



SERVICE AGREEMENT

BETWEEN

NATIONAL CREDIT REGULATOR

AND

.....

REG NO:

WHEREAS

- A. The Client is responsible for carrying out the functions and exercising the powers set out in sections 12 to 18 of the Act or those assigned to it by or in terms of the Act, or any other national legislation.
- B. The Client seeks to appoint a service provider -----
- C. The Supplier successfully tendered for the rendering of the Services to the Client under RFP number **NCR**.....
- D. The Client wishes to appoint the Supplier to render the Services to the Client in accordance with the terms and conditions of this Agreement and in compliance with the provisions of the Act.

1. INTERPRETATION

1.1. Definitions

In this agreement, unless the context indicates otherwise:

- 1. "Act" means the National Credit Act No. 34 of 2005, as amended;
- 2. "Agreement" means this Service Level Agreement and includes its annexures, which shall form part of it;
- 3. "Business Day" means any day other than a Saturday, Sunday or statutory holiday in the Republic of South Africa;
- 4. "Client" means the National Credit Regulator, a statutory body established in terms of the Act;

5. "Commencement Date" means the Signature Date;
6. "Confidential Information" means any information, documentation or trade secrets of whatever nature which may have been or may be obtained by either of the Parties from the other, whether in writing or in electronic form or pursuant to discussions or as a result of the conclusion of this Agreement, which may reasonably be regarded as being confidential and of a proprietary nature to any of the Parties, including without limitation, agreements and understandings, technical information, know-how, trade secrets, software, computer programs, operating procedures and methodologies, proposals, pricing details, strategies, and any other business or financial information relating to the Parties as well as the terms of conditions of this Agreement and the details of any dispute between the Parties or any dispute resolution and/or legal proceedings resulting from this Agreement;
7. "Force Majeure" means an event beyond the control of the Supplier and not involving the Supplier's fault or negligence and not reasonably foreseeable. Such events may include, but is not restricted to, wars or revolutions, fires, floods, epidemics, quarantine restrictions and freight embargoes;
8. "Parties" means the Client and the Supplier; and "Party" means either one of them as the context may require;

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|-----|------------------|---|
| 9. | “Proposal” | means the proposal in terms of which the Supplier successfully tendered for the provision of Services; |
| 10. | “PFMA” | means the Public Finance Management Act 1 of 1999; |
| 11. | “Services” | means a service provider to provide ----- as per the TOR in Annexure “A” . |
| 12. | “Signature Date” | means the date on which this Agreement is last signed by the Parties; and |
| 13. | “Supplier” | means with registration number, a company duly incorporated under the company laws of the Republic of South Africa; |
| 14. | “VAT” | means value-added tax in terms of the Value-Added Tax Act 89 of 1991. |

1.2. General Interpretation

In addition to the definitions in clause 1.1, unless the context requires otherwise:

- 1.2.1. a reference to any one gender, whether masculine, feminine or neuter, includes the other two;
- 1.2.2. any reference to a person, includes, without being limited to, any individual, body corporate, unincorporated association or other entity recognized under any law as having separate legal existence or personality;
- 1.2.3. any word or expression defined in and for the purposes of this Agreement shall if expressed in the singular include the plural and *vice versa* and a cognate word or expression shall

have a corresponding meaning;

1.2.4. references to a statutory provision include any subordinate legislation made from time to time under that provision and references to a statutory provision include that provision as from time to time modified, re-enacted or replaced as far as such modification, re-enactment or replacement applies, or is capable of applying, to this Agreement or any transaction entered into in accordance with this Agreement;

1.2.5. references in this Agreement to “clauses”, “sub-clauses” and “annexures” are to clauses and sub-clauses of, and annexures to, this Agreement; and

1.2.6. no rule of construction shall be applied to the disadvantage of a Party to this Agreement because that Party was responsible for or participated in the preparation of this Agreement or any part of it.

1.3. Headings and Sub-headings

All the headings and sub-headings in this Agreement are for convenience only and are not to be taken into account for the purposes of interpreting it.

