**SERVICES AGREEMENT**

Entered into by and between

**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)

**[“SARS”]**

and

**…………………………………………………….**,

a company incorporated in accordance with the laws of South Africa and with

registration number ………………………………………….

**[“THE SERVICE PROVIDER”]**

TABLE OF CONTENTS

[1. INTERPRETATION 3](#_Toc105765605)

[2. APPOINTMENT 8](#_Toc105765606)

[3. SERVICES 9](#_Toc105765607)

[4. DURATION 11](#_Toc105765608)

[5. SERVICE PROVIDER’S COMMISSION AND AUDIT RIGHTS 12](#_Toc105765609)

6[. SERVICE PROVIDER’S OBLIGATIONS 12](#_Toc105765610)

7[. PERSONNEL AND PROJECT MANAGEMENT 13](#_Toc105765611)

8[. SARS’ OBLIGATIONS 14](#_Toc105765612)

[9. STEP IN RIGHTS 14](#_Toc105765613)

[10. WARRANTIES 15](#_Toc105765614)

[11. LIABILTY OF THE PARTIES 16](#_Toc105765615)

[12. INDEMNITIES 17](#_Toc105765616)

[13. BREACH 17](#_Toc105765617)

[14. TERMINATION OF THE AGREEMENT 18](#_Toc105765618)

[15. FORCE MAJEURE 20](#_Toc105765621)

[16. RELATIONSHIP BETWEEN THE PARTIES 21](#_Toc105765622)

[17. DISPUTE RESOLUTION 21](#_Toc105765623)

[18. CONFIDENTIAL INFORMATION 22](#_Toc105765624)

[19. INTELLECTUAL PROPERTY 23](#_Toc105765625)

[20. OWNERSHIP AND USE OF INFORMATION 24](#_Toc105765626)

[21. TAX COMPLIANCE 24](#_Toc105765627)

[22. BROAD-BASED BLACK ECONOMIC EMPOWERMENT 24](#_Toc105765628)

[23. ADDRESSES 25](#_Toc105765629)

[24. GENERAL 26](#_Toc105765630)

[25. DISENGAGEMENT ASSISTANCE 30](#_Toc105765644)

