**SERVICES AGREEMENT**

Entered into By and Between

**THE SOUTH AFRICAN REVENUE SERVICE**, an organ of state within the public administration but outside the public service established in terms of Section 2 of the South African Revenue Service Act,1997 (Act No. 34 of 1997).

**[“SARS”]**

And

[**INSERT NAME AND ID AND/OR REGISTRATION PARTICULARS OF THE SERVICE PROVIDER**], a private company with limited liability incorporated in accordance with the Laws of South Africa.

**[“THE SERVICE PROVIDER”]**

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1. **INTERPRETATION** 
   1. The head notes to the clauses of this Agreement are for reference purposes only and will not govern or affect the interpretation of nor modify nor amplify the terms of this Agreement.
   2. Unless inconsistent with the context, the words and expressions have the following meanings and similar expressions will have corresponding meanings:

**“Agreement”** means -

1. the Terms and Conditions as contained in this Agreement;
2. the Request for Proposal issued by SARS under RFP **[TO BE INSERTED]**
3. the tender proposal including any pricing schedule (“Proposal“)submitted by the Service Provider in response to **[TO BE INSERTED]**; and,
4. any other schedules or annexures that may be added, by mutual agreement between the Parties to the Agreement, from time to time.

**“Authorised Representatives”** mean those signatories authorised by SARS and the Service Provider respectively to sign the Agreement;

**“Business Day”** means any day other than a Saturday, Sunday or public holiday in South Africa;

**“Commencement Date”** means **[TO BE INSERTED]** notwithstanding the date of signing of this Agreement;

**“Confidential Information”** means, without limitation –

1. the details of this Agreement;
2. all confidential material of either Party;
3. price information relating to the Services;
4. the terms of this Agreement;
5. information or material proprietary to, or deemed proprietary to a Party;
6. information designated as confidential by the Parties after consultation;
7. information acquired by the other Party solely by virtue of the provision of the Services;
8. the trade secrets of the Parties;
9. SARS employee data;
10. taxpayer information;
11. SARS confidential information [which has the meaning assigned to it in section 68 of the Tax Administration Act, 2011 (Act No. 28 of 2011)]
12. information or technology in which either Party has intellectual property rights; and
13. reference material.

**“Intellectual Property”** means concepts, ideas, methods, methodologies, procedures, processes, know-how and techniques, including, without limitation, functions, processes, system and data models, templates, the generalised features of the structure sequence and organisation of software, user interfaces and screen designs, general purpose consulting and software tools, utilities and routines and logic, coherence and methods of operation of systems developed and applied by either Party;

**“Parties”** means SARS and the Service Provider and “Party” as the context requires, is a reference to any one of them;

**“SARS”** means the South African Revenue Service, an organ of state established in terms of the South African Revenue Service Act, 1997 (Act No. 34 of 1997), with its principal address at **Lehae La SARS, 299 Bronkhorst Street, Nieuw Muckleneuk, Pretoria**;

**“Service Provider”** means **[TO BE INSERTED]**, a company with limited liability incorporated in accordance with the Laws of South Africa and with registration number **[TO BE INSERTED]**,

**“Services”** means the SARS’s business requirements as set out in **Clause 3** below including any management, planning and other services that are ancillary to and appropriate for the performance of any of the foregoing and any duties, services, activities, functions and responsibilities reasonably required for the proper performance and provision of the Services.

**“Steering Committee”** means the committee comprising representatives from the Service Provider and SARS, established in terms of this Agreement to monitor and control the Services, overall project direction and scope.

