major incidents and problems in line with SARS's processes.

- (iii) Participating in the analysis of root causes (root cause analysis), when the solution or parts of the solution is unavailable, including the resolution thereof.

14.1.3. Quality Management:

- (i) Ensuring good quality resolutions, by improving accuracy and reducing re-work.

14.1.4. Software Updates:

- (i) Ensuring that all software patches used by the solution are implemented.
- (ii) Ensuring that the solution in operation must be at a minimum one version behind the latest available version from the OEM (n-1), with the latest version (n) being the preferred. The upgrade of the solution versions must be approved by SARS prior to implementation.

14.1.5. Security:

- (i) Ensuring that the security of the solution complies with SARS's security policy and standards.

14.1.6. Change and Release Management:

- (i) Participating and complying with SARS's change and release management processes by ensuring that all changes are duly approved prior to implementation.

14.1.7. IT Continuity:

- (i) Participating in the back-up and restoration processes of the solution.

14.1.8. Technical Administration:

- (i) Performing all technical administrative functions for the solution.

14.1.9. IT Supplier Management

- (i) Adherence with the SARS IT Supplier Management Framework and Contracts Obligation Tracker (COT) to ensure contract governance and transparent management of the Service Provider.

15. CALL LOGGING AND PERFORMANCE MANAGEMENT

15.1. Registering of Incidents and Service Requests

- 15.1.1. All incidents and service requests will be logged at SARS's ICT Service Desk.
- 15.1.2. The Service Provider must provide its own single point of contact (e.g. Service Provider's service desk email address) for the routing of calls to the Service Provider.
- 15.1.3. The Service Provider may be required to respond to service requests (e.g. call taking, call status updates) in a manner prescribed by SARS.
- 15.1.4. Service requests may be registered through various engagements with SARS's ICT team (e.g. service management meetings); however, these requests must be logged at SARS's ICT Service Desk prior to implementation.

15.2. Performance Reports

- 15.2.1. The Service performance will be measured by SARS using the SLA Reports generated from SARS Remedy System.
- 15.2.2. The Service Provider will be expected to produce Solution Availability Reports.

15.3. Service Performance Review

15.3.1. SARS together with the Service Provider will hold monthly Service Review Meetings wherein the SLA Performance Report will be tabled.

15.3.2. SARS and the Service Provider will, at a minimum hold Steerco meeting on a quarterly basis or as agreed between the two parties.

15.3.3. Additional meetings will be decided and agreed upon by the two parties.

15.4. Contact Details

15.4.1. Both parties must provide contact details as guided by SARS's Supplier Management process. These will be detailed in the Contract Obligation Tracker and must be updated on a regular basis.

15.5. SLA Review

15.5.1. The SLA may be reviewed (when required) and if agreed such amended/reviewed SLA must be signed by both parties within 30 days of such agreement.

16. Single Point of Contact

16.1. The Parties have nominated and appointed the following representatives as their SPOC for this Agreement and shall notify each other promptly in the event of a change in this regard.

16.2. The Service Provider

NAME	TITLE	CONTACT DETAILS

16.3. SARS

NAME	TITLE	CONTACT DETAILS

SCHEDULE 1

END TO END SOLUTION IMPLEMENTATION

1. The Service Provider shall appoint an experienced project manager, technical specialist(s) and expert(s) to oversee the end-to-end implementation of the Digital Forensic Review Platform Solution.
2. The Service Provider shall provide a detailed project plan indicating the approach on how the Digital Forensic Review Platform Solution will be implemented and operated after implementation.
3. The expected deliverables shall include but not limited to the below:

3.1 Project Planning and execution

- 3.1.1 The Service Provider shall provide the project management artefacts including but not limited to the following:

- 3.1.1.1 Project Charter
- 3.1.1.2 Project Schedule
- 3.1.1.3 Project Tracking
- 3.1.1.4 Project Risk Management
- 3.1.1.5 Project Reports

3.2 Analysis and Design

- 3.2.1 AS-IS assessment report;
- 3.2.2 Technical solution and design;

3.3 Solution Implementation

- 3.3.1 Infrastructure enablement and configuration;
- 3.3.2 AD Integration;
- 3.3.3 Discovery and inventory of entitlements and usage;

