**AGREEMENT FOR PROVISION OF THE TRANSFER PRICING BENCHMARK TOOL**

Entered into by and between

**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)

**(“SARS”)**

And

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Registration No. **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

(the “Service Provider”)”

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**ANNEXURE A - PRICING SCHEDULE**

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1. BACKGROUND

The provisions and the general terms and conditions of the RFP (including the summary, guidelines, conditions and instructions of the RFP) and BRS (Business Requirement Specifications) are herein incorporated by reference, and shall be read as if specifically incorporated in this Agreement.

* 1. Background
     1. SARS’ primary mandate is to collect all revenue that is due to the State; ensure maximum compliance with the South African Revenue Services Act 34 of 1997 and all other Tax Laws; and provide a customs service that shall maximise revenue collection, protect South Africa’s borders and facilitate trade. SARS’s vision is to become an innovative revenue and customs agency that enhances economic growth and social development, and supports South Africa’s intergration into the global economy in a way that benefits all South African citizens, thereby increasing South Africa’s share of global trade.
     2. Section 31 of the Income Tax Act, 1962 (Act 58 of 1962)’s purpose is to counter Transfer Pricing practices .which may have adverse tax implications on the South African fiscus. The aforesaid section empowers the Commissioner of SARS to adjust considerations (for purposes of the aforementioned Act and the calculation of taxable income) in respect of supply or acquisition of goods or services between Connected Persons where one of the entities is a tax resident by applying the Arm’s Length Principle(s) to the respective international transaction.

(For example, if a non-arms value, i.e. inadequate or excessive consideration, is paid for the transfer of goods or services between members of a multinational, the income calculated for each of those members will be inconsistent with their relative economic contributions. This distortion will impact on the tax revenue of the relevant tax jurisdiction in which they operate).

* + 1. In order to enforce the Arm’s Length Principle/to determine if an international transaction is at arm’s length, a Benchmarking study must be conducted by SARS using reliable comparable data. (For example, when a Transfer Price (or profit derived) is determined by a taxpayer for a transaction under review is not found in the applicable Arm’s Length range, SARS will determine the Arm’s Length price or margin by conducting a Benchmarking study on a database containing relevant and reliable independent comparable data).
    2. SARS seeks to appoint a Service Provider to provide the Transfer Pricing Bechmarking Tool that is reliable, defendable and meets the system technical capability and compatibility requirements set out in the BRS document. SARS has thus issued the RFP 31/2019 (the tender). SARS is interested in a proposed end-to-end solution and shall amend this Agreement by mutual agreement between the Parties in the event that there are additional requirements not catered for in this Agreement or the BRS document or any tender document.
  1. Objectives
     1. The overall objective, in addition to SARS’s mandate, is to issue accurate and defendable Transfer Pricing assessments. A comprehensive Transfer Pricing tax audit is not possible without a Benchmarking tool.
     2. SARS’ current system for the aforementioned purpose is an internet subscription based TP Catalyst software using Orbis and KT Mine Royalties database. The required end-to-end solution should significantly improve SARS’s capacity to collect revenue and improved reliability of the adjustments raised.
     3. Throughout the Term of this Agreement, the Services must be rendered in such a manner so that SARS receives "value for money” as defined in SARS’ generally applicable procurement guidelines, policies, legislation and Best Industry Practice.
     4. The Service Provider has reviewed the objectives for the transaction as set out in the RFP document and this Agreement; and warrants to SARS that it is an established entity capable of providing the Transfer Pricing Benchmarking Tool (and/or end to end solution) and related Services. The Service Provider further acknowledges and agrees that it understands such objectives; and has the capital; skills, experience, knowledge, capacity and resources reasonably required to provide the Services; and shall in good faith negotiate, draft, deliver the required bespoke services, and generally all Services referred to in this Agreement.

1. DEFINITIONS AND INTERPRETATION
   1. The definitions and interpretations set forth in the BRS document and/or any other tender document shall apply *mutatis mutandis* to this Agreement. For purposes of clarity, defined terms repeated herein word for word are for easier reference, except where such definition is specifically varied/amended in this Agreement where the definition set out in this Agreement shall then take precedence.
   2. In the event of a conflict between interpretations of a defined term in this Agreement and the Income Tax Act, 1962 (Act 58 of 1962), the defined term in terms of the aforesaid Act shall take precedence.
   3. In this Agreement, unless the context indicates a contrary intention, the following words and expressions bear the meanings assigned to them and cognate expressions bear corresponding meanings –
      1. **“Applicable Law(s)”** means any statute, regulation, subordinate legislation, policy or directive including but not limited to the section 31 of the Tax Income Act, 1962 (Act No. 58 of 1962), OECD Guidelines, tax treaties entered into by the Republic of South Africa, Practice Note no. 7 dated 6 August 1999 (section 31 of the Income Tax Act, 1962 (the act) :determination of the taxable income of certain persons from international transactions :transfer pricing) and POPI Act;
      2. **“Arm’s Length principle(s)”** means the various objective internationally accepted mechanisms and determinations employed by the Commissioner, as envisaged by section 31 of the Income Tax Act, 1962 (Act No. 58 of 1962) to determine the Transfer Price to a particular transaction between connected persons;
      3. **"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, including the Codes of Good Practice on Broad Based Black Empowerment published by the Minister of Trade and Industry in terms of the Act (the “Codes”), and any relevant sector charter/s applicable;
      4. **“Benchmarking”** or a **“Benchmarking study”** means the studies conducted to determine the general conditions surrounding a transaction conducted by third parties on a given market to help elicit a range of values, i.e. the arm’s length range which is typically within the boundries of a lower quartile and upper quartile, of price or profit attached to the comparable transaction between comparable unrelated parties.
      5. **“Best Industry Practice”** means the highest professional exercise of that degree of skill, diligence, prudence, standards and foresight which would reasonably and ordinarily be expected from time to time from a person skilled and experienced in the Transfer Pricing Benchmarking Tool industry seeking in good faith to fully comply with its contractual obligations;
      6. **“Bugs”** means any error, flaw or mistake in the program of a Deliverable’s source code which in any way prevents the Deliverable from functioning correctly;
      7. **"Confidential Information"** means trade secrets, know-how, technology, techniques or methods of operating employed by SARS, taxpayer information; SARS Confidential Information as defined in the Tax Administration Act, 2011 (Act No. 28 of 2011) as well as any information considered confidential in terms of any other Tax Act administered by the Commissioner of SARS, SARS’ material and any information or data of any nature, tangible or intangible, oral or in writing and in any format or medium, which by its nature or content is or ought reasonably to be identifiable as confidential and/or proprietary to the Disclosing Party or which is provided or disclosed in confidence, and which the Disclosing Party or any person acting on behalf of the Disclosing Party may disclose or provide to the Receiving Party or which may come to the knowledge of the Receiving Party by whatsoever means including internal SARS policies and/or employee details to which the Service Provider may become privy during the term of this Agreement.