**“VAT”** means Value-Added Tax levied in terms of the Value-Added Tax Act, 1991 (Act No. 89 of 1991).

* 1. Any reference in this Agreement to:-
     1. a **“Clause”** shall, subject to any contrary indication, be construed as a reference to a clause hereof;
     2. “**Law**” shall be construed as any law (including common 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;
     3. a “**Person”** refers to any person, firm, company, corporation, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the foregoing;
  2. Unless inconsistent with the context or save where the contrary is expressly indicated:
     1. if any provision in a definition is a substantive provision conferring rights or imposing obligations on any party, notwithstanding that it appears only in the Interpretation Clause, effect shall be given to it as if it were a substantive provision of this Agreement;
     2. when any number of days is prescribed in this Agreement, same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a day which is not a Business Day, in which case the last day shall be the next succeeding Business Day;
     3. in the event that the day for payment of any amount due in terms of this Agreement should fall on a day which is not a Business Day, the relevant day for payment shall be the subsequent Business Day;
     4. in the event that the day for performance of any obligation to be performed in terms of this Agreement should fall on a day which is not a Business Day, the relevant day for performance shall be the subsequent Business Day;
     5. any reference in this Agreement to an enactment is to that enactment as at the signature date and as amended or re-enacted from time to time;
     6. any reference in this Agreement to this Agreement or any other Agreement or document shall be construed as a reference to this Agreement or, as the case may be, such other Agreement or document as same may have been, or may from time to time be, amended, varied, negotiated or supplemented;
     7. no provision of this Agreement constitutes a stipulation for the benefit of any Person who is not a party to this Agreement;
     8. references to day/s, month/s or year/s shall be construed as calendar day/s, month/s or year/s; and,
     9. a reference to a Party includes that Party’s successors-in-title and permitted assigns.
  3. Unless inconsistent with the context, an expression which denotes:
     1. any one gender includes the other gender;
     2. the singular includes the plural and *vice versa*;
  4. Where any term is defined within the context of any particular Clause in this Agreement, the term so defined, unless it is clear from the Clause in question that the term so defined has limited application to the relevant clause, shall bear the same meaning as ascribed to it for all purposes in terms of this Agreement, notwithstanding that that term has not been defined in such clause.
  5. The termination of this Agreement will not affect the provisions of this Agreement which operate after any such termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.
  6. This Agreement is binding on the executors, administrators, trustees, permitted assigns or liquidators of the Parties as fully and effectually as if they had signed this Agreement in the first instance and reference to any Party is deemed to include such Party’s estate, heirs, executors, administrators, trustees, permitted assigns or liquidators, as the case may be.
  7. Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.

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

1. **APPOINTMENT**
   1. SARS hereby appoints the Service Provider to perform the Services, which appointment the Service Provider accepts.
   2. The performance of the Services shall be subject to the terms and conditions of this Agreement.
   3. The Service Provider will at all times perform the Services in accordance with its responsibilities and in compliance with the applicable performance standards (collectively referred to as “Services Deliverables”) set out in **Clause 4** below.

* 1. The Service Provider represents that it has, and warrants that throughout the duration of this Agreement it shall have the resources, skills, qualifications and experience necessary to provide the Services.
  2. The Service Provider will have the right to appoint subcontractors, subject to obtaining prior written approval from SARS, in which event the Service Provider will at all times remain responsible to SARS for fulfilment of all its obligations under this Agreement.