3.4 Solution Testing

3.4.1 Integration and Performance Testing

3.5 Solution Integration (optional)

3.5.1 Integration with internal systems;

3.6 Training

3.6.1 The Service Provider shall provide a training plan to train relevant SARS technical teams.

3.6.2 Bidders must ensure skills transfer to the SARS personnel is conducted.

3.7 Solution Stabilization

3.7.1 Post implementation support for 90 days;

3.7.2 Identify and communicate opportunities for software license optimization;

3.7.3 Ensure continual integration with required systems;

3.7.4 Ongoing improvements and optimization related to software compliance and control over Digital Forensic Review Platform Solution function;

3.7.5 Alignment with SARS's Service Operation Processes: Incident, Change and Problem Management Processes

3.8 On-boarding Activities

3.8.1 The Service Provider shall be expected to participate in SARS' supplier on-boarding process which forms part of gathering and providing information to establish a relationship with the new service provider. The aim is to support the appointed bidder to learn more about the SARS, governance processes and expectations. The objective is to ensure that both parties have the right information and documentation to work together productively, minimize risk and maximize the value of the partnership.

ANNEXURE E

BUSINESS CONTINUITY PLAN

**[NOTE TO BIDDER: BUSINESS CONTINUITY PLAN WILL BE INCLUDED
ON CONTRACTING].**

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ANNEXURE F

DATA PROTECTION AGREEMENT

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ANNEXURE G

REQUEST FOR PROPOSAL

**[NOTE TO THE BIDDER: THE REQUEST FOR PROPOSAL
DOCUMENTATION WILL BE ATTACHED HERE]**

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ANNEXURE H

DISENGAGEMENT ASSISTANCE

1. GENERAL

- 1.1 Service Provider will, during the Disengagement Assistance Period provide to SARS, or at SARS's request to a Successor (where SARS is not the Successor) without interruption or degradation of the Services (i) such termination/expiration assistance as SARS may request to facilitate the Transition of the Services to SARS or a Successor; and (ii) to the extent applicable, hardware and Software, ("Disengagement Assistance").
- 1.2 Disengagement Assistance provided to SARS prior to the effective date of termination or expiration will be chargeable by Service Provider to SARS only to the extent that the appointment of additional resources (above and beyond those resources used in providing the Services) is strictly necessary for Service Provider to provide such assistance and provided Service Provider has notified SARS of such appointment and SARS has pre-approved such appointment and related fees in writing, which approval will be exercised at SARS's sole discretion. Service Provider will use Commercially Reasonable Efforts to perform the Disengagement Assistance without deploying additional resources. Disengagement Assistance provided to SARS after the effective date of termination or expiration will be chargeable to SARS on a Time and Material Basis in accordance with the Ad hoc Services set out in Annexure A.
- 1.3 Disengagement Assistance will include the provision of all information and assistance requested by SARS and necessary to ensure the seamless Transition of Services and functions being performed by Service Provider or its agents to the Successor. Disengagement Assistance may include capacity planning, consulting services, facilities planning, electronic communications services planning, Software configuration, reviewing all system Software with a new vendor, generating machine readable listings of source code, uploading production databases, providing parallel processing, testing, and

providing such other assistance as is described in this Schedule H (Disengagement Assistance).

- 1.4 Service Provider will perform the Disengagement Assistance in a manner such that (to the extent within Service Provider's control):
 - 1.4.1 the Terminated Services are transferred to the Successor in an efficient and orderly manner;
 - 1.4.2 the impact on SARS's operations (including SARS Personnel) and the internal and Third-Party costs incurred by SARS in transferring the Terminated Services are minimised;
 - 1.4.3 the Terminated Services continue to be performed by Service Provider until the Termination Date has occurred without disruption or deterioration except as approved by SARS and included in the Disengagement Assistance Plan;
 - 1.4.4 any disruption or deterioration of the Terminated Services following the Termination Date (except as approved by SARS and included in the Disengagement Assistance Plan) is minimised;
 - 1.4.5 there is a knowledge transfer as part of which SARS and/or the Successor are provided with all information held by Service Provider (or a Subcontractor) that is required to perform services replacing or reasonably equivalent to the Terminated Services following the Termination Date; and
 - 1.4.6 SARS is able, at its option, to receive services similar to the Terminated Services, independently of the Service Provider following termination, including by the transfer to SARS or the Successor of the resources specified in clause 3.
- 1.5 If there is more than one Successor, then Service Provider will perform the Disengagement Assistance in respect of each Successor.

