**SERVICES AGREEMENT FOR THE PROVISION OF**

**MEDIA BULK BUYING SERVICES**

Between

**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)

(hereinafter referred to as “**SARS**”)

and

**… (PTY) LTD**

**(Registration No.: …)**

(herein represented by its authorised representative who warrants that s/he is duly authorised to do so by virtue of a Resolution of the Directors)

(hereinafter referred to as “**the Service Provider**”)

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### DEFINITIONS

* 1. Unless inconsistent with the context, the words and expressions have the following meanings and similar expressions will have corresponding meanings-
     1. **“Accounts Manager”** means the Service Provider’s designated representative who shall be responsible for the management of the delivery of the Services, and to whom all communications regarding this Agreement must be addressed;
     2. **“Agreement”** means this Services Agreement, the RFP, together with all annexures hereto, including all amendments, variations, and/or substitutions to the Agreement, which have been reduced to writing and signed by the duly authorised representatives of the Parties;
     3. **“Applicable Law”** means any of the following to the extent applicable to the Service Provider and where applicable, to SARS or the Services-

1. Any statute, regulation, policy, by-law, ordinance or subordinate legislation;
2. The common law;
3. Any binding court order, judgment or decree;
4. Any applicable industry code of conduct, policy or standard enforceable by law; or
5. Any applicable direction, policy or order that is given by a regulatory authority;
   * 1. **“Brief”** means an instruction given by SARS to the Service Provider relating to a campaign to be engaged into, its nature, duration, objectives as well as the allocated budget and any other information which SARS may deem necessary;
     2. **“Business Day(s)”** means any day between and including Monday and Friday, except public holidays in South Africa observed by SARS;
     3. **“Commercially Reasonable Efforts”** means taking such steps and performing in such a manner as a well-managed company would undertake where such company was acting in a prudent and reasonable manner to achieve the particular result for its own benefit, provided always that such steps are within reasonable control of the Party;
     4. **“Deliverable”** means any material and other feedback provided as a product of the provision of the Services;
     5. **“Effective Date”** means …irrespective of the signature date of this Agreement;
     6. **“Intellectual Property”** means all computer programs, software, source code, object code, programme interfaces, specifications, operating instructions, compilations, lists, databases, systems, operations, processes, methodologies, technologies, algorithms, techniques, methods, designs, circuit layouts, plans, reports, data, works protected under the Copyright Act, 1978 (Act No. 98 of 1978), works of authorship, video recordings, audio recordings, photographs, models, samples, substances, trade secrets, formulae, know-how, show-how, database rights, user interface designs, benchmark data, architecture, utility models, Confidential Information, concepts and ideas of any nature (including of a technical, scientific, engineering, commercial, strategic, financial, marketing or organizational nature), inventions, discoveries, drawings, notes, research and research outcomes, manuals, documentation, training materials, job aids, trademarks, service marks, logos, slogans, corporate, business and trade names, domain names, trade dress, brand names and other indicia of origin, regardless of whether Intellectual Property rights actually exist in any such items, and any other tangible or intangible items in which Intellectual Property rights may exist, as may occur anywhere in the world, and any applications for registration of such intellectual property, and includes all Intellectual Property rights in any of the foregoing;
     7. **“Key Personnel”** means those members of staff of the Service Provider who have been dedicated to the provision of the Services to SARS, and on the strength of whose expertise the Service Provider warrants the ability to provide the Services;
     8. **“Media Credit Coordinators”** means a company with limited guarantee incorporated in accordance with Section 21 of the Companies Act, 2008 (Act No. 71 of 2008) which provides a centralised credit facility to advertising practitioners and centralised securities to media owners
     9. **“Parties”** means SARS and the Service Provider and “Party” as the context requires is a reference to any one of them;
     10. **“Performance Failure”** means a failure to attain a prescribed Service Level, which will entitle SARS to levy a financial penalty or which may result in the termination of this Agreement;
     11. **“RFP”** subject to any contrary indication, is reference to SARS’s Request for Proposals No. 39/2016 for the provision of media bulk buying and related services, which is incorporated herein by reference thereto;
     12. **“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;
     13. **“SARS Authorised Representative”** means the SARS employee designated / appointed in terms of this Agreement, or his/her appointed delegate, as the person who will interface with the Service Provider on all matters relating to the general administration of this Agreement, who will manage the overall performance of the Service Provider over the contract term and to whom all communications regarding this Agreement must be addressed;
     14. **“Service Level”** means the minimum performance standard of compliance which must be met by the Service Provider when rendering the Services;
     15. **“Service Provider”** means …**(PTY) LTD**,incorporated in accordance with the Laws of South Africa with registration number …and with its place of businessat…;
     16. **“Service Provider’s Personnel”** means any staff, entity, institution or person engaged or employed by or on behalf of the Service Provider to provide the Services;
     17. **“Services”** means provision by the Service Provider to SARS of media bulk buying services as more fully outlined in the RFP and contemplated in this Agreement, and includes 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;
     18. **“Termination Date”** means ….; and
     19. **“VAT”** means Value-Added Tax levied in terms of the Value-Added Tax Act, 1991 (Act No. 89 of 1991).