2. SERVICES TO BE RENDERED BY THE SUPPLIER

2.1. The Client hereby appoints the Supplier, which appointment the Supplier hereby accepts, to render the Services in accordance with the terms and conditions of this Agreement and in compliance with the provisions of the Act, subject at all times to the direction of the Client.

2.2. Performance of the Services shall be made by the Supplier in accordance with the terms and conditions set out in **Annexure “A”**.

3. DURATION

3.1. This Agreement shall commence on the Signature Date and shall endure for 3 years.

4. DELAYS IN THE SUPPLIER’S PERFORMANCE

4.1.If at any time during performance of its obligations in terms of this Agreement, the Supplier or its subcontractor(s) encounter conditions impeding timely performance of the Services, the Supplier shall promptly notify the Client in writing of the fact of the delay, its likely duration and its cause(s). As soon as practicable after receipt of the Supplier's notice, the Client shall evaluate the situation and may at its discretion extend the time frames set out in Annexure A, in which case the extension shall be ratified in writing by the Parties by amendment of this Agreement.

4.2.A delay by the Supplier in the performance of its delivery obligations shall render the Supplier liable to the imposition of penalties, pursuant to clause 5, unless an extension of time is agreed upon in writing by the Parties pursuant to clause 4.1 without the application of penalties.

5. PENALTIES

If the Supplier fails to perform the Services within the time frames set out in **Annexure A**, the Client shall, without prejudice to its other remedies under this Agreement, deduct from the Supplier's fees, as a penalty, 1% of the monthly fees payable under this Agreement for each day of the delay until actual delivery or performance.

6. TERMINATION AND EXIT

6.1.Termination of Agreement by Supplier

6.1.1. The Supplier shall be entitled to terminate this Agreement immediately on written notice to the Client if the Client is in material breach of any of its material obligations under this Agreement and the Client has failed to remedy that breach within thirty (30) days after receiving written notice from the Supplier requiring it to remedy that breach, provided that:

6.1.1.1 the Supplier shall not be entitled to terminate this Agreement unless the breach cannot be adequately compensated by the payment of damages; and where they relate to non-payment of any undisputed amount which is due and payable to the Supplier, the Supplier shall not be entitled to terminate this Agreement unless (i) the Supplier has given the Client written notice of such breach and informed the Client in such a notice that non-payment will result in termination of this Agreement; and (ii) the Client has failed to make payment of such amounts within thirty (30) days of receiving such written notice.

6.2.Termination of the Agreement by the Client

Without prejudice to any rights of the Client arising from any other provisions of this Agreement, the Client shall be entitled to terminate this Agreement immediately upon written notice and without liability to the Supplier in the event that, *inter alia*, the Supplier:

- 6.2.1. is categorised as a Restricted Service provider in terms of National Treasury database; and/or
- 6.2.2. is guilty of any serious misconduct or deliberate neglect in the discharge of its duties; and/or
- 6.2.3. is guilty of conduct which is likely to bring itself or the Client into disrepute; and/or
- 6.2.4. is convicted of any offence involving dishonesty; and/or
- 6.2.5. is guilty, in the reasonable opinion of the Client of any unbecoming, unprofessional, dishonourable or unworthy conduct; and/or
- 6.2.6. is convicted of any criminal offence relating to fraud; and/or
- 6.2.7. Commits a breach of any of the terms of this Agreement which cannot be remedied within thirty (30) days of receiving a notice from the Client.

6.3.In the event of termination of this Agreement in terms of clause 6.2

- 6.3.1. the Client shall be entitled to claim from the Supplier as and by way of agreed pre-estimated liquidated damages an amount equivalent to all payments made by the Client to the Supplier in terms of this Agreement, as at the date of the termination;
- 6.3.2. the Client shall not be required to return any performance rendered or goods supplied to it by the Supplier in terms of this Agreement.

6.4. In the event that the Client is required to take legal steps to enforce compliance with the terms of this Agreement and/or incurs any legal costs arising from a breach of this Agreement by the Supplier, such costs will be recovered by the Client from the Supplier on an attorney-and client scale.