1.6 Approach to disengagement

1.6.1 SARS will be entitled to determine on notice to Service Provider the approach to be taken in respect of the transfer of the Terminated Services, including that the transfer of the Terminated Services from Service Provider to a Successor may either occur:

1.6.1.1 on the Termination Date; or

1.6.1.2 over a period prior and up to the Termination Date; and

1.6.2 interim changes are made to the Services to enable the transfer of the Terminated Services.

1.7 Disengagement Assistance Plan

1.7.1 The Disengagement Assistance Plan will be developed for each transfer of Terminated Services. SARS will elect whether the Disengagement Assistance Plan is to be developed by SARS or in whole or part by Service Provider.

1.7.2 If SARS elects to develop the Disengagement Assistance Plan (or any part thereof), SARS will provide the Disengagement Assistance Plan to Service Provider.

1.7.3 If SARS elects for Service Provider to develop all or part of the Disengagement Assistance Plan, then:

1.7.3.1 a detailed draft that complies with this Agreement will be delivered to SARS for its comments and review by:

1.7.3.1.1 in the case of expiry of the Term, 8 (eight) months prior to the end of the Term; or

- 1.7.3.1.2 in all other cases, 10 (ten) Business Days following the date of delivery of a notice of termination or a notice to reduce the scope of the Services.
 - 1.7.3.2 Service Provider will incorporate SARS's reasonable comments and changes into the Disengagement Assistance Plan (and any subsequent version of the Disengagement Assistance Plan) and finalise the Disengagement Assistance Plan within 15 (fifteen) days following receipt of the same; and
 - 1.7.3.3 the final Disengagement Assistance Plan will be subject to the written approval of SARS.
- 1.7.4 The Disengagement Assistance Plan will clearly and in detail:
 - 1.7.4.1 give effect to any approach to the Disengagement Assistance specified by SARS in accordance with clause 1.6;
 - 1.7.4.2 describe actions to be taken by Service Provider in performing the Disengagement Assistance (without limitation to any other actions requested by SARS pursuant to this Schedule H during the Disengagement Assistance Period);
 - 1.7.4.3 subject to clause 1.7.7, describe in detail any SARS and/or Successor tasks (including an estimate of the specific staffing required);
 - 1.7.4.4 describe how any transfer of assets and contracts will be achieved;
 - 1.7.4.5 specify the detailed information that will be provided (having regard to the categories in Appendix H-1 (Disengagement Assistance Data));
 - 1.7.4.6 set out the timetable for the transfer of each element of the Terminated Services (including key milestones to track the progress of the transfer); and

- 1.7.4.7 specify reasonable acceptance criteria and testing procedures to confirm whether the transfer of the Terminated Services has been successfully completed.
- 1.7.4.8 Following SARS's approval of and authorisation to proceed with the final Disengagement Assistance Plan, Service Provider will perform the Disengagement Assistance in accordance with the Disengagement Assistance Plan.
- 1.7.4.9 During the Disengagement Assistance Period, either Party may propose changes to the Disengagement Assistance Plan and Service Provider will proactively recommend changes that are necessary or desirable. Any changes to the Disengagement Assistance Plan will be subject to the other Party's approval.
- 1.7.4.10 SARS (or Successor) tasks to be performed in respect of Disengagement Assistance will only apply where:
 - 1.7.4.11 the task is reasonable and there is no other practical manner in which Service Provider can perform the Disengagement Assistance without such task being performed by SARS or a Successor; or
 - 1.7.4.12 SARS notifies Service Provider that SARS wishes to perform such task.

1.8 Disengagement Assistance Management

- 1.8.1 Service Provider will appoint a senior project manager as its "Disengagement Assistance Manager" who will be responsible for the overall performance of the Disengagement Assistance and who will be the primary point of contact for SARS in respect of the Disengagement Assistance during the Disengagement Assistance Period. Service Provider will appoint such representative by the relevant date specified in clause 1.7.3.1.