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, the words and expressions have the following meanings and similar expressions will have corresponding meanings:
      1. **“Agreement”** means all terms and conditions contained in this Agreement; all Annexures, Schedules and Addenda to this Agreement; as well as the terms and conditions of the Invitation to Bid document (RFP 02/2022) and the bid proposal submitted by the Service Provider, which is incorporated herein by way of reference.
      2. **“Applicable Law”** means any of the following to the extent applicable to the Service Provider and where applicable, to SARS or the Services-
2. Any statute, regulation, policy, by-law, ordinance or subordinate legislation;
3. The common law;
4. Any binding court order, judgment or decree;
5. Any applicable industry code of conduct, policy or standard enforceable by law; or
6. Any applicable direction, policy or order that is given by a regulatory authority;
   * 1. **“Authorised Representatives”** mean those signatories authorised by SARS and the Service Provider respectively to sign this Agreement;
     2. **“Business Day”** means any day other than a Saturday, Sunday or public holiday in South Africa;
     3. **“Commencement Date”** means 1 April 2023, notwithstanding the date of signing of this Agreement;
     4. **“Commercially Reasonable Efforts”** means taking such steps and performing in such a manner as a well-managed company would undertake where such company was acting in a prudent and reasonable manner to achieve the particular result for its own benefit, provided always that such steps are within the reasonable control of the Party;
     5. **“Confidential Information”** means, without limitation–
7. the details of the Services contemplated in this Agreement;
8. all confidential material of either Party;
9. pricing information relating to the Services contemplated in this Agreement;
10. the terms of this Agreement;
11. information or material proprietary to, or deemed proprietary to a Party;
12. information designated as confidential by the Parties after consultation;
13. information acquired by the other Party solely by virtue of the provision of the Services contemplated in this Agreement;
14. the trade secrets of the Parties;
15. information or technology in which either Party has Intellectual Property rights;
16. all medical information relating to a SARS employee or any family/household member of an employee, who is entitled to benefit from the employee assistance programme in terms of this Agreement; and
17. SARS confidential information and taxpayer information as defined in the Tax Administration Act, 2011 (Act No. 28 of 2011), as well as any other information considered confidential in terms of any other tax Act administered by the Commissioner for SARS;
18. the Personal Information of either Party or any subsidiary or associate of either Party;
19. any Personal Information or Special Personal Information of any other person which Personal Information or Special Personal Information is under the control of either Party.
    * 1. **“Intellectual Property”** means all computer programs, software, source code, object code, programme 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, database rights, user interface designs, benchmark data, architecture, utility models, Confidential Information, concepts and ideas of any nature (including of a technical, scientific, engineering, commercial, strategic, financial, marketing or organizational nature), inventions, discoveries, drawings, notes, research and research outcomes, 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 exist in any such items, and any other tangible or intangible items in which Intellectual Property rights may exist, as may occur anywhere in the world, and any applications for registration of such intellectual property, and includes all Intellectual Property rights in any of the foregoing;
      2. **“Key Account Manager”** means the Person appointed by the Service Provider who shall be responsible for the day to day management and operational matters relating to the delivery of Services and the resolution of any complaints, problems and/or disputes in terms of this Agreement;
      3. **“Key Personnel”** means those members of staff of the Service Provider who have been dedicated to the provision of the Services to SARS, and on the strength of whose expertise the Service Provider warrants the ability to provide the Services;
      4. **“Parties”** means SARS and the Service Provider and “Party” as the context requires, is a reference to any one of them;
      5. **“Processing”**, **“Personal Information”** and **“Special Personal Information”** shall have the meanings ascribed thereto in the Protection of Personal Information Act, 2013 (Act No. 4 of 2013) (“POPIA”);
      6. **“RFP 02/2022”** is, subject to any contrary indication, a reference to SARS’ invitation to prospective bidders to tender for the Services specified in RFP 02/2022 dated 15 June 2022, which is incorporated herein by reference thereto;
      7. **“SARS”** means the South African Revenue Service, an organ of state established in terms of the South African Revenue Service Act, 1997 (Act No. 34 of 1997), with its principal address at **Lehae La SARS, 299 Bronkhorst Street, Nieuw Muckleneuk, PRETORIA**;
      8. **“SARS Designated Representative”** means the SARS employee designated / appointed in terms of this Agreement, or his/her appointed delegate, as the Person who will interface with the Service Provider on all matters relating to the general administration of this Agreement, who will manage the overall performance of the Service Provider over the contract term and to whom all communications regarding this Agreement must be addressed;
      9. **“Service Provider”** means………………………………….., a company incorporated in accordance with the Laws of South Africa and with registration number …………………………………..;
      10. **“Services”** means the provision of Value-Added Tax (VAT) Refund Administration Services, as more fully set out in RFP 02/2022 and in clause 3 of this Agreement, including functions or responsibilities not specifically mentioned herein but which are reasonably and necessarily required for the proper performance and provision of the Services;
      11. **“Termination Date”** means 31 March 2028; and
      12. **“VAT”** means Value-Added Tax levied in terms of the Value-Added Tax Act, 1991 (Act No. 89 of 1991).
    1. Any reference in this Agreement to-
       1. a **“Clause”** shall, subject to any contrary indication, be construed as a reference to a clause hereof; and
       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.
    2. Unless inconsistent with the context or save where the contrary is expressly indicated-
       1. if any provision in a definition is a substantive provision conferring rights or imposing obligations on any party, notwithstanding that it appears only in the Interpretation 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 in writing;
       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.
    3. Unless inconsistent with the context, an expression which denotes:
       1. any one gender includes the other gender; and
       2. the singular includes the plural and *vice versa*;
    4. 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.
    5. The termination of this Agreement will not affect the provisions of this Agreement which operate after any such termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the Clauses themselves do not expressly provide for this.
    6. This Agreement is binding on the executors, administrators, trustees, permitted assigns or liquidators of the Parties as fully and effectually as if they had signed this Agreement in the first instance and reference to any Party is deemed to include such Party’s estate, heirs, executors, administrators, trustees, permitted assigns or liquidators, as the case may be.
    7. Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.

* 1. None of the provisions hereof shall be construed against or interpreted to the disadvantage of the Party responsible for the drafting or preparation of such provision.

1. **APPOINTMENT**
   1. SARS issued RFP 02/2022, inviting service providers to submit proposals to be appointed as a Value-Added Tax (VAT) Refund Administrator.
   2. The Service Provider has submitted a proposal to SARS in order to render the Services. SARS accepted the proposal and hereby appoints the Service Provider to provide the Services, which appointment the Service Provider accepts.
   3. The Service Provider will at all times perform the Services in accordance with this Agreement.
   4. The Service Provider represents that it has, and warrants that throughout the duration of this Agreement it shall have the resources, skills, qualifications and experience necessary to provide the Services.
2. **SERVICES**

The Service Provider shall provide the following Services at the prescribed International Airports listed in clause 3.6 below and any other place easily accessible to a qualifying purchaser. The Performance Standards and Penalties in respect of the Services listed below, are provided in **Annexure A** hereto:

