**MASTER SERVICES AGREEMENT IN RESPECT OF THE APPOINTMENT OF LEGAL ADVISORS / ATTORNEYS TO THE SARS PANEL OF LEGAL SERVICE PROVIDERS**

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

**SERVICE PROVIDER**,a company incorporated in accordance with the laws of South Africa with registration number: 0000/000000/00

**(“Service Provider”)**

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### Interpretation

* 1. The headings in 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 this Master Services Agreement, including all Service Requests, annexures and/or schedules to this Agreement, as well as the Service Provider’s proposal to RFP 06/2016 attached as **Annexure C**;
     2. “**Attorney Tier**”means the tier applicable to a certain Legal Advisor / Attorney based on his/her number of years of relevant post-article experience and which will determine the maximum fees such Legal Advisor / Attorney may charge in terms of this Agreement:
* Tier 1: Trainees / Candidate Attorneys;
* Tier 2: Legal Advisors / Attorneys with 3 (three) years or less relevant post-article experience;
* Tier 3: Legal Advisors / Attorneys with more than 3 (three) years, but equal to or less than 7 (seven) years’ relevant post-article experience;
* Tier 4: Legal Advisors / Attorneys with more than 7 (seven) years but equal to or less than 15 (fifteen) years’ relevant post-article experience; and
* Tier 5: Legal Advisors / Attorneys with more than 15 (fifteen) years’ relevant post-article experience.
  + 1. “**Base Fees**”means the tariffs proposed by SARS in its Schedule of Proposed Tariffs, which is annexed to RFP 06/2016 as Annexure B;
    2. “**Business Day**” means any day other than a Saturday, Sunday or public holiday in the Republic of South Africa;
    3. “**Commencement Date**” means the date on which the Panel contemplated herein is appointed, irrespective of the date of the first Service Request;
    4. “**Commercially reasonable efforts**” means taking such steps and performing in such a manner as a well-managed firm / consultancy would undertake where such firm / consultancy 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. "**Deliverable**"means any output, outcome or result produced by the Service Provider for, or on behalf of, SARS as part of the Services pursuant to this Agreement;
    6. "**Key Personnel**" means those members of staff of the Service Provider listed as such in the Service Provider’s Proposal and 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;
    7. “**Legal Service Category**” means the different classes of law enumerated below, in which a Service Provider may be appointed to render the Services to SARS in terms of this Agreement:
* Category 1: Tax law;
* Category 2: Commercial law; Company law and Banking law;
* Category 3: Constitutional law; Administrative law and Public Procurement law;
* Category 4: Information Technology law and Intellectual Property law;
* Category 5: Customs and Excise law;
* Category 6: Property law and Insolvency law;
* Category 7: Labour law and Labour Dispute Resolution; and
* Category 8: General legal assistance (such as general litigation, damages claims, debt collection etc.)
  + 1. “**Master Services Agreement**" means the terms and conditions contained in this document, including any annexures hereto;
    2. “**Maximum percentage deviation**”means the pre-determined percentages allowed for deviation from the Base Fees in respect of each Attorney Tier, which maximum deviation must be calculated per line item:
* Tier 1: No deviation is allowed;
* Tier 2: A deviation of up to 30% of the Base Fees is allowed;
* Tier 3: A deviation of up to 40% of the Base Fees is allowed;
* Tier 4: A deviation of up to 50% of the Base Fees is allowed; and
* Tier 5: A deviation of up to 60% of the Base Fees is allowed.
  + 1. “**Parties**” means SARS and the Service Provider and “party” as the context requires, is a reference to any one of them;
    2. “**Pricing Schedule**” means the Service Provider’s Schedule of Tariffs attached hereto as **Annexure B**;
    3. “**RFP 06/2016**”, subject to any contrary indication, refers to SARS’s invitation to tender to be appointed to the SARS Panel of Legal Service Providers in order to provide legal assistance to SARS and is attached hereto as **Annexure A**;
    4. “**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**;
    5. “**SARS’s Designated Representative**” means any SARS official who is authorised to send a Service Request to the Service Provider;
    6. “**Service Provider**” means the law firm, consultancy or any other legal service provider appointed to the SARS’s Panel of Legal Service Providers;
    7. “**Service Request**” means a specific written request or instruction(s) issued, and signed on behalf of SARS by a designated representative to a Service Provider, directing the Service Provider to perform the Services in terms of this Agreement and which may include specific Deliverables to be provided by the Service Provider to SARS; and
    8. "**Services**" means the provision of legal services by the Service Provider to SARS in accordance with the Service Request or any amendments thereto.
  1. Any reference in this Agreement to:
     1. “**Clause**” shall, subject to any contrary indication, be construed as a reference to a Clause in this Agreement.
     2. “**Person**” refers to any person including juristic entities.
  2. Unless inconsistent with the context or save where the contrary is expressly indicated:
     1. if any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that it appears only in the definition Clause, effect shall be given to it as if it were a substantive provision of this Agreement;
     2. when any number of days is prescribed in this Agreement, such a period shall be computed by excluding the first and including the last day unless the last day falls on a day which is not a Business Day, in which case the last day shall be the next succeeding Business Day;
     3. no provision of this Agreement constitutes a stipulation for the benefit of any Person who is not a Party to this Agreement; and
     4. a reference to a Party includes that Party’s successors-in-title and permitted assigns, including any other persons contemplated in **Clause 1.8** of this Agreement.
  3. Unless inconsistent with the context, an expression which denotes:
     1. any one gender includes the other gender; and
     2. the singular includes the plural and *vice versa*.
  4. Unless it is clear from a specific Clause in which a term has been defined that such definition has limited application to the relevant Clause, any term defined within the context of any particular Clause in this Agreement shall bear the same meaning as ascribed to it throughout the Agreement, notwithstanding that that term has been defined in a specific Clause.
  5. The termination of this Agreement will not affect the provisions of this Agreement which operate after any such termination or which of necessity must continue to have effect after such termination, notwithstanding that the clauses themselves do not expressly provide for this.
  6. This Agreement is binding on the executors, administrators, trustees, permitted assigns or liquidators of the Parties as fully and effectually as if they had signed this Agreement in the first instance and reference to any Party is deemed to include such Party’s estate, heirs, executors, administrators, trustees, permitted assigns or liquidators, as the case may be.
  7. Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.
  8. None of the provisions hereof shall be construed against or interpreted to the disadvantage of the Party responsible for the drafting or preparation of such provision.