- 1.8.2 SARS will appoint a senior project manager as its "SARS Disengagement Assistance Manager" who will be the primary point of contact for Service Provider during the Disengagement Assistance Period.
- 1.8.3 Both Parties will use Commercially Reasonable Efforts to ensure that any Disengagement Assistance issues or disputes are resolved promptly by the Disengagement Assistance Managers. Any disputes that cannot be resolved will be escalated in accordance with the dispute resolution procedure set forth in clause 40 of the Main Agreement.
- 1.8.4 Service Provider will manage the Disengagement Assistance in accordance with SARS's reasonable directions, including:
- 1.8.4.1 resolving any Incidents or problems arising with respect to the Disengagement Assistance;
 - 1.8.4.2 defining an escalation process, as approved by SARS, to be used if there is a failure in any part of the disengagement;
 - 1.8.4.3 establishing, as directed by SARS, the necessary communications and interfaces between SARS, Service Provider, the Successor and the Subcontractors; and subject to the provisions of clause 1.2 above, providing individuals with the required expertise to perform Disengagement Assistance.
 - 1.8.4.4 Service Provider will monitor progress of all tasks and responsibilities in the Disengagement Assistance Plan (whether the responsibility of Service Provider, SARS or any Third Party) against the Disengagement Assistance Plan and promptly escalate to SARS any failures (or potential failures) to perform any tasks or responsibilities, including failures by SARS or the Successor.
 - 1.8.4.5 Service Provider will provide reports to SARS not less than once a week which:

1.8.4.5.1 describe the progress of the Disengagement Assistance against the Disengagement Assistance Plan; and

1.8.4.5.2 identify any risks encountered during the performance of the Disengagement Assistance and propose steps to mitigate such risks.

1.8.5 The Disengagement Assistance Managers appointed pursuant to clauses 1.8.1 and 1.8.2 above will meet on a weekly basis (or as otherwise required by SARS) during the Disengagement Assistance Period to review the status of the Disengagement Assistance Plan.

1.8.6 SARS may appoint a Successor during the Disengagement Assistance Period to manage Service Provider's performance of the Disengagement Assistance and any Terminated Services. Service Provider will follow the direction of such Successor only to the extent that:

1.8.6.1 Service Provider would be obliged to follow SARS's directions under this Agreement; and

1.8.6.2 SARS has authorised the Successor and notified Service Provider of such authorisation.

1.9 Confidentiality and Security Compliance

1.9.1 Prior to a Successor (other than SARS) being provided with any Service Provider Confidential Information as part of Disengagement Assistance, SARS will enter into a confidentiality agreement with the Successor on terms substantially similar to those set out in the Agreement or as otherwise agreed by the Parties.

1.9.2 SARS will procure that any Successor entering any Service Provider or Subcontractor facilities in connection with the Terminated Services will comply with Service Provider's reasonable security and site regulations and policies notified to SARS in advance.

2. SPECIFIC DISENGAGEMENT ASSISTANCE REQUIREMENTS

2.1 Bid Assistance

2.1.1 At any time during the Term (whether before or during the Disengagement Assistance Period), Service Provider will, as requested by SARS, reasonably co-operate and promptly provide assistance with any bid or tender process that SARS runs in relation to any of the Terminated Services (or potential Terminated Services) including:

2.1.1.1 providing information, reports and data for inclusion in SARS's request for information and request for proposals;

2.1.1.2 answering questions raised by potential Successors; and

2.1.1.3 allowing potential Successors to perform reasonable due diligence activities in respect of the relevant Services, including providing reasonable access to facilities from where the Services are performed (subject to Service Provider's reasonable security requirements), Service Provider support systems and Service Provider Personnel (including personnel located off SARS Sites); provided that such due diligence will be performed in such a reasonable manner so that it does not materially disrupt Service performance (unless SARS excuses such disruption in advance, in writing).