6.5. This termination provision is in addition to, and does not in any way derogate from, any statutory or common law remedy that the Client may have for breach of this Agreement, including breach of any representation or warranty.

6.6.Exit Plan

- 6.6.1. The exit plan shall, as a minimum contain the following:
- 6.6.2. An up-to-date description of the services and of the materials and underlying process used by the Supplier in the provision of the services prior to the relevant termination and/or expiration of the Agreement;
- 6.6.3. A detail programme of the proposed transfer process of the Service to the Client (or the replacement service provider)
- 6.6.4. A description of the continuing provision of the Services throughout the handover period and the parallel provision of additional service required that the parties may agree will be performed by the Supplier for the satisfactory conclusion of the Services and the associated handover;
- 6.6.5. Should the Parties (both acting reasonably and in good faith) be unable to agree an Exit Plan or this Agreement is terminated or expires prior to the Parties agreeing an Exit plan, the Supplier shall, in addition to performing its obligation, assist the Client in facilitating a seamless transfer of the Service back to the Client (replaced service provider).

6.7.PAYMENTS AND FEES

- 6.7.1. As consideration for the Services rendered, the Client will pay the Supplier a fee as indicated on **Annexure “B”**, a full contract amount shall not **exceed R..... inclusive of VAT**, which amount shall be paid by the Client to the Supplier for the delivery of the agreed upon deliverables as detailed in Annexure A, to the reasonable satisfaction of the Client, of the agreed deliverables in terms of the Terms of Reference
- 6.7.2. Without prejudice to its other remedies under this Agreement, the Client shall be entitled to withhold at its discretion an amount up to 10% of the invoiced fees payable to the Supplier in respect of any deliverable submitted by the Supplier to the Client until such time as the deliverable has been executed to the reasonable satisfaction of the Client and confirmed as such in writing by the Client.
- 6.7.3. The Supplier shall provide the Client with invoices for the fees claimed for the Services rendered.

- 6.7.4. Payment of the above invoices will be made within thirty (30) days from the date of receipt of the invoice.
- 6.7.5. In the event of a dispute arising in relation to the invoice referred to above, the undisputed amount (if any) of the invoice will be paid in accordance with the time periods above, and the disputed portion (if any) will be paid within seven (7) days of the dispute resolution proceedings provided for in clause 17. Pending the outcome of the aforesaid dispute, the Supplier shall be required to continue rendering the Services to the Client.

7. LIMITATION OF LIABILITY

Except in cases of gross negligence or willful misconduct:

- 7.1. No Party shall be liable to the other Party, whether in contract, delict or otherwise, for any indirect or consequential loss or damage, provided that this exclusion shall not apply to a Party's obligation to pay penalties and/or damages to the other Party; and
- 7.2. The aggregate liability of the Supplier to the Client, whether under the contract, in tort or otherwise, shall not exceed the total contract price.

8. CONFLICT OF INTEREST

- 8.1. The Supplier shall avoid any conflict of interest that may arise during the period of this agreement.
- 8.2. The Supplier shall notify the Client, as soon as reasonably possible, in writing of any matters that constitute or that may potentially give rise to a conflict of interest.
- 8.3. Both Parties shall always act in the best interest of each other in all matters relating to this Agreement.

10. INTELLECTUAL PROPERTY

- 1. For the purposes of this Agreement "intellectual property" shall include, without limitation:
 - 10.1.1 Trademarks, service marks, trade names, domain names, design rights, and patents, in each case whether registered or unregistered and including applications for the grant of any of the foregoing; and

