**MASTER SERVICES AGREEMENT** **IN RESPECT OF THE APPOINTMENT OF A PANEL OF SERVICE PROVIDERS FOR THE OUTSOURCING OF DEBT COLLECTION AND RELATED SERVICES**

Between

The **SOUTH AFRICAN REVENUE SERVICE**,an organ of state established in terms of Section 2 of the South African Revenue Service Act, 1997 (Act No. 34 of 1997).

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

and

…

A legal entity incorporated as such in terms of the laws of South Africa, of the registered address indicated in **Annexure B** hereto (herein represented by its authorised representative who warrants that s/he is duly authorised to do so)

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

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1. **INTRODUCTION**
   1. SARS issued a tender for the appointment of a panel of service providers for the outsourcing of debt collection and related services (the Panel) under **RFP 0045/2021 (RFP)** as more fully described in the RFP.
   2. The Service Provider submitted a proposal in response to the RFP(“the Proposal”).
   3. Pursuant to the RFP and the Proposal, SARS has, subject to conditions indicated in the RFP, placed the Service Provider on the Panel, to provide the Services on an *ad hoc* basis, as and when required by SARS.
   4. This Agreement contains the terms and conditions of engagement by SARS of the Service Provider.
2. **INTERPRETATION**
   1. The headings 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-
      1. “**Account Manager**” means the person designated as such by the Service Provider, as contemplated in the RFP, responsible for the oversight and overall management of this Agreement on behalf of the Service Provider; who shall also act as central point of contact between SARS and the Service Provider;
      2. “**Agreement**” means this Master Services Agreement, the RFP and all annexures hereto. Also included are all amendments, variations, and/or substitutions to the Agreement, which have been reduced to writing and signed by both 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, 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;
      4. “**Authorised Representative**” means signatories authorised by SARS and the Service Provider respectively to sign the Agreement and any amendments or addenda hereto on its behalf;
      5. “**Business Day**” means any day other than a Saturday, Sunday or public holiday in the Republic of South Africa;
      6. “**Commercially Reasonable Efforts**” means taking such steps and performing in such a manner as a well-managed entity would where such entity was acting in a prudent and reasonable manner to achieve the particular result for its own benefit: Provided always that such steps are within reasonable control of the Party;
      7. “**Confidential Information**” means Personal Information defined as such in terms of POPIA; SARS Information Technology Infrastructure; any proprietary or confidential information or data of any nature, tangible or intangible, oral or in writing, in any form or on any medium, whether received by direct communication or observation by the Receiving Party. It includes SARS Confidential Information and Taxpayer Information as defined in Chapter 6 of the Tax Administration Act, 2011 (Act No. 28 of 2011), as well as any information required to be kept confidential in terms of any other Applicable Law.

