**SERVICES AGREEMENT IN RESPECT OF THE APPOINTMENT OF A SERVICE PROVIDER FOR THE CUSTOMISATION AND IMPLEMENTATION OF AN ACCREDITED PROGRAMME FOR DEBT MANAGEMENT**

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

**THE 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 Services Agreement, including all annexures and/or schedules to this Agreement;
     2. “**Amount at Risk**” means the maximum percentage of the Service Provider’s total invoice, which may be at risk in respect of Service Credits due to SARS resulting from any Service Level Failures;
     3. “**Authorised Representatives**” mean those signatories authorised by SARS and the Service Provider respectively to sign the Agreement;
     4. “**Business Day**” means any day other than a Saturday, Sunday or public holiday in the Republic of South Africa;
     5. “**Commencement Date**” means **\_\_\_\_\_\_\_\_\_\_\_\_\_ 2017**, notwithstanding date of signature of this Agreement;
     6. “**Commercially Reasonable Efforts**” means taking such steps and performing in such a manner as a well-managed institution would undertake where such institution 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;
     7. “**Deliverable**”means any output, outcome, report, result, plan or strategy produced by the Service Provider for, or on behalf of, SARS as part of the Services pursuant to this Agreement;
     8. “**Losses**” means all losses, liabilities, costs, expenses, fines, penalties, damages and claims, and all related costs and expenses as determined in law;

* + 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 fees attached hereto as **Annexure B**;
    3. “**RFP 13/2017**” is, subject to any contrary indication, a reference to SARS’s invitation to prospective bidders to tender for the Services specified in RFP 13/2017 dated 1 September 2017, which is incorporated herein by reference thereto;
    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 Delegate**” means a SARS official enrolled for the Debt Management Programme contemplated in this Agreement;
    6. “**SARS’s Designated Representative**” means the SARS official contemplated in **Clause 8.1.1** below;
    7. “**Service Credit**”means a price adjustment in an invoicing period to reflect the reduced level of service experienced by SARS from the Service Provider during such invoicing period;
    8. “**Service Level**” means the minimum performance standard of compliance which must be met by the Service Provider when rendering the Services;
    9. “**Service Level Failure**” means a failure to attain a prescribed Service Level, which will entitle SARS to levy a financial penalty or terminate this Agreement;
    10. “**Service Provider**” means **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** a company, with registration number 0000/00000/00 and with registered address at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_;
    11. “**Service Provider’s Personnel**” means those members of staff of the Service Provider, including contracted staff, 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;

* + 1. “**Service Provider’s Proposal**” is, subject to any contrary indication, a reference to the proposal submitted by the Service Provider in response to SARS’s Request for Proposal under RFP 13/2017;
    2. “**Services**” means the customisation and implementation of an accredited (NQF Level 6) programme for Debt Management in accordance with this Agreement and as more fully outlined in RFP 13/2017, including those services, functions or responsibilities not specifically mentioned herein but which are reasonably and necessarily required for the proper performance and provision of the Services; and
    3. “**VAT**” means Value-Added Tax levied in terms of the Value-Added Tax Act, 1991 (Act No. 89 of 1991).
  1. Any reference in this Agreement to-
     1. “**Clause**” shall, subject to any contrary indication, be construed as a reference to a Clause in this Agreement;
     2. “**Law**” shall be construed as any law (including common or customary law), or statute, constitution, decree, judgment, treaty, regulation, directive, by-law, order or any other legislative measure of any government, local government, statutory or regulatory body or court; and
     3. “**Person**” refers to any person, company, corporation, firm, government, state or agency of a state or any association or partnership, whether or not having separate legal personality.
  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.

* 1. 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.
  2. Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.
  3. 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. SARS issued RFP 13/2017 inviting service providers to submit proposals for the provision of the customisation and implementation of an accredited (NQF Level 6) programme for Debt Management.
  2. The Service Provider has submitted a proposal to SARS in order to render the Services. SARS accepted the proposal and hereby appoints the Service Provider to provide the Services, which appointment the Service Provider accepts.
  3. The Service Provider represents that it has, and warrants that throughout the duration of this Agreement it shall have the resources, skills, qualifications, experience and capacity necessary to provide the Services.
  4. In reliance on these statements and representations, SARS has selected and appointed the Service Provider to provide SARS the Services on a non-exclusive basis.

### DURATION

* 1. This Agreement commences on the Commencement Date and will endure for a period of forty eight (48) months, unless terminated earlier in terms of this Agreement.

### SERVICES

* 1. The Parties agree that the Service Provider has been appointed to and will provide the Services.
  2. The scope of work will require the Service Provider to customise and implement an accredited (NQF Level 6) programme for Debt Management, as specified in RFP 13/2017.
  3. The Service Provider shall provide the Services utilising the requisite capacity and expertise highlighted in the Service Provider’s Proposal, and in accordance with the highest professional standards generally acceptable in its profession. In the event of any doubt regarding what constitutes highest professional standards, the Parties shall request a directive from the relevant regulatory authority.
  4. The Service Provider will render the Services in line with the timeframes indicated in this Agreement.

### PRINCIPLES GOVERNING SERVICE LEVELS

* 1. **Service Levels List**

**Annexure A** lists Service Levels that will apply to the performance of the Services. The Parties may from time to time add new Service Levels by mutual agreement. The Service Provider shall comply with the prescribed Service Levels as of the Commencement Date.

* 1. **Monitoring, Measuring and Reporting**
     1. The Service Provider shall-
        1. Be responsible for monitoring, measuring and reporting on its compliance with the Service Levels.
        2. Monitor its performance of the Services with respect to the Service Levels on a continuous basis and measure and provide SARS with a monthly report on such performance (the “**Monthly Performance Report**”).
        3. Within six (6) Business Days after the end of each month deliver to SARS the Monthly Performance Report with respect to its performance during such month.
        4. The Service Provider shall provide SARS with detailed supporting information for each Monthly Performance Report in soft-copy, as may reasonably be requested by SARS.
        5. The Service Provider shall include the following information in each Monthly Performance Report with respect to any failure to achieve a Service Level during any given month (“**Service Level Failure**”)-
           1. the nature and date of the Service Level Failure;

* + - * 1. the cause of the Service Level Failure; and
        2. a summary of the steps the Service Provider has taken to resolve the Service Level Failure and reduce, to the extent reasonably possible, the likelihood that such Service Level Failure will be repeated.
    1. Any failure by the Service Provider to perform any of the obligations set forth in this **Clause 5.2** during any given month will also be deemed to be a Service Level Failure.
  1. **Rules Governing Service Credits**

* + 1. **Status of Service Credits** 
       1. Service Credits are not an estimate of the loss or damage that may be suffered by SARS as a result of the Service Level Failure.
       2. A price adjustment by means of a Service Credit due to SARS is without prejudice to and shall not limit any right SARS may have to terminate this Agreement and/or seek damages or other non-monetary remedies at Law resulting from, or otherwise arising in respect of, such Service Level Failure and any resulting termination.
       3. Notwithstanding the provisions of **Clauses 5.3.1.1** and **5.3.1.2** above, any claim for damages resulting from such Service Level Failure, in respect of which a Service Credit has already been effected, shall be reduced by the amount of that Service Credit.
    2. **Amount at Risk**
       1. The “Amount at Risk” with respect to Service Credits payable by the Service Provider for Service Level Failures in an invoicing period shall not exceed twenty per cent (20%) of the total amount invoiced to SARS in terms of **Clause 10.4**,irrespective of the number of Service Level Failures.
       2. Subject to **Clause 5.3.2.1**, the Service Provider shall credit the value of the percentage of the Amount at Risk (Service Credit) as indicated in **Annexure A** in respect of each Service Level Failure to SARS.
    3. **Calculation of Service Credits**
       1. For each Service Level Failure, the fees payable to the Service Provider shall be reduced by the applicable Service Credit/s as provided for in **Annexure A**.
       2. If a single triggering event directly causes two (2) or more Service Level Failures in an invoicing period and but for such event, none of such Service Level Failures would have occurred, then SARS shall be entitled to receive only a single Service Credit for a single Service Level Failure (which SARS may select in its sole discretion).
       3. Service Credits arising in respect of the last invoicing period of the Agreement term shall be withheld out of the final payment due.
  1. **Excused Non-Performance**

* + 1. Where the Service Provider can establish to the reasonable satisfaction of SARS that-
       1. the cause of its failure to achieve a Service Level was a factor outside of the reasonable control of the Service Provider (i.e. a *force majeure* event);
       2. the Service Provider would have achieved such Service Level but for such factor;
       3. the Service Provider used Commercially Reasonable Efforts to perform and achieve that Service Level notwithstanding the presence and impact of such factor; and
       4. the Service Provider is without fault in causing such factor,

then, no Service Credit shall be assessed against the Service Provider for any resulting Service Level Failure and the Service Provider shall otherwise be excused from achieving such Service Level for as long as the circumstances relating to such factor and preventing achievement of such Service Level prevail and the Service Provider continues to use its Commercially Reasonable Efforts to prevent, overcome and mitigate the adverse effects of such factor to the extent required to achieve the applicable Service Level.

### 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 Service Provider will provide the Services to SARS, subject to the general terms and conditions contained in this Agreement.

### SERVICE PROVIDER’S UNDERTAKINGS AND OBLIGATIONS

* 1. The Service Provider undertakes to-
     1. nominate and supply the contact details of a representative who shall be responsible for managing the delivery of the Services, liaising with the SARS Designated Representative in respect of the performance of the Services and resolution of any disputes in terms of this Agreement;
     2. provide the Services to SARS using the Service Provider’s Personnel;

* + 1. ensure that the Service Provider’s Personnel are, where applicable, registered with appropriate authorities;
    2. abide by its selection of the Service Provider’s Personnel, and may not, at any stage during execution of this Agreement, substitute any Service Provider’s Personnel without the prior written permission of SARS. Such permission may only be granted where the proposed substitute possesses higher, equal or substantially similar levels of education, skills and experience as the personnel originally proposed in the Service Provider’s Proposal;
    3. carry out all instructions timeously, in a diligent manner and in good faith;
    4. ensure that the Service Provider’s Personnel devote such time, attention and skill in performing the Services as may be reasonably required for the proper discharge of its duties under this Agreement;
    5. attend all meetings arranged by SARS for the purpose of discussing or managing the Services;
    6. charge fees for Services rendered to SARS in accordance with the Service Provider’s Pricing Schedule;
    7. conduct its business activities in the utmost good faith, honesty, integrity and transparency, and consistently uphold the interests and needs of SARS as a client. In this regard the Service Provider acknowledges that any acts of bad faith may lead to SARS electing not to make further use of the services of the Service Provider;
    8. take Commercially Reasonable Efforts to prevent, overcome and mitigate any adverse effects that might ensue, to the extent required to achieve the relevant outcome;
    9. provide SARS with accurate and complete invoices, free from duplicated items and/or calculation errors;
    10. 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, in which event the Service Provider shall be liable for the audit costs;
    11. immediately inform SARS if any of the Service Provider’s Personnel involved in the rendering of the Services to SARS are suspended, found guilty of misconduct by the Service Provider or any regulatory authority, or found guilty of a criminal act by a court; and
    12. comply with all legislation applicable to the Service Provider and to the Services.
  1. The Service Provider must prepare, within seven (7) days of the Commencement Date, an implementation plan for submission to SARS and render the Services in line with the plan. The said implementation plan must comply with the minimum requirements below:
     1. The implementation plan must reflect –
        1. the sequence and timing of operations by the Service Provider;
        2. any information or directive required of SARS by the Service Provider; and
        3. any other information which may be relevant according to the professional judgment of the Service Provider: Provided it is relevant to the Services.
     2. The implementation plan contemplated in **Clause 7.2.1** above must be approved by the SARS Designated Representative in writing before implementation.
     3. The Service Provider may not deviate from the implementation plan without the prior written consent of the SARS Designated Representative.
  2. The Service Provider shall obtain SARS’s signoff for every Deliverable.
  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.
  4. The Service Provider undertakes to avail itself to liaise with SARS regarding any queries arising with regard to a Deliverable, and to assist SARS with its review of the Deliverable.

* 1. SARS undertakes not to unreasonably withhold the sign-off of any Deliverable. However, should SARS not accept the 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 five (5) Business Days (or such other shorter period as the circumstances may require) of receiving SARS's notice, where after the Deliverable will be resubmitted to SARS for another review.
  2. If SARS finds that the Service Provider was still unable to correct the deficiency, then SARS may in its sole discretion elect to–
     1. direct the Service Provider to continue its efforts to make the Deliverable acceptable to SARS, in which case the Service Provider shall continue such efforts; or
     2. without limiting the generality of SARS's right to terminate this Agreement or to claim damages, terminate this Agreement without liability by providing written notice to the Service Provider, in which case the Service Provider shall, if applicable, refund to SARS all amounts paid by SARS to the Service Provider in respect of that Deliverable. Such refund shall be made within fourteen (14) days of receiving SARS's notice.

### SARS’S UNDERTAKINGS AND OBLIGATIONS

* 1. SARS undertakes to-
     1. Nominate a representative who will be responsible for managing the delivery of the Services by the Service Provider, including but not limited to-
        1. acting as a central point of contact between SARS and the Service Provider;
        2. authorising the Service Provider to start with the Services;
        3. liaising with the Service Provider’s representative nominated in terms of **Clause 7.1.1**, in respect of the performance of the Services and resolution of any disputes in terms of this Agreement;
        4. approval of invoices submitted by the Service Provider;
        5. acceptance of Deliverables; and
        6. convening meetings with the Service Provider.
     2. Furnish the Service Provider with access to SARS Delegates / personnel, as well as any relevant information and records necessary for the Service Provider to perform the Services in compliance with the terms and conditions of this Agreement.
     3. Issue clear and accurate instructions to the Service Provider in a timeous manner.
     4. SARS reserves the right to monitor and review the Service Provider’s performance in terms of this Agreement. SARS furthermore, reserves the right, at its exclusive discretion, to appoint a third party to monitor and review the Service Provider’s performance in terms of this Agreement.

### MEETINGS AND REPORTS

* 1. In order to manage the Services provided by the Service Provider to SARS, the Parties agree that meetings between the Parties will be arranged on the following basis-

| **Type of meeting** | **Frequency** | **Purpose of the meeting** |
| --- | --- | --- |
| Supplier relations meeting | Monthly | To discuss administrative, contractual, logistical and performance issues arising on a monthly basis. |
| Management meeting | Quarterly | To discuss service execution issues e.g. managerial issues, performance problems, as well as overall progress. |
| Service relationship review | Annually | To report on the overall performance of the Services. |
| *Ad hoc* meeting | On reasonable request | To discuss any issues relating to the Services, which are of an urgent or critical nature and cannot be held over until a monthly supplier relations meeting. |

* 1. The Service Provider must compile and submit progress and close-out reports contemplated in this Agreement.
  2. Any information provided by the Service Provider in the reports or meetings must be sufficiently detailed to provide assurance to SARS that the Services are on schedule.

### INVOICING AND PAYMENT

* 1. The total cost payable by SARS to the Service Provider in respect of the Services to be provided is **R\_\_\_\_\_\_\_\_\_\_** (\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_) and is inclusive of VAT.
  2. A breakdown of the fees that will be charged is recorded in the Pricing Schedule. The fees recorded in the Pricing Schedule are inclusive of VAT.
  3. The Service Provider shall not be entitled to recover accommodation, travel or subsistence costs from SARS.
  4. 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.
  5. The invoice will include a detailed description of the Services rendered, as well as the total fees payable in respect of the Services less the Service Credit/s credited to SARS for Service Level Failures calculated with reference to the agreed Service Levels.

* 1. SARS will pay the invoiced amount within thirty (30) days of receipt of the invoice, unless SARS disputes any item on the invoice.
  2. In the event that SARS disputes an item on the invoice, SARS will do so by giving written notice to the Service Provider within seven (7) 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.
  3. Where the dispute remains unresolved for a further seven (7) 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 21** of this Agreement.

### INTELLECTUAL PROPERTY RIGHTS

* 1. Neither Party shall acquire any rights, title or interest of any kind in any intellectual property owned by the other Party. All intellectual property owned by a Party and all modifications made by it to that intellectual property, shall at all times remain the sole property of that Party.

### 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 the 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 term 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 the Service Provider’s Personnel. This includes the knowledge acquired by the Service Provider, its agents and/or the Service Provider’s Personnel 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 and Taxpayer Information as defined in Chapter 6 of the Tax Administration Act, 2011 (Act No. 28 of 2011), as well as any information required to be kept confidential by any other Act administered by the Commissioner for SARS.
  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 and 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;

* + 1. is disclosed pursuant to a requirement or request by operation of law, regulation or court order; or
    2. is disclosed by the receiving Party with the disclosing Party’s prior written approval.
  1. The provisions of this Clause shall survive the termination or cancellation of this Agreement for any reason whatsoever.

### LIABILITY OF THE PARTIES

* 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 this Agreement.
  2. The Service Provider shall be liable to SARS for all indirect and consequential or special damages and/or Losses suffered by SARS as a result of gross negligence, reckless acts or breach by the Service Provider or its personnel of the 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 or the Service Provider’s Personnel.

### INDEMNITY

* 1. Subject to **Clause 13** above, the Service Provider hereby indemnifies, holds harmless and agrees to defend SARS and its officers, employees, agents, successors and assigns, against all claims or Losses arising from or in connection with, any of the following-
     1. Third party claims attributable to any breach of the provisions of this Agreement by the Service Provider;
     2. Third party claims attributable to theft, fraud or other unlawful activity or any negligent, wilful or fraudulent conduct by the Service Provider or the Service Provider’s Personnel and claims attributable to errors and/or omissions;
     3. Third party claims arising from or related to the death or bodily injury of any agent, employee, customer, business invitee, business visitor or other person caused by the delictual conduct of the Service Provider or the Service Provider’s Personnel; or
     4. Claims arising from damage to property owned or leased by SARS or belonging to a third party caused by the acts or omissions of the Service Provider or the Service Provider’s Personnel.

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### INSURANCE

* 1. The Service Provider shall on or before the Commencement Date and for the duration of this Agreement, have and maintain in force adequate insurance cover consistent with acceptable and prudent business practices and acceptable to SARS, which shall include, without limitation, professional indemnity insurance cover, against all actions, suits, claims or other expenses arising in connection with damages or loss for which it is liable in terms of this Agreement.
  2. The Service Provider shall provide SARS with a certificate of insurance, evidencing that the cover and policy endorsement required under this Agreement is in force, on the date of signing this Agreement and provide evidence of renewal of the insurance at least three (3) Business Days prior to expiration thereof.
  3. The Service Provider shall provide SARS at least thirty (30) days’ notice prior to any material modification, cancellation or non-renewal of the insurance policies.
  4. In the case of loss or damage or other event that requires notice or other action under the terms of any insurance coverage set out in **Clause 15.1**, 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.
  5. Without limiting the generality of SARS’s rights and remedies in this Agreement, in the event of a failure by the Service Provider to take out or maintain any insurance required hereunder, or to provide evidence of renewal within the period indicated herein, SARS may purchase the requisite insurance and deduct or offset the costs thereof from any monies due to the Service Provider by SARS under this Agreement.

### 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 do 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 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 and expedient 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, qualifications, capacity and experience to render the Services to SARS;
     7. no fact or circumstances exist that may materially affect its capacity to perform its obligations under this Agreement;
     8. it shall at all times have, and comply with all legal requirements and with the terms and conditions of all necessary licenses, certificates, authorisations and consents required under the Law of the Republic of South Africa;
     9. it will discharge its obligations in terms of this Agreement in a manner that does not and will not infringe, or constitute an infringement or misappropriation of Intellectual Property Rights of any third party; and
     10. on delivery of the Services, the Services will be suitable for the purpose stipulated in this Agreement.
  2. By tendering, the Service Provider is deemed to have satisfied itself regarding all conditions affecting this Agreement, and must, at all times, comply with the manifest intent and obligations of this Agreement.
  3. 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.
  4. The provisions of this Clause shall survive the termination of this Agreement.

### BREACH

* 1. If a Party (the “Defaulting Party”) is in default or breach of any obligation which arises in terms of the Agreement and that Defaulting Party fails to remedy such default or breach within fourteen (14) Business Days after receipt of a written notice given by the other Party (the “Aggrieved Party”) calling upon the Defaulting Party to remedy such default or breach, then the Aggrieved Party may, without prejudice to any other rights which it may have in terms hereof or at law-
     1. claim specific performance;
     2. cancel this Agreement, such cancellation to be effective immediately on receipt by the Defaulting Party of a written notice to that effect; or
     3. claim any money due and payable in terms of this Agreement and claim damages from the Defaulting Party.

* 1. The Service Provider acknowledges that it is a material term of this Agreement that Service Levels must be maintained throughout the duration of this Agreement. The Parties agree that multiple Service Level Failures will constitute sufficient proof of persistent non-compliance by the Service Provider of SARS’s prescribed Service Levels and that such persistent non-compliance will constitute a material breach of this Agreement.
  2. The remedies set out in this Clause shall not be construed to be exhaustive of any other remedies available to the Parties.

### 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);
     2. commits any of the acts of insolvency set out in section 8 of the Insolvency Act, 1936 (Act No. 24 of 1936);
     3. is placed under business rescue as contemplated in Chapter 6 of the Companies Act, 2008 (Act No. 71 of 2008);
     4. the Service Provider makes any arrangement or compromise with its creditors generally or ceases to carry on business;
     5. a final and unappealable judgment against the Service Provider remains unsatisfied for a period of ten (10) Business Days or more after it comes to the notice of the Service Provider; and/or
     6. the Service Provider loses its accreditation with any legislative authority or fails or neglects, when so called upon by SARS, to furnish SARS with any certificate of the Service Provider’s accreditation or registration required in terms this Agreement or Law.
  2. Any termination of this Agreement pursuant to the provisions of this **Clause 18** will be without SARS incurring any liability in connection with such termination, or prejudice to any claim which SARS may have in respect of any prior breach of the terms and conditions of this Agreement by the Service Provider.

### 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 this 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. In the event of any dispute arising out of or in connection with this Agreement, the Parties shall try to resolve the dispute by negotiation. This entails that the one Party invites the other in writing to a meeting and attempts to resolve the dispute within seven (7) days from date of the written invitation. If the dispute has not been resolved by such negotiation, the Parties shall submit the dispute to the Arbitration Foundation of Southern Africa (“AFSA”) administered mediation, failing which the dispute shall be determined as below.
  2. Save in respect of those provisions of this Agreement which provide for their own remedies which would be incompatible with arbitration, any dispute arising from, or in connection with, this Agreement and not resolved as contemplated above will finally be resolved by arbitration in accordance with the Rules of AFSA or its successor, by an arbitrator or arbitrators appointed by AFSA.
  3. Neither Party shall be precluded from obtaining interim relief on an urgent basis or other conservatory relief from a court of competent jurisdiction pending the decision of the arbitrator.
  4. Subject to **Clause 10.6**, where the resolution of a dispute is pending, neither Party may in such circumstances suspend their obligations under this Agreement.
  5. This **Clause 21** 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.

### ADDRESSES

* 1. Each Party chooses the address set out below its name as its address to which all notices and other communications must be delivered for the purposes of this Agreement and its *domicilium citandi et executandi (“domicilium”)* at which all documents in legal proceedings in connection with this Agreement must be served.
  2. SARS’s physical address for ***service of notices and legal processes*** shall be as follows-
     1. **Group Executive: Corporate Legal Services**

**Khanyisa Building**

**281 Middel Street**

**Nieuw Muckleneuk**

**PRETORIA**

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

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

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* 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. **Subcontracting**
     1. Subject to applicable Law, the Service Provider shall not without the prior written consent of SARS, which consent shall not be unreasonably withheld, subcontract any of the Services required in terms of this Agreement to any third party. It is expressly recorded that SARS will not approve a proposed subcontracting if, in the exclusive judgment of SARS, the subcontracting will result in prejudice or potential prejudice to other service providers.
     2. Whenever the Service Provider wishes to subcontract any part of the Services in terms hereof, the Service Provider shall submit, together with its request as set out in **Clause 23.2** above,a complete written proposal for SARS’s approval containing-
        1. Full details and business references of the subcontractor;
        2. A full description of the part of the Services it proposes for subcontracting;
        3. Full details of how the Service Provider will manage the performance of the Services by the subcontractor;
        4. The value of the contract proposed to be subcontracted, expressed as a percentage;
        5. The B-BBEE status and certificate of the subcontractor; and
        6. Confirmation of tax compliance of the subcontractor.
     3. Notwithstanding the provisions of this **Clause 23.2**, the Service Provider shall remain the only Party wholly responsible for the due performance of its obligations in terms of this Agreement and compliance with the terms and conditions thereof.
     4. Subject to the provisions of **Clause** **23.2.1** 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.
     5. Nothing contained herein shall create a contractual relationship between SARS and the subcontractor.
  2. **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 the Authorised Representatives of each Party.

* 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 High Court of the Republic of South Africa (Gauteng Division, Pretoria) in regard to all matters arising from this Agreement.

* 1. **Whole Agreement And Amendment**

This Agreement constitutes the whole of the Agreement between the Parties relating to the subject matter hereof and no amendment, alteration, addition, variation or consensual cancellation will be of any force or effect unless reduced to writing and signed by the Parties hereto or their duly Authorised Representatives. Any document executed by the Parties purporting to amend, substitute or revoke this Agreement or any part hereof, shall be titled an “Addendum” to the applicable 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 (“B-BBEE”)

* 1. The Service Provider acknowledges that Broad-Based Black Economic Empowerment is a business and social imperative in order to achieve a non-racial, non-sexist and equitable society in South-Africa.
  2. In pursuance of this objective the Service Provider commits and warrants to comply in all respects with the requirements of the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003) (hereafter referred to as the B-BBEE Act) as amended from time to time, and the Codes of Good Practice issued in terms of the B-BBEE Act.
  3. Upon signature of this Agreement and one (1) 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 remain BEE compliant, failing which it must provide written confirmation from a verification agent that it is in the process of being rated.
  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 represents and warrants that as of the Commencement Date of this Agreement, the Service Provider is and will remain compliant throughout the duration thereof with all applicable Laws relating to taxation in the Republic of South Africa.
  2. A failure to comply with the provisions of this Clause will constitute a material breach and will entitle SARS to terminate the Agreement forthwith.

### 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.

### NON-SOLICITATION

* 1. During the term of this Agreement and for two (2) years after any termination of this Agreement, neither Party will, without the prior written consent of the other Party, either directly or indirectly, solicit or attempt to solicit, any person employed by a Party. Provided that, either Party may employ any person employed by a Party, where they responded to a newspaper advertisement or similar online publicity without being directly solicited by the other Party.

### CONFLICT OF INTERESTS

* 1. Neither the Service Provider nor the Service Provider’s Personnel shall have any interest or receive any remuneration in connection with the performance of the Services, except as provided for in this Agreement.
  2. The Service Provider must at all times act impartially and ethically, and where applicable, act in accordance with the code of ethics / conduct of its profession.
  3. 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. The Service Provider must have systems in place to identify potential conflicts and to bring them to the attention of SARS.
  4. The Service Provider warrants that there are no contracts, restrictions or other matters which would interfere with its ability to discharge its obligations under this Agreement. If, while executing its duties and responsibilities under this Agreement, the Service Provider becomes aware of any potential or actual conflict between its interests and those of SARS, the Service Provider shall immediately inform SARS. Where SARS forms the reasonable view that such a conflict does or could exist, it may direct the Service Provider to take reasonable action(s) to resolve that conflict, and the Service Provider shall comply with that instruction.

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

**SIGNED AT PRETORIA.**

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| --- | --- |
| 1. **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**   **Maropeng Sebothoma**  **Executive:**  **SARS Institute of Learning**  **Date of signature:** | 1. **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**   **Johnstone Makhubu**  **Group Executive: Procurement**  **Date of signature:** |

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

**SIGNED AT \_\_\_\_\_\_\_\_\_\_\_\_ ON THIS \_\_\_\_\_\_\_\_ DAY OF \_\_\_\_\_\_\_ 2017.**

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