1. **SERVICES**
   1. The Service Provider shall be required to:
      1. Act on behalf of SARS as a talent scout for the recruitment and placement of executive candidates, taking into account SARS’s workforce needs. The Service Provider shall keep an external pool of potential candidates informed about positions opening up at SARS, whilst simultaneously maintaining relationships with such potential candidates - regardless of whether or not any vacancy exists within SARS at any given point in time;
      2. Develop, implement and manage an external exclusive scouting process for monitoring potential talent, to enable skills attraction that is aligned with SARS’s value proposition and succession management requirements;
      3. Create and maintain relationships with potential suitable executive candidates and to assist with position these candidates for future employment with SARS;
      4. Ensure that the Service Provider’s relationship with SARS is sustainable and meets the immediate, as well as future needs of SARS that may arise;
      5. Compile regular market reports listing potential candidates who are available on short-, medium- or long term respectively;
      6. Profile and attract potential candidates and develop an understanding in terms of their career aspirations and interests and must expedite on-going engagements in the interest of both SARS and the potential candidates;
      7. Prepare quarterly reports of potential candidates’ profiles;
      8. Conduct quarterly meetings with the head of the Human Resources (“HR”) division, Talent Management, Recruitment and appropriate line management or other stakeholders;
      9. Provide shortlists of potential candidates upon request;
      10. Conduct pre-selection screening of profiled executive candidates, inclusive of relevant psychometric assessments, interviews, credentials, credit- and criminal record verifications;
      11. Act as an interface between SARS and the potential candidates in matters relating to appointments and placements; and
      12. Conduct post placement meetings with relevant SARS’s managers and/or HR personnel or other stakeholders and provide feedback to SARS in the form of a report.
2. **SERVICE DELIVERABLES**
   1. The Service Provider’s satisfactory performance of the Services shall be measured by the prompt delivery of the following outputs (“Services Deliverables”):
      1. A portfolio of an up to date external pool of possible executive position candidates (“Profiled Candidates”), which are aligned to the business requirements of SARS within twenty four (24) hours of such a request by SARS;
      2. Proof of the conducting of pre-selection screening of Profiled Candidates within twenty four (24) hours of such a request by SARS;
      3. Monthly Reports provided to the Head of Human Resources: Talent Management on Profiled Candidates indicating, amongst others, the Profiled Candidate’s -
         1. Short-, medium- to long term availability;
         2. Career interests; and,
         3. Such other matters as SARS may prescribe from time to time.
      4. Quarterly reports on Profiled Candidates to the Head of Human resources, the head of Talent management and Recruitment as well as other stakeholders as identified from time to time;
      5. A short list of potential placement candidates within three (3) Business Days of such a request by SARS;
      6. Conducting and attending quarterly meetings, as provided for in **Clause 3.1.8** above; and.
      7. Providing SARS with a post placement feedback report, taking into account the view of the placed candidate, the relevant SARS Human Resources personnel and the placed candidate’s direct reports, within twenty four (24) hours of such a request by SARS.
   2. The Service Provider agrees that any one incident of failure by the Service Provider to comply with the provisions of this Clause in any month shall constitute a service failure, entitling SARS to a service credit of 10% (ten percent) on the fees payable on the relevant invoice for that particular month or quarter, whichever is applicable. Where there is more than one service failure during any invoicing period, the service credit payable to SARS shall be increased by 2.5 % for each and every subsequent service failure.
   3. The imposition of a service credit in terms of the provisons hereof 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 failure/s and any resulting termination.
   4. Notwithstanding the provisions of this clause**,** any claim for damages resulting from a service failure/s, in respect of which a credit has already been paid, shall be reduced by the amount of such service credit.
   5. The Service Provider shall actively monitor its compliance with the provisions of this **Clause 4** and report all service failures to SARS. Any failure by the Service Provider to comply with the provisions of this clause shall constitute a material breach of this Agreement.
3. **DURATION**

5.1 This Agreement commences on the Commencement Date and shall thereafter endure for a period of twenty four (24) months (the “Initial Period”), unless otherwise terminated earlier in terms of the provisions of this Agreement.

5.2 SARS has an option to extend the Agreement for a further period of twenty four (24) months (the “Renewal Period”) upon giving the Service Provider one (1) months’ notice, subject to SARS’s sole discretion.