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

1. information regarding personnel, independent contractors and suppliers of the Disclosing Party, processes, procedures, projections, manuals, forecasts and analyses, security or intellectual property owned by or licensed to the Disclosing Party;
2. information relating to the knowledge, know-how, expertise, trade secrets and activities of the Disclosing Party; and
3. any information which a Party (without creating a presumption that only so designated information is confidential), acting reasonably, may designate in writing, at the time of disclosure to the Receiving Party, as being confidential information;
   * 1. “**Effective Date**” means…**2022**, notwithstanding the date of signature of this Agreement;
     2. “**Losses”** means all losses, liabilities, costs, expenses, fines, penalties, damages and claims, and all related costs and expenses as determined in Law;
     3. “**Parties**”means the South African Revenue Service and the Service Provider and “Party”is a reference to any one of them;
     4. “**POPIA**” means the Protection of Personal Information Act, 2013 (Act No.4 of 2013);
     5. “**Regulatory Authority**” means any organ of state, government agency or institution, International Body or Organisation which has–
        1. jurisdiction over the Services or parts thereof; or
        2. administrative or oversight responsibility pertaining to any Applicable Law;
     6. “**RFP**” refers to SARS’ invitation to service providers to submit proposals for the appointment to a panel of service providers for the outsourcing of debt collection and related services, bearing number 0045/2021 and dated 06 May 2022, which RFP is incorporated herein by reference;
     7. “**SARS**” means the **SOUTH AFRICAN REVENUE SERVICE**, an organ of state established in terms of Section 2 of the South African Revenue Service Act, 1997 (Act No. 34 of 1997), with its principal address at **Lehae La SARS,** **299 Bronkhorst Street**, **Nieuw Muckleneuk**, **Pretoria**;
     8. “**SARS’ Designated Official**” means any SARS official indicated as such in any Service Request issued to the Service Provider;
     9. “**SARS Designated Representative**” means the SARS employee designated in terms of this Agreement, or his/her appointed delegate, responsible for the oversight and overall management of this Agreement on behalf of SARS; who shall also act as the SARS central point of contact between SARS and the Service Provider
     10. “**Service Provider’s Personnel**”means those members of staff of the Service Provider, who have been assigned by the Service Provider to the provision of the Services, including the Account Manager;
     11. “**Services**” means the provision of debt collection and related services to SARS by the Service Provider as contemplated in the RFP and in this Agreement, including those services, functions or responsibilities not specifically mentioned herein but which are reasonably and necessarily required for the proper performance and provision of the Services;
     12. “**Service Request**” means a specific written instruction, issued to the Service Provider by SARS, requesting the Service Provider to render the Services or part thereof, and signed by the SARS Designated Official; and
     13. “**Termination Date**” means … **2029**.
   1. Any reference in this Agreement to-
      1. “**Clause**” shall, subject to any contrary indication, be construed as a reference to a Clause hereof; and
      2. “**Person**” refers to any person including juristic entities.
   2. Unless inconsistent with the context or save where the contrary is expressly indicated-
      1. if any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that it appears only in the Definitions Clause, effect shall be given to it as if it were a substantive provision of this Agreement;
      2. 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;
      3. 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;
      4. 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; and
      5. no provision of this Agreement constitutes a stipulation for the benefit of any Person who is not a party to this Agreement.
   3. Unless inconsistent with the context, an expression which denotes-
      1. any one gender includes the other gender; and
      2. the singular includes the plural and *vice versa*.
   4. The termination of this Agreement will not affect the provisions of this Agreement which operate after any such termination or which of necessity must continue to have effect after such termination, notwithstanding that the Clauses themselves may not expressly provide for this.
   5. 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 executors, administrators, trustees, permitted assigns or liquidators, as the case may be.
   6. Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.
   7. The Parties hereby agree that this Agreement shall not be construed against a Party on the grounds that such Party drafted, or was responsible for drafting any or the majority of the provisions.
4. **APPOINTMENT**
   1. The Service Provider has, subject to paragraph 7 of the RFP and **Clause 3.2** below, been appointed to the Panel, and has accepted such appointment.
   2. The Service Provider will be utilised on an *ad hoc* basis, as and when required by SARS. SARS does not guarantee that the Service Provider will receive Service Requests during the term of this Agreement.
5. **DURATION**

* 1. This Agreement commences on Effective Date and will endure for a period of eighty four (84) months, until the Termination Date, unless otherwise terminated earlier in terms of this Agreement.

1. **ENGAGEMENT MODEL**
   1. SARS has appointed service providers to the Panel and may from time to time, as and when needed, subject to the conditions indicated in the RFP, issue a Service Request to the Service Provider.
   2. The scope of Services is as defined in the RFP, and Service Requests will be issued within the parameters of the scope and conditions indicated in the RFP. The Service Provider may therefore not accept under this Agreement, any work, service request or instruction for a service or services which are not included in the RFP. It is specifically recorded that SARS will not pay for any such work, regardless of whether or not value is received by SARS.
   3. The provisions of this Agreement shall apply to each and every Service Request, and the Service Provider must comply therewith.
   4. The Service Provider must, when required to do so, provide the Services subject to the terms and conditions of this Agreement generally, and in particular subject to the specifications set forth in the relevant Service Request.
   5. Each Service Request shall contain, at the minimum, the information set out below, namely:
      1. details and specifications of the Services required from the Service Provider;
      2. the timeframe within which the Services must be performed;
      3. the full names and signature of the SARS Designated Official;
      4. Service Levels applicable to the Services procured in terms of the Service Request, together with corresponding penalties for performance failures;
      5. solicitation for the Service Provider to confirm that the Service Provider’s Personnel have individually taken the SARS Oath / Declaration of Secrecy, which the Service Provider must answer in the affirmative and provide proof thereof; and
      6. any additional stipulations which SARS may consider relevant to the pertinent Service Request.
   6. The Service Request 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 Service Request. 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 Service Request.
2. **INVOICING AND PAYMENT**
   1. Payment for the Services is premised on a “no recovery no fee” basis, and SARS will therefore only pay the Service Provider for successful and paid over collections.
   2. The Service Provider must submit an invoice to SARS, accompanied by the relevant Service Request, in order for any payment to be processed.
   3. Fees invoiced must be aligned with the rates indicated in **Annexure A** hereto. Apart from the rates indicated in **Annexure A**, no other fee or cost will be covered by SARS.
   4. SARS will review the rates in Annexure A every two (2) years as contemplated in the RFP.
   5. The invoice must reflect –
3. a detailed description of the Services rendered under the Service Request;
4. details of amounts collected, linked to corresponding debt;
5. applicable fee rates as per **Annexure A**; and
6. the total fees claimed in respect of the Service Request.
   1. Provided all necessary supporting documents are attached and the requirements of this Agreement regarding invoicing are complied with, SARS will pay the invoiced amount within thirty (30) days of receipt of the invoice, unless SARS disputes any item on the invoice, which dispute shall be managed in terms of **Clause 7** below below.
7. **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 therefore and the Parties shall promptly first address such dispute in accordance with this **Clause 7** 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 6.6** 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 7.1** above and which remains unresolved for five (5) Business Days after it has arisen, shall be referred by either Party to SARS’ Chief Procurement Officer and the Account Manager for resolution.