The Confidential Information of the Disclosing Party shall include information even if it is not marked as being ‘confidential’, restricted or proprietary (or any similar designation);

Confidential Information excludes information or data which-

* + - 1. is lawfully in the public domain at the time of disclosure thereof to the Receiving Party; or
      2. subsequently becomes lawfully part of the public domain by publication or otherwise; or
      3. is or becomes available to the Receiving Party from a source other than the Disclosing Party which is lawfully entitled without any restriction on disclosure to disclose such Confidential Information to the Receiving Party; or
      4. is disclosed pursuant to a requirement or request by operation of law, regulation or court order but then only to the extent so disclosed and then only in the specific instance and under the specific circumstances in which it is obliged to be disclosed; provided that-
         1. the onus shall at all times rest on the Receiving Party to establish that such information falls within such exclusions;
         2. the information disclosed shall not be deemed to be within the foregoing exclusions merely because such information is embraced by more general information in the public domain or in a Party's possession; and
         3. any combination of features shall not be deemed to be within the foregoing exclusions merely because individual features are in the public domain or in a Party's possession, but only if the combination itself is in the public domain or in a Party's possession.
      5. The determination of whether information is Confidential Information shall 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;
    1. **“Connected Person”** means a person as defined and envisaged in section 1 of the Income Tax Act, 1962 (Act No. 58 of 1962);
    2. **"Data"** means any data as defined in the Electronic Communications and Transactions Act, (Act no 25 of 2002) and includes Personal Information as defined in section 1 of Protection of Personal Information,2013 (Act No. 4 of 2013), and any other applicable legislation in the jurisdiction where the Services are to be provided, supplied, stored, collected, collated, accessed or processed on behalf of SARS by the Service Provider. In respect of SARS, "Data" includes information relating to Taxpayers;
    3. **“Data Management Services”** means the managed service by the Service Provider of receiving, storing, processing and reporting on the traceability data that will be generated by the Transfer Pricing Benchmarking Tool at various traceable stages throughout the supply chain;
    4. **“Defect”** means any fault, failure, inferior quality and/or non-compliance with the SARS specifications, whether or not it results in the non-functioning or malfunctioning of the hardware or software, and the term “Defective” or “Deficiency” shall have a corresponding meaning;
    5. **"Deliverable"** means any output, outcome or result whether operational or non-operational performed by the Service Provider for/on behalf of SARS as part of the delivery of the Transfer Pricing Benchmarking Tool and Services pursuant to this Agreement;
    6. **"Documentation"** means the documentation that SARS would reasonably require to be provided by the Service Provider relating to the Software and which may include specification, operating standards, user manuals, maintenance and support manuals, operating reports and training materials;
    7. **"Effective Date"** means the last date of signature of this Agreement;
    8. **"Force Majeure"** means 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, 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;
    9. **"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;
    10. **“Licensee”** means SARS;
    11. **“Licensor”** means the Service Provider;
    12. **"Material Errors or Deficiencies"** means any error in the operation of, or deficiency in the functionality of, a Deliverable (including Viruses and Bugs) that potentially could have more than an immaterial impact on SARS and/or the End Users; resulting from any Deliverable deviating from the agreed specifications relating to such Deliverable and/or incorrect or incomplete Documentation;
    13. **“OECD Guidelines”** means The Organisation for Economic Co-operation and Development (OECD) Report on Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations published in July 1995, as revised and supplemented with additional chapters;
    14. **"Parties"** means SARS and Service Provider, and **“Party”** shall refer to either SARS or the Service Provider as the context prescribe;
    15. **“RFP 31/2019”** means the request for proposal for the provision of the transfer pricing benchmarking tool and related services thereto;
    16. **"SARS"** means South African Revenue Service;
    17. **"SARS Data"** means any data (being electronic representations in any form) of SARS, including data relating to Taxpayers, Personal Information (as same is defined herein and in the Tax Acts and/or in any other applicable legislation in the jurisdiction where the Services are to be provided), supplied, stored, collected, collated, accessed, retained or processed by Service Provider, irrespective of the media or form;
    18. **"Service Level"** means the quantitative standards of performance of the Services that Service Provider is required to satisfy; **and**
    19. **"Services"** means the provision of the Transfer Pricing BenchmarkingTool end to end solution including ancillary services thereto in accordance with the terms of RFP 31/2019;
    20. **“Transfer Price” or “Transfer Pricing”** means the price at which goods are transferred between connected persons;
    21. **“Updates”** means the incremental enhancements, patches, bug fixes and error fixes to the Software that are signified by version number changes to the right of the decimal point. For example, version 4.10, 4.20, 4.30;
    22. **“Upgrade”** means versions of the Software that include new major features and significantly improved functionality, and which are signified by version number changes to the left of the decimal point. For example, version 5.0, 6.0, 7.30; and
    23. **“VAT”** means the Value-Added Tax as defined in the VAT Act, 1991 (Act No. 89 of 1991).
  1. Any reference in this Agreement to:
     1. **“Clause”** shall, subject to any contrary indication, be construed as a reference to a Clause in this Agreement.
     2. **“Person”** refers to any person including juristic entities.
  2. Unless inconsistent with the context or save where the contrary is expressly indicated:
     1. if any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that it appears only in the definition Clause, effect shall be given to it as if it were a substantive provision of this Agreement;
     2. when any number of days is prescribed in this Agreement, such a period shall be computed by excluding the first and including the last day unless the last day falls on a day which is not a Business Day, in which case the last day shall be the next succeeding Business Day;
     3. no provision of this Agreement constitutes a stipulation for the benefit of any Person who is not a Party to this Agreement; and
     4. a reference to a Party includes that Party’s successors-in-title and permitted assigns, including any other persons contemplated in **Clause 1.8** of this Agreement.
  3. Unless inconsistent with the context, an expression which denotes:
     1. any one gender includes the other gender; and
     2. the singular includes the plural and *vice versa*.
  4. 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.
  5. 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.
  6. This Agreement is binding on the executors, administrators, trustees, permitted assigns or liquidators of the Parties as fully and effectually as if they had signed this Agreement in the first instance and reference to any Party is deemed to include such Party’s estate, heirs, executors, administrators, trustees, permitted assigns or liquidators, as the case may be.
  7. Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.
  8. 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.