1. **PAYMENT**
   1. In consideration for the provision of the Services, SARS shall pay the Service Provider a retainer fee in the amount of **[TO BE INSERTED**] rand, inclusive of VAT.
   2. In addition to the aforesaid retainer fee, SARS shall in respect of each Profiled Candidate recruited and employed by SARS, pay the Service Provider a placement fee on the scale set out below:.
      1. **[TO BE INSERTED]**
   3. Subject to **Clauses 7 and 8** below, SARS shall pay all undisputed invoices within thirty (30) days after SARS receives such invoice, provided the invoice is accurate and meets all legislative and other requirements in terms of this Agreement.
   4. SARS may set off any amounts due to SARS in terms of this Agreement against any amounts payable by SARS to the Service Provider.
2. **INVOICING AND RECORDS**
   1. The Service Provider shall invoice SARS for Services performed pursuant to this Agreement on a quarterly basis in respect of the retainer fee and on a monthly basis in respect of the placement fee, in arrears, on or before the fifth (5th) Business Day of the month following the month in which the Service Provider rendered the Services to SARS, or the end of a quarter.
   2. Each invoice shall contain or have attached such information, and be in such format and on such media as SARS may reasonably request and, at the minimum contain:
      1. A brief narration of the activities performed by the Service Provider in the applicable quarter or month, whilst executing the Services, or such other information as SARS may prescribe from time to time;
      2. Any credits due to SARS in respect of any service failures as provided for in **Clause 4.2** above; and
      3. a SARS purchase order number.
   3. The Service Provider shall deliver all invoices to SARS’s Head of Talent Management, with copies to other SARS departments, if instructed to do so by SARS.
   4. The Service Provider shall maintain complete and accurate records of, and supporting documentation for, the amounts invoiced to and payments made by SARS hereunder.
   5. Within ten (10) days after SARS’s request, the Service Provider shall provide SARS with any documentation or information reasonably required by SARS in order to verify the Service Provider’s compliance with the requirements of this Agreement.
   6. The Service Provider shall verify that each invoice is complete and accurate and that it conforms to the requirements of this Agreement (including by carrying out detailed checks of each invoice) before issuing the invoice to SARS.
   7. The Service Provider shall 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.
   8. All costs incurred in performing audits under this **Clause 7** 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
   9. SARS shall not be obliged to pay any amounts that are invoiced more than one hundred and twenty (120) days after the first (1st) day of the month in which the Service Provider was obliged to deliver such invoice**.**
3. **DISPUTED CHARGES AND INVOICING ERRORS**

* 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 later payment, including disputes in respect of an error in an invoice or an amount paid. If SARS withholds any such amount:-
     1. SARS shall promptly notify the Service Provider that it is disputing such amount providing a reasonable explanation of the rationale therefor; and the Parties shall promptly first address such dispute in accordance with this **Clause 8** of this Agreement;
     2. If the dispute relates to (or equals in the case of disputed amounts that have already been paid) only a percentage of the invoiced amount, then SARS shall pay the undisputed amount in accordance with **Clause 6** above.
     3. If an invoice is identified as incorrect, then the Service Provider shall either issue a correct invoice if the amount has not yet been paid, or make a correction on the next invoice if the amount has been paid.
  2. Any dispute arising in terms of **Clause 8.1** above and which remains unresolved for ten (10) Business Days after it has arisen, shall be referred by either Party to SARS’s Executive: Procurement or persons of equivalent office for resolution, and the office of the Service Provider’s Chief Executive Officer.
  3. The relevant SARS Executive: Procurement and the Service Provider’s Chief Executive Officer or persons of equivalent office shall meet within ten (10) Business Days of the referral of the dispute to resolve such dispute.
  4. In the event that the dispute remains unresolved after ten (10) days of its referral to the persons mentioned in **Clause 8.3**, either Party shall be entitled to refer the dispute for resolution in accordance with the provisions of **Clause 19**.

1. **THE SERVICE PROVIDER’S OBLIGATIONS**
   1. During the currency of this Agreement, the Service Provider shall-
      1. nominate a representative who shall be referred to as the Project Manager and who shall be responsible for coordinating the Services, attending to the day to day management of the delivery of Services and the resolution of any complaints, problems and/or disputes in terms of this Agreement.
      2. ensure that its personnel and consultants 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.
      3. assign suitably qualified and skilled personnel to provide the Services in terms of this Agreement.
      4. comply with all legislation relating to the protection of personal information and data security.
      5. comply with all other legislation applicable to the Service Provider, including but not limited to tax legislation and labour legislation;
      6. render the Services to SARS in accordance with the highest professional standards.
      7. at all times during the term of this Agreement, observe and perform its duties and tasks and render the Services as set out in this Agreement with due diligence, efficiency and economy and in a reasonable professional, independent, objective, equitable and fair manner.
      8. take all reasonable precautions to preserve the confidentiality and integrity of the information obtained in the exercise of its obligations and to prevent corruption, or loss of such information in the performance of its obligations in terms of this Agreement.
      9. attend all meetings arranged by SARS for the purpose of discussing or managing the Services;.
2. **SARS’s OBLIGATIONS**
   1. SARS undertakes to:-
      1. nominate a representative who shall act as contract manager to liaise with the Service Provider’s Project Manager in respect of the day to day management of the Services;
      2. if required by the Service Provider, promptly furnish the Service Provider with any relevant information, which is necessary for the Service Provider to perform the Services in compliance with the terms and conditions of this Agreement;
      3. comply as soon as reasonably possible with any reasonable requests made by the Service Provider in its pursuance of the Services to be provided under this Agreement.

1. **SECURITY VETTING OF THE SERVICE PROVIDER’S PERSONNEL**
   1. SARS reserves the right at its sole and absolute discretion to do a security check on the Service Provider’s personnel involved in the performance of the Services, provided that SARS has obtained the prior written permission of such personnel. In the event that the Service Provider’s personnel refuse to give such written permission, the Service Provider shall immediately replace such personnel as provided for in **Clause 11.2** below.
   2. Where SARS finds the Service Provider’s employee, subcontractor or agent to be a security risk, SARS will inform the Service Provider accordingly and the Service Provider shall replace such employee, subcontractor or agent with another employee, subcontractor or agent with suitable qualification(s) and experience.
2. **LIABILITY OF THE PARTIES**
   1. A Party [“the Defaulting Party”] shall be liable to the other for any direct damages incurred by the other Party as a result of the Defaulting Party’s failure to perform its obligations in the manner required by this Agreement.
   2. A Party [“the Defaulting Party”] shall further be liable to the other Party for all indirect and consequential or special damages and/or losses suffered by that other Party as a result of a breach of Confidential Information; infringement of a third party’s intellectual property rights and/or any fraudulent acts committed by the Defaulting Party or any of its employees, subcontractors or agents.

1. **WARRANTIES BY THE SERVICE PROVIDER**
   1. The Service Provider hereby represents and warrants to SARS that-
      1. this Agreement has been duly authorised and executed by it and constitutes a legal, valid and binding set of obligations on it;
      2. it is acting as a principal and not as an agent of an undisclosed principal;
      3. the execution and performance of the terms and conditions of this Agreement does not constitute a violation of any statute, judgment, order, decree or regulation or rule of any court, competent authority or arbitrator or competent jurisdiction applicable or relating to the Service Provider, its assets or its business, or its memorandum, articles of association or any other documents or any binding obligation, contract or agreement to which it is a party or by which it or its assets are bound; and,
      4. 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.
   2. The Service Provider hereby warrants and undertakes to comply with all legislation relating to the employment relationship between the Service Provider and its employees, more specifically, it warrants that it will not commit any contravention(s) of the Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997) or the Labour Relations Act, 1995 (Act No. 66 of 1965), any other labour legislation or any collective bargaining agreements and hereby fully indemnifies SARS against all legal consequences of any nature whatsoever which arises in connection with such non-compliance.
   3. The provisions of this Clause shall survive the termination of this Agreement.

1. **INSURANCE AND INDEMNITIES**
   1. The Service Provider shall-
      1. On or before the Commencement Date and for the duration of this Agreement have and maintain in force professional insurance coverage in the amount of **[TO BE INSERTED]** to cover any claims, losses and or damages for which it is liable in terms of this Agreement;
      2. At SARS’s request and within two (2) days of such request, provide SARS with a copy of the aforementioned insurance policies.
      3. Indemnify and hold SARS harmless against all losses, claims, demands, proceedings, damages, costs, charges and expenses (including reasonable legal expenses) of whatsoever nature arising out of this Agreement or at law in respect of the Service Provider’s breach of the provisions of this Agreement or injury or death of any person or loss of or damage to property occurring by reason of the wilfulness or negligence of the Service Provider, its employees or agents.

1. **BREACH**
   1. Should a Party (“the Defaulting Party”) commit a breach of any of the provisions of this Agreement, then the other Party (“the Aggrieved Party”) shall be entitled to require the Defaulting Party to remedy the breach within 10 (ten) Business Days, or any other reasonable time agreed upon between the Parties, by delivery of a written notice requiring it to do so. If the Defaulting Party fails to remedy the breach within the period specified in such notice, the Aggrieved Party shall be entitled to cancel the Agreement and claim damages, alternatively claim immediate specific performance of the Defaulting Party’s obligations. The foregoing is without prejudice to such other rights as the Aggrieved Party may have in Law.
   2. The Service Provider acknowledges that it is a material term of this Agreement to comply with the provisions of **Clause 4** above. Therefore, the Parties agree that multiple service failures as set out in **Clause 16.1.1.3** will constitute sufficient proof of persistent non-compliance by the Service Provider with the terms and conditions of this Agreement.
2. **TERMINATION OF THE AGREEMENT**