* 1. **VAT Export Incentive Scheme Education / Awareness**
     1. Provide clarity to foreign qualifying purchasers about the South African VAT Export Incentive Scheme;
     2. Ensure that foreign qualifying purchasers are informed about the obligations and importance to comply with part one of the VAT Regulation; and
     3. Make it easy for foreign qualifying purchasers / traders to comply with part one of the Value Added Tax (VAT) Export Regulation No. R. 316, Government Gazette No. 37580.
  2. **Claims Management**
     1. Provide secondary inspection of invoices and goods at the three (3) Airports (OR Tambo International Airport, Cape Town International Airport and King Shaka International Airport);
     2. Receive all VAT-related claims from the qualifying claimants;
     3. Administer VAT Refund claims: Ensuring that such claims are accurate, valid, complete, and submitted timeously;
     4. Keep clear record of all the claims and claimants thereof;
     5. Ensure the traveller’s financial information is correctly captured and validated.
     6. Provide automation ability to capture and submit claims directly to SARS electronically in a secure electronic platform that can integrate with SARS’ document management systems and other prescribed related systems;
     7. Ensure automated validation of claimants’ credentials and identity; and
     8. Take responsibility for communicating the SARS Commissioner’s decision on the VAT refund claim application and pay the approved VAT amount to the claimant as per Part one (1) of the VAT Regulation no R316.
  3. **Document Management**
     1. Provide all required/requested documentary evidence to SARS for audit purposes; and
     2. Provide SARS with full details (and supporting documents) relating to all claimants on submission of VAT refund claims to SARS’ dedicated team.
  4. **Risk Management**
     1. Provide a robust and reliable (auditable) system upon which the administration of the VAT refunds is based;
     2. Implement risk-based analysis to detect potential unlawful / fraudulent claims; and
     3. Implement controls to identify and prevent the payment of refunds relating to invalid claims i.e. fraudulent, duplicated, and/or non-compliant with legislative and policy requirements.
  5. **Reporting**

The Service Provider shall submit monthly, quarterly, and annual reports on processed claims and payments detailing/ showing VAT refund claims submitted to the SARS VAT Export Incentive Scheme (“VEIS”) team including but not limited to:

* The VAT refund amount due to the Service Provider as per VAT refund claims received;
* The VAT refund amount due from the Service Provider for claims rejected after SARS’ verification of the claims;
* Refund amounts received from the Service Provider as a result of rejections;
* Payments made by SARS to the Service Provider;
* Payments made to the qualifying purchasers by the Service Provider;
* Number and value of electronic payments due to SARS;
* Number of re-issued electronic payments;
* Payments still not made to the qualifying purchasers; etc.
* Unpaid claims (Refunds that are not collected for three (3) months); and
* Provide a report on blocked claimants due to possible fraudulent claims.
* Where interest may accrue to the Service Provider on stale cheques / cards not claimed after three (3) months, such interest should be paid to SARS and must ensure the following:
  + Provide an external audit report annually at the Service Provider’s cost.
  + Reporting capability on the claims processed and payments made; and
  + The solution should be extendable to other ports of entry as SARS may from time to time introduce new ports of entry or close some.

* 1. **Location**

The Service Provider’s offices must be in the following Ports of Entry, but is not limited to:

### O.R Tambo International Airport;

### Cape Town International Airport; and

### King Shaka International Airport.

The Service Provider will be required to have accessible remote offices within the proximity of the boarders for all other designated Ports of exist to the following countries where qualifying purchasers will be able to submit VAT refund claims:

### Zimbabwe;

### Mozambique;

### Botswana;

### Namibia;

### Lesotho; and

### Swaziland (eSwatini).

* 1. **Turnaround Time**

### The Service Provider should ensure that the VAT refund claims comply with the following turnaround times:

* Movable goods are exported within ninety (90) calendar days from the Tax Invoice date.
* VAT Refund claim documents are submitted to the Service Provider, within ninety (90) calendar days from the export date.
* Fully complete VAT Refund claim documents are submitted to SARS’ dedicated team, within thirty (30) calendar days from receipt by the Service Provider.
* Once a VAT refund has been approved and paid by SARS’ dedicated team, the Service Provider should process payment to a qualifying purchaser within thirty (30) calendar days.
  1. **Training/ Workshop**

The Service Provider must provide training or a workshop (virtual, face to face or hybrid) to the SARS dedicated team on its automated VAT refund system.

1. **DURATION** 
   1. This Agreement commences on the Commencement Date and continues for a maximum period of sixty (60) months, until Termination Date, unless terminated earlier in terms of the provisions of this Agreement.
2. **SERVICE PROVIDER’S COMMISSION AND AUDIT RIGHTS** 
   1. The Service Provider’s commission will be …….% of the VAT inclusive amount per refund claim, in accordance with its Pricing Schedule submitted with its Bid proposal (**Annexure “B”** to the Bid proposal), subject to a minimum fee of R10.00 (Ten Rand) per claim and a maximum fee of R500.00 (Five Hundred Rand) per claim, in respect of goods exported from the Republic.

