

**SERVICES AGREEMENT IN RESPECT OF THE PROVISION OF MEDIA BULK
BUYING, MEDIA PLANNING AND RELATED SERVICES**

Between

SOUTH AFRICAN REVENUE SERVICE

An Organ of State established in terms of section 2 of the South African Revenue
Service Act, 1997 (Act No. 34 of 1997)

(hereinafter referred to as "**SARS**")

and

...

THE SERVICE PROVIDER, a ... in accordance with the laws of South Africa
(Registration No:....)

(herein represented by its authorised representative who warrants that s/he is duly
authorised to do so)

(hereinafter referred to as "**the Service Provider**")

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1. INTRODUCTION

- 1.1 SARS invited proposals for the appointment of a Service Provider for the provision of media bulk buying, media planning and related services through Request for Proposal No. 10/2025 (“**RFP**”), as more fully described therein.
- 1.2 The Service Provider submitted a proposal in response to the RFP (“**Proposal**”).
- 1.3 SARS accepted the Proposal and appointed the Service Provider to provide the Services.
- 1.4 SARS will engage the Services on an *ad hoc*, as and when required basis;
- 1.5 The Service Provider has accepted the appointment, and the Parties herein record the terms and conditions of their agreement.

2. DEFINITIONS AND INTERPRETATION

- 2.1 The headings to the clauses in this Agreement are for reference purposes only and will not govern or affect the interpretation of or modify or amplify the terms in this Agreement.
- 2.2 Unless inconsistent with the context, the words and expressions have the following meanings and similar expressions will have corresponding meanings:
 - 2.2.1 “**Amount at Risk**” means a maximum of twenty percent (20 %) of the Service Provider’s total invoice in respect of any Service Request, which will be exposed to penalty assessment by SARS should any Service Level Failure occur: Provided that the amount is limited to the Service Provider’s Commission and excludes pass through costs;

- 2.2.2 **“Agreement”** means this Services Agreement, the RFP, and all annexures hereto. Also included are all amendments, variations, and/or substitutions to the Agreement, which have been reduced to writing and signed by the Authorised Signatories;
- 2.2.3 **“Applicable Law”** means any of the following to the extent applicable to the Service Provider and where applicable, to SARS or the Services-
- 2.2.3.1 Any original or subordinate legislation;
 - 2.2.3.2 The common law;
 - 2.2.3.3 Any binding court order, judgment or decree;
 - 2.2.3.4 Any applicable industry code of conduct, policy or standard enforceable by law; or
 - 2.2.3.5 Any direction, policy or order that is given by a Regulatory Authority;
- 2.2.4 **“Authorised Signatory”** means a signatory authorised by SARS and the Service Provider respectively to sign the Agreement, any amendments and/or addenda hereto;
- 2.2.5 **“Business Continuity Plan”** means the plan contemplated as such in the RFP;
- 2.2.6 **“Business Day”** means any day other than a Saturday, Sunday or public holiday in South Africa;
- 2.2.7 **“Commencement Date”** is ... **2025**, notwithstanding the date of signature of this Agreement;

2.2.8 **“Commercially Reasonable Efforts”** means taking such steps and performing in such a manner as a well-managed entity would where such entity 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;

2.2.9 **“Confidential Information”** means Personal Information and Special Personal Information defined as such in terms of POPIA; any proprietary or confidential information or data of any nature, tangible or intangible, oral or in writing, in any form or on any medium, whether received by direct communication or observation by the receiving party. It includes SARS Confidential Information and Taxpayer Information as defined in Chapter 6 of the Tax Administration Act, 2011 (Act No. 28 of 2011), as well as any information required to be kept confidential in terms of any other Applicable Law;

Information must be regarded as confidential if by its nature, content, or circumstances of disclosure of the information is, or ought reasonably to have been identified by a receiving party as such by reason of such information not being generally known to, or readily ascertainable by third parties generally. Such information includes-

- (a) information regarding Personnel, independent contractors and suppliers of the Disclosing Party, processes, procedures, projections, manuals, forecasts and analyses, security or intellectual property owned by or licensed to the Disclosing Party;
- (b) information relating to the knowledge, know-how, expertise, trade secrets and activities of the Disclosing Party;

- (c) information relating to the Services and any aspect thereof; and
- (d) any information which a Party (without creating a presumption that only so designated information is confidential), acting reasonably, may designate in writing, at the time of disclosure to the Receiving Party, as being confidential information;

2.2.10 **“Deliverables”** means any report, results, documented analysis, strategy, findings, recommendations, presentation, plan, product, and other feedback contemplated in the RFP, produced / provided by the Service Provider for, or on behalf of SARS as part of the Services;

2.2.11 **“Designated Representative”** means the SARS employee designated 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, and who will manage the overall performance of the Service Provider over the contract term and to whom all SARS directed communication regarding this Agreement must be addressed;

2.2.12 **“Intellectual Property”** means any rights associated with works of authorship, including, works protected under the Copyright Act, 1978 (Act No. 98 of 1978), video recordings, audio recordings, photographs, models, designs, samples, substances, trade secrets, formulae, know-how, show-how, moral rights, and mask works; methodologies, technologies, algorithms, techniques, methods, circuit layouts, plans, reports, data, concepts and ideas of any nature (including of a technical, scientific, engineering, commercial, strategic, financial, marketing or organisational nature), inventions, discoveries, drawings, notes, manuals, documentation, training materials, job aids, trademarks, service marks, slogans, corporate,

business and trade names, domain names, trade dress, brand names and other indicia of origin, regardless of whether Intellectual Property Rights actually inhere in any such items, and any other tangible or intangible items in which Intellectual Property Rights may inhere, as may exist anywhere in the world and any applications for registration of such Intellectual Property, and includes all Intellectual Property Rights in any of the foregoing;

2.2.13 **“Intellectual Property Rights”** means all rights of whatever nature and however described in respect of Intellectual Property, including:

2.2.13.1 all patents and other patent rights, including divisional and continuation patents, utility models;

2.2.13.2 rights in and to inventions, whether patentable or not;

2.2.13.3 rights in trademarks, service marks, logos, slogans, corporate, business and trade names, trade dress, brand names and other indicia of origin;

2.2.13.4 rights in designs, topography rights, rights in circuit layouts and mask-works;

2.2.13.5 copyright, including all copyright in and to computer programs;

2.2.13.6 rights in internet domain names, reservations for internet domain names, uniform resource locators and corresponding internet sites;

