

SERVICE LEVEL AGREEMENT

BETWEEN

**NATIONAL CREDIT REGULATOR
("Client")**

AND

**[•]
("Supplier")**

DRAFT

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 Supplier successfully [tendered/quoted] for the rendering of the Services to the Client.
- C. 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:

- 1.1.1 “Act” means the National Credit Act No. 34 of 2005;
- 1.1.2 “Agreement” means this Service Level Agreement and includes its schedules, which shall form part of it;
- 1.1.3 “Business Day” means any day other than a Saturday, Sunday or statutory holiday in the Republic of South Africa;
- 1.1.4 “Client” means the National Credit Regulator, a statutory body established in terms of the Act;
- 1.1.5 “Commencement Date” means the Signature Date or [insert date];

1.1.6	"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;
1.1.7	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;
1.1.8	"Parties"	shall mean the Client and the Supplier; and "Party" means either one of them as the context may require;
1.1.9	"PFMA"	means the Public Finance Management Act

1 of 1999;

- 1.1.10 “Services” means the services described in annexure A hereto;
- 1.1.11 “Signature Date” means the date on which this Agreement is last signed by the Parties; and
- 1.1.12 “Supplier” means [●], registration number [●], a company duly incorporated under the company laws of the Republic of South Africa;
- 1.1.13 “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 recognised 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 the 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 AND NON-EXCLUSIVITY OF APPOINTMENT

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 *This Agreement does not grant the Supplier the exclusive right to render the Services to the Client and the Client reserves the right to, at its discretion, and on whatever terms it elects, appoint additional service providers to provide the same Services.*

3. DURATION

3.1 This Agreement shall commence on the Commencement Date and continue indefinitely save in the case of a breach in terms of clause 18 or termination by either Party in accordance with clause 7.

4. PERFORMANCE SECURITY

- 4.1 If required by the Client, within [seven (7)] days of the Signature Date, the Supplier shall furnish to the Client a performance security limited to payment of the amount of [●] or such lesser amount as may be claimed by the Client. Furthermore, it may be drawn down by the Client up to the full amount thereof, in tranches in not less than R1 000.00 (one thousand Rand), or the balance thereof.
- 4.2 The proceeds of the performance security shall be payable to the Client as compensation for any loss resulting from the Supplier's failure to complete its obligations under this Agreement. The Parties agree that the performance security is a genuine pre-estimate of the loss and damage that would be suffered by Client as a result of the Supplier not fulfilling its obligations under this Agreement and is not a penalty but in any event shall not preclude the Client's right of to claim any further damages or enforce any of its other rights under this Agreement for breach of the terms of this Agreement.
- 4.3 The performance security shall be denominated in South African Rands and shall be a bank guarantee a cashier's or certified cheque issued by a reputable bank acceptable to the Client, in the form acceptable to the Client.
- 4.4 The performance security will be returned to the issuer thereof by the Client not later than thirty (30) days following the date of completion of the Supplier's performance obligations under this Agreement, including any warranty obligations, unless otherwise specified in this Agreement.

5. DELAYS IN THE SUPPLIER'S PERFORMANCE

- 5.1 Performance of the Services shall be made by the Supplier in accordance with the time schedule set out in Annexure A.
- 5.2 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 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 schedule set out in

Annexure A, in which case the extension shall be ratified in writing by the Parties by amendment of this Agreement.

- 5.3 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 6, unless an extension of time is agreed upon in writing by the Parties pursuant to clause 5.2 without the application of penalties.

6. **PENALTIES**

If the Supplier fails to perform the Services within the time period 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, [the sum of [●] or [●]% of the fees payable under this Agreement] for each day of the delay until actual delivery or performance.

7. **TERMINATION**

- 7.1 Notwithstanding anything to the contrary in this Agreement, either Party shall be entitled to terminate this Agreement by giving one month's written notice to the other Party.

- 7.2 In such event the Supplier shall be entitled to a pro-rata payment for the Services rendered up to the date of termination.