### INTERPRETATION OF AGREEMENT

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* 1. In this Agreement, unless the context otherwise indicates-
     1. Words and expressions that denote any one gender shall be capable of being construed as a reference to the other gender.
     2. Words signifying the singular shall include the plural and vice versa.
     3. A reference to a person shall include a reference to a juristic person or natural person and vice versa.
     4. Words and phrases defined in this Agreement shall bear the meaning assigned to them throughout this Agreement.
     5. Words and phrases used in this Agreement, which are defined or used in any statute, which applies to the subject matter, professional person, goods or services provided for in this Agreement shall be construed in accordance with the applicable statute or regulations.
     6. Headings of clauses are for convenience only and shall not aid in the interpretation or modification of clauses within the Agreement.
     7. Since the provisions of this Agreement have been settled by negotiation, the rule of construction that clauses must be interpreted against the party responsible for drafting will not apply.

### APPOINTMENT

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* 1. SARS issued a Request for Proposals for the provision of media bulk buying services under RFP 39/2016.
  2. The Service Provider submitted a proposal to SARS to render the Services. SARS accepted the proposal and hereby appoints the Service Provider to render the Services.
  3. The performance of the Services shall be subject to the terms and conditions of this Agreement.
  4. The Service Provider represents that it has and warrants that throughout the duration of this Agreement, it shall have the resources (assets, equipment and suitably qualified personnel), necessary to perform the Services in a diligent manner and in accordance with the highest professional standards prevailing in the advertising / communications industry.
  5. In reliance on these statements and representations, SARS has selected and appointed the Service Provider to provide the Services on a non-exclusive, basis to SARS, which appointment the Service Provider accepts.

### DURATION

* 1. This Agreement commences on the Effective Date and shall endure for a period of thirty six (36) months until the Termination Date, unless terminated earlier in accordance with the terms of this Agreement.

### APPROACH IN THE PERFORMANCE OF THE SERVICES

* 1. SARS may, from time to time and as and when needed, issue a Brief to the Service Provider, to perform the Services outlined in the Brief.
  2. This Agreement provides a framework for, and the general terms and conditions applicable to, the Services.
  3. The provisions of this Agreement shall apply to each and every Brief.
  4. The Service Provider will provide the Services to SARS subject to the terms and conditions of this Agreement generally, and in particular, subject to the specifications set forth in the relevant Brief.
  5. Each Brief shall be in writing and conform to the following minimum requirements-
     1. Details and specifications of the Services requested from the Service Provider;
     2. The timeframe within which the Services must be performed, together with the requisite Deliverables;
     3. Nature of reporting and frequency thereof;
     4. The Service Levels applicable to the Services procured in terms of the Brief and the corresponding Performance Failure penalties;
     5. The budget for the Services;
     6. The name/s and signatures of the SARS Authorised Representative or another person designated by SARS, and the Procurement Group Executive or Senior Manager duly designated by SARS; and
     7. Any additional provisions which may be applicable to the specific Brief.
  6. The Brief must be accepted by the Service Provider in writing before implementation.
  7. The Service Provider may not implement any of the Services without a duly issued, signed and accepted Brief. For this purpose, it is expressly recorded that the Service Provider shall not have any right of recourse or claim against SARS, whether financial or otherwise, as a result of any Services rendered or work done without a duly signed off Brief.
  8. The Service Provider must render the Services within the budget provided for in each specific Brief.