2.2.13.7 rights in databases and data collections; and

2.2.13.8 know-how, show-how and trade secrets, in each case whether or not registered and including applications for the registration, extension, renewal and re-issuance, continuations in part or divisions of, any of these and

the right to apply for any of the foregoing, all claims for past infringements, and all rights or forms of protection of a similar nature or having equivalent or similar effect to any of these which may subsist anywhere in the world;

- 2.2.14 **“Key Accounts Manager”** means a member of the Key Personnel designated as such by the Service Provider, as contemplated in the RFP, responsible for the oversight and overall management of this Agreement on behalf of the Service Provider; who shall also act as central point of contact between SARS and the Service Provider;
- 2.2.15 **“Key Personnel”** means members of staff of the Service Provider and/or its agents who have been presented to SARS in the Proposal and assigned by the Service Provider to provide the Services to SARS, and on the strength of whose expertise the Service Provider warrants the ability to provide the Services;
- 2.2.16 **“Losses”** means all losses, liabilities, costs, expenses, fines, penalties, damages and claims, and all related costs and expenses as determined in Law;
- 2.2.17 **“Parties”** means SARS and the Service Provider and “party” as the context requires, is a reference to any one of them;
- 2.2.18 **“Personal Information”** means Personal Information as defined in POPIA, relative to the Services and this Agreement; and for the purpose of this Agreement, reference to Personal Information includes Special Personal Information as defined in POPIA;
- 2.2.19 **“Personal Information Processing Addendum”** means **Annexure B** hereto, which represents the written agreement between a Responsible Party and Operator contemplated in section 21 of POPIA;

- 2.2.20 **“Pre-commencement phase”** means the period contemplated in paragraph 1.3.9 of Annexure A to the main RFP document;
- 2.2.21 **“POPIA”** means the Protection of Personal Information Act, 2013 (Act No. 4 of 2013);
- 2.2.22 **“Regulatory Authority”** means any Organ of State, government agency or institution, Statutory Body, International Body or Organisation which has–
- 2.2.22.1 jurisdiction over the Services or parts thereof; or
- 2.2.22.2 administrative or oversight responsibility pertaining to any Applicable Law;
- 2.2.23 **“RFP”** means SARS’ invitation pack to service providers to submit proposals for the provision of media bulk buying, media planning and related services with reference number RFP 10/2025 and all annexures attached thereto, dated 4 July 2025 which is incorporated herein by reference;
- 2.2.24 **“SARS”** means the South African Revenue Service, an Organ of State 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;
- 2.2.25 **“Services”** means the provision by the Service Provider to SARS of media bulk buying, media planning and related services as contemplated in the RFP, including functions or responsibilities not specifically mentioned therein but which are reasonably and necessarily required for the proper and complete execution of the Services;
- 2.2.26 **“Service Level”** means the minimum performance standard that the Service Provider must adhere to when executing a Service

Request, as stipulated in the RFP and as may be stipulated in a Service Request;

2.2.27 **“Service Level Failure”** means the Service Provider’s failure to meet any of the Service Levels;

2.2.28 **“Service Provider”** means..., a ... incorporated as such in accordance with the Laws of South Africa with registration number ... and with its principal place of business at;

2.2.29 **“Service Provider’s Personnel”** means Key Personnel, as well as personnel assigned by the Service Provider to the provision of the Services and also includes, for the purpose of this Agreement, the Service Provider’s subcontractors and third-party suppliers who may be involved in the execution of this Agreement;

2.2.30 **“Service Request”** means a specific written service instruction issued by SARS to the Service Provider to render the Services or part thereof;

2.2.31 **“Termination Date”** is ... **2029**; and

2.2.32 **“VAT”** shall mean Value-Added Tax as levied in accordance with the provisions of the Value-Added Tax Act, 1991 (Act No. 89 of 1991).

2.3 Any reference in this Agreement to-

2.3.1 A clause shall, subject to any contrary indication, mean reference to a clause in this Agreement; and

2.3.2 A person refers to any person including juristic entities.

2.4 Unless inconsistent with the context or save where the contrary is expressly indicated-

- 2.4.1 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 Definitions and Interpretation clause, effect shall be given to it as if it was a substantive provision of this Agreement; and
- 2.4.2 When any number of days is prescribed in this Agreement, same shall be calculated exclusively of the first and inclusively of the last day unless the latter falls on a day which is not a Business Day, in which case the last day shall be the next Business Day.
- 2.5 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 will be the subsequent Business Day.
- 2.6 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.
- 2.7 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.
- 2.8 No provision of this Agreement shall be construed to provide a benefit to any person who is not a party to this Agreement.
- 2.9 References to day/s, month/s or year/s shall be construed as calendar day/s, month/s or year/s.
- 2.10 Reference to a Party includes that Party's successor-in-title and permitted assigns.
- 2.11 Unless inconsistent with the context, an expression which denotes-

2.11.1 Any one gender, includes the other gender; and

2.11.2 The singular, includes the plural and *vice versa*.

2.12 The termination of this Agreement will not affect the provisions which are intended to 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.

2.13 The Agreement is fully 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.

2.14 Where figures are referred to in numerals and in words, and there is a conflict between the two, the words shall prevail.

2.15 The provisions of this Agreement shall not be construed against or interpreted to the disadvantage of the Party responsible for the drafting or preparation of such provisions.

3. DURATION

3.1 This Agreement commences on Commencement Date, and subsists until Termination Date, unless terminated earlier in accordance with the terms of this Agreement.

4. PRE-COMMENCEMENT PHASE OBLIGATIONS OF THE SERVICE PROVIDER

4.1. Compliance with Agreement during Pre-commencement phase

The Services will commence on Commencement Date, subject to Clause 5 below. However, the RFP makes provision for a Pre-commencement phase, for purposes contemplated in clause 1.3.9 of Annexure 1 to the RFP. During this phase, SARS may, either on its own or through the medium of another supplier, transfer or cause to be transferred to the Service Provider certain Confidential Information, as may be necessary to facilitate pertinent activities during the Pre-commencement phase. To this end, the Service Provider must, during the Pre-commencement phase, comply with the confidentiality provisions of this Agreement, as well as the **Personal Information Processing Addendum** in particular, to ensure compliance with Applicable Law.

4.2. The provisions of **clause 4.1** above are meant solely to preserve compliance with Applicable Law, and must not to be interpreted as an extension of the Agreement, or a broadening of the scope thereof.