### Appointment

* 1. The Service Provider has submitted a proposal to SARS to render the Services set out in **Clause 4** below. SARS accepted the proposal and hereby appoints the Service Provider to the SARS Panel of Legal Service Providers, which appointment the Service Provider accepts.
  2. 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.
  3. In reliance on these statements and representations, SARS has selected and appointed the Service Provider to the SARS Panel of Legal Service Providers.
  4. The Service Provider will be utilised on an ad hoc basis, as and when required by SARS. SARS does not guarantee that the Service Provider will receive Service Requests during the period of this Agreement.
  5. In the event that the Service Provider merges with a firm, who is not on the SARS Panel of Legal Service Providers, the inclusion of such merged firm on the said panel will be subject to the written approval of SARS and such further conditions as prescribed by SARS.
  6. SARS reserves the right, should it be deemed necessary in SARS’s sole discretion, to send Service Requests to firms of attorneys or consultants who are not on the SARS Panel of Legal Service Providers during the term of this Agreement.

### Duration

* 1. This Agreement shall be deemed to have commenced on the Commencement Date and will endure for a period of forty eight (48) months

### Services

* 1. The Parties agree that the Service Provider has been appointed to render legal services to SARS in the following Legal Service Categories:
     1. …
     2. …
     3. …
  2. The Service Provider shall provide the Services utilising the requisite skills and expertise highlighted in the Service Provider’s proposal, and in accordance with the highest professional standards generally acceptable in the legal profession. In the event of any doubt regarding what constitutes generally acceptable standards, the Parties shall request a directive from the relevant regulatory authority.