* 1. The SARS Chief Procurement Officer and the Account Manager 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 seven (7) days of its referral to the persons mentioned in **Clause 7.3**, the Parties may, where applicable, in terms of protocols prescribed in Applicable Law, refer the dispute to competent Regulatory Authorities for resolution. In the absence of a competent Regulatory Authority to deal with the issue, either Party shall be entitled to refer the dispute for resolution in accordance with the provisions of **Clause** **21** below: Provided that **Clause 21.1** will not apply to disputes contemplated in this **Clause 7**.

1. **SERVICE PROVIDER’S OBLIGATIONS**
   1. The Service Provider shall-
      1. ensure that the Account Manager indicated in the Service Provider’s proposal assumes responsibility as such;
      2. ensure that it adheres to written and reasonable requests or instructions by the SARS Designated Representative, provided such requests or instructions are lawful, and are within the framework of this Agreement;
      3. observe and adhere to all the Service Levels that may be prescribed in Service Requests;
      4. when executing a Service Request, furnish the SARS Designated Official with reports contemplated in the RFP and the Service Request;
      5. not change/ replace the Account Manager for the duration of this Agreement, except with the prior written consent of SARS. In this regard:
         1. the Service Provider may make a request to SARS to replace the Account Manager, where such Account Manager has become incapacitated and/or unable to perform his/her duties under this Agreement;
         2. the Service Provider’s request to SARS for the substitution of the Account Manager shall include the reason for the request and a proposal to replace the Account Manager with a person of equal or better qualification(s), experience and the same or similar position of employment with the Service Provider as the party being substituted. Such proposal must include the curriculum vitae of the proposed substitute;
         3. SARS may only approve a substitute which has similar or better qualifications, skills, experience and the same or similar position of employment with the Service Provider as the party being substituted; and
         4. should SARS, in its discretion reasonably consider the Account Manager to be incompetent or unsatisfactory, the Service Provider will have to replace at its cost, the Account Manager with one having equal or better credentials and position with the Service Provider, in line with the timeframes then stipulated by SARS;
      6. ensure that when executing a Service Request, 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;
      7. act impartially and ethically at all times, and where applicable, act in accordance with the code of ethics / conduct of its profession or business;
      8. ensure that the validity of its registration with Regulatory Authorities is maintained for the duration of this Agreement;
      9. always act in good faith and uphold the spirit and intent of Applicable Law in executing the Services; and
      10. comply with this Agreement.
   2. **AUDIT RIGHTS**
      1. The Service Provider must, in implementing this Agreement, and for a period of five (5) years or such other longer period as may be prescribed by Applicable Law, reckoned from the date on which a particular Service Request was closed, maintain an audit trail of the Services performed under this Agreement, sufficient to permit a complete audit thereof, by or on behalf of SARS.
      2. The Service Provider shall provide SARS and SARS’ auditors access at all 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.
      3. All costs incurred in performing audits under this **Clause 8.2** 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, in which event such costs shall be borne by the Service Provider.
   3. **SERVICE LEVELS**
      1. SARS will, at the time of issuing a Service Request, determine and/or prescribe certain performance standards (Service Levels) that the Service Provider must comply with in the execution of the requested Services, along with corresponding penalties applicable to any failure by the Service Provider to comply with the Service Levels. In the event that the Service Provider fails to adhere to the Service Levels due to reasons solely attributable to the Service Provider, SARS may, without prejudice to its other remedies under this Agreement, levy a financial penalty against the Service Provider for the performance failure.

* + 1. Applicable financial penalties will be levied against the first monthly invoice following the month in which the performance failure occurred. SARS may, at its election and with prior notice to the Service Provider, cause the financial penalty to be set off against the Service Provider’s payment or requestthe Service Provider to issue a credit notein favour of SARS.
    2. Multiple performance failures in a Service Request will constitute a material breach of the Agreement.
    3. Notwithstanding the implementation of financial penalties, SARS reserves the right and without derogation from any other remedies it may have in law, to-
       1. terminate this Agreement for breach;
       2. cancel a Service Request with immediate effect; or
       3. reallocate a Service Request to another service provider. In such an event, the Service Provider shall be obliged, and for its own account, to assist with the seamless transition of the Service Request to the incoming service provider.
    4. Cancelation or reallocation of a Service Request as contemplated herein shall be without any liability to SARS except for payment for the Services already rendered by the Service Provider, less applicable financial penalties.