4.3. No fee will be paid by SARS for any activity undertaken by the Service Provider during the Pre-commencement phase.

5. ENGAGEMENT MODEL

5.1 SARS may, from time to time and as and when needed, issue a Service Request to the Service Provider, to perform the Services outlined in the Service Request.

5.2 As contemplated in the RFP and **Annexure A**, the spend commitment for the contract years following the first anniversary of this Agreement will be disclosed by SARS to the Service Provider annually, at least three (3) months prior to the anniversary of the Agreement, whereupon the Parties will meet and negotiate the rate of commission payable to the Service Provider in terms of this Agreement: Provided that such review shall be subject to consideration and approval by SARS in terms of the SARS Procurement Processes.

- 5.2.1 In the event the Parties fail to reach an agreement regarding the rate of Commission payable to the Service Provider by SARS in any period subsequent to the first year of the Agreement as contemplated in **Clause 5.2** above, either Party may, on ninety (90) days' written notice to the other, terminate this Agreement, which shall then be automatically terminated at the end of the said ninety (90) day period: Provided that should the Parties reach an agreement during the ninety (90) day notice period, the notice of termination shall be deemed to be rescinded, and the Agreement will remain valid and effective. None of the Parties shall have any claim against the other arising out of the operation of this Clause, including but not limited to claims based on termination, delays, lost profits, or loss of opportunity.
- 5.3 This Agreement provides a framework for, and the general terms and conditions applicable to the Services.
- 5.4 The provisions of this Agreement shall apply to each and every Service Request.
- 5.5 The Service Provider will provide the Services to SARS subject to the terms and conditions of this Agreement generally, and in particular, subject to the specifications set forth in the relevant Service Request.
- 5.6 Each Service Request shall be in writing and conform to the following minimum requirements-
- 5.6.1 Details and specifications of the Services requested from the Service Provider;
- 5.6.2 The timeframe within which the Services must be performed, together with the requisite Deliverables;
- 5.6.3 Nature of reporting and frequency thereof;
- 5.6.4 The Service Levels, including turn-around times applicable to

the Services procured in terms of the Service Request and the corresponding Service Level Failure penalties;

5.6.5 The budget for the Services;

5.6.6 The name/s and signatures of the SARS Designated Representative: Provided that compliance with the applicable SARS Delegation of Authority Framework must, in addition, be observed; and

5.6.7 Any additional provisions which may be pertinent to the specific Service Request.

5.7 The Service Request must be accepted by the Service Provider in writing before execution.

5.8 The Service Provider may not execute any of the Services without a duly issued, signed and accepted Service Request and subsequent Purchase Order. For this purpose, it is expressly recorded that the Service Provider shall not have any right of recourse or claim against SARS, whether financial or otherwise, as a result of any Services rendered or work done without the abovementioned duly signed off documents.

5.9 For passthrough costs, the Service Provider must render the Services within the budget provided for, in each specific Service Request.

5.10 It is expressly recorded that the Service Provider will only engage in liabilities or purchases on SARS' behalf once it is in receipt of a SARS Purchase Order.

6. SERVICE PROVIDER'S OBLIGATIONS

6.1 General Obligations

6.1.1 The Service Provider must-

- 6.1.1.1 ensure that the Key Accounts Manager contemplated in its Proposal is duly assigned as such, and assumes the attendant role and responsibilities for the duration of this Agreement;
- 6.1.1.2 ensure that Key Personnel or other personnel observe confidentiality and do not use any information obtained pursuant to this Agreement for any reason other than for reasons envisaged in this Agreement;
- 6.1.1.3 act independently and in good faith towards SARS and its employees at all times.
- 6.1.1.4 not change or replace the Key Personnel without the prior written consent of SARS, and in this regard-
 - 6.1.1.4.1 The Service Provider may make a written request to SARS to replace a member of its Key Personnel, where such member has become incapacitated and/or unable to perform his/her duties under the Agreement;
 - 6.1.1.4.2 The Service Provider's request to SARS for the substitution of the Key Personnel shall include the reason for the request and a proposal to replace the Key Personnel with a person of equal or better qualification(s), skills and experience. Such proposal must include the *curriculum vitae* of the proposed substitute;
 - 6.1.1.4.3 SARS may only approve a substitute which has similar or better qualifications, skills and experience; and

- 6.1.1.4.4 Should SARS in its discretion reasonably consider a member of the Key Personnel to be incompetent or unsatisfactory, the Service Provider will have to replace at its cost, that member with one having equal or better qualification(s), skills and experience and in line with the timeframes then stipulated by SARS;
- 6.1.1.5 provide the Services in accordance with the highest professional standards;
- 6.1.1.6 act impartially and ethically at all times, and where applicable, act in accordance with the code of ethics / conduct of its profession;
- 6.1.1.7 ensure that the Key Personnel are familiar with and comply with Applicable Law, this Agreement and the Personal Information Processing Addendum;
- 6.1.1.8 exercise reasonable care and diligence in the discharge of its obligations in terms of the Agreement;
- 6.1.1.9 implement the skills transfer plan submitted to and approved by SARS;
- 6.1.1.10 ensure that it adheres to written and reasonable requests or instructions of the Designated Representative, in so far as same are lawful and consistent with this Agreement.

6.2 Service Provider's obligations when executing a Service Request

6.2.1 The Service Provider shall, when executing a Service Request-

6.2.1.1 comply with this Agreement and the Service Request;

6.2.1.2 observe and adhere to all Service Levels that may be prescribed / indicated in or pursuant to Service Request;

6.2.1.3 monitor implementation of the Services against set targets, costs and timeframes;

6.2.1.4 furnish the Designated Representative with any applicable reports;

6.2.1.5 take Commercially Reasonable Efforts to prevent, overcome and mitigate any adverse effects that might ensue, to the extent required to achieve the relevant outcome;

6.2.1.6 Where the execution of the Services require the use of information technology, the Service Provider shall provide all Services utilising secure technologies and techniques including those relating to the prevention and detection of inappropriate use or access of software, hardware, systems and networks;

6.2.1.7 Adhere to the highest professional standards;

6.2.1.8 achieve market cost efficiencies; and

6.2.1.9 familiarise itself with pertinent Applicable Law and comply accordingly, and ensure that the Key Personnel and the Service Provider's Personnel also comply therewith.

6.3 The Service Provider must co-operate as may be requested by SARS, to enable SARS to, amongst other things, comply with an enquiry from a

Regulatory Authority.

- 6.4 For the duration of this Agreement and for a period of five (5) years after termination, and subject to Applicable Law, the Service Provider must maintain a record of the Services executed. The Service Provider must provide SARS and its auditors access at reasonable times, and subject to reasonable written notice, to information, records and documentation relating to the Services or this Agreement 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. 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, in which event such costs will be borne by the Service Provider.

6.5 Deliverables

- 6.5.1 The Service Provider shall obtain SARS' sign-off for every Deliverable.
- 6.5.2 The Service Provider must, when executing a Service Request, present Deliverables which are free from disclaimers, conditions, or qualification to SARS for acceptance and sign-off.
- 6.5.3 SARS shall have the right to review and accept or reject all Deliverables and/or any components of such Deliverables to be provided by the Service Provider to SARS under this Agreement.
- 6.5.4 The Service Provider undertakes to avail itself to liaise with SARS regarding any queries arising regarding a Deliverable, and to assist SARS with its review of the Deliverable.

- 6.5.5 Should SARS not accept a Deliverable, SARS will provide the Service Provider with written notice of its non-acceptance, as well as reasons therefore. The Service Provider must correct any deficiencies raised by SARS within three (3) Business Days of SARS' notice, whereafter the Deliverable will be resubmitted to SARS for another review.
- 6.5.6 If SARS finds that the Service Provider is still unable to correct the deficiency, then SARS may in its sole discretion elect to–
 - 6.5.6.1 direct the Service Provider to continue its efforts to make the Deliverable acceptable to SARS, in which case the Service Provider shall continue such efforts at its costs;
 - 6.5.6.2 invoke step-in rights as contemplated in this Agreement;
or
 - 6.5.6.3 reject the Deliverable for non-conformity and declare a dispute to be dealt with in terms of the dispute resolution Clause below.

6.6 Business Continuity Plan

- 6.6.1 SARS has accepted the Business Continuity Plan submitted by the Service Provider with its Proposal. The Service Provider must ensure that-
 - 6.6.1.1 its Business Continuity Plan is regularly reviewed, tested and updated as necessary and in accordance with applicable industry practices or Applicable Law: Provided that any update or revisions to the Business Continuity Plan following reviews contemplated herein may not result in a version that contains inferior or less rigorous

continuity plans or measures than was contained in the version submitted by the Service Provider with its Proposal;

6.6.1.2 immediately following any update or revision of its Business Continuity Plan, it submits a copy to the Designated Representative; and

6.6.1.3 upon any relevant triggering event or contingency, it activates, at its own expense, the Business Continuity Plan in a manner that preserves a seamless continuity of the Services and a fulfilment of its obligations under this Agreement; and promptly informs the Designated Representative of the trigger event or contingency and the fact that it has operationalised its Business Continuity Plan.

6.7 Compliance with POPIA

The Service Provider must –

6.7.1 have in place and maintain the minimum or better security safeguards contemplated in section 19 of POPIA, to secure the integrity and confidentiality of Personal Information; and

6.7.2 comply with the Personal Information Protection Addendum and ensure compliance therewith by the Key Personnel.

6.8 Service Levels

6.8.1 The Service Provider shall, when executing a Service Request, comply with the Service Levels.

6.8.2 In the event the Service Provider fails to adhere to any Service Level due to reasons solely attributable to the Service Provider, SARS may, without prejudice to its other remedies under this Agreement

or at law, levy a financial penalty against the Service Provider for the Service Level Failure: Provided that exposure to penalties by the Service Provider shall be subject to the Amount at Risk.

6.8.3 A penalty is a non-performance, delayed performance or defective performance fee, and is payable regardless of the fact that the Service Provider ultimately delivers the pertinent performance.

6.8.4 Multiple Service Level Failures in a Service Request will constitute a material breach of this Agreement.

6.8.5 Notwithstanding any imposition of financial penalties, SARS reserves the right and without derogation from any other remedies it may have in law, to-

6.8.5.1 terminate this Agreement for breach; or

6.8.5.2 cancel a Service Request with immediate effect; or temporarily step in or and take over the Services either by itself or through a third party until such time as SARS is able to make a permanent alternative for the rendering of services. In such an event, the Service Provider shall be obliged, and for its own account, to assist with the seamless transition of the Service Request to either SARS or the third party.

6.8.6 Cancellation or step in or takeover of a Service Request as contemplated herein shall be without any liability to SARS except for payment for the Services already rendered by the Service Provider, less applicable financial penalties.

7. SARS' OBLIGATIONS

7.1 SARS must-

7.1.1 in writing, on Commencement Date, nominate a Designated

Representative, and communicate the names and contact details of such person to the Service Provider in writing. SARS may from time to time change the Designated Representative, in which event SARS must give the Service Provider at least 24 hours' written notice of such change;

- 7.1.2 provide the Service Provider with a budget SARS commits to spend on an annual basis;
- 7.1.3 nominate and provide to the Service Provider, the names of designated employees for skills transfer purposes;
- 7.1.4 ensure that the designated employees in **clause 7.1.3** above avail themselves and cooperate with the Service Provider for skills transfer purposes;
- 7.1.5 provide the Service Provider with timeous management decisions and any necessary approvals or authorisations to enable the Service Provider to fulfil its obligations under this Agreement;
- 7.1.6 where relevant, approve and sign off on Deliverables provided such meet the minimum requirements in terms of this Agreement, and Applicable Law;
- 7.1.7 make available to the Service Provider all relevant information and data at its disposal, which is reasonably required for the rendering of the Services;
- 7.1.8 monitor and review the Service Provider's performance in terms of this Agreement. SARS however, reserves the right subject to Applicable Law, to appoint a third party to monitor and review the Service Provider's performance in terms of this Agreement;
- 7.1.9 Subject to the Key Personnel's compliance with SARS' access and security policies, provide the Key Personnel with access to the

premises and facilities of SARS if necessary for the purposes of rendering the Services: Provided that no telephone, email and/or internet facilities will be provided to the Service Provider by SARS.

8. PRICING AND INVOICING

8.1 Subject to **Clause 5.2** above, pricing will be in accordance with Annexure A, which is VAT inclusive.

8.2 The Service Provider shall invoice SARS for Services rendered on completion of a Service Request, or as otherwise stipulated in a Service Request.

8.3 Where the Service Provider had, following acceptance of a Service Request, furnished SARS with a media placement schedule, the Service Provider must charge SARS in accordance with such media placement schedule, to the extent the Services have actually been rendered.

8.4 Subject to Applicable Law, each invoice shall reflect-

8.4.1 A detailed description of the Services rendered;

8.4.2 Where applicable, the amount of the financial penalties credited to SARS for Service Level Failures calculated with reference to the Service Levels set out in the Service Request;

8.4.3 The applicable rate of commission, subject to **clause 8.1** above;

8.4.4 All applicable discounts envisaged in **Annexure A**, duly considered and applied,

8.4.5 Total charges payable by SARS and

8.4.6 Any such details as may be reasonably requested by SARS from time to time.

- 8.5 The Service Provider must verify that each invoice is complete and accurate, and that it conforms to the requirements of the Value-Added Tax Act, 1991 (Act No. 89 of 1991) and this clause before issuing the invoice to SARS.
- 8.6 The Service Provider must submit all invoices to the Designated Representative and where requested to do so by the Designated Representative, send copies to other SARS officials.
- 8.7 Subject to **clause 9.1** below, SARS shall pay undisputed amounts in an invoice to the Service Provider within thirty (30) days after SARS receives such invoice, if the invoice is accurate and meets the requirements of this Agreement.
- 8.8 Should SARS query an item in an invoice, the Service Provider must, within three (3) days after a written request by SARS, provide SARS with any documentation or information reasonably required by SARS in order to verify the accuracy of amounts indicated in an invoice.

9. DISPUTED CHARGES AND INVOICING ERRORS

- 9.1 SARS may withhold payment of fees that SARS disputes in good faith or, if the disputed fees have already been paid, SARS may withhold an equal amount from a subsequent payment, including disputes in respect of an error in an invoice or an amount paid. If SARS withholds any such amount-
- 9.2 SARS shall promptly notify the Service Provider that it is disputing such amount, providing a reasonable explanation of the rationale therefore and the Parties shall promptly first address such dispute in accordance with this **clause 9** of this Agreement.
- 9.3 Any dispute arising in terms of **clause** Error! Reference source not found.**9.1** above and which remains unresolved for five (5) Business Days after it has arisen, shall be referred by either Party to the SARS Chief Procurement Officer and the Service Provider's Key Account Manager or their designees for resolution.
- 9.4 The SARS Chief Procurement Officer and the Key Account Manager or their designees shall meet within five (5) Business Days of the referral of the

dispute to resolve such dispute.

- 9.5 In the event that the dispute remains unresolved after seven (7) days of its referral to the persons mentioned in **clause 9.4**, either Party shall be entitled to refer the dispute for resolution in accordance with the provisions of **clause 17** below: Provided that **clause 17.1** will not apply to disputes contemplated in this clause.

10. THIRD PARTY COOPERATION

- 10.1 As part of the Services, where appropriate and when requested by SARS to do so, the Service Provider shall provide full co-operation to any third party that might be contracted by SARS on the same or related engagement or for purposes contemplated in **clause 7.1.8** above, to the extent that the co-operation does not create a conflict of interests, breach of professional ethics or compromise the Service Provider's Intellectual Property rights or interests.
- 10.2 It is, however, agreed that the relationship between the Service Provider and any such third party will not constitute an alliance or partnership and that neither the Service Provider nor the third party will be required to perform quality checks on the work of the other party, except where the third party is appointed for purposes contemplated in **clause 7.1.8** above.

11. SECURITY VETTING OF THE KEY PERSONNEL

- 11.1 SARS may, subject to Applicable Law, at any time during the subsistence of this Agreement and in terms of its prevailing Policies, Procedures and Practices, request that the Service Provider, at its own costs –

11.1.1 send any or all of its Key Personnel for security vetting with a competent service provider and provide SARS with security clearance certificates; and

11.1.2 provide a personal background screening report from a reputable

screening agency on personal status such as but not limited to the following:

- a) citizenship status report;
- b) criminal activity report; and
- c) credit worthiness report,

of any or all of the Key Personnel.

11.2 SARS may also at its sole and absolute discretion perform a security check (vetting) or any personal background screening on any or all of the Key Personnel.

11.3 Where SARS establishes the Key Personnel to be a security risk, SARS will inform the Service Provider accordingly and the Service Provider shall replace such Key Personnel with another one of equal or better qualification(s) and experience.

11.4 The provisions of this clause will not exonerate the Service Provider from compliance with the provisions of the Personal Information Processing Addendum.

12. WARRANTIES

12.1 The Service Provider hereby represents and warrants to SARS that-

12.1.1 this Agreement has been duly authorised and executed by it and constitutes a legal, valid and binding set of obligations on it;

12.1.2 it is acting as principal and not an agent of an undisclosed principal;

12.1.3 the execution 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;

- 12.1.4 it has not, in submitting its Proposal, breached any third party Intellectual Property Right; and it shall not, in executing the Services breach or infringe any third-party Intellectual Property Right;
- 12.1.5 it has the necessary resources, skills, and capacity to render the Services to SARS in a diligent manner;
- 12.1.6 it shall, when executing a Service Request, timeously deliver the Services;
- 12.1.7 it will comply with the Personal Information Processing Addendum;
- 12.1.8 no factual circumstances exist that may materially affect its capacity to perform its obligations under this Agreement;
- 12.1.9 it, along with the Service Provider's Personnel, shall at all times have, and comply with all legal requirements and with the terms and conditions of all necessary licenses, certificates, authorisations, accreditations and consents required under the laws of the Republic of South Africa or under any other applicable jurisdiction for the delivery of the Services;
- 12.1.10 upon delivery, the Services will be fit for the purposes intended by SARS and communicated in the RFP;
- 12.1.11 it shall utilise and process all Confidential Information, and any other information provided by SARS only for purposes contemplated in this Agreement;

12.1.12 it will take Commercially Reasonable Efforts to preserve and maintain the integrity and security of the Confidential Information obtained in the execution of its obligations in terms of this Agreement; and

12.1.13 it is familiar with and will comply with Applicable Law.

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

12.3 The provisions of this clause shall survive termination of this Agreement.

13. MEETINGS AND REPORTING

13.1 The Service Provider shall provide reports timeously and, in the manner, prescribed in this Agreement.

13.2 The Key Accounts Manager and the Designated Representative shall meet as and when required to discuss the execution of the Services.

13.3 The Service Provider shall be responsible for the correct recording of the meeting proceedings.

13.4 The Service Provider shall deliver the record of the meeting proceedings to SARS within two (2) Business Days after the date of the meeting or such shorter period as SARS may of necessity prescribe in writing, for SARS' perusal and verification.

13.5 SARS shall have the right to comment on and amend the record. SARS' comments and amendments shall be discussed and/or confirmed at the next meeting between the Parties.

13.6 Clauses **13.4** and **13.5** above are to be subject to **clause 29.12**.

13.7 Any information provided by the Service Provider in reports or meetings should be accurate, relevant and sufficiently detailed to provide assurance that the Services are on schedule.

14. **CONFIDENTIALITY**

14.1 Neither Party may, both during the term of this Agreement and after its expiration, disclose any Confidential Information to any third party without the prior written consent of the other.

14.2 The Service Provider shall ensure that the Key Personnel individually take the SARS Oath / Declaration of Secrecy before commencing with execution of this Agreement, and shall submit the original copies of such Oath / Declaration to the Designated Representative.

14.3 SARS reserves the right to continually monitor and verify that the Key Personnel have individually taken the SARS Oath / Declaration of Secrecy.

14.4 The Service Provider must protect the interests of SARS and its Confidential Information by-

14.4.1 making available such Confidential Information only to the Key Personnel who are actively involved in the execution of its obligations under this Agreement and then only on a “need to know” basis;

14.4.2 putting in place internal information security practices and procedures reasonably acceptable to SARS to prevent unauthorised disclosure and taking all practical steps to impress upon the Key Personnel who need to be given access to Confidential Information, the secret and confidential nature thereof;

- 14.4.3 not using any Confidential Information of SARS, or disclosing directly or indirectly any Confidential Information of SARS to third parties, whether during the subsistence of this Agreement or thereafter; and
- 14.4.4 ensuring that all Confidential Information of SARS which has or will come into the possession of the Service Provider and the Key Personnel, will at all times remain the sole and absolute property of SARS.
- 14.5 Where the Service Provider is served with a request, demand or court papers which seek the disclosure of Confidential Information of SARS, the Service Provider shall, without disclosing such Confidential Information, forthwith and no later than 24 hours from the time of receipt of such request, demand or court papers, transmit all such document(s) served on it to the SARS Designated Representative, whereupon SARS will respond as necessary.
- 14.6 The Service Provider shall not remove from SARS' premises any documents or material relating to the Services or SARS' business without first obtaining the written consent of SARS.
- 14.7 Upon SARS' request, the Service Provider must promptly return all documents, material, information, or data relating to the Services to SARS.
- 14.8 The Service Provider may not disclose / share any of SARS' Confidential Information with any Person, including its affiliates, outside the borders of South Africa, unless it obtains prior, written consent from SARS, which consent will, if granted (at the sole discretion of SARS), be subject to section 72 of POPIA. In this regard and in the event the written consent is obtained, the Service Provider fully indemnifies SARS and its employees against all and any third party damages, liability claims, Losses or the like occasioned by or as a result of i) the Service Provider exchanging, sharing or having exchanged or shared SARS Confidential Information; ii) the Service Provider failing to comply with POPIA in its exchange / sharing of SARS Confidential

Information or iii) breach by the recipient of the information of POPIA or POPIA equivalent laws.

14.9 The Service Provider fully indemnifies SARS and its employees against all and any third party damages, liability claims, Losses or the like which may be occasioned by or as a result of any failure by the Service Provider and/or Key Personnel or other employee or agent of the Service Provider to comply with this clause.

14.10 The provisions of this clause shall survive the termination or cancellation of this Agreement for any reason whatsoever.

15. INTELLECTUAL PROPERTY

15.1 The Parties will each retain ownership of their pre-existing intellectual property rights.

15.2 Subject to Applicable Law and pre-existing intellectual property rights of the Service Provider and/or any third party, all intellectual property rights to literary works created in the course of executing the Services shall vest exclusively in SARS.

15.3 In the event of the Service Provider's intellectual property being incorporated into any aspect of the Services being rendered in terms of this Agreement, the Service Provider hereby grants SARS a non-exclusive, royalty free license for the duration of this Agreement to use such intellectual property for its own purposes in connection with the Services.

15.4 The Service Provider warrants to SARS that it holds the right, title and interest to the intellectual property it will be utilizing to render the Services, alternatively it has procured the necessary rights from the relevant third party and indemnifies SARS against any claim of infringement, which any third party may make or bring against SARS as a result of this Agreement.

16. BREACH

16.1 Subject to **clause 18.1 15** below, if a Party (the “Defaulting Party”) is in default or breach of any term of this Agreement and that Defaulting Party fails to remedy such default or breach within seven (7) 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-

16.1.1 claim specific performance;

16.1.2 cancel this Agreement and claim damages from the Defaulting Party, such cancellation to be effective immediately on receipt by the Defaulting Party of a written notice to that effect; or

16.1.3 claim any money due and payable in terms of this Agreement and claim damages from the Defaulting Party.

16.2 The remedies set out in this clause shall not be construed to be exhaustive of any other remedies available to the Parties.

17. DISPUTE RESOLUTION

17.1 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.

17.2 If the dispute has not been resolved by such negotiation as contemplated above, or in **clause 9**, 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.

17.3 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 and not resolved as contemplated above will finally be resolved by arbitration in accordance with the Rules of the AFSA or its successor, by an arbitrator or arbitrators appointed by AFSA.

17.4 This clause is 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.

17.5 The provisions of this clause shall not preclude—

17.5.1 any of the Parties from accessing and obtaining any interim relief on an urgent basis or other conservatory relief from a court of competent jurisdiction; and

17.5.2 SARS from approaching a Regulatory Authority for resolution of disputes on pertinent matters.

17.5.3 Subject to **Clause 9.1** above, 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 its obligations in terms of this Agreement: Provided that SARS shall not pay any invoice in respect of which there is a pending dispute.

18. TERMINATION

18.1 Termination for cause by SARS

18.1.1 SARS may, by giving written notice to the Service Provider, terminate this Agreement or the rendering of the Services in whole or in part, as of a date set out in the notice of termination, in the event that the Service Provider–

18.1.1.1 commits a material breach of this Agreement, which is incapable of remedy;

18.1.1.2 breaches the confidentiality provisions of this Agreement or the SARS Oath / Declaration of Secrecy;

18.1.1.3 commits any act or omission which, in the reasonable opinion of SARS, may either bring SARS into disrepute, damage its reputation or negatively impact taxpayer and public confidence in SARS;

18.1.1.4 breaches Applicable Law;

18.1.1.5 breaches the Personal Information Processing Addendum;

18.1.1.6 is found guilty of an offence in terms of Applicable Law;

18.1.1.7 commits an act of insolvency as defined in the Insolvency Act, 1936 (Act No. 24 of 1936) or is placed under provisional liquidation or under business rescue proceedings or is finally liquidated;

18.1.1.8 commits an act of professional misconduct or professional or technical incompetence, which is substantial and serious; or

18.1.1.9 commits or participates in any unlawful, dishonest or unethical act in executing this Agreement.

18.2 Termination Upon Sale, Acquisition, Merger or Change of Control

18.2.1 In the event of a sale, acquisition, merger, or other change of control of the Service Provider (a “Change Event”) where such Change Event is achieved, directly or indirectly, in a single transaction or series of related transactions, or in the event of a sale of all or substantially all of the assets of the Service Provider in a single or series of related transactions, then the Service Provider shall notify SARS of such Change Event within ten (10) Business Days after the Change Event is achieved.

18.2.2 No sale, acquisition, merger or other change of control shall be effective against and legally binding on SARS if the Service Provider failed to notify SARS, as required by **clause 18.2.1** above.

18.2.3 SARS may terminate this Agreement, at any time after being notified by the Service Provider of the Change Event, by giving the Service Provider thirty (30) days’ written notice designating a date upon which such termination shall become effective.

18.2.4 In the event that the Service Provider fails to notify SARS, as required by **clause 18.2.1** above, then SARS may upon discovery of the Change Event terminate the Agreement by giving the Service Provider thirty (30) days’ written notice and designating a date upon which such termination shall be effective.

18.2.5 “Control” in terms of this clause shall mean, with regard to any entity, the right or power to dictate the management of and otherwise control such entity by any of the following-

18.2.5.1 holding directly or indirectly the majority of the issued share capital or stock (or other ownership interest if not a company) of such entity ordinarily having voting rights;

18.2.5.2 controlling the majority of the voting rights in such entity;

or

18.2.5.3 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.

18.3 SARS shall have no liability to the Service Provider with respect to a termination under this clause and **clause 16.1.2** above.

19. ADDRESSES

19.1 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.

19.2 SARS' physical address for **service of notices and legal processes** is as indicated in **clause 2.2.24** above.

19.3 The Service Provider's physical address for **service of notices and legal processes** is as indicated in **clause 2.2.28** above.

19.4 SARS' email address for communications, and/or correspondences in connection with the execution of the Services: rft-professionalservices@sars.gov.za.

19.5 The Service Provider's email address for communications, and/or correspondences in connection with the execution of the Services: ...

19.6 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 of *domicilium*, provided that documents in legal proceedings in connection with this Agreement may only be served at a Party's physical address.

19.7 Any Party may by written notice to the other Party, change its chosen

address to another address, provided that-

19.7.1 the change shall become effective on the tenth (10th) Business Day after the receipt or deemed receipt of the notice by the addressee; and

19.7.2 any change in a Party's *domicilium* shall only be to an address in South Africa, which is not a post office box.

19.8 The Parties record that whilst they may correspond via email 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.

20. LIABILITY

20.1 The Service Provider shall be liable to SARS, where SARS has suffered any direct damages and/or Losses as a result of the Service Provider's failure to observe its obligations in terms of the Agreement.

20.2 The Service Provider shall further be liable to SARS for all indirect and consequential or special damages and/or Losses suffered by SARS as a result of gross negligence, wilful misconduct or breach by the Service Provider or its Key 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, Key Personnel or any employee of the Service Provider.

21. INDEMNITY BY THE SERVICE PROVIDER

21.1 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-

- 21.1.1 Third party claims attributable to any breach of the provisions of this Agreement by the Service Provider;
 - 21.1.2 Third party claims attributable to errors, omissions, theft, fraud or other unlawful activity or any negligent, wilful or fraudulent conduct by the Service Provider or the Key Personnel or other employee or agent of the Service Provider;
 - 21.1.3 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 on SARS premises or other premises or location where the Services are executed, caused by the delictual conduct of the Service Provider, the Key Personnel or other employee or agent of the Service Provider; or
 - 21.1.4 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 the Key Personnel.
- 21.2 For the purposes of this clause, the phrase "Third party claims" includes claims by SARS employees.

22. INSURANCE

- 22.1 The Service Provider must, for the duration of this Agreement, comply with Applicable Law regarding insurance, and ensure it has the minimum coverage indicated in the RFP.
- 22.2 The Service Provider must, on Commencement Date and as and when requested, provide SARS with evidence of cover as envisaged above.
- 22.3 In the event of loss or damage or other event that requires notice or other action under the terms of any cover contemplated in this clause, the Service Provider shall be solely responsible to take such action. The Service Provider shall provide SARS with contemporaneous notice and with such

other information as SARS may request regarding the event.

23. FORCE MAJEURE

23.1 In the event of any circumstance arising or action taken beyond the reasonable control of a Party or the Parties hereto, such as but not limited to war, rebellion, riot, civil commotion, lockout, fire, accident, operation of law, Applicable Law, epidemic, pandemic or any other circumstance preventing the Parties 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, subject to **clauses 23.2 and 23.3** herein, be relieved of its obligations hereunder during the period that such *force majeure* subsists.

23.1.1 The Service Provider must before invoking this **clause 23**, demonstrate that it activated the Service Provider's Business Continuity Plan and was unable to circumvent the *force majeure* event.

23.2 Should a *force majeure* event arise, the affected Party shall within seven (7) days of the commencement of the event notify the other Party of the event, giving sufficient details thereof, including details of how the event has impacted the affected Party's ability to perform in terms of the Agreement, as well as the estimated duration of the event or disturbing circumstances.

23.3 The affected Party's relief is only to the extent so prevented and to the extent that the affected Party is not the cause of the *force majeure* event. 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.

23.4 The affected Party shall use Commercially Reasonable Efforts to remove the disturbance with the least possible delay so that its obligations can be fulfilled as soon as reasonably possible, in the manner provided for in this Agreement.