### Approach to the Services

* 1. This Agreement provides a framework for, and the general terms and conditions applicable to, the Services that the Service Provider will provide to SARS under this Agreement.
  2. The provisions of this Agreement shall apply to each and every Service Request issued under this Agreement.
  3. The Service Provider will provide the Services to SARS, subject to the general terms and conditions contained in this Agreement, as well as subject to the specific terms and conditions set forth in the relevant Service Request.
  4. In the event of a conflict between the terms contained in this Agreement and a Service Request, the Service Request shall prevail.

### Service Requests

Each Service Request shall be in writing and shall:

* 1. Detail the Services requested by SARS from the Service Provider;
  2. Where necessary or feasible, contain the timeframe within which the Services must be performed;
  3. Indicate the applicable Attorney Tier, which according to SARS would be suitable to deal with the Service Request. Should a Service Provider choose to assign the instruction to a Legal Advisor / Attorney who falls in a higher tier, such Service Provider may not charge the higher fee unless SARS’s prior written consent is obtained. In the event that SARS fails or neglects to prescribe the applicable Attorney Tier, the Service Provider will in good faith appoint a Legal Advisor / Attorney with suitable experience and qualifications;
  4. Indicate whether or not any special conditions apply to the Service Request, such as approval for increased fees as provided for in **Clause 11.4 below**; and
  5. Contain the name and contact details of the SARS’s Designated Representative requesting the Services, as well as such Representative’s signature.

### Service Provider’s Undertakings and Obligations

* 1. The Service Provider undertakes to:
     1. provide SARS with a list of Key Personnel who shall be responsible for receiving Service Requests from SARS in respect of each of the Legal Service Categories in which it has been appointed. Such Key Personnel will be required to liaise with the SARS’s Designated Representative in respect of the performance of the Services;
     2. advise SARS in writing when a Legal Advisor / Attorney moves to a new Attorney Tier before such Legal Advisor / Attorney renders his/her next account to SARS;
     3. advise SARS in writing of any new Key Personnel or professional staff members appointed to attend to SARS’s instructions during the contract term. The Service Provider will further provide SARS with a short curriculum vitae, including the new appointee’s qualifications and skills as well as his/her applicable Attorney Tier. Such information will be provided to SARS prior to the new appointee commencing work on a SARS matter;
     4. charge fees for Services rendered to SARS in accordance with the Service Provider’s Pricing Schedule, which is attached as **Annexure B**;
     5. ensure that fees charged do not exceed the Maximum Percentage Deviation allowed in respect of each Attorney Tier (calculated per line item), as set out in SARS’s Schedule of Proposed Tariffs (see Annexure B to RFP 06/2016);
     6. ensure that it has the necessary SARS approval prior to charging fees in excess of the Maximum Percentage Deviation allowed, as provided for in **Clause 11.4 below**;
     7. carry out all Service Requests timeously, in a diligent manner and in good faith;
     8. refrain from acting in bad faith, which include:
        1. not assigning instructions and/or duties that can be attended to, or executed by junior staff members to senior Legal Advisors / Attorneys and then billing for such Services at senior staff members’ rates;
        2. assigning a single instruction to multiple Legal Advisors / Attorneys without any proper justification, such as the complexity or magnitude of a matter; and
        3. providing SARS with accounts that contain unrealistic time billing, taking into account the nature (i.e. relative simplicity) of the Services rendered.

In this regard the Service Provider acknowledges that the aforesaid transgressions (or any other acts of bad faith) may lead to SARS electing not to make further use of the services of the Service Provider.

