**SARS TERMS AND CONDITIONS OF ENGAGEMENT IN RESPECT OF THE PROVISION OF**

**RECRUITMENT SERVICES PURSUANT TO RFP 03/2022,**

**APPLICABLE TO ALL SERVICE PROVIDERS PLACED ON THE PANEL OF SARS RECRUITMENT SERVICES FOR**

**CATEGORY B: PERMANENT AND TEMPORARY RECRUITMENT**

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1. **INTERPRETATION**
   1. The head notes to the Clauses of this Agreement are for reference purposes only and will not govern or affect the interpretation of nor modify nor amplify the terms of this Agreement.
   2. Unless inconsistent with the context, words and expressions in this Agreement will have the following meaning and similar expressions will have corresponding meaning-
      1. **“Agreement”** means these SARS terms and conditions of engagement in respect of the provision of recruitment services pursuant to **RFP 03/2022**, which provisions are incorporated herein by way of reference, including all the annexures hereto;
      2. “**Applicable Law(s)”** means any statute, regulation, notice, policy, directive, ruling or subordinate legislation; the common law; any binding court order, judgment or ruling; any applicable industry code, policy or standard enforceable by law; or any applicable direction, policy or order that is given by any regulator, competent authority or organ of state or industry body in respect of the Services;
      3. **“Authorised Representative”** means the respective signatories authorised by SARS and the Service Provider to sign the Agreement;
      4. **“Business Day”** means any day other than a Saturday, Sunday or public holiday in South Africa;
      5. **“Commencement Date”** means **[TO BE ADDED]** notwithstanding the date of the last signing Party to this Agreement;
      6. **“Deliverables”** means any document, report, including CVs and/or a response by the Service Provider to a communication from SARS that a Service Provider must submit to SARS as a part of the performance of the Services;
      7. **“Dedicated Email Address”** means **[TO BE ADDED]** being the email address provided to SARS by the Service Provider;
      8. "**HR Business Partner”** means the SARS Human Resources person whose name and other particulars would be included in the job advert as a SARS contact person in respect of the SARS business area making the request for the Services.
      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, plans, reports, data, works protected under the Copyright Act, 1978 ( Act No. 98 of 1978), works of authorship, video recordings, audio recordings, photographs, models, samples, substances, trade secrets, formulae, know-how, show-how, 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. **"Key Personnel"** means those employees, including agents or third party service providers of the Service Provider dedicated and assigned to the delivery and management of the Services to SARS by the Service Provider in terms of **Clause 6.1.2** below. The Key Personnel are deemed to be material and integral to the provision of the Services;
      11. **“Panel of SARS Recruitment Services”** means a list of Service Providers appointed in terms of **RFP03/2022** for Category B: Permanent and Temporary recruitment;
      12. “**Parties**” means SARS and the Service Provider and “party” as the context requires, is a reference to any one of them;
      13. **“Recruitment Agency Platform”** means the electronic interface platform that SARS will be using to communicate with the Service Provider in connection with a request for the Services as well as other communications in connection therewith.
      14. **“RFP 03/2022”** subject to any contrary indication refers to SARS’s invitation to tender to establish a panel of approved service providers to provide executive search services, and permanent and temporary recruitment services, dated **[TO BE ADDED]**, which is incorporated herein by reference thereto;
      15. **“SARS”** means the **SOUTH AFRICAN REVENUE SERVICE**, an organ of state within the public administration but outside the public service established in terms of Section 2 of the South African Revenue Service Act, 1997 (Act No. 34 of 1997), with its principal address at **299 Bronkhorst Street, Nieuw Muckleneuk, Pretoria**;
      16. **“Services”** means permanent and temporary recruitment services as contemplated in **RFP 03/2022**, including functions or responsibilities not specifically mentioned herein but which are reasonably and necessarily required for the proper performance and provision of the Services;
      17. **“Service Provider”** means the legal Person appointed to the panel for Category B: Permanent and Temporary recruitment in terms of **RFP 03/2022**;
      18. **“Termination Date”** means **[TO BE ADDED]**; and
      19. **“VAT”** means Value-Added Tax levied in terms of the Value-Added Tax Act, 1991 (Act No. 89 of 1991).
   3. Any reference in this Agreement to:
      1. a **“Clause”** shall, subject to any contrary indication, be construed as a reference to a Clause hereof;
      2. a **“Person”** refers to any person, firm, company, corporation, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the foregoing.
   4. 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, same shall be reckoned exclusively of the first and inclusively of 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. in the event that the day for payment of any amount due in terms of this Agreement should fall on a day which is not a Business Day, the relevant day for payment shall be the subsequent Business Day;
      4. in the event that the day for performance of any obligation to be performed in terms of this Agreement should fall on a day which is not a Business Day, the relevant day for performance shall be the subsequent Business Day;
      5. any reference in this Agreement to an enactment is to that enactment as at the signature date and as amended or re-enacted from time to time;
      6. any reference in this Agreement to this Agreement or any other agreement or document shall be construed as a reference to this Agreement or, as the case may be, such other agreement or document as same may have been, or may from time to time be, amended, varied, negotiated or supplemented;
      7. no provision of this Agreement constitutes a stipulation for the benefit of any Person who is not a Party to this Agreement;
      8. references to day/s, month/s or year/s shall be construed as calendar day/s, month/s or year/s; and,
      9. a reference to a Party includes that Party’s successors-in-title and permitted assigns.
   5. Unless inconsistent with the context, an expression which denotes:
      1. any one gender includes the other gender;
      2. the singular includes the plural and *vice versa*;
   6. Where any term is defined within the context of any particular Clause in this Agreement, the term so defined, unless it is clear from the Clause in question that the term so defined has limited application to the relevant Clause, shall bear the same meaning as ascribed to it for all purposes in terms of this Agreement, notwithstanding that that term has not been defined in such Clause.
   7. 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.
   8. 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.
   9. Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.
   10. 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.
2. **APPOINTMENT**
   1. SARS issued a tender for the establishment of a panel of approved service providers to render recruitment services for Category A: Executive Search, and Category B: Permanent and Temporary Recruitment under **RFP 03/2022**.
   2. The Service Provider has submitted a response to **RFP** **03/2022** (the “Proposal”) in respect of Category B: Permanent and Temporary Recruitment to SARS to render the Services. SARS accepted the Proposal and hereby appoints the Service Provider to the SARS Recruitment Services Panel, which appointment the Service Provider accepts.
   3. The Service Provider represents that the Service Provider has, and warrants that throughout the duration of this Agreement the Service Provider shall have, the resources, skills, qualifications and experience necessary to provide the Services to the highest standards.
   4. In reliance on these statements, and representations, SARS has selected and placed the Service Provider on the Panel of SARS’s Recruitment Services in respect of Category B: Permanent and Temporary Recruitment.
   5. The Service Provider will render the Services on a non-exclusive basis. Nothing contained herein will in any way be construed or constitute a guarantee in favour of the Service Provider that the Service Provider will receive any work from SARS for the Services in the future, whether under this Agreement or otherwise.
3. **DURATION**