1. appointment
   1. The Service Provider has reviewed the objectives of RFP 31/2019 and in this this Agreement; and warrants to SARS that it is an established entity capable of providing the Transfer Pricing Benchmarking Tool and related Services.
   2. The Service Provider represents that throughout the Term of this Agreement, it shall have the resources, software licenses, capacity, skills, qualification, technology requirements and experience necessary to supply the Transfer Pricing Benchmarking Tool and related Services, and shall in good faith negotiate, draft, deliver the required bespoke services (if any), and generally all Services referred to in this Agreement
   3. The Parties agree, on a non-exclusive basis, for Service Provider to provide the Services on the terms and conditions of this Agreement, and the Service Provider hereby accepts such appointment.
   4. In reliance of these statements and representations, SARS has selected and appointed the Service Provider to the SARS panel of service providers according to the terms of RFT 31/2019.
2. TERM
   1. This Agreement shall commence on the Effective Date and shall continue for a period of \_\_\_\_\_\_\_\_\_\_\_\_\_ years (the **“Term”**) unless terminated earlier in writing by either Party or extended by the Parties in accordance with the provisions of this Agreement.
   2. The Parties may by agreement extend this Agreement for a further agreed extension period of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (**“Renewal Term**”). Any such extension will, save for an agreed increase in the Charges, be subject to the then-existing terms and conditions of this Agreement which will remain unchanged and in full force and effect during each such extension term, unless otherwise agreed by the Parties in writing.
   3. The Parties agree that the aforementioned Renewal Term shall be subject to procurement and other approvals that may be necessary, in terms of SARS’s procurement guidelines, policies and procedures*.*
3. SUB-CONTRACTING
   1. The Service Provider may not sub-contract the whole or any part of the Services without the prior written consent of SARS, which consent SARS shall not unreasonably withhold.
   2. In no event shall the Service Provider be relieved of its obligations under this Agreement as a result of its use of any sub-contractors. The Service Provider shall at all times be responsible to SARS for the fulfilment of all the Service Provider' obligations under this Agreement and shall remain SARS's sole point of contact regarding the Services.
   3. Notwithstanding the aforegoing, the Service Provider acknowledges that it shall be fully responsible for the payment of all fees and charges payable to sub-contractors (if any) unless otherwise agreed in writing with SARS.
4. SERVICES
   1. The Service Provider shall provide the Services utilising the requisite skills and expertise highlighted in the Service Provider’s proposal, and in accordance with the acceptable worldwide Best Industry Practice. In the event of any doubt regarding what constitutes generally acceptable worldwide standards, the Parties shall request a directive from the relevant industry regulatory authority.
5. SERVICE LEVELS

The Service Provider shall perform the Services in accordance with the Service Level and with promptness and diligence. SARS may charge penalties for any failure to meet the agreed Service Level.