* + 1. negotiate fees with advocates before briefs are finalised and not to appoint senior counsel unless specifically instructed to do so, in writing, by SARS;
    2. timeously inform SARS should the Service Provider disagree with the Attorney Tier prescribed by SARS in respect of a specific Service Request;
    3. provide SARS with feedback in the form of a Monthly Report, at no charge, setting out –
       1. all new Service Requests received from SARS during a particular month (listed by date);
       2. all historic matters still being attended to by the Service Provider on behalf of SARS (also listed by date);
       3. the SARS division/s where the instruction/s originated from;
       4. the name of the SARS’s Designated Representative who submitted the Service Request; and
       5. the name of the Legal Advisor / Attorney in charge of the day-to-day running of the matter.
    4. advise SARS, whenever applicable, whether or not any realistic prospects of success exist upon receipt of a Service Request;
    5. provide SARS with accurate and complete invoices, free from duplicated items and/or calculation errors;
    6. for the duration of this Agreement and for a period of five (5) years after the termination of this Agreement, maintain a complete audit trail of the Services performed under this Agreement, sufficient to permit a complete audit thereof. The Service Provider shall provide SARS and SARS’s auditors access at reasonable times to information, records and documentation relating to the Services for the purpose of performing audits, examinations and inspections in order to verify the Service Provider’s compliance with the terms of this Agreement and/or to enable SARS to comply with the requirements of any regulatory authority and/or regulators and governmental entities having jurisdiction. All costs incurred in performing audits under this clause will be borne by SARS, unless audit findings reveal the Service Provider’s non-compliance with the terms of this Agreement and/or requirements of a regulatory authority or similar institution having jurisdiction over SARS and/or the Service Provider;
    7. ensure that it performs security checks (vetting) on its Key Personnel and support staff involved with the performance of the Services, and immediately take steps to prevent any of its personnel found to be a security risk from performing the Services, which are the subject of this Agreement;
    8. immediately inform SARS if any of its employees involved in the rendering of the Services to SARS are suspended or struck from the roll of attorneys, found guilty of misconduct by the Service Provider or any regulatory authority, or found guilty of a criminal act by a court;
    9. ensure that it follows SARS’s applicable security policies and procedures for the duration of this Agreement; and
    10. comply with all legislation applicable to the Services.

### Service Levels

* 1. The Service Provider shall perform the Services promptly, in a diligent, professional and courteous manner. The Service Provider shall execute the Services in accordance with generally acceptable practices applicable to the legal profession, whilst at all times maintaining the highest professional standards.

* 1. Service Levels shall be agreed between the Service Provider and the SARS’s Designated Representative on a case by case basis and reduced to writing.

* 1. The Service Provider recognises that its failure to meet agreed Service Levels may have a material and adverse impact on the operations of SARS, which impact may result in SARS suffering damages in an amount not necessarily capable of precise determination. Accordingly, in the event that the Service Provider fails to meet any prescribed Service Levels, then in addition to all other remedies available to SARS in law, SARS may report the Service Provider to National Treasury and request that such Service Provider be placed on National Treasury’s List of Restricted Suppliers.
  2. The Service Provider shall be excused from failing to comply with any prescribed Service Levels to the extent that non-performance or delayed performance is due to the acts or omissions of a SARS official, or if it occurs as a result of a Force Majeure Event.

### Third Party Co-Operation

* 1. As part of the Services, where appropriate and when requested by SARS to do so, the Service Provider shall provide its full co-operation to any third party involved with, or contracted by SARS to assist with, a matter that forms the subject of a Service Request.
  2. It is, however, agreed that the relationship between the Service Provider and any third party will not constitute a partnership, and that neither the Service Provider nor the third party will be required to manage or monitor the other’s performance.
  3. Any complaints relating to a perceived lack of co-operation by the Service Provider from the third party must promptly be brought to SARS’s attention.

### SARS’s Rights and Obligations

* 1. SARS undertakes to:-
     1. 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. Issue Service Requests that contain clear and accurate instructions to the Service Provider in a timeous manner.