This Agreement commences on the Commencement Date, and shall continue to be in full force and effect until the Termination Date.

1. **APPROACH IN THE PROCUREMENT OF THE SERVICES**
   1. SARS may, and on an “as and when the need arises basis”, place a job advert in the Recruitment Agency Portal inviting the Service Provider to submit CVs in respect of the advertised position.
   2. The job advert will contain sufficient details to enable the Service Provider to submit the best CVs for the advertised position.
   3. The Service Providers must respond to the job advert via the Recruitment Agency Portal, and when requested, attach the requested documents to its response.
   4. SARS reserves the right, to be exercised in its sole discretion, to request via the Recruitment Agency Platform, eligible service providers to attend a compulsory briefing session, wherein the job specifications, skill and experience requirements, qualifications, turnaround times or such others matters pertinent to the filling of the vacancy would be discussed prior to placing the job advert in the Recruitment Agency Platform.
   5. The Service Provider shall be deemed to have received and thus have knowledge of all communications send to the Recruitment Agency Platform on the same day of the sending of the communication.
2. **TREATMENT OF CVs OF CANDIDATES IN RESPECT OF AN ADVERTISED POSITION**
   1. The terms and conditions set out in paragraph 10.3of **RFP 03/2022** shall apply in respect of all CVs submitted in respect of an advertised position.