- 10.1.2 Rights in know-how, designs, utility models and petty patents, research and analysis reports to be produced by the Supplier pursuant to this Agreement, including Confidential Information and trade secrets from the Client.
2. All the Intellectual Property arising from the execution of this Agreement shall vest in the Client. The Supplier undertakes to honour the Client's rights to such Intellectual Property and all related future rights by keeping the research conducted, analysis done, and any reports or agreements produced, whether published or unpublished, confidential.
 3. In the event that the Supplier, or any of its employees, team members or subcontractors would like to use the information or data generated arising from this Agreement for academic or any other purpose, prior written consent must be obtained from the Client.
 4. The Supplier shall immediately disclose to the Client all intellectual property rights made or conceived by it in the performance of the Services, whether alone or in conjunction with others. To the extent that they do not vest automatically in the Client, the Supplier hereby, free of consideration, unconditionally cedes and assigns to the Client all its rights in and to this intellectual property, which rights shall become and remain the sole property of the Client. It is further recorded that the Client shall be entitled to cede and assign all such rights to any other person without limitation and without any additional consideration to the Supplier.
 5. The Client may make application at its own expense for the registration of a patent for any such invention or for the registration of such design or trade mark.
 6. The Supplier shall, forthwith upon being called upon to do so, sign all documents and to do all things necessary so as to comply with all the legal formalities to enable the Client to take assignment of all such intellectual property that is created or comes into existence during the period of this Agreement and to obtain or to record such intellectual property rights at any applicable intellectual property registry.
 7. The Supplier shall from time to time, whether during the period of this Agreement or after the expiry or early termination of this Agreement, upon request by the Client do all things which may be required to protect the rights of the Client in terms of this

clause.

8. Should the Supplier fail to sign any cession, assignment or other required documents provided for in this clause and fail to hand them to the Client or its representative within seven (7) days after being called upon in writing to do so, then the Supplier irrevocably and *in rem suam* appoints any person nominated by the Client, with power of substitution, as the agent of the Supplier, to sign any cession, assignment or other required document on its behalf.
9. The Supplier shall retain all of its intellectual property rights in respect of any and all of its tools, models, methodologies or the like of a common or generic nature supplied or developed by the Supplier in the ordinary course of its business, before, during or after the period of this Agreement.
10. The provisions of this clause shall survive the expiry of this agreement or termination or cancellation of this Agreement for any reason whatsoever.

11. ANNOUNCEMENTS

- 11.1 Subject to clause 11.2, neither of the Parties shall make any announcement or statement about this Agreement or its contents without first having obtained the other Parties' prior written consent to the announcement or statement and to its contents, provided that such consent may not be unreasonably withheld.
- 11.2 The provisions of clause 11.1 shall not apply to any announcement or statement which either of the Parties is obliged to make in terms of the Act or any other law or enactment, provided that the Party in question shall consult with the other Party before making any such announcement or statement

12. CONFIDENTIALITY

- 12.1 During the period of this Agreement, the Supplier will gain access to confidential Information that is not in the public domain. The Supplier and all its employees, team members or subcontractors will during the period of this Agreement as well as after its expiry or termination or cancellation for whatsoever reason protect the confidentiality of all such information and will not disclose the Confidential Information or the provisions of this Agreement to any third party, without the prior written consent of the Client. Disclosure of

any Confidential Information by the Supplier to any of its employees shall be made in confidence and shall extend only so far as may be necessary for purposes of performance of its Services.

12.2 The Supplier shall ensure that its employees or team members are made fully aware of the need for confidentiality and will ensure that they return all hard and electronic copies of Confidential Information to the Client upon termination of this Agreement.

12.3 The Supplier shall permit the Client to inspect the Supplier's records relating to the rendering of the Services and to have them audited by auditors appointed by the Client, if so, required by the Client.

13 RIGHT OF RETENTION

The Supplier shall, during the term of this Agreement or upon termination of this Agreement, for any reason whatsoever, not have a lien or other right of retention over the Client's data and records (including the Client's Confidential Information).

14 FORCE MAJEURE

14.2 The Supplier shall not be liable for forfeiture of its performance security, damages, termination for default or the imposition of penalties pursuant to clauses 4 and 5 if and to the extent that its delay in performance or other failure to perform its obligations under this Agreement is as a result of an event of Force Majeure.

14.3 If a Force Majeure situation arises, the Supplier shall promptly notify the Client in writing of such condition and the cause thereof. Unless otherwise directed by the Client in writing, the Supplier shall continue to perform its obligations under this Agreement as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the Force Majeure event.