* 1. The Service Provider is not entitled to any other fee, commission or similar remuneration over and above the remuneration agreed to in clause 5.1 above.
  2. SARS will pay the Service Provider only after SARS’ dedicated team has confirmed that the VAT Refund claim conforms with Part One (1) of the Value Added Tax (VAT) Export Regulation, No. R. 316, Government Gazette No. 37580.
  3. The Service Provider consents to SARS conducting audits of its financial records, operating structures and systems including IT systems when required and undertakes to cooperate with SARS in an accountable and responsible manner and to provide SARS with such information as is reasonably required by SARS, including with regard to any disengagement assistance to any new service provider appointed after termination of this Agreement.
  4. If SARS disputes any invoiced amount (“the affected invoice”), then it shall, within 10 (ten) business days of receipt thereof, notify the Service Provider in writing, specifying the affected invoice, the particular disputed amount, and its reasons for such dispute. Such amounts shall not be regarded as ‘payable’ provided such dispute is *bona fide*. If the Parties are unable to resolve such dispute, it shall be referred for determination in accordance with the provisions of clause 17 hereunder.

1. **SERVICE PROVIDER’S OBLIGATIONS**
   1. The Service Provider shall-
      1. appoint a Key Account Manager;
      2. render the Services to SARS in accordance with this Agreement;
      3. ensure that its Key Personnel devote such time, attention and skill in performing the Services;
      4. comply with all other Applicable Law;
      5. render the Services to SARS in accordance with the highest professional standards;
      6. at all times during the term of this Agreement, observe and perform its duties and tasks and render the Services with due diligence, efficiency and economy and in a professional, independent, objective, equitable and fair manner, with due regard to the terms of this Agreement and any Applicable Law;
      7. take all reasonable precautions to preserve the integrity of the information obtained in the exercise of its obligations, and to prevent corruption, leakage or loss of such information in the performance of its obligations in terms of this Agreement; and
      8. attend all meetings arranged by SARS for the purpose of discussing or managing the Services.
2. **PERSONNEL AND PROJECT MANAGEMENT**
   1. The Service Provider will provide a Key Account Manager and SARS will provide a SARS Designated Representative.
   2. The Parties will inform each other in writing of the persons appointed as the Key Account Manager and SARS Designated Representative respectively, on the Commencement Date. If there is a need and a new SARS Designated Representative or Key Account Manager is appointed, the Parties will inform each other, in writing, within seven (7) days of such new appointment.
   3. In the event that the Key Account Manager takes leave or is unavailable for a period of more than twenty four (24) hours, the Service Provider undertakes to furnish SARS with the name of a person who is familiar with SARS’ account to act as Key Account Manager for the time being.
   4. SARS reserves the right in its sole and absolute discretion to do a security check (vetting) on the Service Provider’s staff involved with the performance of the Services.
   5. The Service Provider shall procure from its staff such documentation as may be reasonably requested by SARS, to enable SARS to conduct such security checks as aforementioned.
   6. Where SARS finds any of the Service Provider staff to be a security risk, SARS shall inform the Service Provider accordingly and the Service Provider shall immediately replace such person with a suitably qualified substitute. The Service Provider indemnifies SARS against any claims that may be brought by any Service Provider staff who may be affected as a result of SARS exercising its rights under this clause 7.6.

1. **SARS’ OBLIGATIONS**
   1. SARS undertakes to-
      1. nominate a SARS Designated Representative;
      2. if required by the Service Provider, promptly furnish the Service Provider with access to SARS personnel and any relevant information, which is necessary for the Service Provider to perform the Services in compliance with the terms and conditions of this Agreement; and
      3. comply as soon as reasonably possible with any reasonable requests made by the Service Provider in its performance of the Services under this Agreement.
2. **STEP IN RIGHTS**
   1. In addition to any other rights and remedies that it may have in terms of this Agreement or otherwise, including the right to terminate this Agreement, SARS may in its sole discretion elect to temporarily take over the Services as contemplated below, immediately upon SARS’ identification or the Service Provider’s notification of the occurrence of any event which SARS considers, in its sole discretion, to be an event which may affect the continuity of the Services.
   2. For purposes of this clause, SARS may (at its option), either itself or by the procurement of an alternate third party service provider, temporarily take over the provision of the Services until such time as SARS is able to make permanent alternate arrangements for the provision of the Services, which right shall apply for a period of no more than one hundred and eighty (180) days from the date that SARS temporarily takes over the provision of the Services. The Service Provider shall, upon the request of SARS, fully co-operate with and assist SARS during any such temporary take-over of the Services.
   3. To the extent that SARS exercises its right to assume the rendering of the Services or part thereof itself, or by a third party service provider, the Service Provider shall not be entitled to any fees and/or payment during the period for which SARS or the third party assumes the Services. SARS shall not, under any circumstances by virtue of any assumption, be obliged or deemed or required to take over or assume responsibility for the conduct of the Service Provider's business operations.
3. **WARRANTIES** 
   1. **General Warranties-**

The Service Provider represents and warrants that:

* + 1. It shall for the duration of this Agreement use adequate numbers of qualified staff who have suitable training, education, experience and skill to perform the Services;
    2. This Agreement has been duly authorised and executed by it and constitutes a legal, valid and binding set of obligations on it;
    3. It is acting as a principal and not as an agent of an undisclosed principal;
    4. It has the requisite insurance to cover any form of claim that may be instituted against it as a result of it executing this Agreement;
    5. It has the necessary resources, skills, capacity and experience to render the Services to SARS;
    6. No facts or circumstances exist that may materially affect its capacity to perform its obligations under this Agreement.
    7. It shall use and adopt any standards and processes required under this Agreement; and
    8. It shall provide the Services with promptness and diligence and in a professional manner.
  1. **Warranties relating to Service Provider’s authority-**

The Service Provider represents and warrants that it:

* + 1. Has all the necessary licences, certificates, authorisations and consents required under the laws of the Republic of South Africa or under any other applicable jurisdiction for the provision of the Services; and
    2. Shall comply with all legal requirements and with the terms and conditions of all licences, certificates, authorisations and consents required for the provision of the Services.
  1. **Product specific warranties-**

The Service Provider represents and warrants that it shall-

* + 1. Ensure that all equipment, tools, components and/or parts used, supplied and/or installed in connection with the Services comply with the highest industry standards; and
    2. Replace, within a reasonable period of time and at no additional cost to SARS, any and all defective equipment, tools, components and/or parts as aforementioned, provided that such defect appears within 12 (twelve) months of it being supplied and/or installed as such. For the purposes of this clause the word “defective” shall include, without limitation, a defect in material, design or workmanship.

* 1. **Regulatory requirements**

The Service Provider warrants that it is and shall remain for the duration of this Agreement, fully cognisant of and compliant with any relevant legislative or regulatory requirements and/or rulings or codes of practice of any competent authority or industry body that has jurisdiction over the provision of or is relevant to the Services under the Agreement. The Service Provider shall promptly identify and notify SARS of any relevant changes in law, legislative enactments and/or regulatory requirements and rulings or codes of any competent authority or industry body that may relate to or have an impact on the Service Provider’s provision of the Services. The Service Provider and SARS shall co-operate to identify the impact of such changes on the provision of the Services by the Service Provider. The Service Provider shall be responsible for any fines and penalties arising from any non-compliance with any law, legislative enactment or regulatory requirement, code or ruling of any competent authority or industry body relating to the delivery or use of the Services.

10.5 It is expressly agreed between the Parties that each warranty and representation given by the Service Provider in this Agreement is material and induced SARS to conclude this Agreement.

10.6 The provisions of this clause 10 shall survive the termination of this Agreement.

1. **LIABILITY OF THE PARTIES**
   1. The Service Provider shall be liable to SARS, where SARS has suffered any direct damages and/or losses which are attributable to the Service Provider’s failure to observe its obligations in terms of this Agreement.
   2. The Service Provider shall be liable to SARS for all indirect and consequential or special damages and/or losses suffered by SARS as a result of gross negligence, reckless acts or breach, attributable to the Service Provider or its personnel, of confidentiality provisions in this Agreement, breach of Applicable Laws, infringement of third party intellectual property rights or a criminal act committed by the Service Provider, its suppliers or personnel.

1. **INDEMNITIES**
   1. The Service Provider hereby indemnifies, holds harmless and agrees to defend SARS and its officers, employees, agents, successors and assigns, against all claims or losses arising from or in connection with, any of the following-
      1. Third party claims attributable to any breach of the provisions of this Agreement by the Service Provider;
      2. Third party claims attributable to theft, fraud or other unlawful activity or any negligent, wilful or fraudulent conduct by the Service Provider or its personnel and claims attributable to errors and/or omissions;
      3. Third party claims arising from or related to the death or bodily injury of any agent, employee, customer, business invitee, business visitor or other person caused by the delictual conduct of the Service Provider or its personnel; or
      4. Claims arising from damage to property owned or leased by SARS or belonging to a third party caused by the acts or omissions of the Service Provider or its personnel.

1. **BREACH**
   1. If a Party (the “Defaulting Party”) is in default or breach of any obligation which arises in terms of this Agreement and that Defaulting Party fails to remedy such default or breach within ten (10) Business Days after receipt of a written notice given by the other Party (the “Aggrieved Party”) calling upon the Defaulting Party to remedy such default or breach, then the Aggrieved Party may, without prejudice to any other rights which it may have in terms hereof or at law-

* + 1. claim specific performance;
    2. cancel this Agreement, such cancellation to be effective immediately on receipt by the Defaulting Party of a written notice to that effect; or
    3. claim any money due and payable in terms of this Agreement and claim damages from the Defaulting Party.
  1. The remedies set out in this Clause shall not be construed to be exhaustive of any other remedies available to the Parties.

1. **TERMINATION OF THE AGREEMENT**

* 1. **Termination for Cause**

* + 1. SARS may, by giving written notice to the Service Provider, terminate this Agreement, in whole or in part, as of a date set out in the notice of termination, in the event that the Service Provider-
       1. commits a material breach of this Agreement, which breach is not cured within ten (10) Business Days after notice of breach from SARS to the Service Provider;
       2. commits a material breach of this Agreement that is not capable of being cured within ten (10) Business Days; or
       3. commits numerous breaches of this Agreement that collectively constitute a material breach, even if cured.
    2. SARS may, upon written notice to the Service Provider, terminate this Agreement immediately if-
       1. the Service Provider commits an act of insolvency as contemplated in the Insolvency Act, 1936 (Act No. 24 of 1936);
       2. the Service Provider is placed in liquidation, whether provisionally or finally;
       3. the Service Provider is placed under business rescue as contemplated in Chapter 6 of the Companies Act, 2008 (Act No. 71 of 2008);
       4. the Service Provider makes any arrangement or compromise with its creditors generally or ceases to carry on business;

* + - 1. a final and unappealable judgment 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;
      2. the Service Provider is convicted of any offence which comprises an element of fraud or dishonesty; or
      3. the Service Provider undergoes a change of Control, “Control” meaning, with regard to any entity, the right or power to dictate the management of or to otherwise control such entity by-
         1. holding directly or indirectly the majority of the issued share capital or stock (or other ownership interest if not a corporation) of such entity ordinarily having voting rights;
         2. controlling the majority of the voting rights in such entity; or
         3. having the right to appoint or remove directors holding a majority of the voting rights at meetings of the board of directors of such entity.
  1. **Required Actions on Termination**
     1. Where this Agreement has been terminated–
        1. each Party shall return to the other immediately upon demand, or within such reasonable period as the Parties may agree upon all information, documentation, records, reports, software or other property that belong to the other Party, as well as all Confidential Information disclosed to it;
        2. the Service Provider shall render the necessary Disengagement Assistance to SARS, as more fully set out in clause 25;
        3. in the event of this Agreement being terminated, the Service Provider shall not be entitled to withhold any information, records or reports, or any assistance as set out in the clauses below that will be crucial to effect the immediate and seamless transition of the Services, and the Service Provider will retain only certain electronic records which it is legally required to retain;
        4. the information and documentation to be transferred to the new service provider will exclude proprietary software, which shall remain the sole and exclusive property of the Service Provider, but shall include all Confidential Information and Intellectual Property of SARS;
        5. SARS will ensure that all commission due and payable to the Service Provider by SARS as at the Termination Date, shall be paid to the Service Provider by no later than thirty (30) days following the Termination Date; and
        6. the Service Provider shall immediately cease to provide the Services, subject to clause 25 (Disengagement Assistance).
     2. Any termination of this Agreement pursuant to the provisions of this clause 14shall 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; and
     3. No SARS employee shall have any claim against the Service Provider because of the termination of the Services.

1. **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 a “*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* Event continues.
   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* Event give prompt written notice thereof to the other Party. Should a *Force Majeure* Event continue for a period of more than thirty (30) days, and then either Party has the right to cancel this Agreement.
2. **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 this Agreement.
   2. All personnel used by the Service Provider will be the Service Provider’s employees, subcontractors, or agents, and the entire management, direction, and control of all such persons will be and remain the responsibility of the Service Provider.
   3. Neither Party may under any circumstances, represent that it acts on behalf of the other Party, nor may it bind the other Party in any manner.

1. **DISPUTE RESOLUTION**
   1. In the event of any dispute arising out of or in connection with this Agreement, the Parties shall try to resolve the dispute by negotiation. This entails that the one Party invites the other in writing to a meeting and attempts to resolve the dispute within seven (7) days from date of the written invitation. If the dispute has not been resolved by such negotiation, the Parties shall submit the dispute to the Arbitration Foundation of Southern Africa (“AFSA”) administered mediation, failing which the dispute shall be determined as below.
   2. Save in respect of those provisions of this Agreement which provide for their own remedies which would be incompatible with arbitration, any dispute arising from, or in connection with, this Agreement will finally be resolved by arbitration in accordance with the Rules of AFSA or its successor, by an arbitrator or arbitrators appointed by AFSA.
   3. Neither Party shall be precluded from obtaining interim relief on an urgent basis or other conservatory relief from a court of competent jurisdiction pending the decision of the arbitrator.
   4. This clause 17will 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.
   5. 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. **CONFIDENTIAL INFORMATION** 
   1. Neither Party may, unless otherwise provided in this Agreement, disclose the other Party’s Confidential Information.
   2. Confidential Information shall not include any information which is generally available to the public or becomes known to a Party on a non-confidential basis, or to the extent that the information may be required to be disclosed in terms of any law.
   3. 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.

* 1. The Service Provider agrees that SARS’ Confidential Information will be used solely for the purpose of providing the Services, and that all of it will be kept secure by applying the same security measures thereto as those which the Service Provider uses to protect its own Confidential Information, provided that: the Confidential Information or any part of it may be disclosed to the Service Provider’s employees, subcontractors, agents and advisors on a “need to know” basis for the purpose of providing any aspect of the Services, it being understood that those employees, subcontractors, agents and advisors shall be informed by the Service Provider of the confidential nature of all such Confidential Information and shall be directed by the Service Provider to treat it confidentially.
  2. The Parties agree that all Confidential Information 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.
  3. 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 five (5) days of receipt of the threatened legal action. The Party shall together with the notice referred to above, deliver to the other Party all documentation received or submitted in connection with the threatened legal action.
  4. The Service Provider shall not remove from SARS’ premises any documents nor materials relating to the Services or SARS’ business without first obtaining the written consent of SARS.
  5. The provisions of this Clause shall survive the termination or cancellation of this Agreement for any reason whatsoever.
  6. Both Parties shall comply with all data protection legislation, including POPIA, in respect of the Processing of Personal Information and Special Personal Information.

1. **INTELLECTUAL PROPERTY**
   1. Neither Party shall acquire any rights, title or interest of any kind in any pre-existing Intellectual Property owned by the other Party. All Intellectual Property owned by a Party and all modifications made by it to that Intellectual Property, shall at all times remain the sole property of that Party. Unless specifically authorised in this Agreement or in writing by a Party and then only to the extent so authorised, the other Party shall have no right to use the first mentioned Party’s Intellectual Property in any manner, save for Clause 20below.

1. **OWNERSHIP AND USE OF INFORMATION**
   1. The Service Provider confirms that all records and reports pertaining to the Services to be rendered to SARS in terms of this Agreement will remain the sole property of SARS.
   2. At the request of SARS, and subject to Applicable Law, the Service Provider shall make available all records and reports pertaining to the Services within a reasonable period, but not exceeding seven (7) days from date of request, unless otherwise specified.
2. **TAX COMPLIANCE**
   1. The Service Provider represents and warrants that, as of the Commencement Date of this Agreement, the Service Provider is and will remain compliant throughout the duration thereof with all Applicable Laws relating to tax in South Africa.
   2. If the Service Provider fails to remain compliant as contemplated in clause 21.1 above, SARS may terminate this Agreement immediately. SARS will have no liability to the Service Provider with respect to such termination.
3. **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 B-BBEE Act) as amended from time to time, and the Codes of Good Practice issued in terms of the B-BBEE Act.
   3. Upon signature of this Agreement and one (1) month after the expiry of a current certificate for a particular year, the Service Provider shall provide SARS with a certified copy of its B-BBEE 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/or improve its current B-BBEE rating status.
   5. A failure to provide a certified copy of its B-BBEE rating status or a failure to comply with provisions of this Clause will entitle SARS to terminate this Agreement by giving the Service Provider one (1) month’s written notice.
4. **ADDRESSES**
   1. Each Party chooses the addresses set out below its name as its address 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’ physical address for *service of formal notices and legal processes*-

## Lehae La SARS

## Pretoria Head Office

## 299 Bronkhorst Street

## Nieuw Muckleneuk

## Pretoria

**0181**

* 1. SARS’ email address for communications and/or correspondences in connection with the performance of the Services: ………………………………….
  2. The Service Provider’s physical address for *service of formal notices and legal processes-*

**………………………………………**

**………………………………………**

**………………………………………**

**………………………………………**

**Email: ……………………………….**

**Marked for the attention of …………………………………….**

* 1. Any notice or communication required or permitted to be given to a Party pursuant to the provisions of this Agreement shall be valid and effective only if in writing and sent to a Party’s chosen address, provided that documents in legal proceedings in connection with this Agreement may only be served at a Party’s physical address*.*
  2. Any Party may by written notice to the other Parties, change its chosen address to another address, provided that-
     1. the change shall only become effective on the tenth (10th) Business Day after the receipt or deemed receipt of the notice by the addressee; and

* + 1. 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.*
  1. 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.
  2. Any notice to a Party in a correctly addressed envelope and which 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.
  3. The Parties record that whilst they may correspond via 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 or concluded via email.