1. **OBLIGATIONS OF THE SERVICE PROVIDER**
   1. As an integral part of the provision of the Services, the Service Provider shall-
      1. Register as a user on the Recruitment Agency Platform using the Dedicated Email Address as user email address.
      2. Appoint Key Personnel; and
      3. Strictly comply with the provisions of **RFP 03/2022**.

1. **PERFORMANCE STANDARDS (“SERVICE LEVELS”)**
   1. The Service Provider shall perform the Services with promptness, diligence and courtesy. The Service Provider shall execute the Services in a professional manner and in accordance with the practices and professional standards used in well-managed operations performing services similar to the Services.

* 1. SARS must at the time of the placement of a job advert in the Recruitment Agency Portal, prescribe the performance standards (“Service Levels”) by which a Deliverable in terms of the job advert would be measured, including the fixing of timelines within which the Services and/or Deliverable must be performed or submitted, whichever is applicable. Should the Service Provider not meet the prescribed performance standards, the applicable penalties as described in the relevant job advert, as well as the provisions of **Clause 8.4** below, will apply.

1. **ACCEPTANCE AND REVIEW**
   1. SARS shall have the right to review and accept or reject all Deliverables and/or any components of such Deliverables to be provided by the Service Provider to SARS under this Agreement in the performance of the Services.
   2. The Service Provider will be available to liaise with SARS regarding any queries arising with regard to a Deliverable and will assist SARS with its evaluation of the Deliverable.
   3. Should SARS not accept the Deliverable, SARS will provide the Service Provider with written notice of its non-acceptance, as well as detailed reasons therefore. The Service Provider will correct any deficiencies within the time stipulated in the SARS's notice, where after the Deliverable will be resubmitted to SARS for review and evaluation in accordance with this clause.
   4. If the Service Provider is still unable to correct the deficiency within this period, then SARS may in its sole discretion elect to –
      1. direct the Service Provider to continue its efforts to make the Deliverable acceptable to SARS, in which case the Service Provider shall continue such efforts; or
      2. without limiting the generality of SARS's right to terminate this Agreement and/or the Service Provider’s further participation in the recruitment process for cause under **Clause 20** or to claim damages, without liability by providing written notice to the Service Provider, in which case the Service Provider shall, if applicable, refund to SARS all amounts paid by SARS to the Service Provider in respect of that Deliverable. Such refund shall be made within fourteen (14) days of receiving SARS's notice.
2. **FEES**
   1. SARS shall pay the Service Provider a placement fee at a percentage rate set out in the letter of appointment issued by SARS to the Service Provider.
   2. The placement fee shall be calculated as a percentage of an annual Guaranteed Total Package. Consequently, the Service Provider shall not invoice SARS for any bonuses, including service bonus.
   3. A placement fee will only be paid by SARS where the Service Provider is the effective cause of the hire.
   4. The placement fee is exclusive of VAT.

* 1. Any disputes between Service Providers regarding entitlement to a placement fee will be determined in terms of the Federation of African Professional Staffing Organisations (APSO) Code of Ethics and Professional Practice notwithstanding the fact that a Service Provider might not be affiliated to APSO.

1. **SARS’S OBLIGATIONS**
   1. SARS undertakes to-
      1. Assign an HR Business Partner in each and every job advert placed in the Recruitment Agency Portal.
      2. If required by the Service Provider, furnish the Service Provider with any relevant information necessary for the Service Provider to perform the Services in compliance with the terms and conditions of this Agreement.
2. **INVOICING AND PAYMENT**
   1. The Service Provider must within seven (7) days after being advised of the placement of its candidate by SARS, submit an invoice to SARS for payment of the rendered Services.
   2. The invoice will include a narration of the type of Services performed and the fees payable in respect of those Services.