1. **SARS’ OBLIGATIONS**

* 1. SARS undertakes to-
     1. on Effective Date, nominate a SARS Designated Representative, and communicate the names and contact details of such person to the Service Provider in writing. SARS may from time to time change the SARS Designated Representative, in which event SARS must give the Service Provider at least 24 hours’ written notice of such change;
     2. subject to Applicable Law, make available to the Service Provider all relevant information and data at its disposal, which is reasonably required for the rendering of the Services;
     3. subject to compliance with SARS’ access and physical security policies, provide the Service Provider’s Personnel with access to the premises of SARS, if necessary, for the purposes of rendering the Services;
     4. monitor and review the Service Provider’s performance in terms of this Agreement. SARS however, reserves the right subject to Applicable Law, to appoint a third party to monitor and review the Service Provider’s performance in terms of this Agreement; and
     5. comply with Applicable Law.

1. **WARRANTIES**
   1. The Service Provider hereby represents and warrants to SARS that-
      1. this Agreement has been duly authorised and executed by it and constitutes a legal, valid and binding set of obligations on it;
      2. it is acting as a principal and not as an agent of an undisclosed principal;
      3. the execution 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, 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;
      4. it shall utilise and process all Confidential Information and any other information provided by SARS only for purposes contemplated in this Agreement;
      5. it will ensure that the Service Provider’s Personnel is suitable and qualified to provide the Services, and pose no cyber or information security related risks to SARS;
      6. no factual circumstances exist that may materially affect its capacity to perform its obligations under this Agreement;
      7. 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;
      8. it has and will maintain in force for the duration of this Agreement, the requisite insurance cover contemplated in the RFP;
      9. in providing the Services, it shall not breach or infringe any third party Intellectual Property rights;
      10. it, along with the Service Provider’s Personnel, shall at all times have, and comply with all legal requirements and with the terms and conditions of all necessary licenses, certificates, authorisations and consents required under the laws of the Republic of South Africa or under any other applicable jurisdiction for the delivery of the Services; and
      11. it is familiar with and will comply with Applicable Law.
   2. It is expressly agreed between the Parties that each warranty and representation given by the Service Provider in its Proposal, in response to the RFP and in this Agreement, is material to this Agreement and induced SARS to conclude this Agreement.
   3. By bidding, the Service Provider is deemed to have satisfied itself regarding all conditions affecting this Agreement, and must at all times comply with the manifest intent and obligations of this Agreement.
   4. The provisions of this Clause shall survive the termination of this Agreement.
2. **RELATIONSHIP BETWEEN THE PARTIES**
   1. Except in so far as SARS may authorise the Service Provider to execute a mandate or perform an act on its behalf in terms of a Service Request issued pursuant hereto, nothing in this Agreement may be construed to create a partnership, agency or any like arrangement between the Parties.
3. **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 or related engagement or for purposes contemplated in **Clause 9.1.4** above, to the extent that the co-operation does not create a conflict of interests, breach of professional ethics or compromise the Service Provider’s Intellectual Property rights or interests.
   2. It is, however, agreed that the relationship between the Service Provider and any such third party will not constitute an alliance or partnership and that neither the Service Provider nor the third party will be required to perform quality checks on the work of the other party, except where the third party is appointed for purposes contemplated in **Clause 9.1.4** above.
4. **SECURITY VETTING OF SERVICE PROVIDER’S RESOURCES**
   1. SARS may, subject to Applicable Law, at any time during the subsistence of this Agreement and in terms of its prevailing Policies, Procedures and Practices, request that the Service Provider, at its own costs –
      1. send any or all of the Service Provider’s Personnel for security vetting with a competent service provider and provide SARS with security clearance certificates; and
      2. provide a personal background screening report from a reputable screening agency on personal status such as but not limited to the following:
5. citizenship status report;
6. criminal activity report; and
7. credit worthiness report,

of any or all of the Service Provider’s Personnel.

* 1. SARS may also at its sole and absolute discretion perform a security check (vetting) or any personal background screening on any or all of the Service Provider’s Personnel.
  2. Where SARS establishes the Service Provider’s Personnel to be a security risk, SARS will inform the Service Provider accordingly and the Service Provider shall replace such Service Provider’s Personnel with another one of equal or better qualification(s) and experience; and where such personnel is the Account Manager, the replacement shall be of the same position of employment with the Service Provider as the outgoing Account Manager.