### Invoicing and Payment

* 1. All fees will be charged according to the Service Provider’s Pricing Schedule attached hereto as **Annexure B**. Fees are exclusive of VAT.
  2. Fees will be fixed for the Initial Period. Base Fees may be reviewed during a subsequent Renewal Period, at the sole discretion of SARS.
  3. The Service Provider’s fees may not exceed the pre-determined Maximum Percentage Deviation allowed, as applicable to the relevant Attorney Tier and calculated per line item.
  4. Fees above the Maximum Percentage Deviation allowed in any of the Attorney Tiers may be negotiated with SARS upfront, before a Service Request is accepted, and on a case by case basis in the following instances, namely where –
     1. instructions are received from SARS to attend to a very urgent matter on extremely short notice;
     2. instructions are received from SARS to attend to a highly complex matter; or
     3. the services of a specific, highly skilled attorney is requested by SARS (i.e. by name).

Approval of a Service Provider’s request for an increased fee will be subject to SARS’s sole discretion.

* 1. In the event that a court case is postponed by a Service Provider acting on behalf of SARS due to non-compliance with any procedural requirements, or due to a lack of preparation, the Service Provider shall bear the costs of the postponement and the amount thereof will not be recovered from SARS.
  2. The Service Provider shall render invoices to SARS on a regular basis, which intervals may not exceed one hundred and twenty (120) days. SARS shall not be obliged to pay invoices submitted for Services rendered more than one hundred and twenty (120) days prior to the date of the invoice.
  3. The invoice will include a detailed description of the Services rendered under the Service Request and time spent (where applicable), the name of the Legal Advisor / Attorney who performed the Services together with such Legal Advisor / Attorney’s applicable rates, as well as the total fees payable in respect of the Services.
  4. SARS will pay the invoiced amount within thirty (30) days of receipt of the invoice, unless SARS disputes any item on the invoice.
  5. In the event that SARS disputes an item on the invoice, SARS will do so by giving written notice to the Service Provider within fifteen (15) days of receipt of the invoice. The notice shall set out the disputed items on the invoice and the reasons therefore. The Parties shall endeavour to resolve the dispute amicably and as soon as possible.
  6. Where the dispute remains unresolved for a further fifteen (15) days after the dispute was first brought to the Service Provider’s attention, the dispute shall be dealt with in terms of the dispute resolution procedures set out in **Clause 23** of this Agreement.

### Intellectual Property Rights

* 1. Each Party will retain ownership of its existing intellectual property rights.
  2. All right, title and interest in and to literary works which may be created, written and/or presented by the Service Provider and or its agents and employees and which relate to the Services which are to be performed by the Service Provider in terms of this Agreement will however vest exclusively in SARS. To this end, the Service Provider irrevocably makes over and assigns to SARS all intellectual property rights which may come into existence which transfer, make over and assignment is accepted by SARS.
  3. In addition to the provisions of **Clause 12.2** above, the Service Provider waives the moral rights conferred upon the Service Provider as author by Section 20(1) of the Copyright Act, 1978 (Act No. 98 of 1978), as amended.