- 7.3 In the event that the Supplier becomes bankrupt or otherwise insolvent the Client shall be entitled to terminate this Agreement in accordance with clause 7.1.

8. **PAYMENTS AND FEES**

- 8.1 As consideration for the Services rendered, the Client will pay the Supplier a fee of R[●] per month [excluding VAT and disbursements], for the duration of this Agreement. [Alternatively, the Client will pay the Supplier the following fees upon achieving the following milestones:

Milestone	Fee

8.2 Without prejudice to its other remedies under this Agreement, the Client shall be entitled to withhold at its discretion up to [10%/20%] of the fees payable to the Supplier in respect of any deliverable submitted by the Supplier to the Client pursuant to this Agreement 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.

8.3 The Supplier shall provide the Client with a tax invoice on a monthly basis for the fees claimed for the Services rendered each month.

8.4 Payment of the above invoice will be made within 30 (thirty) days from the date of the invoice.

8.5 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 [7] days of the dispute resolution proceedings provided for in clause 19. Pending the outcome of the aforesaid dispute, the Supplier shall be required to continue rendering the Services to the Client.

9. **LIMITATION OF LIABILITY**

Except in cases of criminal negligence or willful misconduct:

9.1 the Supplier shall not be liable to the Client, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, provided that this exclusion shall not apply to any obligation of the Supplier to pay penalties and/or damages to the Client; and

9.2 the aggregate liability of the Supplier to the Client, whether under the contract, in tort or otherwise, shall not exceed the total contract price.

10. CONFLICT OF INTEREST

- 10.1 The Supplier shall avoid any conflict of interest that may arise during the period of this Agreement.
- 10.2 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.
- 10.3 The Supplier shall always act in the best interest of the Client in all matters relating to this Agreement.

11. INTELLECTUAL PROPERTY

- 11.1 For the purposes of this Agreement “intellectual property” shall include, without limitation:
- 11.1.1 trade marks, 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
- 11.1.2 rights in know-how, Confidential Information, designs, trade secrets, utility models and petty patents, as well as the research conducted, analysis done and any reports or agreements produced by the Supplier pursuant to this agreement.
- 11.2 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.
- 11.3 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.

- 11.4 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.
- 11.5 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.
- 11.6 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.
- 11.7 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.
- 11.8 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 [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.
- 11.9 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 conduct of its business, before, during or after the period of this Agreement.

11.10 The provisions of this clause 11 shall survive the expiry of this agreement or termination or cancellation of this Agreement for any reason whatsoever.

12. **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.

13. **ANNOUNCEMENTS**

13.1 Subject to clause 13.2, 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.

13.2 The provisions of clause 13.1 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.

14. **CONFIDENTIALITY**

14.1 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 to any third party without the prior written consent of the Client.

14.2 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.

14.3 The Supplier shall procure that its employees, team members of

subcontractors are made fully aware of the need for confidentiality and will procure that they return all hard and electronic copies of Confidential Information to the Client upon termination of this Agreement.

- 14.4 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.

15. **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).

16. **FORCE MAJEURE**

- 16.1 The Supplier shall not be liable for forfeiture of its performance security, damages, termination for default or the imposition of penalties pursuant to clauses 5 and 6 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.

- 16.1 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.

- 16.2 In the event of the force majeure persisting for more than 3 months, it will constitute grounds for terminating this Agreement on seven (7) days written notice to the other Party.

17. **TAXES**

- 17.1 The Supplier confirms that:

- 17.1.1 its tax matters are in order; and
- 17.1.2 it has submitted an original tax certificate issued by the South African Revenue Services to the Department of Trade and Industry prior to the award of the Bid.

18. BREACH

- 18.1 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:
 - 18.1.1 if the Supplier fails to perform any obligation(s) under this Agreement;
or
 - 18.1.2 if the Supplier, in the judgment of the Client, has engaged in corrupt or fraudulent practices in competing for or in executing this Agreement.
- 18.2 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.
- 18.3 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 10 (ten) years.
- 18.4 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.
- 18.5 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.