* 1. SARS will pay the invoiced amount within thirty (30) days of receipt of the invoice unless SARS disputes any item in the invoice.
  2. All invoiced fees must be inclusive of VAT.
  3. In the event that SARS disputes an item on the invoice, SARS will do so by giving written notice to Service Provider within ten (10) Business Days of receipt of the invoice. The notice shall set out the disputed items in the invoice and the reasons therefor. The Parties’ senior managers, one level up from the SARS HR Business Partner and the Service Provider’s Key Personnel, shall meet to resolve the dispute within five (5) Business Days of SARS giving notice of the dispute. The senior manager shall resolve the dispute within two (2) Business Days of its referral to them.
  4. Where the dispute remains unresolved after the informal procedures set out in **Clause 11.5** above have been exhausted, the dispute shall be dealt with in terms of the dispute resolution procedures set out in **Clause 23** of this Agreement.

1. **INTELLECTUAL PROPERTY RIGHTS**

Subject to **Clause 13** below, each Party shall retain all right, title and interest, in and to its processes, designs, drawings, specifications, formulae, databases, algorithms, models, methods, know-how, techniques, concepts, ideas, documents or other tools (“Intellectual Property”).

1. **COPYRIGHT IN MATERIAL**

Subject to third party or pre-existing Intellectual Property rights of the Service Provider, any available copyright in the reports and documentation produced by the Service Provider in rendering the Services pursuant to this Agreement shall vest in SARS.

