

**MEDIA RELATIONS AND STAKEHOLDER ENGAGEMENT SERVICES AGREEMENT**

Between

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

**[“SARS”]**

And

**XXXXXXXXXXXXXXXXXXXXXXX**, Registration Number: **XXXX / XXXXXX /07**, a private company with limited liability incorporated in accordance with the Laws of South Africa.

**[“XXXXXXXXXXXXXXXXXXXXXXX”]**

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## 1. INTERPRETATION

1.1 The head notes to the Clauses of this Agreement are for reference purposes only and will not govern or affect the interpretation of nor modify nor amplify the terms of this Agreement.

1.2 Unless inconsistent with the context, the words and expressions have the following meanings and similar expressions will have corresponding meanings:

1.2.1 **Agreement**” means this Agreement and the annexures hereto;

1.2.2 **“Authorised Representative”** means signatories authorised by SARS and XXXXXXXX to sign the Agreement;

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

1.2.4 **“Commencement Date”** means the XXXXXXXX notwithstanding the date of the signing of this Agreement;

1.2.5 **“XXXXXXXXXX”** means, a company with limited liability incorporated in accordance with the Laws of South Africa with registration number XXXX /XXXXXX /07;

1.2.6 **“Parties”** means SARS and XXXXXXXXXXXX and “party” as the context requires, is a reference to any one of them;

1.2.7 **“SARS”** means the South African Revenue Service, an organ of state established in terms of the South African Revenue Service Act, 1997 (Act No. 34 of 1997);

1.2.8 **“Services”** means the provision of Media Relations and Stakeholder Engagement Services and other related services as set out in RFP30/2014 attached hereto and marked **Annexure “D”**;

1.2.9 “**Service Level**” means a qualitative standard of performance of the Services that XXXXXXXXXXXX is required to satisfy in its performance of the services;

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

1.2.11 “**Signature Date**” means the date on which the last signature is affixed to this agreement;

1.2.12 “**Termination Date**” means the XXXXXXXXXXXX;

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

1.3 Any reference in this Agreement to-

1.3.1 a “**Clause**” shall, subject to any contrary indication, be construed as a reference to a Clause hereof;

1.3.2 “**Law**” shall be construed as any Law (including common or customary Law), or statute, constitution, decree, judgment, treaty, regulation, directive, by-Law, order or any other legislative measure of any government, local government, statutory or regulatory body or court;

1.3.3 a “**Person**” refers to any person, firm, company, corporation, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the foregoing;

1.3.4 “**Service Provider’s Proposal**” is, subject to any contrary indication, a reference to the proposal submitted by the Service Provider in response to SARS’s Request for Proposal number RFP XX/XXXX;

1.3.5 “**Tender Documents**” is, subject to any contrary indication, a reference to SARS’s invitation to prospective Service Providers to quote for the services specified in RFP 30/2014.

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

1.4.1 if any provision in a definition is a substantive provision conferring rights or imposing obligations on any party, notwithstanding that it appears only in the definition Clause, effect shall be given to it as if it were a substantive provision of this Agreement;

1.4.2 when any number of days is prescribed in this Agreement, same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a day which is not a Business Day, in which case the last day shall be the next succeeding Business Day;

1.4.3 in the event that the day for payment of any amount due in terms of this Agreement should fall on a day which is not a Business Day, the relevant day for payment shall be the subsequent Business Day;

1.4.4 in the event that the day for performance of any obligation to be performed in terms of this Agreement should fall on a day which is not a Business Day, the relevant day for performance shall be the subsequent Business Day;

1.4.5 any reference in this Agreement to an enactment is to that enactment as at the Signature Date and as amended or re-enacted from time to time;

1.4.6 any reference in this Agreement to this Agreement or any other Agreement or document shall be construed as a reference to this Agreement or, as the case may be, such other Agreement or document as same may have been, or may from time to time be, amended, varied, negotiated or supplemented;

1.4.7 no provision of this Agreement constitutes a stipulation for the benefit of any Person who is not a party to this Agreement;

1.4.8 references to day/s, month/s or year/s shall be construed as calendar day/s, month/s or year/s; and,

- 1.4.9 a reference to a party includes that party's successors-in-title and permitted assigns.
- 1.5 Unless inconsistent with the context, an expression which denotes-
- 1.5.1 any one gender includes the other gender;
- 1.5.2 the singular includes the plural and *vice versa*.
- 1.6 Where any term is defined within the context of any particular Clause in this Agreement, the term so defined, unless it is clear from the Clause in question that the term so defined has limited application to the relevant clause, shall bear the same meaning as ascribed to it for all purposes in terms of this Agreement, notwithstanding that that term has not been defined in such clause.
- 1.7 The termination of this Agreement will not affect the provisions of this Agreement which operate after any such termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.
- 1.8 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 a reference to any Party is deemed to include such Party's estate, heirs, executors, administrators, trustees, permitted assigns or liquidators, as the case may be.
- 1.9 Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.
- 1.10 None of the provisions hereof shall be construed against or interpreted to the disadvantage of the Party responsible for the drafting or preparation of such provision.