### Confidentiality

* 1. The Parties shall ensure that prior to commencing the performance of the Services all the Service Provider’s 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.
  2. 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, its agents and/or employees. This includes the knowledge acquired by the Service Provider, its agents and/or 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.
  3. For purposes of this Agreement, the expression “Confidential Information” shall include, but shall not be limited to SARS’s operating procedures, internal policies, manuals, computer infrastructure, hardware, software, methods and techniques, know-how, operating costs, as well as the names of service providers and/or potential service providers 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.
  4. The Service Provider further in particular undertakes to keep confidential all SARS Confidential Information, which shall have the meaning assigned to it in section 68 of the Tax Administration Act, 2011 (Act No. 28 of 2011) [hereinafter referred to as “TAACT”], as well as Taxpayer Information, which means any information provided by a taxpayer or obtained by SARS in respect of the taxpayer, including biometric information. In this regard the Service Provider is specifically referred to the Confidentiality of Information provisions contained in Chapter 6 of the TAACT.
  5. The Parties agree that no trade and/or business secrets, Confidential Information or methods of work supplied by the one Party to the other shall be disclosed to any third party, without first obtaining the written consent of the other Party.
  6. The Service Provider specifically acknowledges that all information relating to the Services, including and not limited to, literary works produced thereunder are of a sensitive nature and must be kept confidential. The Service Provider undertakes not to disclose such information without first obtaining the written consent of SARS.
  7. If the Service Provider is uncertain about whether information is to be treated as confidential in terms of this Clause, it shall be obliged to treat it as such until advised otherwise, in writing, by SARS.
  8. The Service Provider will protect the interests of SARS in its Confidential Information by :
     1. making available such Confidential Information only to those of its personnel who are actively involved in the execution of its obligations under this Agreement and then only on a “need to know” basis;
     2. putting in place internal security procedures reasonably acceptable to SARS to prevent unauthorised disclosure and taking all practical steps to impress upon those personnel who need to be given access to Confidential Information, the secret and confidential nature thereof;
     3. not using any Confidential Information of SARS, or disclosing directly or indirectly any Confidential Information of SARS to third parties, whether during this Agreement or thereafter; and
     4. ensuring that all Confidential Information of SARS which has or will come into the possession of the Service Provider and its personnel, will at all times remain the sole and absolute property of SARS.
  9. Confidential Information shall not include information that:
     1. is lawfully in the public domain at the time of disclosure;
     2. subsequently and lawfully becomes part of the public domain by publication or otherwise;
     3. subsequently becomes available to a Party from a source other than the disclosing Party, which source is lawfully entitled without any restriction on disclosure to disclose such Confidential Information;
     4. is disclosed pursuant to a requirement or request by operation of law, regulation or court order;
     5. is independently developed or learned by a receiving Party without reference to or use of the Confidential Information of the other Party; and/or
     6. is disclosed by the receiving Party with the disclosing Party’s prior written approval.
  10. The provisions of this Clause shall survive the termination or cancellation of this Agreement for any reason whatsoever.

### Liability of the Parties

* 1. A Party shall be liable to the other Party for any direct 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. 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 a breach of **Clause 13** above, infringement of third party intellectual property rights, or any criminal act committed by the Service Provider or its employees.
  3. The Service Provider shall be liable for any negligent or wrongful acts relating to the Services, including fraud or unlawful activity, committed by any of its personnel.

### Indemnity

* 1. The Service Provider shall indemnify and hold SARS harmless against all losses, claims, demands, proceedings, damages, costs, charges and expenses (including reasonable legal expenses) of whatsoever nature arising out of 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 property occurring by reason of the Service Provider, its employees or agents’ wilful conduct or negligence during or after the execution of the Services.

### Insurance

* 1. The Service Provider shall-
     1. in the case of an Attorney, on or before the Commencement Date and for the duration of this Agreement be in possession of a valid, current fidelity fund certificate which provides for adequate professional indemnity insurance to cover any claims, losses and/or damages for which it may be liable in terms of this Agreement;
     2. in the case of a Legal Advisor, on or before the Commencement Date and for the duration of this Agreement have and maintain a professional indemnity insurance policy to cover any claims, losses and/or damages for which it may be liable in terms of this Agreement;
     3. at SARS’s request and within two (2) days of such request, provide SARS with a copy of a fidelity fund certificate in the case of an Attorney, or a copy of an insurance policy in the case of a Legal Advisor; and
     4. in the case of an Attorney, take out additional indemnity cover from a third party other than the Law Society, or in the case of a Legal Advisor, agree to increase the amount of cover provided for in the applicable insurance policy, upon reasonable request from SARS.

### Warranties

* 1. The Service Provider hereby represents and warrants to SARS that-
     1. this Agreement has been duly authorised and executed by it and constitutes a legal, valid and binding set of obligations on it;
     2. it is acting as a principal and not as an agent of an undisclosed principal;
     3. the execution and performance of the terms and conditions of this Agreement does not constitute a violation of any statute, judgment, order, decree or regulation or rule of any court, competent authority or arbitrator or competent jurisdiction applicable or relating to the Service Provider, its assets or its business, or its memorandum of incorporation or any other documents or any binding obligation, contract or agreement to which it is a party or by which it or its assets are bound;
     4. it will provide the Services in a cost-effective manner, thereby ensuring that no unnecessary or extraordinary costs are incurred and passed on to SARS;
     5. it has the requisite insurance to cover professional liability claims that may be instituted against it;
     6. it has the necessary resources, skills and experience to render the Service to SARS; and

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.

* 1. The provisions of this Clause shall survive the termination of this Agreement.

### Breach

* 1. A Party (the "Aggrieved Party") may terminate this Agreement with immediate effect if:

* + 1. the other Party (the "Defaulting Party") commits a material breach of this Agreement and fails to remedy such breach within 10 (ten) Business Days (the "Notice Period") of being notified of the breach and, if the Aggrieved Party so elects, the steps required to remedy such breach.
    2. For the purposes of **Clause** **18.1.1**, a breach will be deemed to be a material breach if  ‑
       1. it is capable of being remedied, but is not so remedied within the Notice Period; or
       2. it is incapable of being remedied within the Notice Period; or
       3. if payment in money will compensate for such breach, but payment is not made within the Notice Period; or
       4. the Service Provider commits numerous, repeated breaches even if cured; or
       5. at any time, SARS experiences non-performance, alternatively mal-performance from the Service Provider relating to the execution of it duties and obligations in terms of this Agreement.

### Termination for Cause

* 1. SARS may, by giving 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 commits a material breach of this Agreement or:

* + 1. is placed under voluntary or compulsory liquidation (whether provisional or final) or business rescue proceedings are commenced against the Service Provider; and/or
    2. commits any of the acts of insolvency set out in section 8 of the Insolvency Act, 1936 (Act No. 24 of 1936).
  1. SARS may terminate this Agreement, in whole or in part, in the event that SARS is unable to obtain funding to procure the Services.

### Termination for Convenience

* 1. SARS may terminate this Agreement in whole or in part for convenience and without cause at any time by giving the Service Provider at least 30 (thirty) days prior written notice. SARS will be obliged to pay the Service Provider’s professional fees for Services rendered up to the date of the termination of this Agreement.

### Force Majeure

* 1. In the event of any act beyond the control of the Parties, strike, war, rebellion, riot, civil commotion, lockout, 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 which fell due before the said force majeure).
  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 a force majeure event continue for a period of more than thirty (30) days, then either Party has the right to cancel this Agreement.
  4. Any strike, lock-out, interference by trade unions, suspension of labour or other industrial action directly related to a Party as employer and which could have been avoided by steps which such Party might reasonably have been expected to take acting as a reasonable prudent employer, does not constitute a force majeure event.

### 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.

### 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 its obligations in terms of this Agreement pending the settlement of, or decision in, any dispute arising between the Parties. Each Party shall, in such circumstances, continue to comply with its obligations in terms of this Agreement.

### Addresses

* 1. Each Party chooses the addresses set out below its name 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. **Chief Officer: Legal Counsel**

**299 Bronkhorst Street**

**Block A, Le Hae La SARS**

**Nieuw Muckleneuk**

**PRETORIA**

* 1. The Service Provider‘s physical address for ***service of notices and legal processes*** shall be as follows:

…

…

…

* 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.
  2. Any Party may by written notice to the other Party, 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.*
  3. 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.
  4. Any notice to a Party in a correctly addressed envelope and which is delivered by hand to a Party’s chosen address shall be deemed to have been received on the day of delivery, unless the contrary is proved.

### 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 (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 Agreement shall be valid unless in writing and signed on behalf 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. **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 them without delay.

* 1. **Applicable Law** **and Jurisdiction**
     1. 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.
     2. The Parties hereby irrevocably and unconditionally consent to the non-exclusive jurisdiction of the North Gauteng High Court, Pretoria in regard to all matters arising from this Agreement.
  2. **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 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.