2.1.2 The bid assistance to be performed pursuant to clause 2.1.1 above will be at least to the level:

2.1.2.1 that would be required for reasonably skilled and experienced Third Party service providers to:

2.1.2.1.1 prepare an informed, non-qualified offer for the relevant Terminated Services; and

2.1.2.1.2 not be disadvantaged compared to Service Provider (if Service Provider is invited to participate) in respect of access to information; and

2.1.2.1.3 in any event, be no less than the co-operation and assistance provided by SARS to Service Provider prior to the Effective Date.

2.2 Return of Materials

Service Provider will return to SARS (or destroy) the SARS Confidential Information in accordance with clause 22 of the Main Agreement.

2.3 Information

2.3.1 As requested by SARS, Service Provider will promptly (and in any event within 5 (five) Business Days following the request) provide SARS with and permit SARS to share with the Successor if the Successor is not SARS:

2.3.1.1 the information and data listed in Appendix F-1 (Disengagement Assistance Data), subject to any timing restrictions specified in that Appendix; and

2.3.1.2 any other information relating to the Services which would be reasonably required by a reasonably skilled and experienced provider of services to continue to perform the Services without disruption or deterioration following the Termination Date.

2.3.2 Subject to clause 1.8 above, SARS may provide to a Successor (or potential Successor): (a) the information identified in clause 2.3.1 and (b) the Agreement.

2.3.3 Service Provider will provide updates to the information provided pursuant to this Schedule H, during the Disengagement Assistance Period.

2.4 Knowledge Transfer

Service Provider will provide knowledge transfer services to the Successor (and SARS where SARS is not the Successor) as reasonably required by SARS, including:

- 2.4.1 explaining procedures, standards and operations used to perform the Terminated Services;
- 2.4.2 answering questions in respect of the information provided pursuant to clause 2.3 above; and
- 2.4.3 for reasonable periods during the Disengagement Assistance Period prior to the Termination Date, allowing Successor personnel to work alongside Service Provider Personnel to shadow their role and enable knowledge transfer.

2.5 Co-operation

As requested by SARS, Service Provider will co-operate with (and procure that the Subcontractors co-operate with) the Successor during the Disengagement Assistance Period.

2.6 Change Freeze

Service Provider will, unless otherwise approved by SARS, ensure that during the 3 (three) month period prior to the Termination Date no material changes are made to:

- 2.6.1 the Terminated Services (including to any hardware, Software or other facilities used to perform the Terminated Services), other than changes necessary for the continued performance of the Services in accordance with the Performance Standards; and
- 2.6.2 any hardware, Software or contracts that SARS has the right to acquire in accordance with clause 3 below.

2.7 Backlogs

Service Provider will perform its obligations under this Agreement so that there is not an unreasonable backlog of requests for support or resolution of Incidents as at the Termination Date.

2.8 Business Continuity

Service Provider will provide the following assistance to support SARS's requirements for business continuity:

- 2.8.1 where SARS is not the Successor, informing Successors of SARS's then-current policies and procedures with regard to backup and disaster recovery relating to the Terminated Services;
- 2.8.2 arranging for additional overlapping coverage or support through the Run Down Period to minimise disruption in the event of an outage during the Run Down Period; and
- 2.8.3 as requested by SARS, assisting in disaster recovery testing during the Run Down Period in accordance with the processes and procedures detailed in the Process and Procedures Library.

3. TRANSFER OF ASSETS AND GRANT OF RIGHTS

3.1 Option to purchase hardware (if applicable)

- 3.1.1 At SARS's election, Service Provider will sell to SARS some or all of the hardware used primarily to provide the Services to SARS. Service Provider will sell hardware that SARS elects to purchase under this provision at the lesser of fair market value or net book value. For this purpose, fair market value will be determined by a registered valuator designated by SARS.

By the relevant date as contemplated in clause 1.7.3.1 above, Service Provider will provide a list of any hardware that is owned by Service Provider or a Subcontractor and is used primarily to provide the Services to SARS. The list will specify for each item of hardware: the manufacturer, model, configuration, age, location, function in the provision of the Services and net book value.

3.1.2 If SARS elects to purchase hardware pursuant to clause 3.1.1 above, then:

3.1.2.1 as requested by SARS, Service Provider will de-commission the purchased hardware and prepare it for transportation (including packaging) or provide it for collection by SARS or the Successor;

3.1.2.2 risk in the purchased hardware will pass to SARS only upon collection by SARS or upon delivery to SARS; and

3.1.2.3 Service Provider will execute or provide any title, bills of sale, invoices or other documents as may be required to give effect to this clause 3.1 and to perfect the transfer of title to SARS or the Successor.

3.1.3 If SARS elects not to purchase any such hardware, Service Provider will be responsible for the re-use or safe disposal of the same (including, if it contains any SARS data, cleansing the same to the standards specified in this Agreement).

3.1.4 Service Provider will provide SARS, the Successor or both (as specified by SARS) with such assistance as is reasonably required to ensure the migration of SARS's Software, SARS data or SARS-provided resources from any hardware which SARS does not wish to acquire to alternative hardware designated by SARS, or secure deletion (as required by SARS).

3.1.5 At SARS's election, Service Provider will assign to SARS some or all of the Third Party contracts relating to hardware used primarily to provide the Services to SARS. Service Provider will be responsible for obtaining, at its

sole cost and expense, any Required Consents necessary for the assignment of the applicable lease.

3.2 Assignment of contracts

3.2.1 SARS or a Successor (where SARS is not the Successor) will have the option (exercisable by SARS on a contract by contract basis) to assume contracts for any Services provided by Third Parties to Service Provider and used exclusively by Service Provider to provide Services to SARS. Service Provider will take all steps necessary to formally assign such contracts to SARS. In respect of Third Party service contracts, Service Provider will, where required by SARS, use Commercially Reasonable Efforts to arrange for the provision of the Services by the Third Party to SARS under terms at least as favourable as those in the Third Party Service Contract.

3.2.2 Service Provider will provide further information about such contracts in accordance with Appendix H-1 (Disengagement Assistance Data).

APPENDIX H-1

DISENGAGEMENT ASSISTANCE DATA

1 DISENGAGEMENT ASSISTANCE DATA

The Disengagement Assistance Data consists of:

1.1 Third Party contracts

1.1.1 In respect of each Third Party contract entered into by Service Provider (or by a Subcontractor) in relation to the Services, including contracts with Subcontractors, and warranties, maintenance agreements and leases relating to hardware and licences and maintenance agreements relating to Software:

1.1.1.1 the type of contract, such as maintenance or support services;

1.1.1.2 a description of the service being provided;

1.1.1.3 whether the contract exclusively relates to the Services;

1.1.1.4 whether the contract can be assigned or novated;

1.1.1.5 the licences, rights or permissions granted under the contract by the Third Party;

1.1.1.6 amounts payable under the terms of such contract;

1.1.1.7 the remaining term of contract and termination rights;

1.1.1.8 contact details of the Third Party;

1.1.1.9 a history of dealings with the Third Party (including performance histories against service levels that may be in effect with respect to such Third Party);

1.1.1.10 a list of projects or unfilled orders in progress and the status of each; and

1.1.1.11 a copy of each of the contracts with each Third Party.

1.2 Other Information

- 1.2.1 A copy of all documents in the Process and Procedures Library required to provide the Services to SARS;
- 1.2.2 A list of any Tools, systems, hardware, assets, Software, processes and procedures that are necessary to perform the Services that will not be transferred to the Successor;
- 1.2.3 All Software back-ups of systems used to perform the Services;
- 1.2.4 Any security features, passwords and password control policies that the Successor needs to know to continue to perform the Services;
- 1.2.5 Key support contact details for Service Provider Personnel and Third Party service providers (excluding Subcontractors), including a contact listing of current potential alternative sources of resources, including skilled labour and spare hardware and parts; and
- 1.2.6 Work volumes, staffing requirements, actual Service Levels and information on historical performance for each Service component during the preceding 12 (twelve) months.

ANNEXURE I

BROAD-BASED BLACK ECONOMIC EMPOWERMENT

1. INTRODUCTION

- 1.1. The Parties are cognisant of the B-BBEE Act 53 of 2003 as amended by the B-BBEE Amendment Act 46 of 2013 together with the applicable codes published.
- 1.2. The Service Provider will use Commercially Reasonable Efforts to submit a BBBEE certificate, measuring the Service Provider's BEE Status in accordance with the new Codes before or on the Effective Date. SARS may in its sole discretion extend the submission date to the first anniversary of the Effective Date.
- 1.3. The Service Provider will use Commercially Reasonable Efforts to ensure that its BEE Status remains the same or does not decrease more than 1 (one) Level below the Level contained in the Verification Certificate submitted with the Service Provider's Proposal.

2. BBBEE

- 2.1. This Schedule H sets out, amongst other things, subject to clause 1 above, the minimum BEE Status that the Service Provider undertakes and warrants will be maintained for duration of the Term.
- 2.2. In this Schedule H the provisions of the Act and the Codes (defined below) will apply mutatis mutandis to any words and expressions, the meaning of which for purposes of this Schedule H are not defined in this clause 2.2, and unless the context indicates a contrary intention, the following words and expressions bear the meanings assigned to them and cognate expressions bear corresponding meanings –
 - 2.2.1. "**Act**" means the Broad-based Black Economic Empowerment Act, 2003 (Act 53 of 2003);
 - 2.2.2. "**BBBEE**" means broad-based black economic empowerment,

as defined in the Broad-based Black Economic Empowerment Act, 2003 (Act 53 of 2003);

2.2.3. **“BEE Certification Document”** means the certification documentation required in accordance with an organisation’s classification as set out in the table below:

Classification	Turnover	Submission Requirement
Exempted Micro Enterprise (EME)	Below R10 million p.a	A sworn Affidavit or Certificate from CIPC
Qualifying Small Enterprise (QSE)	Between R10 million and R50 million p.a.	A sworn Affidavit – only 51% BO and above Certified copy of B-BBEE Rating Certificate from a SANAS Accredited rating agency.
Large Enterprise (LE)	Above R50 million p.a.	Certified copy of B-BBEE Rating Certificate from a SANAS Accredited rating agency.

2.2.4. **“BEE Data”** means without limitation, all the underlying data relating to an Entity which has been relied upon or utilised by a Verification Agency for the purposes of issuing a Verification Certificate in respect of an Entity's BEE Status;

2.2.5. **“BEE Status”** means the BEE Status of an Entity based on its Generic Scorecard (or the QSE scorecard, as may be applicable) as measured and certified by a Verification Agency in accordance with the applicable Codes or the compliance bands applicable to QSE’s under the Codes, as the case may be.

B-BBEE Status	Qualification
Level One Contributor	≥100 points on the Generic Scorecard
Level Two Contributor	≥95 but <100 points on the Generic Scorecard
Level Three Contributor	≥90 but <95 points on the Generic Scorecard
Level Four Contributor	≥80 but <90 points on the Generic Scorecard
Level Five Contributor	≥75 but <80 points on the Generic Scorecard
Level Six Contributor	≥70 but <75 points on the Generic Scorecard
Level Seven Contributor	≥55 but <70 points on the Generic Scorecard
Level Eight Contributor	≥40 but <55 points on the Generic Scorecard
Non-Compliant Contributor	<40 points on the Generic Scorecard

2.2.6. **“CCA”** means the Close Corporation Act 69 of 1984;

2.2.7. **“CIPC”** means the Companies and Intellectual Property Commission;

2.2.8. **"Codes"** mean generally, the Codes of Good Practice on Black Economic Empowerment gazetted by the Minister of Trade and Industry under clause 9 of the Act on 9 February 2007 and the specific Code applicable;

2.2.9. **"Entity"** means for purposes of this Schedule H, the Service

Provider and any subsidiary of the Service Provider specifically cited as a subsidiary in the Verification Certificate of the Service Provider's group of companies;

2.2.10. **"Element"** means the measurable quantitative or qualitative elements of the Generic Scorecard (or the QSE scorecard, as may be applicable), being Ownership, Management, Employment Equity, Skills Development, Preferential Procurement, Enterprise Development and Socio-Economic Development Initiatives, and each of the specific scorecards relating to these elements, measured in accordance with the respective Codes;

2.2.11. **"EME"** means an Exempted Micro Enterprise as defined under **Schedule 1** to the Code;

2.2.12. **"LE"** means Large Enterprise as defined under Schedule 1 to the Codes;

2.2.13. **"QSE"** means a Qualifying Small Enterprise as defined under Schedule 1 to the Codes;

2.2.14. **"SANAS"** means South African National Accreditation System, being the only national accreditation body recognized by the South African Government;

2.2.15. **"Statements"** mean generally, the statements to the Codes and in respect of the specific Code applicable, the specific statement thereto;

2.2.16. **"Verification Agency"** means a BEE Verification Agency contemplated by the Codes which, at the time of the issue of any certificate or confirmation of any aspect of any Entity's BEE status for purposes of this Schedule I, is –

2.2.16.1. a verification agency accredited by SANAS; or alternatively;

2.2.16.2. in respect of any certificate or confirmation of any

aspect of any Entity's BEE Status issued after 1 February 2010 (and for 12 months thereafter), a verification agency that has been issued with a valid pre-assessment letter from SANAS; and

2.2.16.3. **"Verification Certificate"** means a certificate which may be required in terms of this **Schedule I** issued by a verification agency, verifying an Entity's BEE Status level, the details of its scorecard performance on the Elements of the Generic Scorecard (or QSE Scorecard, as may be applicable), and any other aspect of its BEE performance under the Codes or, verifying the BEE Status level, the details of the scorecard performance and any other aspect of BEE performance under the Codes of a group of companies of which an Entity forms part, provided that such Entity is specifically cited as a subsidiary in the Verification Certificate of that group of companies.

2.3. The Service Provider, subject to clause 1 above, undertakes and warrants that, for the full duration of the Term, the Service Provider and its Subcontractors will provide SARS with valid BEE Certification Documentation.

2.4. In the event the Service Provider, or any of its Subcontractors, fail to obtain and submit BEE Certification Documentation as is required in terms of their classification (in accordance with the table set out in 2.1.3 above) that is valid at a point in time during the term of the Agreement, the Service Provider will promptly inform SARS of such failure. The Service Provider will, within 14 (fourteen) days of it becoming aware of such failure, submit a full report to SARS detailing the events and circumstances leading to the failure to obtain valid BEE Certification Documentation either by the Service Provider or by one of its Subcontractors.

2.5. The Service Provider will, annually, at the earlier of, the anniversary of the Effective Date of the Agreement or, prior to the expiry of the Service

Provider's previously applicable BEE Certification Documentation, provide to SARS BEE Certification Documentation for the Service Provider comprising the following –

- 2.5.1. a certification of its overall BEE Status, and
- 2.5.2. a certification of its scoring on all the Elements of the Generic Scorecard (or QSE Scorecard as may be applicable) stipulating –
 - 2.5.2.1. the points scored on each Element under the applicable scorecard;
 - 2.5.2.2. the percentage achieved on each element under the applicable scorecard; and
 - 2.5.2.3. The BBBEE Report must be submitted
- 2.6. The Service Provider will, upon the written request of SARS at any time for the duration of this Agreement, within 30 (thirty) business days, provide SARS with any BEE Data SARS considers relevant to its evaluation of the Service Provider's or the Service Provider's Subcontractor's BEE Status or, the Service Provider's or the Service Provider's Subcontractor's BEE Status performance on any Element of the Generic Scorecard (or QSE Scorecard as may be applicable) for purposes of this **Schedule I**.
- 2.7. 2.62.3 SARS reserves the right to require the Service Provider and or its Subcontractor, either before adjudication or at any time subsequently, to substantiate any claim in regard to B-BBEE/ preference, in a manner required by SARS.
- 2.8. In the event that the Service Provider, at any time for the duration of this Agreement, undergoes any corporate or internal restructuring or change which has (or, is reasonably likely to have) a negative impact on its BEE Status (as per the Verification Certificate required to be lodged from time to time in terms of this Agreement) or, undertakes any contractual commitment to do so, the Service Provider will be required to notify SARS thereof forthwith, providing full details of the impact (or anticipated impact)

such restructuring or change (or proposed restructuring or change) will have on each Element of the Service Provider's Generic Scorecard, in the form of written confirmation to this effect from a Verification Agency and the steps that will be taken by the Service Provider to regain a BEE Status Level in compliance with its obligations under clause 2.3 above.

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