### RELATIONSHIP BETWEEN THE PARTIES

* 1. The Service Provider is an independent contractor, and under no circumstances will it be considered a 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 the responsibility of the Service Provider.

### SCOPE OF SERVICES

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* 1. The Service Provider is required, as part of the Services, to transfer skills to designated employees of SARS. The Service Provider must, in this regard:
     1. submit a skills transfer plan to the SARS Authorised Representative for approval, within two (2) weeks of commencement of the Agreement;
     2. obtain the written approval of the SARS Authorised Representative or SARS representative indicated prior to implementation of the skills transfer plan; and
     3. implement the approved skills transfer plan.
  2. The skills transfer plan must contain the following minimum details:
     1. skills transfer methodology contemplated;
     2. outcomes or deliverables contemplated;
     3. details of how the Service Provider will report to SARS on progress made; and
     4. details of how designated employees who participate in the skills transfer program will be assessed to determine their comprehension of skills transferred.

* 1. The Service Provider shall generally render the Services on the terms and conditions of this Agreement and, specifically, in accordance with the specifications set out in a Brief.
  2. Where the rendering of the Services requires the use of information technology, the Service Provider shall provide all Services utilising secure technologies and techniques in accordance with best industry practice andSARS’s security policies, procedures and requirements, including those relating to the prevention and detection of inappropriate use or access of software, hardware, systems and networks.
  3. The Service Provider shall use up-to-date technology to ensure that Services delivered to SARS-
     1. are in line with the highest standards prevailing in the media buying/communications industry;
     2. comply with Applicable Law; and
     3. achieve market cost efficiencies.
  4. The Service Provider will create an individual separate record for each Brief it receives from SARS, and keep proper records to enable a proper audit trail.

### PERFORMANCE FAILURES

* 1. SARS will, at the time of issuing and/or awarding of a Brief, determine and/or prescribe certain performance standards (Service Levels) that the Service Provider should comply with in the performance of the requested Services.
  2. Adherence to these Service Levels is crucial to the delivery of the Services at acceptable levels.
  3. Failure to adhere to Service Levels will entitle SARS to levy a financial penalty for the transgressed Service Level.
  4. Notwithstanding the imposition of a financial penalty in respect of a Performance Failure, SARS reserves the rights and without derogation to any other remedies it may have in law, to-
     1. terminate the Agreement for breach by the Service Provider as provided for in **clause 23** below;
     2. cancel a Brief with immediate effect; or
  5. Cancelation of Services in respect of a Brief in terms of this clause shall be without any liability to SARS except for payment for the Services already rendered by the Service Provider, less applicable financial penalties.

### PRICING

* 1. The Service Provider will charge SARS according to the rates provided for in the Commission schedule provided in Annexure A.
  2. The Service Provider will further charge SARS in accordance with a media placement schedule provided by the Service Provider to SARS following acceptance of a Brief.

### INVOICING

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* 1. The Service Provider shall invoice SARS for Services rendered on completion of a Brief, or as otherwise stipulated in a Brief.
  2. Each invoice shall contain-
     1. A description of the Services rendered;
     2. The amount of the financial penalties credited to SARS for Performance Failures calculated with reference to the Service Levels set out in the Brief;
     3. The commission set out in Annexure A or discount applicable;
     4. The disbursements incurred by a third party service provider as a result of performing the services; and
     5. Any such details as may be reasonably requested by SARS from time to time.
  3. The Service Provider shall verify that each invoice is complete and accurate and that it conforms to the requirements of this **clause 10** before issuing the invoice to SARS.
  4. All amounts and charges referred to above should be inclusive of Value Added Tax.
  5. The Service Provider shall reinvest into each relevant campaign schedule, the agreed portion of the commission and/or savings (comprising of discounts and/or added value) as detailed in Annexure A hereto, passing these reinvested commissions and/or savings onto SARS, whilst the balance of the commission and/or savings received shall serve as compensation to the Service Provider.
  6. The Service Provider shall deliver all invoices to the SARS office designated by SARS from time to time.