### Broad-Based Black Economic Empowerment ("BBBEE")

* 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 BEE rating status from an agency accredited by the South African National Accreditation System (“SANAS”) or the Independent Regulatory Board of Auditors (“IRBA”).
  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 BEE rating status.
  5. A failure to provide a certified copy of its BEE 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.

### Tax 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.
  2. If SARS becomes aware of any non-compliance by the Service Provider and such non-compliance is not remedied within sixty (60) days after SARS has given notice to this effect, such non-compliance shall be deemed to constitute a material breach of this Agreement by the Service Provider and SARS shall be entitled to terminate the Agreement forthwith.
  3. The Service Provider further warrants that it 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. Should the Service Provider fail to provide such certificate within twenty one (21) days of the contract anniversary date, SARS may terminate the Agreement on 30 (thirty) days' notice. SARS shall have no liability to the Service Provider with respect to a termination under this Clause.

### Ethical Business Practices

* 1. SARS has a policy of zero tolerance regarding corrupt activities. The Service Provider will promptly report to SARS and the relevant authorities any suspicion of corruption on the part of their personnel, as well as any behaviour by any of those persons that is likely to constitute a contravention of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004).
  2. Neither Party will offer, promise or make any gift, payment, loan, reward, inducement benefit or other advantage to any of the other Party's personnel.
  3. If the results of any audit of the Services conducted by or on behalf of SARS indicates the possibility of corrupt activities, improper or fraudulent practices or theft, SARS will, after allowing the Service Provider reasonable opportunity to investigate that possibility, have the right either by itself, or by its agents, or by requesting the police, to investigate all the relevant circumstances, to question any relevant personnel of the Service Provider or a third party and the Service Provider will use all reasonable efforts to facilitate any such investigation or enquiry. In the event that an act of corruption, fraud or theft is proven, SARS will be entitled, on written notice to the Service Provider, to immediately terminate this Agreement

### Disengagement Assistance

### 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 alternate service provider is imperative. To this extent and without any derogation to any claims sounding in money, which either Party may have or allege against the other Party, the Service Provider shall not be entitled to withhold any information, files, records or reports, or any assistance as required that will be crucial to effect the immediate and seamless transition of the Services.

### For a period of one (1) month after the expiry or termination of this Agreement for whatsoever reason, or such earlier period as the Parties may agree, the Service Provider will provide SARS or SARS’s 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”).

### The Service Provider undertakes to use its best endeavours to ensure that all files and records are complete, up to date and adhere to professional quality standards, failing which SARS reserves the right to demand that the Service Provider brings the files, records and/or reports up to standard.

### SARS or its newly designated service provider shall have the option exercisable on a contract by contract basis to assume contracts for any Services provided by third parties to the Service Provider and used exclusively by the Service Provider to provide the Services to SARS.

### 29.5 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 service contract.

### Conflict of Interest

* 1. The Service Provider undertakes to immediately notify SARS in the event that a conflict of interest is identified, pursuant to a Service Request being received from SARS.
  2. The Service Provider further warrants that it will not disclose any Confidential Information it obtained in rendering the Services to SARS to any client or third party.

**As Authorised Representatives for the South African Revenue Service:**

**SIGNED AT PRETORIA**

|  |  |
| --- | --- |
| 1. **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**     **Group Executive/Senior Manager:**  **Corporate Legal Services**  **Date of signature:** | 1. **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**     **Senior Manager: Procurement**  **Date of signature:** |

**As Authorised Representative for the Service Provider:**

**SIGNED AT \_\_\_\_\_\_\_\_\_\_\_\_ ON THIS \_\_\_\_\_\_\_\_ DAY OF \_\_\_\_\_\_\_ 20\_\_.**

|  |
| --- |
| **SIGNATURE:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**  **FULL NAMES AND SURNAME:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**  **CAPACITY:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** |