1. **CONFIDENTIALITY**
   1. The Service Provider undertakes that for the duration of this Agreement and after the expiration or earlier termination of this Agreement for any reason, it will keep confidential all proprietary information, including any trade secrets and/or all information of a confidential nature which SARS from time to time communicates to the Service Provider, agents and/or its employees. This includes the knowledge acquired by the Service Provider, agents and/or its employees as a result of the work to be performed by the Service Provider in terms of this Agreement and which by its nature is, intended to be kept confidential.
   2. The Service Provider in particular undertakes to keep confidential all SARS Confidential Information and Taxpayer Information as defined in Chapter 6 of the Tax Administration Act, 2011 (Act No. 28 of 2011); any information required to be kept confidential by any other act administered by the Commissioner for SARS and any personal information in terms of the Protection of Personal Information Act (Act No. 4 of 2013)(“POPIA”), and any regulations promulgated in terms thereof.
   3. If the Service Provider is uncertain about whether information is to be treated as confidential in terms of this **Clause 14**, it shall be obliged to treat it as such until clearance is obtained, in writing, from SARS.
   4. The Service Provider shall ensure that prior to commencing the performance of the Services all its personnel involved in the rendering of such Services shall sign the ***SARS Oath of Secrecy*** and submit the original thereof to SARS for record keeping purposes.
   5. For purposes of this Agreement, the expression “proprietary information and confidential information of SARS” shall include, but shall not be limited to, “SARS confidential information” and “taxpayer information” as defined in Chapter 6 of the Tax Administration Act, 2011 (Act No. 28 of 2011) as well as any information required to be kept confidential by any other tax act administered by the Commissioner, the technical detail, programme content, techniques, know-how, methods of operating, costs, training courses, taxpayer information and names of clients and/or potential clients with whom SARS has not yet contracted but intends contracting for purposes of establishing business relationships to which the Service Provider may become privy during the contract term.
   6. The Parties agree that all trade and professional secrets and other secrets or confidential information or methods of work supplied by the one Party to the other shall not be disclosed to any third party without first obtaining the written consent of the other Party.
   7. Where a Party is threatened with legal action to disclose the confidential information of the other Party, such Party shall give the other Party written notice of such legal action within (2) two days of receipt of the threatened legal action. The Party shall deliver to the other Party, together with the notice referred to above, all documentation received or submitted in connection with the threatened legal action.
   8. The Service Provider shall not remove from SARS premises any documents or materials relating to the Services or SARS’s business without first obtaining the written consent of SARS.
   9. The provisions of this Clause shall survive the termination or cancellation of this Agreement for any reason whatsoever.
   10. Both Parties shall comply with all data protection legislation, including POPIA, in respect of the Processing of Personal Information and Special Personal Information.
2. **SECURITY VETTING OF THE SERVICE PROVIDER RESOURCES**
   1. SARS reserves the right at its sole and absolute discretion to do a security check (vetting) on the Service Provider personnel involved with the performance of the Services.
   2. Where SARS finds a Service Provider employee or agent to be a security risk, SARS will inform the Service Provider accordingly and the Service Provider shall replace such employee or agent with another employee or agent with equal qualification(s) and experience.
   3. The Service Provider indemnifies SARS against any claims that may be brought by any of the Service Provider’s personnel who may be affected as a result of SARS exercising its rights under this Clause.
3. **LIABILITY OF THE PAR****TIES**
   1. A Party shall be liable to the other Party for any actual damages incurred by such Party as a result of the other Party’s failure to perform its obligations in the manner required by this Agreement.
   2. Notwithstanding the provisions of **Clause 16.1** above, the Service Provider shall be liable to SARS for all direct damages and/or losses suffered by SARS as a result of a breach of **Clause 14** above, infringement of third intellectual property rights or any negligent acts or omissions by the Service Provider or employees of the Service Provider.
   3. The Parties’ liability to each other in terms of **Clause 16.1** above for actual damages shall be limited to actual monies paid to a Service Provider in terms of this Agreement.
4. **WARRANTIES**
   1. The Service Provider hereby represents and warrants to SARS that-
      1. it is acting as a principal and not as an agent of an undisclosed principal;
      2. this Agreement has been duly authorised and executed by it and constitutes a legal, valid and binding set of obligations on it;
      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, articles of association or any other documents or any binding obligation, contract or Agreement to which it is a party or by which it or its assets are bound; and,
   2. 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.
   3. By bidding, the Service Provider is deemed to have satisfied itself regarding all conditions affecting this contract, and must at all times comply with the manifest intent and obligations of this Agreement.
   4. The provisions of this Clause shall survive the termination of this Agreement.
5. **INDEMNITIES**
   1. The Service Provider indemnifies and hold SARS harmless against all losses, claims, demands, proceedings, damages, costs, charges and expenses (including reasonable legal expenses) of whatsoever nature arising from this Agreement or at Law in respect of the Service Provider’s breach of the provisions of this Agreement or injury or death of any person or loss of or damage to any person or property occurring by reason of the Service Provider, its employees or agents’ wilful conduct or gross negligence during or after the execution of the Services.
6. **BREACH**
   1. A Party (the “Aggrieved Party”) may terminate this Agreement with immediate effect if the other Party (the “Defaulting Party”) commits a material breach of this Agreement and fails to remedy such breach within ten (10) Business Days (the “Notice Period”) of being notified of the breach.
   2. For the purposes of **Clause 19.1** above, 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/or if payment in money would compensate for such breach but such payment is not made within the Notice Period**.**
7. **TERMINATION FOR CAUSE**
   1. SARS may immediately terminate this Agreement at any time by giving written notice of such termination to the other Party if –
      1. the Service Provider is placed under voluntary or compulsory liquidation (whether provisional or final) or under business rescue proceedings as contemplated in Chapter 6 of the Companies Act, 2008 (Act No. 71 of 2008) or under curatorship or under the equivalent of any of the aforegoing;
      2. a final judgement against the Service Provider remains unsatisfied for a period of ten (10) Business Days or more after it comes to the notice of the Service Provider; and/or
      3. the Service Provider makes any arrangement or compromise with its creditors generally or ceases to carry on business.
   2. Any termination of this Agreement pursuant to the provisions of this **Clause 20** shall be without prejudice to any claim which either Party may have in respect of any prior breach of the terms and conditions of this Agreement by the other Party.
8. **FORCE MAJEURE**
   1. In the event of any act beyond the control of the Parties, strike, war, warlike operation, rebellion, riot, civil commotion, lockout, interference by trade unions, suspension of labour, fire, accident, or (without regard to the foregoing enumeration) of any circumstances arising or action taken beyond the reasonable control of the Parties hereto preventing them or any of them from the performance of any obligation hereunder (any such event hereinafter called "*force majeure* event") then the party affected by such *force majeure* event shall be relieved of its obligations hereunder during the period that such *force majeure* continues (excluding payment obligations for materials purchased).
   2. The affected Party’s relief is only to the extent so prevented and such Party shall not be liable for any delay or failure in the performance of any obligations hereunder or loss or damage which the other party may suffer due to or resulting from the *force majeure* event, provided always that a written notice shall be promptly given of any such inability by the affected party.
   3. Any Party invoking *force majeure* shall upon termination of such *force majeure* give prompt written notice thereof to the other Party. Should *force majeure* event continue for a period of more than thirty (30) days, then either Party has the right to cancel this Agreement.
   4. In the event that the Service Provider is for any reason other than as provided for in this Clause unable to provide the Services for the full duration of this Agreement-
      1. the Service Provider shall serve SARS with a written notice requesting an extension of the duration of this Agreement at least seven (7) Business Days prior to the end of the duration of this Agreement; and,
      2. SARS shall consider the request and revert to the Service Provider by no later than five (5) Business Days from date of receipt of the notice referred to in **Clause 21.4.1**.

1. **RELATIONSHIP BETWEEN THE PARTIES**
   1. The Service Provider is an independent contractor and under no circumstances will it be partner, joint venture partner, agent, or employee of SARS in the performance of its duties and responsibilities pursuant to the Agreement.
   2. All personnel used by the Service Provider will be the Service Provider’s employees, contractors, or agents, and the entire management, direction, and control of all such persons will be and remain the responsibility of the Service Provider.

1. **DISPUTE RESOLUTION**
   1. If a dispute between the Parties arises out of or is related to this Agreement, the Parties shall meet and negotiate in good faith to attempt to resolve the dispute. If, after twenty (20) Business Days from the date upon which the dispute was declared by a party by written notice, the dispute is not resolved, the matter shall be determined in accordance with the provisions set out below.
   2. Save in respect of those provisions of this Agreement which provide for their own remedies which would be incompatible with arbitration, or in the event of either Party instituting urgent action against the other in any court of competent jurisdiction, any dispute arising from, or in connection with, this Agreement will finally be resolved by arbitration in accordance with the Rules of the Arbitration Foundation of Southern Africa (the “Foundation”) or its successor, by an arbitrator or arbitrators appointed by the Foundation.
   3. This **Clause 23** will be severable from the rest of the provisions of this Agreement so that it will operate and continue to operate notwithstanding any actual or alleged voidness, voidability, unenforceability, termination, cancellation, expiry, or accepted repudiation, of this Agreement.
   4. Neither Party shall be entitled to withhold performance of any of their obligations in terms of this Agreement pending the settlement of, or decision in, any dispute arising between the Parties and each party shall, in such circumstances continue to comply with their obligations in terms of this Agreement.
2. **ADDRESSES**
   1. Each Party chooses the addresses set out opposite its name below as its addresses to which all notices and other communications must be delivered for the purposes of this Agreement and its *domicilium citandi et executandi (“domicilium”)* at which all documents in legal proceedings in connection with this Agreement must be served.
   2. SARS’s physical address for ***service of notices and legal processes***-
      1. **The Executive: Procurement**;

**Block D: LeHae La SARS**

**299 Bronkhorst Street**

**Nieuw Muckleneuk**

**Pretoria**

* 1. SARS’s email address for communications and/or correspondences in connection with the performance of the Services: **[To be inserted]**
  2. Service Provider’s physical address for ***service of notices and legal processes*** shall be as set forth in the letter of acceptance of its appointment, alternatively, in the Service Provider’s bid proposal in response to **RFP03/2022**.
  3. Any notice or communication required or permitted to be given to a Party pursuant to the prov**i**sions of this Agreement shall be valid and effective only if in writing and sent to a Party’s chosen address, provided that documents in legal proceedings in connection with this Agreement may only be served at a Party’s *physical address.*
  4. Any Party may by written notice to the other Parties, change its chosen address to another address, provided that-
     1. the change shall become effective on the tenth (10th) (Business Day after the receipt or deemed receipt of the notice by the addressee, and;
     2. any change in a party’s *domicilium* shall only be to an address in South Africa, which is not a post office box or a *poste restante.*
  5. Any notice to a Party contained in a correctly addressed envelope and sent by prepaid registered post to it at a Party’s chosen address shall be deemed to have been received on the fifth (5th) Business Day after posting; or
  6. Any notice to a Party in a correctly addressed envelope and is delivered by hand at a Party’s chosen address shall be deemed to have been received on the day of delivery, unless the contrary is proved.
  7. The Parties record that while they may correspond by email during the currency of this Agreement for operational reasons, no formal notice required in terms of this Agreement, nor any amendment or variation to this Agreement may be given, conveyed or concluded by email.