## 2. APPOINTMENT

- 2.1 SARS hereby appoints XXXXXXXXXXXXXXXXXXXX to render the Services as more fully described in **Annexures “B”** and **“D”**.
- 2.2 The performance of the Services shall be subject to the terms and conditions of this Agreement.
- 2.3 The Service Provider will at all times perform the Services in accordance with any Service Levels prescribed in this Agreement.
- 2.4 The Service Provider represents that it has, and warrants that throughout the duration of this Agreement it shall have the resources, skills, qualifications and experience necessary to provide the Services to the highest standards prevailing in the advertising/communication industry.

## 3. DURATION

- 3.1 This Agreement shall commence on the Commencement Date, notwithstanding the Signature Date, and continue in full force and effect until Termination Date.
- 3.2 SARS shall be entitled to terminate this Agreement for convenience at any time in the manner provided in **Clause 17** below. The Service Provider will have the right to accept or reject a specific service request without compromising the Service Provider's position as a preferred Service Provider of SARS.

## 4. SERVICES

- 4.1 The Service Provider shall render the Services on the terms and conditions of this Agreement in accordance with the specifications set out in the relevant service request.
- 4.2 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 and SARS'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.

4.3 The Service Provider will use up to date technology to ensure that Services delivered to SARS–

4.3.1 are in line with the highest standards prevailing in the industry;

4.3.2 comply with current industry technology standards; and,

4.3.3 achieve market cost efficiencies.

## **5. APPROACH IN THE PERFORMANCE OF THE SERVICES**

5.1 This Agreement is a framework agreement. It sets out the general terms and conditions applicable to the Services.

5.2 SARS will from time to time issue a written service request to the Service Provider to perform specific Services identified in such service request.

5.3 The provisions of this Agreement shall apply to each and every service request issued under this Agreement.

5.4 The Service Provider will provide the Services to SARS subject to the terms and conditions of this Agreement and subject to the terms and conditions set forth in the relevant service request.

5.5 No service request shall constitute a binding contract between the Parties unless a SARS's purchase order is issued simultaneously with the service request and such purchase order appears on the face of the service request.

5.6 If there is a conflict between the terms and conditions of this Agreement, and/or any service request and/or any annexures-

- 5.6.1 subject to **Clause 5.6.3**, to the extent the conflicting terms can reasonably be interpreted so that such terms are consistent with each other, such consistent interpretation shall prevail;
- 5.6.2 to the extent **Clause 5.6.1** does not apply and subject to **Clause 5.6.3**, any conflict between the provisions of the various clauses of the Agreement, the service request and annexures will be resolved in accordance with the following order of precedence (in descending order of priority):
- (a) the Agreement and its annexures;
  - (b) the Service Request and any annexures thereto; and
- 5.6.3 a service request may amend the terms and conditions of this Agreement only with respect to the subject matter of such service request. Insofar as any service request specifically amends the provisions of this Agreement, such amendment shall prevail in respect of that service request only. For the avoidance of doubt it is recorded that the terms of one service request shall not apply to any other service request.
- 5.7 Each service request shall be in writing and include-
- 5.7.1 details of the Services requested from the Service Provider;
  - 5.7.2 time within which the Services must be performed;
  - 5.7.3 costs of the Services;
  - 5.7.4 purchase order for the Services;
  - 5.7.5 name and contact details of SARS's designated representative requesting the Services; and
  - 5.7.6 signature of the SARS designated representative.

## 6. SERVICE PROVIDER'S OBLIGATIONS

6.1. During this Agreement, the Service Provider shall-

- 6.1.1. render the Services to SARS as more fully described in **Annexures "B"** and **"D"**;
- 6.1.2. after obtaining SARS's approved campaign plans (if any), submit the campaign plans to SARS for written approval of-
  - 6.1.2.1. Scripts (if any);
  - 6.1.2.2. Estimates or quotation of the cost of the various items of Services covered by this agreement;
- 6.1.3. nominate a representative who shall be referred to as the account executive and shall be responsible for the day to day management of the delivery of Services and resolution of any disputes in terms of this Agreement;
- 6.1.4. render the Services to SARS in accordance with the performance standards ["Service Levels"] prescribed by SARS for a Service line item. **Clause 24** below details the principles that will be applicable to Service Levels;
- 6.1.5. ensure that its personnel and consultants devote such time, attention and skill in performing the Services as may be reasonably required for the proper discharge of its duties under this Agreement;
- 6.1.6. assign suitably qualified and skilled personnel to provide the Services in terms of this Agreement;
- 6.1.7. comply with all legislation regulating the advertising industry including legislation relating to registration or licensing by a regulatory authority; and

- 6.1.8. comply with all industry self-regulatory codes including the Code of Advertising Practice of the Advertising Standards Authority of South Africa
- 6.1.9. comply with all legislation relating to the protection of personal information.

## **7. SARS OBLIGATIONS**

### **7.1. SARS undertakes to-**

- 7.1.1. Nominate a representative who shall liaise with the Service Provider's account executive in respect of the day to day management of the Services;
- 7.1.2. If required by the Service Provider, furnish the Service Provider with any relevant information, which is necessary for the Service Provider to perform the Services in compliance with the terms and conditions of this Agreement; and
- 7.1.3. The Service Provider with approved campaign plans for its intended marketing and advertising campaigns.

## **8. FEES AND PAYMENT**

- 8.1 The fees payable by SARS to the Service Provider in respect of the Services will be as per **Annexure "A"**.
- 8.2 The Service Provider shall within seven (7) days of the end of every month, submit an invoice to SARS for payment of Services rendered for the previous month inclusive of the monthly retainer/ management fee.
- 8.3 The fees will be fixed for a period of 12 (twelve) months. The fees will be subject to an escalation of the lesser of 6% (six percent) or the actual inflation rate (CPI), as applicable and with effect from the first anniversary of the Commencement Date.

- 8.4 The Service Provider's invoice shall include a narration of the type of Services performed and the fees payable, inclusive of VAT, in respect of those Services rendered.
- 8.5 Each invoice shall contain or have attached such information, and be in such form and on such medium as SARS may reasonably request and, at the minimum shall contain:
- 8.5.1 a statement of the total amount due based on the number of total requests and proof of services rendered;
  - 8.5.2 the month during which the Services were provided;
  - 8.5.3 a valid SARS purchase order number.
- 8.6 The Service Provider shall deliver all invoices to the SARS department designated by SARS from time to time with copies sent to other SARS's contacts as designated by SARS from time to time.
- 8.7 The Service Provider shall maintain complete and accurate records of, and supporting documentation for, the amounts invoiced to and payments made by SARS hereunder.
- 8.8 Within ten (10) days following SARS's request, the Service Provider shall 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 and the Service Provider's compliance with the requirements of this Agreement.
- 8.9 The Service Provider shall verify that each invoice is complete and accurate and that it conforms to the requirements of this Agreement (including by carrying out detailed checks of each invoice) before issuing the invoice to SARS.
- 8.10 SARS shall pay the Service Provider undisputed amounts of an invoice within thirty (30) days after SARS receives such invoice provided the invoice is accurate and meets the requirements of this Agreement.

8.11 SARS may set off any credit notes due to SARS in terms of this Agreement against any amounts payable by SARS to the Service Provider.

## **9. DISPUTED CHARGES AND INVOICING ERRORS**

9.1 SARS may withhold payment of fees that SARS disputes in good faith or, if the disputed fees have already been paid, SARS may withhold an equal amount from a later payment, including disputes in respect of an error in an invoice or an amount paid. If SARS withholds any such amount:

9.1.1 SARS shall promptly notify the Service Provider that it is disputing such amount providing a reasonable explanation of the rationale thereof; and the Parties shall promptly first address such dispute in accordance with this **Clause 9** of this Agreement;

9.1.2 if the dispute relates to (or equals in the case of disputed amounts that have already been paid) only certain of the amounts included on an invoice, then SARS shall pay the undisputed amounts in accordance with **Clause 8** above; and

9.1.3 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.

9.2 SARS shall not be responsible for paying interest on undercharged amounts, if any.

9.3 Any dispute arising in terms of **Clause 9.1** above and which remains unresolved for five (5) Business Days after it has arisen, shall be referred by either Party to their relevant Chief Financial Officer or persons of equivalent office for resolution.

9.4 The Chief Financial Officers or persons of equivalent office shall meet within five (5) Business Days of the referral of the dispute to resolve the dispute.

- 9.5 In the event that the dispute remains unresolved after ten (10) days of its referral to the persons mentioned in **Clause 9.3**, either Party shall be entitled to refer the dispute for resolution in accordance with the provisions of **Clause 20** below.

## **10. TAX COMPLIANCE**

- 10.1. The Service Provider represents and warrants that as of the Commencement Date of this Agreement, the Service Provider is and will remain compliant throughout the duration thereof with all applicable laws relating to tax in South Africa.
- 10.2. In addition to the above, the Service Provider shall not later than three (3) months after each anniversary of this Agreement submit to the Executive: Procurement a valid tax clearance certificate for the current year.
- 10.3. If the Service Provider fails to provide such a certificate, SARS may terminate the agreement in accordance with **Clause 16**. SARS will have no liability to the Service Provider with respect to such termination.

## **11. WARRANTIES**

- 11.1. The Service Provider hereby represents and warrants to SARS that-
- 11.1.1. this Agreement has been duly authorised and executed by it and constitutes a legal, valid and binding set of obligations on it;
  - 11.1.2. it is acting as a principal and not as an agent of an undisclosed principal;
  - 11.1.3. the execution and performance of the terms and conditions of this Agreement does not constitute a violation of any statute, judgment, order, decree or regulation or rule of any court, competent authority or arbitrator or competent jurisdiction applicable or relating to the Service Provider, its assets or its business, or its memorandum, articles of association or any other documents or any binding obligation, contract or Agreement to which it is a party or by which it or its assets are bound; and,

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

11.2. The provisions of this Clause shall survive the termination of this Agreement.

## **12. INDEMNITIES**

12.1. The Service Provider shall-

12.1.1. on or before the Commencement Date and for the duration of this Agreement have and maintain in force adequate professional insurance coverage to cover any claims, loss and or damages to which it is liable in terms of this Agreement;

12.1.2. at SARS's request and within two (2) days of such request, provide SARS with a copy of the aforementioned insurance policy; and

12.1.3. update the aforementioned as requested by SARS, including the possible increase in the amount of cover provided in such insurance policy.

12.1.4. indemnify and hold SARS harmless against all losses, claims, demands, proceedings, damages, costs, charges and expenses (including reasonable legal expenses) of whatsoever nature arising out of this Agreement or at Law in respect of the Service Provider's breach of the provisions of this Agreement or injury or death of any person or loss of or damage to any person or property occurring by reason of the Service Provider, its employees or agents' wilful conduct or negligence during or after the execution of the Services.



### **13. LIABILITY OF THE PARTIES**

A Party shall be liable to the other Party for any actual damages incurred by such Party as a result of the other Party's failure to perform its obligations in the manner required by this Agreement. The Service Provider will furthermore be liable to SARS for any indirect, special and consequential damages, resulting from the Service Provider's fraudulent, unlawful or negligent conduct, or any breach of clause 22 of this Agreement. The risk of and liability for any erroneous deliverables or any errors which may occur due to fraud or unlawful activity on the part of the Service Provider's staff shall lie with the Service Provider.

### **14. HEALTH, SAFETY AND SECURITY PROCEDURES AND GUIDELINES**

- 14.1. The Service Provider will ensure that its personnel will at all times, whilst on SARS's premises, adhere to standard health, safety and security procedures and guidelines applicable to SARS's personnel, as may be amended by SARS from time to time and which are available to the Service Provider on request.
- 14.2. Should SARS at any time have reason to believe that any member of the Service Provider's personnel is failing to comply with such standard health, safety and security procedures and guidelines, SARS will be entitled to deny such member of the Service Provider personnel access to any or all of SARS's premises and the Service Provider will be required to replace such member of its personnel without delay. The Service Provider will not be relieved of its obligations under this Agreement as a result of such denial of access, and SARS will have no liability to the Service Provider with regard thereto.
- 14.3. The Service Provider hereby agrees and undertakes, in terms of the Occupational Health and Safety Act, 1993 (Act No. 85 of 1993), to ensure that the Service Provider and the Service Provider's personnel comply with the aforesaid Act. The Service Provider accepts sole responsibility for all health and safety matters relating to the provision of the Services, or in connection with or arising out of such Services for the duration of this Agreement and will ensure that neither SARS's personnel, nor any third party's health and safety is endangered in any way by the Service Provider's activities or conduct in providing the Services.

14.4. The Service Provider hereby agrees and undertakes to maintain its equipment in good order, so as to comply with SARS's occupational health and safety policies, procedures and standards as amended from time to time.

## **15. BREACH**

Should a party ("the defaulting party") commit a breach of any of the provisions of this Agreement, then any other party ("the aggrieved party") shall be entitled to require the defaulting party to remedy the breach within ten (10) Business Days, or any other reasonable time mutually agreed upon, of delivery of a written notice requiring it to do so. If the defaulting party fails to remedy the breach within the period specified in such notice the aggrieved party shall be entitled to claim immediate specific performance from the defaulting party. The foregoing is without prejudice to such other rights as the aggrieved party may have in law.

## **16. TERMINATION FOR CAUSE**

16.1. SARS may, by giving notice to the Service Provider, terminate this Agreement or a service request in whole or in part, as of a date set out the notice of termination, in the event that the Service Provider:

16.1.1. commits a material breach of this Agreement, which breach is not cured within ten (10) days after notice of the breach from SARS to the Service Provider;

16.1.2. commits a material breach of this Agreement that is not capable of being cured within ten (10) days from the notice of the breach;

16.1.3. commits numerous breaches of this Agreement that collectively constitute a material breach, even if cured;

16.1.4. is placed under voluntary or compulsory liquidation (whether provisional or final) or business rescue proceedings are commenced against the Service Provider; and/or,

16.1.5. fails to adhere to a final judgement against the Service Provider within a period of (10) ten Business Days or more after it comes to the notice of the defaulting party; and/or, the Service Provider makes any arrangement or composition with its creditors generally or ceases to carry on business or business rescue proceedings in terms of the Companies Act, 2008 [Act No. 71 of 2008] are commenced against the Service Provider.

16.2. SARS may terminate this Agreement, in whole or in part, in the event SARS is unable to obtain funding to procure the Services.

16.3. Without limiting the generality of the foregoing, SARS may terminate this Agreement, by giving notice to the Service Provider, if the Service Provider fails to comply with the provisions of **Clauses 10; 22 and 23**.

16.4. SARS shall have no liability to the Service Provider with respect to a termination under this **Clause 16**.

## **17. TERMINATION FOR CONVENIENCE**

SARS may terminate this Agreement in whole or in part for convenience and without cause at any time by giving the Service Provider at least 90 (ninety) days prior written notice designating the termination date. SARS will be obliged to pay the Service Provider's professional fees for Services rendered up to the date of the termination of this Agreement.

## **18. FORCE MAJEURE**

18.1. In the event of any act beyond the control of the Parties, strike, war, warlike operation, rebellion, riot, civil commotion, lockout, interference by trade unions, suspension of labour, fire, accident, or (without regard to the foregoing enumeration) of any circumstances arising or action taken beyond the reasonable control of the Parties hereto preventing them or any of them from the performance of any obligation hereunder (any such event hereinafter called "force majeure event") then the party affected by such force majeure event shall be relieved of its

obligations hereunder during the period that such force majeure continues (excluding payment obligations for materials purchased).

18.2. The affected Party's relief is only to the extent so prevented and such Party shall not be liable for any delay or failure in the performance of any obligations hereunder or loss or damage which the other party may suffer due to or resulting from the force majeure event, provided always that a written notice shall be promptly given of any such inability by the affected party.

18.3. Any Party invoking force majeure shall upon termination of such force majeure give prompt written notice thereof to the other Party. Should a force majeure event continue for a period of more than thirty (30) days, then either Party has the right to cancel this Agreement.

18.4. In the event that the Service Provider is for any reason other than as provided for in this Clause unable to provide the Services for the full duration of this Agreement-

18.4.1. The Service Provider shall serve SARS with a written notice requesting an extension of the duration of this Agreement at least seven (7) Business Days prior to the end of the duration of this Agreement; and,

18.4.2. SARS shall consider the request and revert to the Service Provider by no later than five (5) Business Days from date of receipt of the notice referred to in **Clause 18.4.1.**

## **19. RELATIONSHIP BETWEEN THE PARTIES**

19.1. The Service Provider is an independent contractor and under no circumstances will it be partner, joint venture partner, agent, or employee of SARS in the performance of its duties and responsibilities pursuant to the Agreement.

19.2. All personnel used by the Service Provider will be the Service Provider's employees, contractors, or agents, and the entire management, direction, and control of all such persons will be and remain the responsibility of the Service Provider.

## 20. DISPUTE RESOLUTION

- 20.1. If a dispute between the Parties arises out of or is related to this Agreement, the Parties shall meet and negotiate in good faith to attempt to resolve the dispute. If, after twenty (20) Business Days from the date upon which the dispute was declared by a party by written notice, the dispute is not resolved, the matter shall be determined in accordance with the provisions set out below.
- 20.2. Save in respect of those provisions of this Agreement which provide for their own remedies which would be incompatible with arbitration, or in the event of either Party instituting urgent action against the other in any court of competent jurisdiction, any dispute arising from, or in connection with, this Agreement will finally be resolved by arbitration in accordance with the Rules of the Arbitration Foundation of Southern Africa (the "Foundation") or its successor, by an arbitrator or arbitrators appointed by the Foundation.
- 20.3. This **Clause 20** 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.
- 20.4. 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.

## 21. ADDRESSES

- 21.1. Each Party chooses the addresses set out opposite its name below as its addresses 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.
- 21.2. SARS's physical address for **service of notices and legal processes-**

21.2.1. **The Executive: Procurement;**  
**570 Fehrsen Street;**  
**Brooklynbridge**  
**Linton House;**  
**Brooklyn – Pretoria**

21.3. SARS's email address for communications and/or correspondences in connection with the operation of the Services: xxxxxxxxxxxx; e-mail: [xxxxxxxxxx@sars.gov.za](mailto:xxxxxxxxxx@sars.gov.za); Telephone number: 012 422 xxxx; cellphone number: xxxxxxxxxxxx.

21.4. SARS's email address for communications and/or correspondences in connection with the performance and contract management of the Services: xxxxxxxxxxxx; e-mail: [xxxxxxxxxx@sars.gov.za](mailto:xxxxxxxxxx@sars.gov.za); Telephone number: 012 422 xxxxxx; cellphone number: xxxxxxxxxxxx.

21.5. The Service Provider's physical address for **service of notices and legal processes-**

21.5.1. XXXXXXXXXX  
XXXXXXXXXX  
XXXXXXXXXX  
XXXXXXXXXX  
XXXXXXXXXX  
XXXX

21.6. The Service Provider's email address for communications and/or correspondences in connection with the performance of the Services: xxxxxxxxxx; e-mail: xxxxxxxxxx; telephone number: xxxxxxxxxx; cell number: xxxxxxxx; fax: xxxxxxxxxx.

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

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

21.8.1. the change shall become effective on the tenth (10<sup>th</sup>) (Business Day after the receipt or deemed receipt of the notice by the addressee; and

21.8.2. 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*.

21.9. 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 (5<sup>th</sup>) Business Day after posting; or

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

21.11. 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.

## **22. CONFIDENTIALITY**

22.1. The Service Provider undertakes that for the duration 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, agents and/or its employees. This includes the knowledge acquired by the Service Provider, agents and/or its employees 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.

22.2. If the Service Provider is uncertain about whether information is to be treated as confidential in terms of this **Clause 22**, it shall be obliged to treat it as such until clearance is obtained, in writing, from SARS.

- 22.3. The Service Provider shall ensure that prior to commencing the performance of the Services all its personnel involved in the rendering of such Services shall sign the **SARS Oath of Secrecy** and submit the original thereof to SARS for record keeping purposes.
- 22.4. For purposes of this Agreement, the expression “proprietary information and confidential information of SARS” shall include, but shall not be limited to, the technical detail, programme content, techniques, know-how, methods of operating, costs, training courses, taxpayer information and names of clients and/or potential clients 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.
- 22.5. The Parties agree that all trade and professional secrets and other secrets or confidential information or methods of work supplied by the one Party to the other shall not be disclosed to any third party without first obtaining the written consent of the other Party.
- 22.6. Where a Party is threatened with legal action to disclose the confidential information of the other Party, such Party shall give the other Party written notice of such legal action within (2) two days of receipt of the threatened legal action. The Party shall together with the notice referred to above, deliver to the other Party all documentation received or submitted in connection with the threatened legal action.
- 22.7. The Service Provider specifically acknowledges that all information relating to the Services, including and not limited to, literary works produced thereunder are of a sensitive nature and secret. The Service Provider undertakes not to disclose such information without first obtaining the written consent of SARS.
- 22.8. 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.
- 22.9. The provisions of this clause shall survive the termination or cancellation of this Agreement for any reason whatsoever.



## **23. BROAD-BASED BLACK ECONOMIC EMPOWERMENT**

23.1. The Service Provider commits and warrants to comply with the requirements of the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003) (hereinafter referred to as the *BBBEE Act*) as will be amended from time to time, and the *Codes of Good Practice* issued in terms of the *BBBEE Act*.

23.2. Upon the Signature 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 rating status from an agency accredited by the South African National Accreditation System.

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

23.4. A failure to provide a certified copy of its BEE rating status or a failure to comply with provisions of this clause will entitle SARS to terminate the Agreement by giving the Service Provider one (1) month written notice.

## **24. PRINCIPLES GOVERNING SERVICE LEVELS**

### **24.1. GENERAL**

24.1.1. **Annexure “C”** contains a list of the Service Levels that will be applicable to the performance of the Services. The Parties may from time to time add new Service Levels, or make changes to existing Service Levels, by mutual agreement and in writing. The Service Provider shall comply with the Service Levels as of the Commencement Date.

24.1.2. The purpose of such Service Levels is to provide a framework against which the quality of the Services rendered to SARS can be measured.

24.1.3. Service level targets are set which targets must be achieved by the Service Provider in order to avoid termination on the basis of malperformance.

24.1.4. Thresholds are set in the form of percentages, which will be used to determine whether or not a transgression of a Service Level has taken place.

## **24.2. MONITORING, MEASURING AND REPORTING**

24.2.1. Except as otherwise set out in the description of the individual Service Level, Service Provider's performance with respect to the Service Levels will-

24.2.1.1. commence being measured by Service Provider on the Commencement Date; and

24.2.1.2. be measured against Service Provider's actual performance of the Services against the Service Levels, not merely a sampling of its performance of such Services.

24.2.2. Except as otherwise specifically provided herein, the Service Provider will be responsible for monitoring, measuring and reporting on performance, as required, to apply the Service Levels, including the provision, installation and support of any automated tools required or appropriate for such purpose. The Service Provider will provide, deploy, implement, and make operational a Service Level measurement system that will collect, calculate and report data as required to determine Service Provider's compliance with each of the Service Levels. Such tools:

24.2.2.1. will be automatic and/or electronic, to the extent technically feasible and commercially reasonable. The Service Provider acknowledges and agrees that such tools may evolve over time as more advanced tools with improved performance measurement capabilities become available in the marketplace;

- 24.2.2.2. will be acquired, implemented and maintained at Service Provider's own cost and expense; and
  - 24.2.2.3. will be able to produce reports at a level of detail which is sufficient to verify the Service Provider's compliance with the Service Levels.
- 24.2.3. SARS will have the right to perform an audit on the tools described above in clause 24.2.2. to determine whether the tools are functioning properly; provided however that if SARS reasonably believes that the Service Provider may be in breach of the provisions of this clause, SARS may promptly initiate an audit of the tools on reasonable notice to the Service Provider.
- 24.2.4. The Service Provider shall-
- 24.2.4.1. monitor its performance of the Services and its compliance with the prescribed Service Levels on a continuous basis;
  - 24.2.4.2. provide SARS with a monthly performance report in respect of all Services rendered to SARS during any particular month, within 7 (seven) days of the last day of the month, which Report shall include the following information with regards to failure to achieve any Service Levels during a particular month-
    - 24.2.4.2.1. the nature of, and time and date when the Service Level Failure/s occurred;
    - 24.2.4.2.2. the circumstances which led to such Service Level Failure/s; and
    - 24.2.4.2.3. the impact, if any, of the Service Level Failure/s on the balance of the Services; and

- 24.2.4.3. provide SARS with any supporting documentation and/or information, as and when requested to do so, to enable SARS to verify the Service Provider's level of performance.
- 24.2.5. Regardless of the requirement for the Service Provider to furnish SARS with a consolidated monthly performance Report, the Service Provider shall, in respect of each and every Service Level Failure, immediately upon it coming to the Service Provider's attention-
  - 24.2.5.1. inform SARS of its non-compliance with the prescribed Service Level;
  - 24.2.5.2. investigate the non-compliance and advise SARS in writing of the cause of the Service Level Failure;
  - 24.2.5.3. advise SARS of the corrective actions being undertaken to remedy such Service Level Failure, as well as the status of and expected resolution time for the aforesaid Service Level Failure;
  - 24.2.5.4. take commercially reasonable steps to prevent such Service Level Failure from recurring in the future.
- 24.2.6. Within 30 (thirty) days of the Effective Date, or such later time as may be agreed in writing between the Parties, the Service Provider will propose for SARS's review and approval a set of weekly, monthly, quarterly, annual and other periodic meetings to be held between representatives of SARS and the Service Provider.
- 24.2.7. As of the Effective Date, such meetings will include the following:
  - 24.2.7.1. a weekly meeting to be held by operational SARS Personnel and the Service Provider's personnel to discuss daily performance and planned or anticipated activities, including changes in the Services that might adversely affect performance, and otherwise address, review, and discuss

matters specific to SARS;

- 24.2.7.2. a monthly meeting to be attended by the SARS Contract Manager (XXXXXXXXXX and at such Manager's election, other members of SARS contract management team) and the Service Provider Program Executive to discuss day-to-day operations, the status of on going and planned activities including changes that might adversely affect performance, and such other matters as appropriate;
  - 24.2.7.3. a quarterly management meeting of the Contract Steering Committee to (i) review the monthly performance reports during the quarter; (ii) review the Service Provider's overall performance under the Agreement; (iii) review progress on the resolution of issues; (iv) provide a strategic outlook for the systems requirements of SARS; and (v) discuss such other matters as appropriate;
  - 24.2.7.4. an annual meeting of senior management of the Parties to review relevant relationship, contract and performance issues; and
  - 24.2.7.5. such other meetings between SARS and the Service Provider personnel as may be reasonably requested by SARS and as may be necessary to address relevant relationship, contract and performance issues.
- 24.2.8. The Service Provider will prepare and circulate an agenda sufficiently in advance of each such meeting to give participants an opportunity to prepare for the meeting. The Service Provider will incorporate into such agenda items that SARS desires to discuss. At the request of SARS, the Service Provider will prepare and circulate minutes promptly after a meeting for review and approval by SARS.