1. **GENERAL**
   1. **NO ASSIGNMENT WITHOUT CONSENT**

Neither Party shall be entitled to assign, cede, sub-contract, delegate or in any other manner transfer any benefit, rights and/or obligations in terms of this Agreement, without the prior written consent of the other Party, which consent shall not be unreasonably withheld.

* 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, 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 Agreement shall be valid unless in writing and signed by an Authorised Representative/s 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 Representatives of both Parties.

* 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 laws 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 Agreement constitutes the whole of the Agreement between the Parties relating to the subject matter hereof and no amendment, alteration, addition, variation or consensual cancellation will be of any force or effect unless reduced to writing and signed by the Parties hereto or their duly Authorised Representatives. Any document executed by the Parties purporting to amend, substitute or revoke this Agreement or any part hereof, shall be titled an “Addendum” to the applicable Services 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 South Africa (Gauteng Division, Pretoria) in regard to all matters arising from this Agreement.

* 1. **SUBCONTRACTING**
     1. Subject to Applicable Law, the Service Provider shall not without the prior written consent of SARS, which consent shall not be unreasonably withheld, subcontract any of the Services required in terms of this Agreement to any third party. It is expressly recorded that SARS will not approve a proposed subcontracting if, in the exclusive judgment of SARS, the subcontracting will result in prejudice or potential prejudice to other service providers.
     2. Whenever the Service Provider wishes to subcontract any part of the Services in terms hereof, the Service Provider shall submit, together with its request as set out in clause 24.13.1 above,a complete written proposal for SARS’ approval containing-
        1. Full details and business references of the subcontractor;
        2. A full description of the part of the Services it proposes for subcontracting;
        3. Full details of how the Service Provider will manage the performance of the Services by the subcontractor;
        4. The value of the contract proposed to be subcontracted, expressed as a percentage;
        5. The B-BBEE status and certificate of the subcontractor; and
        6. Confirmation of tax compliance of the subcontractor.
     3. Notwithstanding the provisions of this clause 24.13, the Service Provider shall remain the only Party wholly responsible for the due performance of its obligations in terms of this Agreement and compliance with the terms and conditions thereof.
     4. Subject to the provisions of clause 24.13.1, the Service Provider shall ensure that a subcontracting agreement entered into between the Service Provider and the subcontractor binds the subcontractor to the terms and conditions of this Agreement.
     5. Nothing contained herein shall create a contractual relationship between SARS and the subcontractor.

1. **DISENGAGEMENT ASSISTANCE**
   1. The Parties hereby acknowledge that, notwithstanding the termination of this Agreement for any reason whatsoever, the immediate and seamless transition of the Services to an incoming service provider is imperative. To this extent and without any derogation to any claims sounding in money that the Service Provider may have or allege against SARS, the Service Provider shall not be entitled to withhold any information, records or reports, or any assistance as set out in the Clauses below that will be crucial to effect the immediate and seamless transition of the Services.
   2. For a period of twenty (20) Business Days after the expiry or termination of this Agreement for whatsoever reason or such earlier period as the Parties may agree, whichever is applicable and at SARS’ request, the Service Provider will provide SARS or SARS’ newly designated service provider such assistance as SARS may reasonably require to facilitate the immediate transition of the Services in as seamless a manner as possible (“Disengagement Assistance”).
   3. Without limiting the generality of the foregoing, the Service Provider shall deliver to SARS at no additional cost such information and documentation relating to the Services as SARS may reasonably request on a date specified by SARS.
   4. In the case of third party service providers used by the Service Provider to provide Services to SARS, the Service Provider shall use Commercially Reasonable Efforts to arrange for the provision of the Services by the third party to SARS under terms at least as favourable as those in the third party services contract.

**SIGNED AT PRETORIA** **ON THIS \_\_\_\_\_\_\_\_\_\_\_\_ DAY OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ 2022.**

|  |  |
| --- | --- |
| **As representatives for the South African Revenue Service:**  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Signature  Name:  Executive: Professional Services, Procurement  Date of signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Signature  Name:  Head:  Date of signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  |
| **SIGNED AT \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ON THIS \_\_\_\_\_\_\_\_ DAY OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ 2022.**  **As representative for the Service Provider:**  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Signature  Name:  Capacity:  Date of signature: |