1. **CONFLICT OF INTERESTS**
   1. The Service Provider and the Service Provider’s Personnel must not have or take on obligations or interests that create or might reasonably be anticipated to create an actual or perceived conflict with their obligations and duties towards SARS as contemplated in this Agreement.
   2. The Service Provider or the Service Provider’s Personnel may not participate in any decision relating to anything contemplated in this Agreement or a Service Request where such decision affects his or her personal interests or the interests of any entity in which he or she holds a direct or indirect interest.
   3. The Service Provider must have systems in place to identify potential conflicts and timeously bring them to the attention of SARS.
   4. The Service Provider must comply with and ensure that the Service Provider’s Personnel complies with Applicable Law in so far as issues related to conflict of interests are concerned.
   5. SARS may, on an *ad hoc* basis, request the Service Provider or any member of the Service Provider’s Personnel to declare any interest they may have in a particular matter.
2. **NON-SOLICITATION**
   1. During the term of this Agreement and for two (2) years after termination for whatever reason, neither Party may, 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 the person employed responded to a publicly accessible advertisement or similar online publicity without being directly solicited by the other Party.
3. **CONFIDENTIALITY**
   1. Neither Party may, both during the term of this Agreement and after its expiration, disclose any Confidential Information to any third party without the prior written consent of the other.
   2. The Service Provider shall ensure that the Service Provider’s Personnel individually take the SARS Oath / Declaration of Secrecy before commencing with execution of this Agreement or a Service Request as may be required, and shall submit the original copies of such Oath / Declaration to the SARS Designated Representative.
   3. SARS reserves the right to continually monitor and verfiy that the Service Provider’s Personnel have individually taken the SARS Oath / Declaration of Secrecy.
   4. The Service Provider must protect the interests of SARS and its Confidential Information by-
      1. making available such Confidential Information only to those of the Service Provider’s 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 information security practices and procedures reasonably acceptable to SARS to prevent unauthorised disclosure and taking all practical steps to impress upon the Service Provider’s 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 the subsistence of 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 the Service Provider’s Personnel, will at all times remain the sole and absolute property of SARS.
   5. Where the Service Provider is served with a request, demand or court papers which seek the disclosure of Confidential Information of SARS, the Service Provider shall, without disclosing such Confidential Information, forthwith and no later than 24 hours from the time of receipt of such request, demand or court papers, transmit all such document(s) served on it to the SARS Designated Representative, and where a Service Request is involved, also to the SARS Designated Official, whereupon SARS will respond as necessary.
   6. The Service Provider shall not remove from SARS’ premises any documents or material relating to the Services or SARS’ business without first obtaining the written consent of SARS.
   7. Upon SARS’ request or completion of a Service Request, the Service Provider must promptly return all documents, material, information, or data relating to the Services to SARS.
   8. The Service Provider recognises that in the rendering the Services, it shall be regarded as an ‘Operator’ as defined in the POPIA; further that the Service Provider must comply with the provisions of POPIA, and ensure that Personal Information (as defined in POPIA) –
      1. made available to it by SARS in the execution of the Services is kept confidential and processed only for the purpose of executing the Service Provider’s obligations in terms of this Agreement; and
      2. is kept secure as contemplated in POPIA. The Service Provider must immediately notify the SARS’ Designated Representative in writing at his/her provided contact email address, and the SARS Anti-Corruption Unit at the email address: [anti-corruption@sars.gov.za](mailto:anti-corruption@sars.gov.za), where the Service Provider or the Service Provider’s Personnel have reasonable grounds to believe or suspect that any Personal Information processed or held by the Service Provider pursuant to this Agreement has been unlawfully accessed or acquired by any person through unauthorised means.
   9. The Service Provider may not disclose/share any of SARS’ Confidential Information with any Person, including its affiliates, outside the borders of South Africa, unless it obtains prior, written consent from SARS, which consent will, if granted (at the sole discretion of SARS), be subject to section 72 of POPIA. In this regard and in the event the written consent is obtained, the Service Provider fully indemnifies SARS and its employees against all and any third party damages, liability claims, Losses or the like occasioned by or as a result of i) the Service Provider exchanging, sharing or having exchanged or shared SARS Confidential Information; ii) the Service Provider failing to comply with POPIA in its exchange / sharing of SARS Confidential Information or iii) breach by the recipient of the information of POPIA or POPIA equivalent laws.

* 1. The Service Provider fully indemnifies SARS and its employees against all and any third party damages, liability claims, Losses or the like which may be occasioned by or as a result of any failure by the Service Provider and/or the Service Provider’s Personnel to comply with this Clause 16.
  2. The provisions of this Clause shall survive the termination or cancellation of this Agreement for any reason whatsoever.