* 1. SARS shall pay undisputed amounts in an invoice owed to the Service Provider within thirty (30) days after SARS receives such invoice, if the invoice is accurate and meets the requirements of this Agreement.
  2. Should SARS query an item in an invoice, the Service Provider shall within two (2) days after a written request by SARS, provide SARS with any other documentation or information reasonably required by SARS in order to verify the accuracy of the amounts due on an invoice.

* 1. 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.
  2. All costs incurred in performing audits under this **clause 10** will be borne by SARS unless audit findings reveal the Service Provider’s non-compliance with the terms of this Agreement and/or Applicable Law.

* 1. 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, unless the amount or invoice is disputed in terms of **clause 11** below.
  2. SARS may withhold, deduct or set off from any monies due and owing to the Service Provider either in terms of this Agreement an amount equal to the amount of any outstanding claims that SARS may have against the Service Provider for damages, costs or any other indebtedness arising out of this Agreement: Provided that SARS will provide the Service Provider with written notice of its intention to offset, supported by reasonable detail of the actual damages, costs or indebtedness incurred by SARS.
  3. A certificate of indebtedness signed by the Chief Financial Officer of SARS reflecting the amount due and payable under **clause 10.10** above shall be sufficient and conclusive proof of the contents and correctness thereof for the purposes of with-holding, deduction or set off by SARS or for provisional sentence, summary judgment or any other proceedings against the Service Provider in a court of law and shall be valid as a liquid document for such purposes.

### DISPUTED CHARGES AND INVOICING ERRORS

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* 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 therefore and the Parties shall promptly first address such dispute in accordance with this **clause 11** 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 10.5** above; and
     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 11.1** above and which remains unresolved for five (5) Business Days after it has arisen, shall be referred by either Party to SARS’s Group Executive: Procurement and the Service Provider’s Chief Executive Officer or their designees for resolution.

* 1. The SARS’s Group Executive: Procurement and the Service Provider’s Chief Executive Officer or their designees shall meet within five (5) Business Days of the referral of the dispute to resolve such dispute.
  2. In the event that the dispute remains unresolved after ten (10) days of its referral to the persons mentioned in **clause 11.3**, either Party shall be entitled to refer the dispute for resolution in accordance with the provisions of **clause 25** below.

### SARS’S OBLIGATIONS

* 1. SARS undertakes to:
     1. nominate a SARS Authorised Representative;
     2. provide the Service Provider with the necessary documents and information in order for the Service Provider to render the Services;
     3. take timeous management decisions and give necessary approvals or authorisations to enable the Service Provider to fulfil its obligations under this Agreement;
     4. ensure that it designates employees for skills transfer purposes, and furnish the Service Provider with names of such designated employees;
     5. ensure that the designated employees contemplated above avail themselves and cooperate with the Service Provider for skills transfer purposes; and
     6. monitor and review the Service Provider’s performance in terms of this Agreement. SARS however, 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.
  2. Subject to the Service Provider’s personnel’s compliance with SARS’s access and security policies, provide the Service Provider’s personnel with access to the premises and facilities of SARS if necessary for the purposes of rendering the Services, for example to transfer relevant skills and knowledge to SARS personnel, to make presentations to SARS and/or attend meetings with SARS. No telephone, email and/or internet facilities will be provided to the Service Provider.
  3. The Service Provider shall obtain SARS’s signoff for every Deliverable described in a Brief.
  4. 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, or a Brief in particular.
  5. 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.
  6. 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 and/or any Brief or to claim damages, terminate the applicable Brief or 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.
  7. SARS will conduct an analysis of the Service Provider’s financial status and viability in line with the applicable industry standards and norms.
     1. The Service Provider will on each anniversary of the Commencement Date of this Agreement, submit to SARS the last audited financial statements for the analysis referred to in **clause 12.7** above.
     2. In the event that SARS finds that the Service Provider is no longer financially viable, SARS will notify the Service Provider of the same.
     3. SARS may request the Service Provider to provide an explanation about the finding made.
     4. In the event that SARS does not find the explanation in **clause 12.7.3** above satisfactory, SARS may terminate the Agreement.