23.5 SARS shall be entitled to use the services of other parties during *force majeure* events declared by the Service Provider.

24. STEP IN RIGHTError! Bookmark not defined.

24.1 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 step in and take over a Service Request as contemplated below, immediately upon SARS' identification or the Service Provider's notification to SARS of the occurrence of any adverse event which SARS considers, in its reasonable opinion, to be an event which may affect continuity of the Services, as may be applicable.

24.2 For the purposes of this Clause, SARS may (at its option), either itself or by the procurement of an alternative third party service provider, temporarily take over the provision of the Services until such time that SARS is able to make permanent alternative arrangements for the provision of the Services in terms of the particular Service Request: Provided that any takeover by SARS as envisaged in this Clause shall apply for a period of no more than one hundred and eighty (180) days, reckoned from the date that SARS temporarily takes over the particular Service Request. The Service Provider must, upon the request of SARS, fully co-operate with and assist SARS during any temporary take-over of a Service Request.

24.3 To the extent that SARS exercises its right to assume the rendering of a Service Request or part thereof itself, or by a third party service provider, the Service Provider shall not be entitled to any commission and/or payment during the period for which SARS or the third party service provider assumes the Services. SARS shall not, under any circumstances, by virtue of any assumption, be obliged, deemed or required to take over or assume responsibility for the conduct of the Service Provider's business operations.

25. RELATIONSHIP BETWEEN THE PARTIES

25.1 The Service Provider is an independent contractor and under no

circumstances will it be considered a partner, joint venture partner or employee of SARS in the execution of this Agreement.

- 25.2 Key Personnel and other personnel engaged 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 the responsibility of the Service Provider. The Service Provider is liable to SARS for the performance, malperformance, acts and or omissions of any of its Key Personnel or other personnel involved in the execution of this Agreement.

26. CONFLICT OF INTERESTS

- 26.1 The Service Provider must not have or undertake duties or interests that create or might reasonably be anticipated to create an actual or perceived conflict with its duties and interests in executing this Agreement.
- 26.2 The Service Provider must have systems in place to identify potential conflicts, bring them to the attention of SARS and withdraw participation in matters which are the subject of the conflict.
- 26.3 The Service Provider or any member of the Service Provider's Personnel may not participate in any decision relating to anything contemplated in this Agreement or a Service Request where such decision affects its private interests or personal interests of the member of the Service Provider's Personnel, or the interests of any entity in which the Service Provider or member of the Service Provider's Personnel holds a direct or indirect interest.
- 26.4 SARS may, on an *ad hoc* basis, request the Service Provider or any member of the Service Provider's Personnel to declare any interest they may have in a particular transaction.

27. BROAD BASED BLACK ECONOMIC EMPOWERMENT

- 27.1 The Service Provider must remain BEE compliant and maintain or improve upon the B-BBEE status level it had when the tender (RFP) was awarded.

28. TAX COMPLIANCE

- 28.1 The Service Provider represents and warrants that, as of Commencement Date, it is and will remain compliant for the duration of this Agreement with all Applicable Law relating to taxation.

29. GENERAL

29.1 Advertising and Marketing

Except in so far as herein expressly provided, 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 media 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.

29.2 Authorised Signatories

This Agreement shall not be valid unless signed by the Authorised Signatories.

29.3 Costs

Each Party shall bear its own costs in respect of the negotiation, preparation and finalisation of this Agreement.

29.4 Counterparts

This Agreement may be executed in one or more counterparts, each of which shall be deemed to be 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.

29.5 Covenant in 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.

29.6 Governing Law and Jurisdiction

29.6.1 This Agreement shall 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.

29.6.2 The Service Provider hereby consents to the jurisdiction of the High Court of the Republic of South Africa (Gauteng Division, Pretoria), in regard to all matters arising from this Agreement.

29.7 No Cession or Assignment Without Consent

Subject to Applicable Law, neither Party may assign, cede, delegate, or in any other manner transfer any benefit, rights and/or obligations arising from this Agreement, without the prior written consent of the other Party, which consent shall not be unreasonably withheld.

29.8 Subcontracting

29.8.1 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 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.

29.8.2 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 2829.8.1** above, a complete written proposal for SARS's approval containing-

29.8.2.1 full details and business references of the subcontractor;

29.8.2.2 a full description of the part of the Services it proposes for subcontracting;

29.8.2.3 full details of how the Service Provider will manage the performance of the Services by the subcontractor;

29.8.2.4 the value of the contract proposed to be subcontracted, expressed as a percentage;

29.8.2.5 an acceptable document depicting the B-BBEE status and certificate of the subcontractor; and

29.8.2.6 a CSD report for the proposed subcontractor.

SARS reserves the right to call upon additional information when assessing a request for subcontracting, including subjecting the subcontractor to the same evaluation process that the Service Provider has been under the RFP.

29.8.3 Notwithstanding the provisions of this **Clause 29.8**, 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.

29.8.4 Subject to the provisions of **Clause 29.8.1** above, 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.

29.8.5 Nothing contained herein shall create a contractual relationship

between SARS and the subcontractor.

- 29.8.6 In the event that the Service Provider has provided the details of a subcontractor in its bid proposal, the Service Provider must not change or replace such subcontractor without obtaining a prior written approval from SARS.

29.9 **No Withholding of Consents**

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 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.

29.10 **Severability**

If any clause or provision of this Agreement is found to be invalid, illegal or unenforceable in any way, such clause or provision shall be deemed to be separate and severable from the remaining provisions of this Agreement, and the validity and enforceability of such remaining provisions shall not be affected. If, however, any invalid term is capable of amendment to render it valid, the Parties agree to negotiate in good faith an amendment to remove the invalidity.

29.11 **Waiver**

No change, waiver or discharge of the terms and conditions of this Agreement shall be valid unless in writing and signed by the Authorised Signatories, and any such change, waiver or discharge will be effective only in that 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.

29.12 **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, disclaimers, qualifications, variation or consensual cancellation will be of any force or effect unless reduced to writing and signed by the Authorised Signatories. Any document executed by the Parties purporting to amend, substitute or revoke this Agreement or any part hereof, shall be titled an "Addendum" to this Agreement.

SIGNED FOR AND BEHALF OF SARS

Name:

Designation:

Place:

Date:

Name:

Designation:

Place:

Date:

FOR THE SERVICE PROVIDER

Full Names : _____

Signature : _____

Capacity : _____

Date : _____

Place : _____