1. SUPPORT AND MAINTENANCE SERVICES
   1. In providing the Maintenance Services, the Service Provider further undertakes to:
      1. provide Maintenance Services from the Effective Date in respect of Software already installed on SARS’s equipment prior to the Effective Date; and
      2. the Maintenance Services referred to in this Agreement include preventative maintenance, corrective maintenance, emergency maintenance, minor enhancements and incidents management.
   2. Preventive Maintenance
      1. The Service Provider shall be responsible for performing preventive maintenance, including providing Updates as it may receive from the OEM, with respect to the Software to improve its performance and reliability, to prevent errors, and otherwise to minimize the need for corrective maintenance. The Service Provider’s obligations in this regard include:
         1. Performing configuration services and other similar activities required to improve the efficiency, performance and reliability of the Software to the extent required for the Service Provider to perform the Services in accordance with the terms of the Agreement;
         2. Providing technical and other information regarding the Software as SARS or its Third Party service providers may reasonably request; and
         3. Performing other preventive maintenance functions reasonably required to maintain the Software in good working order.
   3. Corrective Maintenance
   4. The Service Provider shall be responsible for providing patches, fixes, maintenance releases and all other corrections as it may receive from the Software owner (collectively the ‘Corrections’) for all: (i) errors, abnormal terminations, performance or operational issues, security holes or other vulnerabilities; and (ii) other issues arising from the operation, use, performance or functionality of the Software and (ii) collectively, the ‘Problems’).
   5. Whenever a Correction is introduced, the Service Provider shall be responsible for promptly providing to SARS the updated Documentation as it may have received from the Software owner. The Service Provider’s obligations in this regard shall include resolving Problems in accordance with the applicable Service Level(s) set forth in this Agreement.
   6. In the event that a Problem arises that is attributable to a Third Party Software and hardware not part of the Software but somehow affects the Software, the Service Provider shall work in collaboration with and provide all reasonable assistance to SARS and its Third Party service providers to:
      1. develop a plan for dealing with such Problem; and
      2. design, develop and implement a Correction for such Problem in accordance with such plans, but only to the extent such Problem is attributable in whole or in part to the design of the Software, and the integration of hardware and Third Party Software.
   7. The Service Provider acknowledges that in some cases resolving a Problem may require changes to hardware and Third Party Software that is not embedded in, contained or otherwise part of the Software (e.g., configuration changes to the operating system or hardware upgrades). The Service Provider’s responsibilities with respect to such changes shall be to:
   8. work with SARS and its Third Party service providers and suppliers to identify and evaluate the Problem;
   9. with such service providers and suppliers develop and present recommendations to SARS for correcting the Problem, but only to the extent such Problem is attributable in whole or in part to the design of the Software, and the integration of hardware and Third Party Software; and
   10. provide SARS and its Third Party service providers and suppliers such other assistance as they may reasonably request, with such service providers and suppliers developing and presenting recommendations to SARS for correcting the Problem, but only to the extent such Problem is attributable in whole or in part to the design of the Software and the integration of hardware and Third Party Software.
   11. Emergency Maintenance
       1. If SARS is of the view that a Problem rises to the level of an operational emergency, the Service Provider shall provide Maintenance Services on an urgent basis to rectify the emergency in accordance with SARS Emergency Processes as set out in the Service Level Agreement. Without limiting the generality of the foregoing, as part of emergency maintenance, the Service Provider shall use Commercially Reasonable Efforts to correct or restore data that is lost, incorrect or corrupted. In addition, the Service Provider shall provide SARS and its Third Party service providers and suppliers such assistance as they may reasonably request, to correct any problems with hardware and Third Party Software that is not part of Software but interfaces with or is otherwise associated with such Software, except as otherwise directed by SARS. The Service Provider shall coordinate with SARS and SARS’ Third Party service providers and suppliers, as applicable.
   12. Minor Enhancements
       1. SARS acknowledges that the Service Provider does not have access to the Software source code and is therefore unable to perform any Enhancements to the Software. However, as part of the Maintenance Services, and without any additional charge, the Service Provider shall raise Enhancement requests with the EOM, when necessary.
   13. Testing and Implementation of Corrections
       1. As part of the correction process, the Service Provider shall perform testing of the Software until the Software operates without material errors or Deficiencies or bugs until the Service Provider establishes to SARS’s reasonable satisfaction that the Software performs materially in accordance with the functional and technical specifications
       2. In the event that either the Service Provider or SARS identifies a material error or Deficiency, the Service Provider shall, log such material error or Deficiency with the OEM and upon instruction from the OEM, advise SARS as to when the material error or Deficiency will be addressed. SARS agrees that the material error or Deficiency may be addressed in patch releases or in a next major release.
       3. The Service Provider shall also provide such assistance, as SARS or its Third Party service providers may reasonably request with respect to the installation by SARS or its Third Party service providers of the Software, any Updates, Upgrades, Enhancements or New Releases. SARS acknowledges that in the event that the Service Provider is requested to perform on-site assistance regarding the installation of Upgrades, Updates, Enhancements or New Releases such onsite assistance shall incur a charge in accordance with the Service Providers prevailing rate card [currently \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ per hour] at the time the request for onsite installation is requested. Any onsite assistance shall be approved by SARS prior to the Service Provider rendering same.
   14. The Service Provider shall coordinate the application of patches to SARS’ systems software as required to test the Correction or Update. In the event that SARS requires the Service Provider to assist it or any Third Party Service Provider with the installation of any systems software and/or equipment, any other applications software that may be relevant, and any required infrastructure, that is not covered by the Maintenance Services as set out in this Agreement, the Parties will agree on the relevant cost associated thereto, subject to SARS internal governance processes/approvals.
   15. Exception to Regression Testing
       1. If at any time, the Service Provider is of the view that testing the Software is not in the best interests of SARS or the Services, the Service Provider shall propose to SARS an alternative approach to that required under clause 8.15 that would reduce the amount of such regression testing required with respect to the Software. Such proposal shall include a detailed description of the alternative, a comparison of it to the approach required under this clause 8.15, and a detailed explanation of the rationale for using the alternative approach. The Service Provider may implement such alternative approach with SARS’ prior written consent.
   16. Without limiting the generality of the foregoing, the Parties shall use Commercially Reasonable Efforts to timely complete the testing as envisaged in this clause and, to the extent possible, make-up for delays repeated testing.
   17. For purposes of clause 8.15, SARS shall authorize the appropriate SARS personnel to act on its behalf. The Service Provider shall seek comments, approvals and acceptances through such authorised SARS personnel.
   18. Incident Management
       1. In accordance with SARS Incident management procedures as set out in the Service Level Agreement, the Service Provider shall perform the tasks necessary to resolve Problems and answer questions relating to the Software, whether raised by SARS or its Third Party service providers, including:
       2. utilizing the Service Provider’s Incident management system to track, monitor, resolve and escalate Problems and questions from SARS and its Third Party service providers as indicated in the Service Level Agreement;
       3. updating the status of each such trouble ticket on a timely basis and in accordance with the Service Level Agreement. The Service Provider personnel providing stand-by maintenance shall remotely log Problems and questions to the Service Providers Incident management system on a timely basis, in accordance with the Service Level Agreement. The Service Provider shall monitor and update the status of each such trouble ticket until each such Problem has been resolved in accordance with the agreed Service Levels as set out in the Service Level Agreement;
       4. responding to, diagnosing and resolving or escalating Problems with respect to the Software in accordance with the Service Levels;
       5. providing SARS’ IT staff or its Third Party service providers "how to” advice and assistance to SARS’ personnel or personnel of its Third Party service providers that are using the Software; and
       6. on a quarterly basis, performing trend analysis on recurrent Problems and questions and developing for SARS’ review and approval plans to reduce the number of such Problems and questions.
   19. The Service Provider shall provide a reasonable number of Service Provider personnel on stand-by to provide Maintenance Services outside of Business Hours, including with respect to emergencies. In this regard, Service Provider shall:
       1. monitor and keep current a list of such personnel including contact information;
       2. require such personnel to have mobile communications devices and workstations (whether computers; laptops and/or etc.) in their possession and require that such communications devices: (i) be turned on at all times during on-call; and (ii) have remote access service (RAS) software installed sufficient to perform the Maintenance Services remotely;
       3. require that such personnel have internet access from the sites at which they shall spend substantially all of their time during on call; and
       4. dispatch such personnel to SARS Facilities as SARS may reasonably request as stated in the Service Level Agreement.
   20. In addition to the above, the Service Provider shall promptly notify SARS of any Upgrades or New Release of the Software as it may receive from the OEM;
       1. 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 shall ensure 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;
       2. ensure, within 7 (seven) days of receipt of such notification, that it delivers to SARS the Upgrade or New Release in machine readable form together with any amendments to the Documentation which it may receive from the OEM and shall be necessary to describe and enable proper use of the improved facilities and functions of the Upgrade or New Release;
       3. ensure that it is available during the time periods agreed upon by the Parties in each Service Level Agreement for any SARS evaluation to provide Maintenance Services; and
       4. continue to provide any Maintenance Services and/or Support 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. The Parties record and agree that the provisions of this clause will only apply in the event that the Software has not reached its end of life date or SARS has procured the extended Support Services for the Software.
   21. Without limiting the generality of the foregoing, the Service Provider shall perform all of the Maintenance Services in a manner that is consistent with SARS’ PPPS&G (Policies, Procedures, Processes, Standards and Guidelines) applicable to such Services.
   22. In providing the Support Services, the Service Provider :
       1. shall, at its expense, supply all items necessary or required for the Support Services, provided that in the event such Support Services will be provided at SARS's premises, as agreed to between the Parties in writing, the supply of electricity, network connectivity and telephone services reasonably required by the Service Provider to provide the Support Services will be made available to the Service Provider in accordance with SARS's procedures and at SARS's expense;
       2. will perform such Support Services as may be required for the purpose of ensuring the continued operation and functionality of the Software, including the resolution of Problems in respect of the Software to ensure continuous operation and functionality thereof in accordance with the Documentation;
       3. to the extent that any of the below falls directly within the control of the Service Provider, it undertakes that in providing the Services it shall use Commercially Reasonable Efforts to: (i) ensure that the Software function error-free, (ii) maintain the Software in such a manner as to its continued compliance with the Documentation and capable of achieving all applicable Service Levels; (iii) identify the nature and cause of the Problem and advise SARS thereof; and (iv) provide SARS with future avoidance advice as well as undertaking any necessary preventative measures to minimise recurrence of the Problem.
   23. SARS shall have the exclusive discretion to indicate to the Service Provider whether it wishes to install the Upgrade, Update or New Release of the Software recommended by the Service Provider.
   24. Where any Software or part thereof becomes defective, the Service Provider shall repair or replace same in accordance with the Service Level Agreement.
   25. The Service Provider shall, at its expense, supply all items necessary or required to provide the Services. Notwithstanding the aforegoing, in the event that the Services are provided at SARS' premises (upon agreement between the Parties as only remote Support Services are provided in terms of this Agreement), SARS shall (subject to SARS’ PPPS&G and expense), ensure the supply of electricity, network connectivity and telephone services reasonably required by the Service Provider are made available in order for the Service Provider to provide the Services.
   26. Any Updates, Upgrades, Enhancements, New Releases etc, shall be subject to the Documentation of any click or shrink wrap license terms and conditions applicable to such Software, provided that SARS has been granted an opportunity to first review such licence terms and conditions and has agreed thereto with the OEM.
2. risk of loss
   1. The Service Provider shall be responsible for risk of loss of, and damage to, any equipment or hardware in its possession or under its control. Any such items in the possession or control of the Service Provider’s Sub-contractors or agents shall be deemed to be under the control of the Service Provider.
   2. Should any equipment or hardware be delivered to SARS in a Defective or sub-standard condition, SARS shall be entitled to return such equipment or hardware (or component thereof) to the Service Provider, at the Service Provider's cost, in which event the Service Provider shall, at SARS's election and within the time period provided in the service levels, either (i) refund SARS the full amount paid by SARS in respect of the Defective equipment, hardware or component or (ii) replace such Defective hardware or component with a similar item in an acceptable condition.
   3. For purposes of this clause the Service Provider accepts and acknowledges that mere signature of a delivery note by SARS’s authorised representative will not constitute an acceptance or acknowledgment by SARS that the equipment or hardware are not Defective.
3. REPRESENTATIONS AND WARRANTIES
   1. NIPP (National Industrial Participation Programme and EEIP

The Service provider represents and warrants that it shall conclude an agreement with the Department of Trade and Industry with regards to the NIPP Commitment to be carried out by the Service Provider in accordance with the Department of Trade and Industry

* 1. Deliverables

The Service Provider represents and warrants that for a period of 12 (twelve) months following Acceptance (the **‘Warranty Period’**), each Deliverable shall operate in accordance with the SARS BRS document, the functional specifications for such Deliverables and the technical specifications for such Deliverable without Material Errors or Deficiencies. The terms of this clause 10.2 shall survive the expiry of any termination of this Agreement.

* 1. Work Standards

The Service Provider represents and warrants that it shall perform its obligations under this Agreement with promptness and in accordance with the Best Industry Practice. Without limiting the generality of the foregoing, the Service Provider represents and warrants that it has and shall assign to perform the Services resources having the skills, experience and expertise, capacity and knowledge reasonably required to perform the Services.

* 1. No actual, pending or threatened litigation

The Service Provider represents and warrants that there is no actual, pending or threatened litigation against or affecting Service Provider before any court or administrative body or arbitral tribunal that might affect the ability of Service Provider to meet and carry out its obligations under this Agreement.

* 1. Protecting the Parties Reputations

The Service Provider warrants and represents that it shall not intentionally or negligently do, nor omit to do, anything which would adversely impact on, or prejudice, SARS’s reputation in any way whatsoever.

* 1. Authorisation
     1. The Service Provider represents and warrants to SARS that:
        1. it has the requisite corporate power and authority to enter into this Agreement and to carry out the transactions contemplated by this Agreement; and
        2. the execution, delivery and performance of this Agreement the consummation of the transactions contemplated by this Agreement have been duly authorised and approved by the requisite corporate action on the part of the Service Provider.
  2. Inducements

Each Party represents and warrants to the other that it has not violated any Applicable Laws or policies of the other of which it has been given notice, regarding the offering of unlawful inducements in connection with this Agreement.

* 1. Viruses

The Service Provider shall ensure that no Viruses, Bugs or similar items are coded or introduced into any of the components of the Solution, systems, networks, software or computer hardware of the Service Provider or SARS Data contained therein, during the performance of any the Services by the Service Provider personnel. If, notwithstanding the aforegoing, Viruses or Bugs are coded or introduced or coded by the Service Provider Personnel, the Service Provider shall at no additional charge, remove the Virus or Bug and reduce the effects of the Virus or Bug and do all such things as SARS may request in relation to the Virus or Bug and, if the Virus or Bug causes a loss of operational efficiency or loss of data, to mitigate and restore such losses.

1. BROAD-BASED black economic empowerment
   1. The Service Provider warrants that as at the Effective Date it is in possession of a valid B-BBEE certificate and shall for the duration of this Agreement use its best endeavours to maintain and/or improve on its B-BBEE level. In the event that the Service Provider is not in possession of the aforementioned certificate, the Service Provider undertakes to submit a letter from the verification agency indicating that Service Provider is in the process of being B-BBEE verified. The Service Provider will be required to, upon request, provide a verification certificate to SARS on an annual basis on each anniversary of the Effective Date and prior to the expiry of the Service Provider's previously applicable certificate.
2. Tax Compliance
   1. The Service Provider warrants that as of the Effective Date it is in full compliance with, and throughout the term of this Agreement (including any Renewal Term) shall remain in full compliance with all applicable laws relating to taxation in the Republic of South Africa.
   2. If SARS becomes aware of any non-compliance by the Service Provider and such non-compliance is not remedied within sixty (60) days after SARS has given notice to this effect, such non-compliance shall be deemed to constitute a material breach of this Agreement by the Service Provider and SARS shall be entitled to terminate this Agreement forthwith.
3. INSURANCE
   1. For the duration of this Agreement, the Service Provider shall maintain the relevant insurance policy underwritten by a reputable insurer in respect of all risks normally associated with the business of the Service Provider.
4. ETHICAL BUSINESS PRACTICES
   1. SARS has a policy of zero tolerance regarding corrupt activities. The Parties shall promptly report to each other and the relevant authorities any suspicion of corruption on the part of their Staff, suppliers, taxpayers, or any other person or entity, as well as any behaviour by any of those persons that is likely to constitute a contravention of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004).
   2. Neither Party shall offer, promise or make any gift, payment, loan, reward, inducement benefit or other advantage to any of the other Party's Staff or suppliers.
   3. If the results of any audit of the Services conducted by or on behalf of SARS indicates the possibility of corrupt activities, improper or fraudulent practices or theft, SARS shall, 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, on reasonable notice to the Service Provider as the circumstances allow, to question any relevant Staff of the Service Provider or a third party and the Service Provider shall 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 shall be entitled, on written notice to the Service Provider, to immediately terminate this Agreement.
5. CONFLICT OF INTEREST
   1. The Service Provider warrants to and in favour of SARS that as at the signature date and for the duration of this Agreement, as far as the Service Provider is reasonably aware, none of its staff are related to or has any business relationship with any employee or other functionary of SARS.
   2. The Service Provider undertakes to immediately notify SARS when an actual or potential conflict of interest is identified, pursuant to a Service Request being received from SARS or at any time other time whilst acting for SARS. In such an event SARS will have the right to determine a matter to be a conflict and will have the right to terminate any instruction.
6. pricing and payment
   1. All amounts due will be charged according to the Service Provider’s accepted Pricing Schedule attached in response to the issued RFP.
   2. The Service Provider shall issue to SARS invoices on a monthly basis for the Services rendered. The invoice will include a detailed description of the Services rendered (in particular each invoice will consist of a statement of the total amount due which will be itemised per product and/or service). SARS will pay the invoiced amount within 30 (thirty) days of receipt of the invoice, unless SARS disputes any item on the invoice.
   3. SARS will not be obliged to pay any amounts that are invoiced more than 120 (one hundred and twenty) days after the provision of the Services.
   4. 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 IAS and IFRS) applied on a consistent basis.
   5. In the event that SARS disputes an item on the invoice, SARS will do so by giving written notice to the Service Provider within 15 (fifteen) days of receipt of the invoice. The notice shall set out the disputed items on the invoice and the reasons therefore. The Parties shall endeavour to resolve the dispute amicably and as soon as possible.
   6. Where the dispute remains unresolved for a further 15 (fifteen) days after the dispute was first brought to the Service Provider’s attention, the dispute shall be dealt with in terms of the dispute resolution procedures set out in of this Agreement.
7. INTELLECTUAL PROPERTY
   1. Each Party will retain ownership of its existing intellectual property rights.
   2. The Service Provider acknowledges that it will acquire no right, title or interest in or to any information technology infrastructure, systems, components, computer hardware, software, designs, processes, data, material or SARS Intellectual Property made available to it by SARS in terms of this Agreement where such previously listed items existed prior to the signing of this Agreement.
   3. Unless otherwise agreed in writing by the Parties, the Service Provider hereby assigns to SARS all right, title and interest to any and all Intellectual Property created in, arising out of or in relation to the provision of the Services after the Effective Date where SARS has directly caused such Intellectual Property to come into existence and has paid for the creation of such Intellectual Property. No consideration shall be payable by SARS to the Service Provider in respect of this assignment. Such Intellectual Property Rights shall belong to and be the absolute property of SARS.
   4. The Service Provider and SARS agree that the ownership in and to all Intellectual Property Rights which were created and/or developed for SARS at its request are and shall continue to remain the property of SARS. Should Service Provider be required to use the intellectual property referred to in this clause 16.4 as part of the provision of the Services hereunder, SARS hereby provides the Service Provider with a non-exclusive license for the duration of this Agreement to enable it to continue the use of such intellectual property strictly in its provision of the Services.
   5. Without limiting the provisions of clause 16.3, should SARS require the Service Provider to develop or customise any computer software in order to render the Services ("**Developed Software**"), all Intellectual Property Rights in such Developed Software shall vest in SARS, and no additional consideration shall be payable by SARS to the Service Provider in respect of such Developed Software. The Service Provider hereby waives any moral rights which it may have in any Developed Software.
   6. The Service Provider warrants to and in favour of SARS that in providing the Services, it will not infringe the Intellectual Property Rights of any third party. The Service Provider hereby indemnifies SARS for any and all proven losses, damages, expenses, penalties and costs which SARS may sustain as a result of a breach of such warranty by the Service Provider provided that such infringement was in no way caused by SARS.
   7. In the event that any person brings a claim against SARS alleging that the reproduction, use or exploitation of any material used or produced by the Service Provider in rendering the Services infringes the rights of any person, the Service Provider shall provide SARS with all assistance as may be reasonably required to defend or settle such claim and SARS shall reimburse the Service Provider for any expenses reasonably incurred by the Service Provider in providing such assistance, provided that such expenses have been approved by SARS in advance. The *aforegoing* provisions shall not apply in respect of claims arising as a result of a breach of the warranty given by the Service Provider in clause 16.4 and 16.6 above.
   8. In the event that the Service Provider, with the consent of SARS in terms of clause 6.1, subcontracts the whole or any part of the Services, the Service Provider shall procure that such sub-contractor cedes and assigns in writing to and in favour of SARS all Intellectual Property Rights created in, arising out of or in relation to the provision of the sub-contracted services, and further that the sub-contractor waives any moral rights which it may have in the sub-contracted services. For the avoidance of doubt, the Parties record and agree that the aforementioned provision will only apply should such sub-contracted services result in the creation of the Intellectual Property Rights for use by SARS and for which SARS has paid.
8. INDEMNITy
   1. The Service Provider hereby indemnifies and holds SARS harmless against all claims, liability, damage, loss, penalty, expense and cost (including taxed legal costs) of any nature whatsoever which SARS may sustain directly as a result of or directly attributable to –
      1. a failure of any of the warranties or any representations or undertakings contained in this Agreement to be true and correct; or
      2. the proven gross negligence of the Service Provider;
9. LIMITATION OF LIABILITY
   1. Neither Party shall be liable to the other Party for indirect or consequential loss or damage, loss of profits, business, revenue, goodwill or anticipated savings suffered by the other Party during the term of this Agreement.
   2. Notwithstanding anything to the contrary set forth in clause 18.1 or this Agreement in general, the Parties agree that Service Provider shall be liable to SARS for all losses which constitute indirect damages where such damages are caused by the Service Provider's proven breach of any Intellectual Property, and/or Confidential Information undertakings and warranties contained in this Agreement.
10. warranties
    1. The Service Provider hereby represents and warrants to SARS that-
       1. this Agreement has been duly authorised and executed by it and constitutes a legal, valid and binding set of obligations on it;
       2. it is acting as a principal and not as an agent of an undisclosed principal;
       3. the execution and performance of the terms and conditions of this Agreement does not constitute a violation of any statute, judgment, order, decree or regulation or rule of any court, competent authority or arbitrator or competent jurisdiction applicable or relating to the Service Provider, its assets or its business, or its memorandum of incorporation or any other documents or any binding obligation, contract or agreement to which it is a party or by which it or its assets are bound;
       4. it will provide the Services in a cost-effective manner, thereby ensuring that no unnecessary or extraordinary costs are incurred and passed on to SARS;
       5. it has the requisite insurance to cover professional liability claims that may be instituted against it;
       6. it has the necessary resources, skills and experience to render the Services to SARS; and
       7. It is expressly agreed between the Parties that each warranty and representation given by the Service Provider in this Agreement is material to this Agreement and induced SARS to conclude this Agreement.
    2. The provisions of this Clause shall survive the termination of this Agreement.
11. CONFIDENTIALITY AND PUBLICITY
    1. The Service Provider acknowledges that in the course of the provision of the Services it may become privy to Confidential Information. The Service Provider undertakes to keep confidential and not to disclose to any third party, save as may be permitted in terms of this Agreement, the Confidential Information, the nature, content or existence of this Agreement and any and all information given by SARS to the Service Provider pursuant to this Agreement. In particular, Service Provider shall:
       1. treat this Agreement and the Confidential Information as strictly confidential;
       2. not disclose the Confidential Information to any person other than those staff members of the service Provider on a "need to know" basis strictly in order for the Service Provider to render the Services and comply with its obligations under this Agreement;
       3. ensure that all Staff members of the Service Provider who are provided with the Confidential Information on a "need to know" basis as contemplated in clause 20.1.2 above are bound by appropriate and legally binding confidentiality and non-use obligations as required in terms the applicable legislation oin relation to the Confidential Information;
       4. use 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 or credit information unless requested to do so by SARS in writing;
       5. notify SARS promptly of any unauthorised or unlawful use, disclosure and/or Processing of the Confidential Information of which Service Provider becomes aware;
       6. at the request of SARS, delete or return to 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 provided that the Service Provider shall be entitled to retain (i) sufficient copies of such Confidential Information in compliance with any Applicable Law and (ii) information created pursuant to its automatic back-up procedures (in each case subject always to the confidentiality obligations contained in this Agreement); and
       7. provide reasonable evidence of the Service Provider’s compliance with its obligations under this clause 20.1 to SARS on reasonable notice and request.
    2. 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. The Service Provider indemnifies and holds SARS harmless against any loss, action, expense, claim, harm or damage, or whatever nature, suffered or sustained by the SARS pursuant to a proven breach by the Service Provider of the provisions of this clause 20.
    3. 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. Under no circumstances will either Party release any material or place information in a location accessible by any person not employed by either Party claiming that a form of endorsement of the Services has occurred by either Party.
12. FORCE MAJEURE EVENT
    1. Neither Party shall be liable to the other for non-performance (either in whole or in part) or delay in performance of their respective obligations if caused by a *Force Majeure* Event. While a *Force Majeure* Event subsists, the Party so affected shall be relieved of liability to the other for failure to perform its obligations hereunder and such obligations shall be suspended until such time as performance can be resumed (provided that the relevant affected Party could not have prevented the failure or delay by taking reasonable precautions or measures).
    2. Either party shall be entitled to terminate this Agreement on not less than 10 (ten) days written notice to the other Party if a *Force Majeure* Event persists for more than 25 (twenty-five) consecutive days.
    3. Neither Party will be liable for the payment of any termination fees or have any other liability to the other if this Agreement is terminated in terms of clause 21.2.
13. breach AND TERMINATION
    1. Either Party **("Aggrieved Party"**) may terminate this Agreement and applicable Annexures with immediate effect if:
       1. the other **("Defaulting Party"**) commits a material breach of this Agreement and fails to remedy that breach within 20 (twenty)days of being notified of the breach **("Notice Period"**) and, if the Aggrieved Party so elects, the steps required to remedy it;
       2. the Defaulting Party becomes/is declared Insolvent;
       3. by reason of a *Force Majeure* Event, the Defaulting Party is unable to perform or delays in performing its obligations hereunder for a period of 15 (fifteen) business days from the date of such *Force Majeure* Event in circumstances where the Defaulting Party could have prevented the failure or delay by taking reasonable precautions or measures; or
       4. any representation or warranty on the part of the Defaulting Party is found to be untrue in any material particular or if the Defaulting Party does anything in breach of such representation or warranty.
    2. Notwithstanding the above, the Parties record and agree that in the event of any amalgamation, merger and/or sale of the Service Provider to any third party, SARS shall in its own discretion (and in compliance with SARS’s Procurement prescripts) and subject to the provisions of clause 23 below, be entitled to terminate this Agreement within 30 (thirty) days from the date of notice.
    3. For the purposes of clause 22.1.1, a breach will be deemed to be a material breach if  ‑
       1. it is capable of being remedied, but is not so remedied within the notice period; or
       2. it is incapable of being remedied or is not remedied within the Notice Period, and payment in money will compensate for such breach but such payment is not made within the notice period.
    4. The Parties agree that any costs awarded will be recoverable on an attorney-and-own-client scale unless the Court specifically determines that such scale shall not apply, in which event the costs will be recoverable in accordance with the High Court tariff, determined on an attorney-and-client scale.
    5. The Aggrieved Party's remedies in terms of this clause 22 are without prejudice to any other remedies to which the Aggrieved Party may be entitled in law.
14. TERMINATION FOR CONVENIENCE
    1. Either Party may terminate this Agreement and/or a Statement of Works in whole or in part in respect of all or some of the Services, for convenience and without cause at any time by giving the other Party at least 90 (ninety) days (or such other period as may be specified in respect of any Service in the Statement of Work) prior written notice designating the termination date. The Party terminating shall not have any liability to the other Party with respect to any such termination.
15. DISPUTE RESOLUTION
    1. **Informal dispute resolution**
       1. Upon the written request of a Party, any dispute which arises between the Parties under this Agreement shall be referred to a joint committee of the Parties' Designated Representatives. The joint committee shall meet as often as the Parties reasonably deem necessary in order to gather and furnish to the other all information with respect to the matter in issue that the Parties believe to be appropriate in connection with its resolution.
       2. The Designated Representatives shall discuss the problem and attempt to resolve the dispute without the necessity of any formal proceeding, within 14 (fourteen) days of the dispute having been referred. During the course of discussion, all reasonable requests made by one Party to another for non-privileged information, reasonably related to this Agreement, shall be honoured in order that each of the Parties may be fully advised of the other's position. The specific format for the discussions shall be left to the discretion of the Designated Representatives.
    2. **Formal Dispute Resolution**
       1. If the Parties are unable to resolve any dispute in the manner contemplated by clause 24.1, such dispute shall on written demand by either Party to the dispute be submitted to arbitration at AFSA in Sandton and in accordance with the AFSA rules, by an arbitrator agreed on by the Parties or should the Parties fail to agree an arbitrator within 5 (five) business days after arbitration has been demanded, the arbitrator shall be nominated by AFSA. The arbitration shall be held in the English language.
       2. The person so nominated shall be the duly appointed arbitrator in respect of the dispute. In the event of the attorneys of the parties to the dispute failing to agree on any matter relating to the administration of the arbitration, such matter shall be referred to and decided by the arbitrator whose decision shall be final and binding on the parties to the dispute
       3. The arbitration shall be held as quickly as possible after it is demanded with a view to its being completed as quickly as possible. Any party to the arbitration may appeal the decision of the arbitrator or arbitrators in terms of the AFSA rules for commercial arbitration.
       4. Each Party shall bear its own costs of the arbitration, unless the arbitrator directs otherwise.
       5. Any arbitration in terms of this clause 24 (including any appeal proceedings) shall be conducted in camera and the Parties shall treat as confidential details of the dispute submitted to arbitration, the conduct of the arbitration proceedings and the outcome of the arbitration.
       6. The Parties agree that the written demand by a party to the dispute in terms of clause 24.2.1 that the dispute or difference be submitted to arbitration, is to be deemed to be a legal process for the purpose of interrupting extinctive prescription in terms of the Prescription Act, 1969 (Act No. 68 of 1969).
       7. The Parties agree that the arbitrator’s decision can be made an order of court.
    3. **Urgent relief**
       1. Nothing contained in this clause 24 shall be deemed to prevent or prohibit a party to the dispute or arbitration from applying, at any time, to the appropriate court for urgent relief or for judgment in relation to a liquidated claim.
    4. **Binding after termination**
       1. This clause 24 will continue to be binding on the Parties notwithstanding any termination or cancellation of this Agreement.
16. Notices and Domicilia
    1. The Parties select as their respective *domicilia citandi et executandi* the following physical addresses for the purposes of giving or sending any notice provided for or required under this Agreement -

|  |  |  |
| --- | --- | --- |
|  |  |  |
| **Name** | **Physical Address** |  |
| SARS | LaHae La SARS |  |
|  | 299 Bronkhorst Street |  |
|  | Brooklyn  Pretoria |  |
|  |  |  |
| Marked for the attention of: **The Head of Legal: Corporate Legal Services** | | |
|  |  |  |
| **Name** | **Physical Address** |  |
| . |  |  |
|  |  |  |
| Marked for the attention of: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | | |
|  | | |

provided that a Party may change its *domicilium* or its address for the purposes of notices to any other physical address or telefax number by written notice to the other Party to that effect. Such change of address will be effective 5 (five) business days after receipt of the notice of the change.

* 1. All notices to be given in terms of this Agreement will be given in writing and will -
     1. be delivered by hand ;
     2. if delivered by hand during business hours, be presumed to have been received on the date of delivery. Any notice delivered after business hours or on a day which is not a business day will be presumed to have been received on the following business day;
  2. Notwithstanding the above, any notice given in writing, and actually received by the Party to whom the notice is addressed, will be deemed to have been properly given and received, notwithstanding that such notice has not been given in accordance with this clause 25.

1. benefit of the agreement
   1. This Agreement will also be for the benefit of and be binding upon the successors in title and permitted assigns of the Parties or either of them.
2. applicable law and jurisdiction
   1. This Agreement will in all respects be governed by and construed under the laws of the Republic of South Africa.
   2. Subject to clause 24, the Parties hereby consent and submit to the non-exclusive jurisdiction of the North Gauteng High Court, Pretoria in any dispute arising from or in connection with this Agreement.
3. new laws and inability to perform
   1. It is recorded that the Parties are aware of various new Bills (including the outstanding Cyber Security Bill) that are to be presented to Parliament which, if passed into law, will have an effect on the provisions of this Agreement and the Services. 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, including the cost of providing the Services, 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.
   2. If either Party is prevented from performing any of its obligations in terms of this Agreement as a result of any new law, it shall not be liable to perform those of its obligations under this Agreement which are affected by the new law until such time as a variation to this Agreement has been reached in terms of clause 28.1. The Parties shall however, to the extent possible, continue to perform those obligations under this Agreement that are not affected by the new law.
4. independent advice
   1. Each of the Parties to this Agreement hereby acknowledges and agrees that –
      1. it has been free to secure independent legal and other professional advice (including financial and taxation advice) as to the nature and effect of all of the provisions of this Agreement and that it has either taken such independent advice or has dispensed with the necessity of doing so; and
      2. all of the provisions of this Agreement and the restrictions herein contained are fair and reasonable in all the circumstances and are in accordance with the Party’s intentions.
5. GENERAL
   1. **Whole Agreement**
      1. This Agreement constitutes the whole of the agreement between the Parties relating to the matters dealt with herein and, save to the extent otherwise provided herein, no undertaking, representation, term or condition relating to the subject matter of this Agreement not incorporated in this Agreement shall be binding on either of the Parties.
   2. **Variations to be in Writing**
      1. No addition to or variation, deletion, or agreed cancellation of all or any clauses or provisions of this Agreement will be of any force or effect unless in writing and signed by the Parties.
   3. **No Indulgences**
      1. No latitude, extension of time or other indulgence which may be given or allowed by any Party to the other Party in respect of the performance of any obligation hereunder, and no delay or forbearance in the enforcement of any right of any Party arising from this Agreement and no single or partial exercise of any right by any Party under this Agreement, shall in any circumstances be construed to be an implied consent or election by such Party or operate as a waiver or a novation of or otherwise affect any of the Party's rights in terms of or arising from this Agreement or estop or preclude any such Party from enforcing at any time and without notice, strict and punctual compliance with each and every provision or term hereof. Failure or delay on the part of any Party in exercising any right, power or privilege under this Agreement will not constitute or be deemed to be 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.
   4. **No Waiver or Suspension of Rights**

No waiver, suspension or postponement by any Party of any right arising out of or in connection with this Agreement shall be of any force or effect unless in writing and signed by such Party. Any such waiver, suspension or postponement will be effective only in the specific instance and for the purpose given.

* 1. **Provisions Severable**
     1. All provisions and the various clauses of this Agreement are, notwithstanding the manner in which they have been grouped together or linked grammatically, severable from each other. Any provision or clause of this Agreement which is or becomes unenforceable in any jurisdiction, whether due to voidness, invalidity, illegality, unlawfulness or for any other reason whatever, shall, in such jurisdiction only and only to the extent that it is so unenforceable, be treated as *pro non scripto* and the remaining provisions and clauses of this Agreement shall remain of full force and effect. The Parties declare that it is their intention that this Agreement would be executed without such unenforceable provision if they were aware of such unenforceability at the time of execution hereof.
  2. **Continuing Effectiveness of Certain Provisions**
     1. The expiration or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.
  3. **No Cession or Assignment**
     1. Neither this Agreement nor any part, share or interest herein nor any rights or obligations hereunder may be ceded, delegated or assigned by either Party without the prior written consent of the other Party, save as otherwise provided herein.

1. COSTS
   1. Except as otherwise specifically provided herein, each Party will bear and pay its own legal costs and expenses of and incidental to the negotiation, drafting, preparation and implementation of this Agreement.
2. SIGNATURE
   1. This Agreement is signed by the Parties on the dates and at the places indicated below.
   2. 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.
   3. The persons signing this Agreement in a representative capacity warrant their authority to do so.

SIGNED at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

For **SERVICE PROVIDER**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Signature Signature

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Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

SIGNED at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

For **SOUTH AFRICAN REVENUE SERVICE**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ .. Signature Signature

Acting Group Executive Procurement Head: Technology & Solutions Delivery

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_