### SERVICE PROVIDER’S OBLIGATIONS

* 1. During the currency of this Agreement, the Service Provider shall-

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* + 1. appoint and provide SARS with the full contact details of an Accounts Manager;
    2. 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;
    3. assign suitably qualified and skilled personnel to provide the Services in terms of this Agreement. To this extent, the Service Provider shall provide SARS with the names and *curriculum vitae* of the Key Personnel, indicating qualifications and, where appropriate, registration with the relevant regulatory authority upon request;
    4. not change or replace the Key Personnel for the duration of this Agreement, except with the prior written consent of SARS, in which event the replacement shall be at the cost of the Service Provider and have similar or better qualifications, skills and experience;
    5. provide the Services to SARS with due care, skill and diligence in accordance with the highest professional service standards and principles;
    6. monitor the implementation of a Brief against set targets, costs and timeframes;
    7. take Commercially Reasonable Efforts to prevent, overcome and mitigate any adverse effects that might ensue, to the extent required to achieve the relevant outcome;
    8. ensure that it adheres to written and reasonable requests or instructions by the SARS Authorised Representative;
    9. 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; and
    10. comply with all Applicable Law.

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### WARRANTIES

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* 1. The Service Provider hereby represents and warrants to SARS that-
     1. this Agreement has been duly authorised and executed by it and constitutes a legal, valid and binding set of obligations on it;
     2. it is acting as a principal and not as an agent of an undisclosed principal;
     3. the execution and performance of the terms and conditions of this Agreement does not constitute a violation of any statute, judgment, order, decree or regulation or rule of any court, competent authority or arbitrator or competent jurisdiction applicable or relating to the Service Provider, its assets or its business, or its memorandum of incorporation or any other documents or any binding obligation, contract or agreement to which it is a party or by which it or its assets are bound;
     4. it will provide the Services in a cost-effective and expedient manner, thereby ensuring that no unnecessary or extraordinary costs are incurred and passed on to SARS. In particular, the Service Provider warrants to strictly adhere to the timelines set out in a Brief;
     5. it has the requisite insurance to cover any form of claim that may be instituted against it as a result of it executing this Agreement or any Brief;
     6. it has the necessary resources, skills, capacity and experience to render the Services to SARS;
     7. no facts or circumstances exist that may materially affect its capacity to perform its obligations under this Agreement; and
     8. for the duration of this Agreement, it shall-
        1. hold a valid accreditation to Media Credit Coordinators and shall maintain a good industry assessment rating on an annual basis.
  2. 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.
  3. The provisions of this clause shall survive the termination of this Agreement.

### MEETINGS AND REPORTING

* 1. The Accounts Manager and SARS Authorised Representative shall meet as and when required to discuss the performance of the Services.
  2. The Service Provider shall be responsible for the correct recording of the meeting proceedings.
  3. The Service Provider shall deliver the record of the meeting proceedings to SARS within two (2) Business Days after the date of the meeting or such shorter period as SARS may prescribe, in its absolute discretion, for SARS’s perusal and verification.
  4. SARS shall have the right to comment on and amend the record. SARS’s comments and amendments shall be discussed and/or confirmed at the next meeting.
  5. **Clauses 15.2** and **15.3** shall be subject to **clause** **32.1** below.
  6. Where a Brief calls for a written progress report by the Service Provider, or a meeting is convened for the purpose of such report, the information provided by the Service Provider in the reports or meetings should be sufficiently detailed to provide assurance that the Services are on schedule.
  7. The Service Provider shall provide all reports envisaged in the RFP as indicated in a particular Brief.

### THIRD PARTY COOPERATION

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

### 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 personnel. This includes the knowledge acquired by the Service Provider, its agents and/or 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. 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.
  7. 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.
  8. Confidential Information shall not include information that-
     1. is lawfully in the public domain at the time of disclosure;
     2. subsequently and lawfully becomes part of the public domain by publication or otherwise;
     3. subsequently becomes available to a Party from a source other than the disclosing Party, which source is lawfully entitled without any restriction on disclosure to disclose such Confidential Information;
     4. is disclosed pursuant to a requirement or request by operation of law, regulation or court order;

* + 1. is independently developed or learned by a receiving Party without reference to or use of the Confidential Information of the other Party; and/or
    2. is disclosed by the receiving Party with the disclosing Party’s prior written approval.
  1. The Service Provider specifically acknowledges that all information relating to the Services, including but not limited to, literary works produced thereunder are of a sensitive nature and confidential. The Service Provider undertakes not to disclose such information without first obtaining the written consent of SARS.
  2. The Service Provider shall not remove from SARS’s premises any documents nor 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.