* 1. **Termination for Cause**

* + 1. SARS may, by giving written notice to the Service Provider, terminate this Agreement, in whole or in part, as of a date set out in the notice of termination, in the event that the Service Provider:
       1. commits a material breach of this Agreement, which breach is not cured within ten (10) calendar days after notice of breach from SARS to the Service Provider;
       2. commits a material breach of this Agreement that is not capable of being cured within ten (10) calendar days;
       3. fails to meet the prescribed service levels on 3 (three) occasions during the same month, or if the Service Provider fails to meet the prescribed service Levels on 4 (four) different occasions within any consecutive 3 (three) () month period.
    2. Without limiting the generality of the foregoing, SARS may terminate this Agreement, by giving notice to the Service Provider, if the Service Provider fails to comply with **Clauses 4; 13; 20; 21 and 23**.
    3. SARS may, upon written notice to the Service Provider, terminate this Agreement immediately if:
       1. the Service Provider is placed in liquidation, whether provisionally or finally; or
       2. the Service Provider is placed under business rescue as contemplated in Chapter 6 of the Companies Act, 2008 ( Act No. 71 of 2008); or
       3. the Service Provider is convicted of any offence which comprises an element of fraud or dishonesty; or
       4. the Service Provider commits an act of insolvency as contemplated in the Insolvency Act, 1936 (Act No. 24 of 1936); or
       5. the Service Provider undergoes a change of Control, in which case “Control” shall mean, with regard to any entity, the right or power to dictate the management of and otherwise control such entity by any of:
          1. holding directly or indirectly the majority of the issued share capital or stock (or other ownership interest if not a corporation) of such entity ordinarily having voting rights;
          2. controlling the majority of the voting rights in such entity; or having the right to appoint or remove directors holding a majority of the voting rights at meetings of the board of directors of such entity.
  1. **Termination for Convenience**

Either party may terminate this Agreement, in whole or in part, for convenience and without cause at any time by giving the other Party at least twenty (20) Business Days’ prior notice of the intended termination.

* 1. **Required Actions On Termination**
     1. Where this Agreement has been terminated –
        1. each Party shall return to the other immediately upon demand, or within such reasonable period as the Parties may agree upon all information, documentation and reports that belong to the other Party, as well as all Confidential Information disclosed to it;
        2. the information and documentation to be transferred to the new service provider will exclude proprietary software, which shall remain the sole and exclusive property of the Service Provider but shall include all Confidential Information and Intellectual Property of SARS; and,
        3. the Service Provider shall immediately cease to provide the Services, subject to **Clause 27**; and,
  2. **Consequences Of Termination**
     1. Any termination of this Agreement pursuant to the provisions of this **Clause 16** shall be without prejudice to any claim which either Party may have in respect of any prior breach of the terms and conditions of this Agreement by the other Party; and
     2. No Employee shall have any claim against the Service Provider on account of termination of the Services.

1. **FORCE MAJEURE**
   1. In the event of any act beyond the control of the Parties, strike, war, warlike operation, rebellion, riot, civil commotion, lockout, interference by trade unions, suspension of labour, fire, accident, or (without regard to the foregoing enumeration) of any circumstances arising or action taken beyond the reasonable control of the Parties hereto preventing them or any of them from the performance of any obligation hereunder (any such event hereinafter called a "Force Majeure Event") then the party affected by such Force Majeure Event shall be relieved of its obligations hereunder during the period that such force majeure continues.
   2. The affected Party’s relief is only to the extent so prevented and such Party shall not be liable for any delay or failure in the performance of any obligations hereunder or loss or damage which the other party may suffer due to or resulting from the Force Majeure Event, provided always that a written notice shall be promptly given of any such inability by the affected party.
   3. Any Party invoking force majeure shall upon termination of such force majeure give prompt written notice thereof to the other Party. Should a Force Majeure Event continue for a period of more than thirty (30) calendar days, then either Party has the right to cancel this Agreement.
2. **RELATIONSHIP BETWEEN THE PARTIES**
   1. The Service Provider is an independent contractor and under no circumstances will it be partner, joint venture partner, agent, or employee of SARS in the performance of its duties and responsibilities pursuant to the Agreement.
   2. All personnel used by the Service Provider will be the Service Provider’s employees, subcontractors, or agents, and the entire management, direction, and control of all such persons will be and remain the responsibility of the Service Provider.
   3. Neither Party may under any circumstances, represent that it acts on behalf of the other Party, nor may it bind the other Party in any manner.
3. **DISPUTE RESOLUTION**
   1. If a dispute between the Parties arises out of or is related to this Agreement, the Parties shall meet and negotiate in good faith to attempt to resolve the dispute. If, after twenty (20) Business Days from the date upon which the dispute was declared by a party by written notice, the dispute is not resolved, the matter shall be determined in accordance with the provisions set out below.
   2. Save in respect of those provisions of this Agreement which provide for their own remedies which would be incompatible with arbitration, or in the event of either Party instituting urgent action against the other in any court of competent jurisdiction, any dispute arising from, or in connection with, this Agreement will finally be resolved by arbitration in accordance with the Rules of the Arbitration Foundation of Southern Africa (the “Foundation”) or its successor, by an arbitrator or arbitrators appointed by the Foundation.
   3. This **Clause 19** will be severable from the rest of the provisions of this Agreement so that it will operate and continue to operate notwithstanding any actual or alleged voidness, voidability, unenforceability, termination, cancellation, expiry, or accepted repudiation, of this Agreement.
   4. Save for **Clause 8**, neither Party shall be entitled to withhold performance of any of their obligations in terms of this Agreement pending the settlement of, or decision in, any dispute arising between the Parties and each party shall, in such circumstances continue to comply with their obligations in terms of this Agreement.
4. **CONFIDENTIAL INFORMATION**
   1. Neither Party may, unless otherwise provided in this Agreement, disclose the other Party’s Confidential Information, whether written or oral, imparted or delivered to a Party or its employees, subcontractors, attorneys, agents, accountants, investment bankers, other advisors or representatives.
   2. Confidential Information shall not include any information which is generally available to the public or becomes known to a Party on a non-confidential basis, or to the extent that the information may be required to be disclosed in terms of any law.
   3. The Service Provider agrees that SARS’s Confidential Information will be used solely for the purpose of providing the Services, and that all of it will be kept secure by applying the same security measures thereto as those which the Service Provider uses to protect its own Confidential Information, provided that: the Confidential Information or any part of it may be disclosed to the Service Provider’s employees, subcontractors, agents and advisors on a “need to know” basis for the purpose of providing any aspect of the Services, it being understood that those employees, subcontractors, agents and representatives shall be informed by the Service Provider of the confidential nature of all such Confidential Information and shall be directed by the Service Provider to treat it confidentially, provided that the Service Provider shall be responsible for any breach of this Agreement by its employees, subcontractors, agents or representatives and accordingly indemnifies SARS against any loss or damage that may be suffered by SARS as a result of such breach.

* 1. Any Confidential Information may be disclosed if a Party consents to such disclosure in writing.
  2. The Service Provider shall not remove from SARS’s premises any documents or materials relating to the Services or SARS’s business without first obtaining the written consent of SARS.
  3. The provisions of this clause shall survive the termination or cancellation of this Agreement for any reason whatsoever.

1. **INTELLECTUAL PROPERTY**

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. Unless specifically authorised in this Agreement or in writing by a Party and then only to the extent so authorised, the other Party shall have no right to use the first mentioned Party’s intellectual property in any manner, save for **Clause 22** below.

1. **OWNERSHIP AND USE OF INFORMATION**

# The Service Provider confirms that all records and reports pertaining to the Services to be rendered to SARS in terms of the Agreement will remain the sole property of SARS.

# At the request of SARS, the Service Provider shall make available all records and reports pertaining to the Services within a reasonable period, but not exceeding seven days from date of request.

1. **TAX COMPLIANCE**

# The Service Provider represents and warrants that as of the Commencement Date of this Agreement, the Service Provider is and will remain compliant throughout the duration thereof with all applicable laws relating to tax in South Africa.

# In addition to the above, the Service Provider shall not later than 45 (forty five) days after each anniversary of this Agreement submit to the Executive: Procurement a valid tax clearance certificate for the current year.

# If the Service Provider fails to provide such a certificate, SARS may terminate the Agreement in accordance with the provisions of Clause 16. SARS will have no liability to the Service Provider with respect to such termination.

1. **BROAD-BASED BLACK ECONOMIC EMPOWERMENT**

# 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.

# In pursuance of this objective the Service Provider commits and warrants to comply in all respects with the requirements of the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003) (hereafter referred to as the BBBEE Act) as amended from time to time, and the Codes of Good Practice issued in terms of the BBBEE Act.

# 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.

# During the currency of this Agreement (including any extension or renewal hereof which may apply), the Service Provider shall use reasonable endeavours to maintain and/or improve its current BEE rating status.

# 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.

1. **ADDRESSES**

# 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.

# SARS’s physical address for *service of formal notices and legal processes*-

# The Executive: Procurement;

**570 Ferhsen Street;**

**Brooklynbridge**

**Linton House;**

**Brooklyn – Pretoria.**

# SARS’s email address for communications and/or correspondences in connection with the performance of the Services: [rftprofessional@sars.gov.za](mailto:rftprofessional@sars.gov.za)

# The Service Provider’s physical address for *service of formal notices and legal processes-*

# 

# [TO BE INSERTED]

# Any notice or communication required or permitted to be given to a Party pursuant to the provisions of this Agreement shall be valid and effective only if in writing and sent to a Party’s chosen address, provided that documents in legal proceedings in connection with this Agreement may only be served at a Party’s physical address*.*

# Any Party may by written notice to the other Parties, change its chosen address to another address, provided that-

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

# 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.*

# Any notice to a Party contained in a correctly addressed envelope and sent by prepaid registered post to it at a Party’s chosen address shall be deemed to have been received on the fifth (5th) Business Day after posting; or

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# Any notice to a Party in a correctly addressed envelope and which is delivered by hand at a Party’s chosen address shall be deemed to have been received on the day of delivery, unless the contrary is proved.

# The parties record that whilst they may correspond via email during the currency of this Agreement for operational reasons, no formal notice required in terms of this Agreement, nor any amendment or variation to this Agreement may be given or concluded via email.

1. **GENERAL**

# NO ASSIGNMENT WITHOUT CONSENT

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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.

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# 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.

# ADVERTISING AND MARKETING

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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.

# WAIVER

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

# NO WITHHOLDING OF CONSENTS

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

# AUTHORISED SIGNATORIES

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

# COUNTERPARTS

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

# APPLICABLE LAW

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

# WHOLE AGREEMENT AND AMENDMENT

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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.

# ORDER OF PRECEDENCE

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In the event of a conflict between the documents comprising this Agreement, such conflict shall be resolved in accordance with the order of precedence (in descending order of priority) as follows (i) this Agreement (ii) any Annexures and/or Schedules to this Agreement.

# COVENANT OF GOOD FAITH

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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.

# COSTS

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

# JURISDICTION

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

**SIGNED AT PRETORIA**

**As representatives for the South African Revenue Service:**

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| --- | --- |
| 1. **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**   **Jacobus Johannes Louw**  **Chief Officer: Legal and Policy**  **Date of signature:** | 1. **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**   **Takalani Musekwa**  **Acting Chief Human Resources Officer**  **Date of signature:** |

|  |  |
| --- | --- |
| 1. **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**   **Prakash Mangrey**  **Chief Financial Officer**  **Date of signature:** | 1. **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**   **Deon Louwrens Stofberg**  **Executive: Procurement**  **Date of signature** |

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| --- |
| **As representative for the Service Provider:** |

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| --- |
| **SIGNED AT \_\_\_\_\_\_\_\_\_ON THIS \_\_\_\_DAY OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_2011** |
| **SIGNATURE:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**  **FULL NAMES AND SURNAME:**  **CAPACITY:** |