1. **GENERAL**

25.1 **Cession**

Subject to Applicable Law, the Service Provider may not cede or in any other manner transfer any benefit or right arising from this Agreement, without the prior written consent of SARS.

25.2 **Assignment**

The Service Provider may not assign or transfer any obligation arising out of this Agreement.

* 1. **Severability**

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

* 1. **Advertising And Marketing**

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

* 1. **Waiver**

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

* 1. **No Withholding of Consents**

Except where expressly provided as being in the sole discretion of a Party, where agreement, approval, acceptance, consent, or similar action by either Party is required under this Agreement, such action shall not be unreasonably delayed or withheld. An approval, acceptance, consent or similar action by a Party under this Agreement (including in respect of a plan or Deliverable) shall not relieve the other Party from the responsibility of complying with the requirements of this Agreement, nor shall it be construed as a waiver of any rights under this Agreement, except as and to the extent otherwise expressly provided in such approval, acceptance or consent.

* 1. **Authorised Signatories**

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

* 1. **Counterparts**

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same Agreement as at the date of signature of the Party last signing one of the counterparts. The Parties undertake to take whatever steps may be necessary to ensure that each counterpart is duly signed by each of them without delay

* 1. **Applicable Law**

This Agreement will be governed by and construed in accordance with the Law of the Republic of South Africa and all disputes, actions and other matters relating thereto will be determined in accordance with such Law.

* 1. **Whole Agreement and Amendment**

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

* 1. **Covenant Of Good Faith**

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

* 1. **Costs**

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

1. **JURISDICTION**

The Parties hereby irrevocably and unconditionally consent to the non-exclusive jurisdiction of the High Court of the Republic of South Africa (Gauteng Division, Pretoria), in regard to all matters arising from this Agreement.

1. **BROAD-BASED BLACK ECONOMIC EMPOWERMENT**
   1. The Service Provider acknowledges that Broad-Based Black Economic Empowerment is a business and social imperative in order to achieve a non-racial, non-sexist and equitable society in South-Africa.
   2. In pursuance of this objective the Service Provider commits and warrants to comply in all respects with the requirements of the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003) (hereafter referred to as the BBBEE Act) as amended from time to time, and the Codes of Good Practice issued in terms of the BBBEE Act.
   3. Upon signature of this Agreement and one (1) calendar month after the expiry of a current certificate for a particular year, the Service Provider shall provide SARS with a certified copy of its BBBEE rating status from an agency accredited by the South African National Accreditation System.
   4. During the currency of this Agreement (including any extension or renewal hereof which may apply), the Service Provider shall use reasonable endeavours to maintain and improve its current BBBEE rating status.
   5. A failure to provide a certified copy of its BBBEE rating status or a failure to comply with provisions of this clause will entitle SARS to terminate the Agreement by giving the Service Provider one (1) month's written notice.
2. **TAX AND SECURITY COMPLIANCE**
   1. The Service Provider warrants that as of the Commencement Date it is in full compliance with, and throughout the term of this Agreement (including any Renewal Period) shall remain in full compliance with all applicable laws relating to taxation in the Republic of South Africa; and meet, and throughout the term of this Agreement continue to meet, SARS’s applicable security requirements from time to time.
   2. Any failure to comply with **Clause 28.1** above shall be deemed to constitute a material breach of this Agreement by the Service Provider, and SARS shall be entitled to all remedies (including termination for cause) provided for in this Agreement pursuant to a material breach hereof by the Service Provider.
   3. The Service Provider further warrants that the Service Provider shall deliver to SARS on the Commencement Date and each anniversary thereof during the term of this Agreement, a valid tax clearance certificate issued for the then-current year in respect of the Service Provider. If the Service Provider fails to provide such annual certificate, not due to any failure by SARS in the production of the certificate, SARS may immediately terminate the Agreement, and SARS shall have no liability to Service Provider with respect to a termination under this clause.

**F****or the South African Revenue Service:**

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| **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**  **Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**  **Designation: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**  **Date of signature: \_\_\_\_\_\_\_\_\_\_\_** | **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**  **Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**  **Executive: Procurement**  **Date of signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** |