### **24.3. EXCUSED NON-COMPLIANCE**

- 24.3.1. Where the Service Provider can establish to the reasonable satisfaction of SARS that-

- 24.3.1.1. the cause of its failure to achieve a certain Service Level was due to a factor outside of the reasonable control of the Service Provider (i.e. force majeure);
- 24.3.1.2. the Service Provider would have achieved such service level but for such factor;
- 24.3.1.3. the Service Provider used commercially reasonable efforts to perform and achieve that service level notwithstanding the presence and impact of such factor; and
- 24.3.1.4. the Service Provider is without fault in causing such factor in which instance no service level failure will be recorded against the record of the Service Provider.

## **25. THIRD PARTY SERVICE PROVIDER COOPERATION**

- 25.1. 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.
- 25.2. 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.

## **26. INTELLECTUAL PROPERTY RIGHTS**

- 26.1. Provided that SARS paid all amounts due under this Agreement, the copyright in the copyrighted work made by the Service Provider pursuant to this Agreement shall vest in SARS and no copyright to such copyrighted work shall vest in the Service Provider save as may specifically be granted by SARS.
- 26.2. The Service Provider shall indemnify and hold SARS harmless against losses, claims, demands, proceedings, damages, costs, charges and expenses of

whatsoever nature in respect of the Service Provider's infringement of an intellectual property rights of a third party as a result of the action or actions of the Service Provider in execution of this agreement.

## **27. SECURITY VETTING OF DRAFTFCB SOUTH AFRICA RESOURCES**

27.1. SARS reserves the right in its sole and absolute discretion to do a security check (vetting) on the Service Provider personnel involved with the performance of the Services.

27.2. Where SARS finds a Service Provider employee or agent to be a security risk, SARS will inform Service Provider accordingly and the Service Provider shall replace such employee or agent with another employee or agent with equal qualification(s) and experience, without any delay.

## **28. GENERAL**

### **28.1. NO ASSIGNMENT WITHOUT CONSENT**

Neither Party shall be entitled to assign, cede, sub-contract, delegate or in any other manner transfer any benefit, rights and/or obligations in terms of this Agreement, without the prior written consent of the other Party, which consent shall not be unreasonably withheld.

### **28.2. SEVERABILITY**

Should any of the terms and conditions of this Agreement be held to be invalid, unlawful or unenforceable, such terms and conditions shall be severable from the remaining terms and conditions which shall continue to be valid and enforceable. If any term or condition held to be invalid is capable of amendment to render it valid, the Parties agree to negotiate an amendment to remove the invalidity.

### **28.3. ADVERTISING AND MARKETING**

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

### **28.4. WAIVER**

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

### **28.5. NO WITHHOLDING OF CONSENTS**

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



## **28.6. AUTHORISED SIGNATORIES**

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

## **28.7. 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.

## **28.8. APPLICABLE LAW**

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

## **28.9. WHOLE AGREEMENT AND AMENDMENT**

This Agreement constitute the whole of the Agreement between the Parties relating to the subject matter hereof and no amendment, alteration, addition, variation or consensual cancellation will be of any force or effect unless reduced to writing and signed by the Parties hereto or their duly Authorised Representatives. Any document executed by the Parties purporting to amend, substitute or revoke this Agreement or any part hereof, shall be titled an "Addendum" to the applicable Agreement and assigned a sequential letter to be included in the title.

## **28.10. 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.

## 29. COSTS

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

## 30. JURISDICTION

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

**SIGNED AT PRETORIA ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2015**

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

1. \_\_\_\_\_

**Mogogodi Dioka**

**Executive: Procurement**

**Date of signature:**

2. \_\_\_\_\_

**Babs Naidoo**

**Executive: Communication and  
Marketing**

**Date of signature:**

**As representative for the Service Provider-**

**SIGNED AT \_\_\_\_\_ ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2015**

**SIGNATURE:**\_\_\_\_\_

**FULL NAMES AND SURNAME:**\_\_\_\_\_

**CAPACITY:**\_\_\_\_\_

DRAFT