### SECURITY VETTING OF THE SERVICE PROVIDER’S PERSONNEL

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* 1. SARS reserves the right at its sole and absolute discretion to do a security check (vetting) on the Service Provider’s Personnel involved with the performance of the Services.
  2. Where SARS, in its sole discretion, finds any of the Service Provider’s Personnel to be a security risk, including where they are found to have criminal records, SARS will inform the Service Provider accordingly in writing and the Service Provider will be required to immediately replace such a person with a suitably qualified substitute.
  3. Failure to effect such a replacement of the Service Provider’s Personnel, within a period of forty eight (48) hours after having been so informed by SARS, will constitute a Performance Failure.

### CONFLICT OF INTEREST

* 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 view that such a conflict does or could exist, it may direct the Service Provider to take action(s) to resolve that conflict, and the Service Provider shall comply with that instruction.

### 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 the 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 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 employees of the Service Provider.

### INSURANCE

* 1. The Service Provider shall on or before the Effective 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 and/or public liability insurance cover, whichever is applicable to the Services which the Service Provider has been appointed to perform, 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 certificates of insurance, evidencing that the covers and policy endorsements required under this Agreement are maintained 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 with 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 21.1**, 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.

### INDEMNITY BY THE SERVICE PROVIDER

* 1. Subject to **clause 20** 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.

### BREACH

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* 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 the Service Levels contained in a Brief must be maintained throughout the duration of a Brief or this Agreement. The Parties agree that multiple Performance 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

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* 1. **Termination for cause by SARS**
     1. SARS may, by giving notice to the Service Provider, terminate this Agreement or the rendering of the Services in whole or in part, as of a date set out in the notice of termination, in the event that the Service Provider fails to comply with the provisions in **clause 17** of this Agreement or commits an act of insolvency as defined in the Insolvency Act, 1936 (Act No. 24 of 1936) or is placed under provisional liquidation or under business rescue proceedings or is finally liquidated. Notwithstanding the above, SARS may immediately terminate this Agreement without notice where the Service Provider breaches **clause** **29.3**.
     2. SARS shall have no liability to the Service Provider with respect to a termination under **clause 24.1.1**.
  2. **Termination Upon Sale, Acquisition, Merger or Change of Control**
     1. In the event of a sale, acquisition, merger, or other change of control of the Service Provider (a “Change Event”) where such Change Event is achieved, directly or indirectly, in a single transaction or series of related transactions, or in the event of a sale of all or substantially all of the assets of the Service Provider in a single or series of related transactions, then, at any time within twenty (20) calendar days after being notified by the Service Provider in terms of **clause 24.2.2** of the last of such events to occur, SARS may terminate this Agreement by giving the Service Provider written notice designating a date upon which such termination shall become effective.
     2. The Service Provider shall notify SARS of any Change Event within five (5) Business Days after becoming aware of such Change Event.
     3. No sale, acquisition, merger or other change of control shall be effective against and legally binding on SARS, if the prior written consent of SARS was not obtained.
     4. SARS shall have no liability to the Service Provider with respect to termination of the Agreement in terms of this clause.
     5. “Control” in terms of this clause shall mean, with regard to any entity, the right or power to dictate the management of and otherwise control such entity by any of the following-
        1. holding directly or indirectly the majority of the issued share capital or stock (or other ownership interest if not a company) of such entity ordinarily having voting rights;
        2. controlling the majority of the voting rights in such entity; or
        3. having the right to appoint or remove directors holding a majority of the voting rights at meetings of the board of directors of such entity.
     6. Any termination of this Agreement pursuant to the provisions of this **clause 24.2** 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.

### DISPUTE RESOLUTION

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* 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 in 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 **clauses 10.5** and **11.1.2**, where the resolution of a dispute is pending, neither Party may in such circumstances suspend their obligations under this Agreement.