14.4 In the event of the Force Majeure persisting for more than three (3) months, it will constitute grounds for terminating this Agreement on seven (7) days written notice to the other Party.

15 TAXES

15.2 The Supplier confirms that:

15.2.1 its tax matters are in order; and

15.2.2 it has submitted an original tax certificate issued by the South African Revenue Services to the Client prior to the award of the contract.

16 BREACH

16.2 The Client may, without prejudice to any other remedy for breach of contract, by written notice of default sent to the Supplier, terminate this contract in whole or in part:

16.2.1 if the Supplier fails to perform any obligation(s) under this Agreement and has failed to remedy such breach within ten (10) days of receiving written notice of the breach from the Client; or

16.2.2 if the Supplier, in the judgment of the Client, has engaged in corrupt or fraudulent practices in competing for or in executing this Agreement.

16.3 In the event the Client terminates the contract in whole or in part, the Client may procure, upon such terms and in such manner as it deems appropriate, services similar to those undelivered, and the Supplier shall be liable to the Client for any excess costs for such similar services. However, the Supplier shall continue performance of its Services to the extent not terminated.

16.4 Where the Client terminates the contract in whole or in part, the Client may decide to impose a restriction penalty on the Supplier by prohibiting such Supplier from doing business with the public sector for a period not exceeding ten (10) years, which restriction penalty shall not be unreasonable applied.

16.5 If the Client intends imposing a restriction on a Supplier or any person associated with the Supplier, the Supplier will be allowed a time period of not more than fourteen (14) days to provide reasons why the envisaged restriction should not be imposed. Should the Supplier fail to respond within the stipulated fourteen (14) days the Client may regard the intended penalty as not objected against and may impose it on the Supplier.

16.6 Any restriction imposed on any person by the Accounting Officer/Authority of the Client will, at the discretion of the Accounting Officer/Authority of the Client, also be applicable to any other enterprise or any partner, manager, director or other person who wholly or partly exercises or exercised or may exercise control over the enterprise of the first-mentioned person, and with which enterprise or person the first-mentioned person, is or was in the opinion of the Accounting Officer/Authority actively associated.

17 DISPUTE RESOLUTION

17.2 If any dispute or difference of any kind whatsoever arises between the Client and the Supplier in connection with or arising out of this Agreement, the Parties shall make every effort to resolve amicably such dispute or difference by mutual consultation.

17.3 If, after thirty (30) days, the Parties have failed to resolve their dispute or difference by such mutual consultation (referred to in 17.1) above, then either the Client or the Supplier may give notice to the other Party of his intention to commence with mediation. No mediation in respect of this matter may commence unless such notice is given to the other Party.

17.4 Should it not be possible to settle the dispute by means of mediation within 30 days of receipt of the notice to commence with mediation, such dispute will be submitted to, and decided by, arbitration pursuant to the rules of the Arbitration Foundation of South Africa (“AFSA”) or its successor body. Nothing shall however prevent either Party from applying for interim and urgent relief from a court of competent jurisdiction.

17.5 Notwithstanding any reference to mediation and/or court proceedings herein:

17.5.1 the Parties shall continue to perform their respective obligations under this Agreement unless they otherwise agree; and

17.5.2 the Client shall pay the Supplier any monies due to the Supplier.

18 ADDRESSES FOR LEGAL PROCESS AND NOTICES

18.2 The Parties choose for the purposes of this Agreement the following addresses and contact

details:

18.2.1 the Client:

Physical Address: 127 15th Road
Randjespark
Midrand
Halfway House

Postal Address: PO Box 209
Halfway House
1685

Telephone No: (011) 554 2718
Attention: Procurement Department
Email address procurement@ncr.org.za

The Supplier:

Physical Address:
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Postal Address:
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.....
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.....

Telephone No:
Attention:
E-mail address:

- 18.3 Any legal process to be served on either Party may be served on it at the address specified for it in clause 18.1 and it chooses that address as its *domicilium citandi et executandi* for all purposes under this Agreement.

- 18.4 Any notice or other communication to be given to either Party in terms of this Agreement shall be valid and effective only if it is in writing.

- 18.5 A notice to a Party which is sent by registered post in a correctly addressed envelope to the address specified for it in clause 18.1 shall be deemed to have been received (unless the contrary is proved) within 14 (fourteen) days from the date it was posted, or any notice to a Party which is delivered to that Party by hand at the address specified for it in clause 18.1 shall be deemed to have been received on the day of delivery, provided it was delivered to a responsible person during ordinary business hours.

- 18.6 Notwithstanding anything to the contrary in this clause 18, a written notice or other communication actually received by a Party shall be adequate written notice or communication to it notwithstanding that the notice was not sent to or delivered at its chosen address.

- 18.7 A Party may by written notice to the other Party change its address or contact details for the purposes of clause 18.1 to any other address provided that the change shall become effective on the seventh (7th) day after the receipt of the notice.

19 SUBCONTRACTS

The Supplier shall notify the Client in writing of all subcontracts awarded under this Agreement if not already specified in the Bid. Such notification, in the original Bid or later, shall not relieve the Supplier from any liability or obligation under this Agreement.

20 GENERAL

20.2 Severance

If any provision of this Agreement, which is not material to its efficacy as a whole, is

rendered void, illegal or unenforceable in any respect under any law, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

20.3 Entire Agreement

20.3.1 This Agreement constitutes the entire agreement between the Parties in regard to its subject matter.

20.3.2 Neither Party shall have any claim or right of action arising from any undertaking, representation or warranty not included in this Agreement.

20.4 No Waiver

The failure by either Party to enforce any provision of this Agreement shall not affect in any way that Party's right to require performance of the provision at any time in the future, nor shall the waiver of any subsequent breach nullify the effectiveness of the provision thereof.

20.5 Amendments

No variation in or modification of the terms of the contract shall be made except by written amendment signed by the Parties concerned.

20.6 General Co-operation

Each Party shall co-operate with the other, execute and deliver to the other Party such other instruments and documents and take such other actions as may be reasonably requested from time to time in order to carry out, evidence and confirm its rights and the intended purpose of this Agreement.

20.7 Counterparts

This Agreement may be signed in counterparts, both of which taken together shall constitute one and the same instrument. Either Party may enter into this Agreement by signing any such counterpart.

20.8 Survival of Rights, Duties and Obligations

Termination of this Agreement for any cause shall not release either Party from any liability which at the time of termination has already accrued to the other Party or which thereafter may accrue in respect of any act or omission prior to such termination.

20.9 Governing language

This Agreement is written in English. All correspondence and other documents pertaining to the contract that is exchanged between the Parties shall also be written in English.

20.10 Governing law

The validity of this Agreement, its interpretation, the respective rights and obligations of the Parties and all other matters arising in any way out of it or its expiration or earlier termination for any reason shall be determined in accordance with the laws of the Republic of South Africa.

20.11 Contractual relationship

Nothing contained in this Agreement shall be construed as creating a joint venture, partnership, agency or employment relationship between the Client and the Supplier. The Supplier shall not act as agent of the Client and shall not make any representations on behalf of the Client or bind the Client financially or otherwise without the prior written authorisation of the Client.

20.11 Government Procurement: General Conditions of Contract (“GCC”)

For so long as the Client is listed as a national entity in terms of the PFMA, this Agreement shall be subject to the GCC as amended or replaced from time to time by the National Treasury and whenever there is a conflict between the contents of this Agreement, the GCC and any Special Conditions of Contract (“SCC”) compiled for a

specific bid, then the following hierarchy shall prevail:

- 1.1. the SCC;
- 1.2. the GCC;
- 1.3. this Agreement

SIGNED at _____ on _____ 2019

Ms. Nomsa Motshegare
CEO
(Duly authorised on behalf of the Client)

Witness
2. Witness

SIGNED at _____ on _____ 2019

Name:
Director:
(Duly authorised on behalf of the Supplier)

1. Witness
2. Witness

ANNEXURE A - TERMS OF REFERENCE AND DELIVERABLES