- 18.6 If a restriction is imposed, the Client must, within five (5) working days of such imposition, furnish the National Treasury with the following information:
- 18.6.1 The name and address of the Supplier and/or person restricted by the Client
 - 18.6.2 The date of commencement of the restriction
 - 18.6.3 The period of the restriction; and
 - 18.6.4 The reasons for the restriction

These details will be loaded in the National Treasury's central database of suppliers or persons prohibited from doing business with the public sector.

- 18.7 If a court of law convicts a person of an offence as contemplated in sections 12 or 13 of the Prevention and Combating of Corrupt Activities Act, no. 12 of 2004, the court may also rule that such person's name be endorsed on the Register of Tender Defaulters. When a person's name has been endorsed on the Register, the person will be prohibited from doing business with the public sector for a period not less than five years and not more than 10 years. The National Treasury is empowered to determine the period of restriction and each case will be dealt with on its own merits. According to section 32 of the Act, the Register must be open to the public. The Register can be perused on the National Treasury website.

19. **DISPUTE RESOLUTION**

- 19.1 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.
- 19.2 If, after thirty (30) days, the Parties have failed to resolve their dispute or

difference by such mutual consultation (referred to in 19.1 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.

19.3 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, it may be settled in a South African court of law.

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

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

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

20. ADDRESSES FOR LEGAL PROCESS AND NOTICES

20.1 The Parties choose for the purposes of this Agreement the following addresses and contact details:

20.1.1 the Client:

Physical Address:	127 15 th Road Randjespark Midrand Halfway House
Postal Address:	PO Box 209 Halfway House 1685
Telephone No.	(011) 554 2600
Fax No:	(011) 554 2871
Attention:	[•]

20.1.2 the Supplier:

Physical Address:	[•]
Postal Address:	[•]
Telephone No.	[•]
Fax No:	[•]

Attention: [●]

- 20.2 Any legal process to be served on either Party may be served on it at the address specified for it in clause 20.1 and it chooses that address as its *domicilium citandi et executandi* for all purposes under this Agreement.
- 20.3 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 given in writing, provided that any notice given by telefax shall be regarded for this purpose as having been given in writing.
- 20.4 A notice to a Party which is sent by registered post in a correctly addressed envelope to the address specified for it in clause 20.1 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 20.1 shall be deemed to have been received on the day of delivery, provided it was delivered to a responsible person during ordinary business hours.
- 20.5 Each notice by telefax to a Party at the telefax number specified for it in clause 20.1 shall be deemed to have been received (unless the contrary is proved) within 12 (twelve) hours of transmission if it is transmitted during normal business hours of the receiving party or within 12 (twelve) hours of the beginning of the next Business Day after it is transmitted, if it is transmitted outside those business hours.
- 20.6 Notwithstanding anything to the contrary in this clause 15, 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.
- 20.7 A Party may by written notice to the other Party change its address or contact details for the purposes of clause 20.1 to any other address provided that the change shall become effective on the 7th (seventh) day after the receipt of the notice.

21. GENERAL

21.1 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.

21.2 Entire Agreement

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

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

21.3 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.

21.4 Assignment

Neither Party may cede any of its rights or delegate any of its obligations under this Agreement without the prior written consent of the other Party.

21.5 Amendments

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

21.6 General Co-operation

Each Party shall co-operate with the other and 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.

21.7 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.

21.8 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.

21.9 Governing language

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

21.10 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.

21.11 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.

21.12 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:

- 21.12.1 the SCC;
- 21.12.2 the GCC; and
- 21.12.3 this Agreement.

SIGNED at

on

20__.

Name:

Title:

(on behalf of the Client)

1. Witness

2. Witness]

SIGNED at

on

20__.

Name:

Title:

(on behalf of the Supplier)

[_____

2. Witness

2. Witness]

**ANNEXURE A
SERVICES (CLAUSE 2)**

[Comprehensive description of Services and timing of deliverables to be inserted]

DRAFT