### DOMICILIUM CITANDI ET EXECUTANDI

* 1. Any notice in terms of this Agreement may be hand delivered to a responsible person during business hours at the physical addresses of the Parties, in which event proof of acknowledgment shall be endorsed upon a copy of the notice together with the name of the recipient and date of receipt, or may be sent by registered post to the nominated postal addresses of the Parties, in which event a proof of postage issued by the relevant postal authority will serve as proof, or may be sent per telefax. In the case of hand delivery, receipt shall be deemed to have been on the day of delivery; in the case of postage, receipt shall be deemed to be the fifth (5th) Business Day after posting (unless the contrary is proved) and in the case of telefax, receipt shall be deemed to have been on the first Business Day after the date of transmission (unless the contrary is proved).
  2. The Service Provider chooses for the purpose of service of documents in legal proceedings its ***domicilium citandi et executandi*** as follows-
     1. Street Address: ….

…

**…**

**…**

**…**

* + 1. Postal Address: …

…

* 1. SARS chooses for the purpose of service of documents in legal proceedings its ***domicilium citandi et executandi*** as follows-
     1. Street Address: **The Group Executive: Procurement**

**Linton House**

**Brooklyn Bridge**

**570 Ferhsen Street**

**Brooklyn**

**Pretoria**

* + 1. Postal Address: Private Bag X923, Pretoria, 0001
  1. Any Party to this Agreement may change its *domicilium citandi et executandi* by giving the other Party thirty (30) days’ notice as prescribed in **clause 26.1** above.
  2. 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.

### FORCE MAJEURE

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* 1. To the extent that, and for as long as either of the Parties (hereinafter referred to as the “the affected Party”) is rendered unable wholly or in part, to carry out any of its obligations under this Agreement, by reason of any *force majeure* event beyond its reasonable control, then subject to **clause 27.5** below-
     1. The affected Party shall be released from the relevant obligation and shall incur no liability therefore during the continuance of the said *force majeure* event; and
     2. The obligations not affected by the said *force majeure* event shall remain in force.
  2. To the extent that the affected Party is not the cause of the *force majeure* event, such *force majeure* event may be deemed to include, but shall not be limited thereto, fire, storm, explosion, accidents, earthquake, an epidemic, floods, drought, war, revolution, riots, sabotage, sanctions, boycotts or the operation of any law or regulation under the law or any other cause beyond the reasonable control of that Party.
  3. Should such *force majeure* event arise, the affected Party shall within seven (7) days notify the other Party of the estimated duration and extent of the disturbing circumstances with sufficient particulars to enable the other Party to assess the possibility of obtaining performance by another means not affected by the *force majeure* event.
  4. The affected Party shall use its best efforts to remove the disturbance with the least possible delay so that its obligations can be fulfilled as soon as reasonably possible in the manner provided for in this Agreement.

* 1. Should the *force majeure* event last more than thirty (30) days from the date of receipt of notification by the other Party, the other Party shall be entitled to terminate this Agreement by giving not less than ten (10) days’ written notice to the affected Party.
  2. SARS shall be entitled to use the service of other parties during such period.

### INTELLECTUAL PROPERTY RIGHTS

* 1. The Service Provider shall retain all right, title and interest, in the Service Provider’s Intellectual Property rights in and to all processes, designs, drawings, specifications, formulae, databases, algorithms, models, methods, know-how, techniques concepts, ideas or other similar tools employed in the production of the Services.
  2. Subject to third party or pre-existing Intellectual Property rights of the Service Provider, and provided that SARS paid all amounts due and payable under a Brief (to the Service Provider), all Intellectual Property which may be created, written and/or presented by the Service Provider and/or its agents and employees and which relate to the Services, will vest exclusively in SARS. To this end, the Service Provider irrevocably and in perpetuity transfers, makes over and assigns to SARS all Intellectual Property rights which may come into existence which transfer, make over and assignment is herein accepted by SARS.
  3. The Service Provider warrants that in providing the Services, it shall not breach or infringe any third party Intellectual Property rights.
  4. The Service Provider shall indemnify and hold SARS harmless against losses, claims, demand, proceedings, damages, costs, charges and expenses of whatsoever nature in respect of the Service Provider’s infringement of Intellectual Property rights of a third party as a result of the action or actions of the Service Provider in execution of this Agreement.
  5. The Service Provider further waives the moral rights conferred upon the author of any works by Section 20(1) of the Copyright Act, 1978 (Act No. 98 of 1978), whenever applicable.