1. **DATA PROTECTION**
   1. The Service Provider shall ensure that all SARS’ Confidential Information and information provided to it by SARS in order to render the Services is stored separately and isolated from data and information infrastructure relating to the Service Provider or any third party (including any other entity with whom the Service Provider may conduct business).
2. **LEGISLATIVE COMPLIANCE AND MONITORING**
   1. The Parties acknowledge that the nature of the Services is highly regulated, and agree that it is therefore necessary for SARS to monitor certain aspects of the Agreement during execution, to ensure that it is not exposed to any risks relating to non-compliance with Applicable Laws.
   2. This Agreement shall, in addition to regulating the relationship between the Parties in relation to the Services, also, to the extent applicable, serve as an agreement between SARS as Responsible Party and the Service Provider as Operator, in the manner envisaged in section 21(1) of POPIA. To this end, the Service Provider warrants that it has in place and will, throughout the duration of this Agreement, maintain security safeguards contemplated in section 19 of POPIA.
   3. SARS will regularly audit compliance by the Service Provider with this Agreement, POPIA or other Applicable Law. Without limiting the generality of such audits, SARS may, at any time, on reasonable notice to the Service Provider, call upon the Service Provider to furnish it with the following documents:
      1. the Service Provider’s information / data processing policies and protocols;
      2. data breach management policies and protocols; and
      3. acceptable evidence detailing the Service Provider’s compliance with section 19 of POPIA, or any other provision of POPIA or Applicable Law, as may be relevant to this Agreement. The evidence must be sufficient to provide SARS with assurance of the Service Provider’s envisaged compliance.
   4. The Service Provider must co-operate as may be requested by SARS, to enable SARS to, amongst other things, comply with an enquiry from a Regulatory Authority, or comply with or respond to a query from a data subject in exercising the rights of the data subject under POPIA. Such co-operation must be rendered by the Service Provider within the timelines specified by SARS in each case.
3. **INTELLECTUAL PROPERTY RIGHTS**
   1. The Parties will each retain ownership of their pre-existing intellectual property rights.
   2. Subject to Applicable Law and pre-existing intellectual property rights of the Service Provider and/or any third party, all intellectual property rights to literary works created in the course of executing the Services shall vest exclusively in SARS.

* 1. The Service Provider hereby indemnifies and holds SARS harmless against Losses, claims, proceedings and expenses of whatsoever nature in respect of any infringement by the Service Provider or the Service Provider’s Personnel of Intellectual Property rights of a third party.
  2. The Service Provider may not reproduce SARS’ logo in any form or medium.

1. **BREACH**
   1. If a Party (the “Defaulting Party”) is in default or breach of any obligation which arises in terms of this Agreement and that Defaulting Party fails to remedy such default or breach within seven (7) Business Days after receipt of a written notice given by the other Party (the “Aggrieved Party”) calling upon the Defaulting Party to remedy such default or breach, then the Aggrieved Party may, without prejudice to any other rights which it may have in terms hereof or at law-
      1. claim specific performance;
      2. cancel this Agreement and claim damages from the Defaulting Party, such cancellation to be effective immediately on receipt by the Defaulting Party of a written notice to that effect; or
      3. claim any money due and payable in terms of this Agreement and claim damages from the Defaulting Party.
   2. The remedies set out in this Clause shall not be construed to be exhaustive of any other remedies available to the Parties.
2. **DISPUTE RESOLUTION**

* 1. In the event of any dispute other than a dispute relating to matters dealt with under **Clause 7** above 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.
  2. If the dispute has not been resolved by such negotiation as contemplated above, the Parties may submit the dispute to the Arbitration Foundation of Southern Africa (“AFSA”), for resolution through AFSA administered mediation, failing which the dispute shall be determined as below.
  3. Save in respect of those provisions of this Agreement which provide for their own remedies which would be incompatible with arbitration, any dispute arising from, or in connection with this Agreement and not resolved as contemplated above will finally be resolved by arbitration in accordance with the Rules of AFSA or its successor, by an arbitrator or arbitrators appointed by AFSA.
  4. This Clause 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.
  5. 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: Provided that, subject to **Clause** **7.1.2**, SARS shall not pay any invoice in respect of which there is a pending dispute.
  6. The provisions of this Clause shall not preclude–
     1. any of the Parties from accessing and obtaining any interim relief on an urgent basis or other conservatory relief from a court of competent jurisdiction; and
     2. SARS from approaching any Regulatory Authority for resolution of disputes on pertinent matters.

1. **LIABILITY OF THE PAR****TIES**
   1. The Service Provider shall be liable to SARS, where SARS has suffered any direct damages and/or Losses as a result of the Service Provider’s failure to observe its obligations in terms of this Agreement.
   2. The Service Provider shall further be liable to SARS for all indirect and consequential or special damages and/or Losses suffered by SARS as a result of gross negligence, wilful misconduct, breach by the Service Provider or the Service Provider’s 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 any employees of the Service Provider.
2. **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, cyber insurance, data protection insurance and professional indemnity insurance cover, against all actions, suits, claims or other expenses arising in connection with damages or loss for which it is liable in terms of this Agreement.
   2. The Service Provider shall provide SARS with certificates of insurance, evidencing that the insurance 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 such 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 of the insurance policies contemplated in this Agreement.
   4. In the case of loss, damage or other event that requires notice or other action under the terms of any insurance coverage set out in **Clause 23.1** above, 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’ 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.
3. **INDEMNITY BY THE SERVICE PROVIDER**

* 1. The Service Provider hereby indemnifies, holds harmless and agrees to defend SARS and its officers, employees, agents, successors-in-title, and assigns, from any and all Losses arising from, or in connection with, any of the following-
     1. third Party claims attributable to any breach of Applicable Law or 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 SARS agent, employee, business invitee, or business visitor or other person on SARS’ premises caused by the negligent acts or omissions of the Service Provider or the Service Provider’s Personnel; and
     4. third Party claims arising from damage to property owned or leased by SARS or a third party caused by the Service Provider or the Service Provider’s Personnel’s negligence or misconduct.

1. **FORCE MAJEURE**
   1. In the event of any circumstance arising or action taken beyond the reasonable control of a Party or the Parties hereto, such as but not limited to war, rebellion, riot, civil commotion, lockout, fire, accident, operation of law, Applicable Law, epidemic, pandemic or any other circumstance preventing the Parties or any of them from the performance of any obligation hereunder (any such event hereinafter called “*force majeure* event”) then the Party affected by such *force majeure* event shall, subject to **Clauses 25.2** and **25.3** herein, be relieved of its obligations hereunder during the period that such *force majeure* subsists.
   2. Should a *force majeure* event arise, the affected Party shall within seven (7) days of the commencement of the event notify the other Party of the event, giving sufficient details thereof, including details of how the event has impacted the affected Party’s ability to perform in terms of the Agreement, as well as the estimated duration of the event or disturbing circumstances.
   3. The affected Party’s relief is only to the extent so prevented and to the extent that the affected Party is not the cause of the *force majeure* event. Such Party shall not be liable for any delay or failure in the performance of any obligations hereunder or loss or damage which the other Party may suffer due to or resulting from the *force majeure* event.
   4. The affected Party shall use Commercially Reasonable Efforts to remove the disturbance with the least possible delay so that its obligations can be fulfilled as soon as reasonably possible, in the manner provided for in this Agreement.
   5. SARS shall be entitled to use the services of other parties during *force majeure* events declared by the Service Provider.
2. **TERMINATION**

* 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-
       1. commits an act of insolvency as defined in the Insolvency Act, 1936 (Act No. 24 of 1936) or is placed under voluntary or compulsory liquidation (whether provisional or final) or business rescue proceedings are commenced against the Service Provider;
       2. breaches the confidentiality provisions of this Agreement;
       3. is found guilty of an offence in terms of Applicable Law;
       4. commits an act of professional misconduct as contemplated in Applicable Law;
       5. commits or participates in any unlawful, dishonest or unethical act in performing its obligations under this Agreement; or
       6. fails to maintain or loses its registration or good standing with a Regulatory Authority, where such registration or good standing was a mandatory requirement in terms of the RFP.
  1. **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 the Service Provider shall notify SARS of such Change Event within ten (10) Business Days after the Change Event is achieved.
     2. No sale, acquisition, merger or other change of control shall be effective against and legally binding on SARS if the Service Provider failed to notify SARS, as required by **Clause 26.2.1** above.
     3. SARS may terminate this Agreement, at any time after being notified by the Service Provider of the Change Event, by giving the Service Provider thirty (30) days’ written notice designating a date upon which such termination shall become effective.

* + 1. In the event that the Service Provider fails to notify SARS, as required by **Clause 26.2.1** above, then SARS may upon discovery of the Change Event terminate the Agreement by giving the Service Provider thirty (30) days’ written notice and designating a date upon which such termination shall be effective.
    2. “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.
  1. SARS shall have no liability to the Service Provider with respect to a termination under Clause 26, except for amounts actually due and payable in respect of the completion of any matters pertaining to a Service Request.

1. **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 step in and take over a Service Request as contemplated below, immediately upon SARS’ identification or the Service Provider's notification to SARS of the occurrence of any adverse event which SARS considers, in its reasonable opinion, to be an event which may affect continuity of the Services.
   2. For the purposes of this Clause, SARS may (at its option), either itself or by the procurement of an alternative panellist from the Panel, temporarily take over the provision of the Services until such time that SARS is able to make permanent alternative arrangements for the provision of the Services in terms of the particular Service Request: Provided that any takeover by SARS as envisaged in this Clause shall apply for a period of no more than one hundred and eighty (180) days, reckoned from the date that SARS temporarily takes over the particular Service Request. The Service Provider must, upon the request of SARS, fully co-operate with and assist SARS during any temporary take-over of a Service Request.
   3. To the extent that SARS exercises its right to assume the rendering of a Service Request or part thereof itself, or by another panellist, the Service Provider shall not be entitled to any fees and/or payment during the period for which SARS or another panellist assumes the Services. SARS shall not, under any circumstances, by virtue of any assumption, be obliged, deemed or required to take over or assume responsibility for the conduct of the Service Provider's business operations.
2. **ADDRESSES**
   1. Each Party chooses the addresses set out below its name as its address to which all notices and other communications must be delivered for the purposes of this Agreement and its *domicilium citandi et executandi (“domicilium”)* at which all documents in legal proceedings in connection with this Agreement must be served.
   2. SARS’ physical address for ***service of notices and legal processes*** is as indicated in **Clause 2.2.14** above.
   3. Service Provider’s physical address for ***service of notices and legal processes*** is as indicated in **Annexure B**.
   4. SARS’ email address for communications, and/or correspondences in connection with the performance of the Services: [rft-professionalservices@sars.gov.za](mailto:rft-professionalservices@sars.gov.za).
   5. The Service Provider’s email address for communications, and/or correspondences in connection with the performance of the Services is set out in **Annexure B**.
   6. Any notice or communication required or permitted to be given to a Party pursuant to the provisions of this Agreement shall be valid and effective only if in writing and sent to a Party’s chosen address of *domicilium*, provided that documents in legal proceedings in connection with this Agreement may only be served at a Party’s physical address.
   7. Any Party may by written notice to the other Party, change its chosen address to another address, provided that-
      1. the change shall become effective on the tenth (10th) Business Day after the receipt or deemed receipt of the notice by the addressee; and
      2. any change in a Party’s *domicilium* shall only be to an address in South Africa, which is not a post office box or a *poste restante.*
   8. 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.
   9. Any notice to a Party 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.
   10. The Parties record that whilst they may correspond by email for operational reasons, no formal notice required in terms of this Agreement, nor any amendment or variation to this Agreement may be given or concluded via email.
3. **TAX COMPLIANCE**
   1. The Service Provider represents and warrants that as of the Effective Date, it is and will remain compliant for the duration of this Agreement with all Applicable Law relating to taxation in the Republic of South Africa.
4. **GENERAL**
   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**

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

* 1. **Costs**

Each Party shall bear and pay 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 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.
     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 Cession or Assignment Without Consent**

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

* 1. **No Withholding of Consents**

Where agreement, approval, acceptance, consent, or similar action by either Party is required under this Agreement, such action shall not be unreasonably delayed or withheld. An approval, acceptance, consent or similar action by a Party under this Agreement shall not relieve the other Party from the responsibility of complying with the requirements of this Agreement, nor shall it be construed as a waiver of any rights under this Agreement.

* 1. **Severability**

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

* 1. **Waiver**

No change, waiver or discharge from the terms and conditions of this Agreement shall be valid unless in writing and signed by the Authorised Signatories, and any such change, waiver or discharge will be effective only in that specific instance and for the purpose given. No failure or delay on the part of either Party in exercising any right, power, or privilege under this Agreement will operate as a waiver thereof, nor will any single or partial exercise of any right, power, or privilege preclude any other or further exercise thereof, or the exercise of any other right, power, or privilege.

* 1. **Whole Agreement and Amendment**

This Agreement constitutes the whole of the Agreement between the Parties relating to the subject matter hereof and no amendment, alteration, addition, variation or consensual cancellation will be of any force or effect unless reduced to writing and signed by the Authorised Signatories. Any document executed by the Parties purporting to amend, substitute or revoke this Agreement or any part hereof, shall be titled an "Addendum" to this Agreement and accordingly annexed hereto.

**SIGNED AT PRETORIA BY THE SARS’ AUTHORISED REPRESENTATIVES**

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

**NAME:**

**DESIGNATION:**

**DATE:**

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

**NAME:**

**DESIGNATION:**

**DATE:**

**SIGNED BY THE SERVICE PROVIDER’S AUTHORISED REPRESENTATIVE**

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

**NAME:**

**CAPACITY:**

**PLACE:**

**DATE:**