### TAX CLEARANCE CERTIFICATE

* 1. The Service Provider warrants that, as of the Effective Date, it is and will for the duration of the Agreement remain compliant with all Applicable Laws.

* 1. The Service Provider warrants further that it will deliver to SARS, on the Effective Date and on each anniversary thereof, for the duration of the Agreement, a valid Tax Clearance Certificate issued for the then current year.
  2. If the Service Provider fails to provide such a certificate, SARS may terminate the Agreement immediately. SARS will have no liability to the Service Provider with respect to such termination.

### BROAD-BASED BLACK ECONOMIC EMPOWERMENT

* 1. 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 will be amended from time to time, and the Codes of Good Practice issued in terms of the B-BBEE Act.
  2. Upon the Effective Date 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 or Independent Regulatory Board for Auditors.
  3. 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.
  4. A failure to provide a certified copy of its BEE rating status or a failure to comply with the provisions of this clause is a material breach and will entitle SARS to terminate the Agreement by giving the Service Provider one (1) calendar month’s written notice.

### STEP IN RIGHTS

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

### GENERAL

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* 1. **Additions, Variations, Cancellation And Novation**

No addition to or variation, consensual cancellation or novation of this Agreement and no waiver of any rights arising from this Agreement or its breach or termination shall be of any force and effect unless reduced into writing and signed by both Parties or their duly authorised signatories.

* 1. **Advertising and Marketing**

Except in so far as herein expressly provided, the Service Provider shall not make or issue any formal or informal announcement (with the exception of Stock Exchange announcements), advertisement or statement to the media in connection with this Agreement or otherwise disclose the existence of this Agreement or the subject matter thereof to any other person without the prior written consent of SARS.

* 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 signatories of SARS.

* 1. **Costs**

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

* 1. **Counterparts**

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

* 1. **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. **Governing Law and Jurisdiction**
     1. This Agreement shall be subject to South African law.
     2. The Service Provider hereby consents to the jurisdiction of the High Court of the Republic of South Africa (Gauteng Division, Pretoria), in regard to all matters arising from this Agreement.
  2. **No Assignment Without Consent**

The Service Provider shall not cede, assign, transfer or otherwise alienate this Agreement without the prior written consent of SARS, which shall not be unreasonably withheld.

* 1. **Non-solicitation**

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.

* 1. **Severability of the Clauses or Provisions**

If any clause or provision of this Agreement is found to be invalid, illegal or unenforceable in any way, such clause or provision shall be deemed to be separate and severable from the remaining provisions of this Agreement, and the validity and enforceability of those provisions shall not be affected.

* 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 32.12.1** 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 Brief 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 Brief proposed to be subcontracted, expressed as a percentage;
        5. The B-BBEE status and certificate of the subcontractor; and
        6. A Tax Clearance Certificate of the subcontractor.
     3. Notwithstanding the provisions of this **clause 32.12**, 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** **32.12.1** 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.

* 1. **Waiver**

No latitude, extension of time or other indulgence which may be given or allowed by either Party in respect of the performance of any obligation hereunder, and no delay or forbearance in the enforcement of any right of such Party arising from this Agreement, and no single or partial exercise of any right by a Party under this Agreement, shall in any circumstances be construed to be implied consent or election by a Party or operate as a waiver or novation of or otherwise affect any of that Party’s rights in terms of or arising from this Agreement or estop or preclude that Party from enforcing at any time and without notice, strict punctual compliance with each and every provision or term hereof.

* 1. **Whole Agreement**

This Agreement constitutes the whole Agreement between the Parties as to the subject matter hereof and no contracts, undertakings, representations or warranties given, made or concluded between the Parties regarding the subject matter hereof other than those set out herein are binding on the Parties.

### SIGNATORIES

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

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

1. Hlengani Mathebula

Chief Officer: Strategy and Communication

Date signed:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

1. Johnstone Makhubu

Group Executive: Procurement

Date signed:

**As Authorised Representative for the Service Provider**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Full Names:

Capacity:

Date signed: