

**SERVICES AGREEMENT IN RESPECT OF THE APPOINTMENT OF A CHAIRPERSON FOR
THE SARS NATIONAL BARGAINING FORUM**

Between

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

(TO BE ADDED), a company incorporated in accordance with the laws of South Africa
(Registration Number: **TO BE ADDED**)

(herein represented by its authorised representative who warrants
that s/he is duly authorised to do so)

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

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ANNEXURES:

- A - PRICING SCHEDULE
- B - NATIONAL BARGAINING FORUM CONSTITUTION

1. INTRODUCTION

- 1.1 SARS invited proposals for the appointment of a Chairperson for the SARS National Bargaining Forum, through Request for Proposal No. 02/2021 (“**RFP**”) as more fully described therein.
- 1.2 The Service Provider submitted a proposal in response to the RFP (“the Proposal”).
- 1.3 SARS accepted the Proposal and appointed the Service Provider to provide the Services.
- 1.4 The Service Provider has accepted the appointment, and the Parties herein record the terms and conditions of their agreement.
- 1.5 The Parties acknowledge that this Agreement is underpinned by the National Bargaining Forum Constitution. The Service Provider must therefore acquaint itself with the National Bargaining Forum Constitution and the turnaround times contained therein, and render the Services in a manner that is independent, objective and responsive to the objectives of the National Bargaining Forum Constitution and any future amendment that may be effected thereto during the term of this Agreement.

2. DEFINITIONS AND INTERPRETATION

- 2.1 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.
- 2.2 Unless inconsistent with the context, the words and expressions have the following meanings and similar expressions will have corresponding meanings-
 - 2.2.1 “**Agreement**” means this 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 the Authorised Signatories;
 - 2.2.2 “**Alternative Chairperson**” means the person presented as such in the Proposal;

- 2.2.3 **“Applicable Law”** means any of the following to the extent applicable to the Service Provider and where applicable, to SARS or the Services-
- 2.2.3.1 Any original or subordinate legislation;
 - 2.2.3.2 The common law;
 - 2.2.3.3 Any binding court order, judgment or decree;
 - 2.2.3.4 Any applicable industry code of conduct, policy or standard enforceable by law; or
 - 2.2.3.5 Any direction, policy or order that is given by a Regulatory Authority;
- 2.2.4 **“Authorised Signatory”** means a signatory authorised by SARS and the Service Provider respectively to sign the Agreement, any amendments and/or addenda hereto;
- 2.2.5 **“Business Day”** means any day other than a Saturday, Sunday or public holiday in South Africa;
- 2.2.6 **“Chairperson”** means the person presented as such in Proposal;
- 2.2.7 **“Commencement Date”** is **(TO BE ADDED)**, notwithstanding the date of signature of this Agreement;
- 2.2.8 **“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;
- 2.2.9 **“Confidential Information”** means Personal Information defined as such in terms of POPIA; 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-

- (a) 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;
- (b) information relating to the knowledge, know-how, expertise, trade secrets and activities of the Disclosing Party;
- (c) information relating to the Services and any aspect thereof; and
- (d) 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;

2.2.10 **“Designated Representative”** means the SARS employee designated in terms of this Agreement, or his/her appointed delegate, as the person who will interface with the Service Provider on all matters relating to the general administration of this Agreement and who will manage the overall performance of the Service Provider over the contract term and to whom all SARS directed communication regarding this Agreement must be addressed;

2.2.11 **“Key Account Manager”** means a member of the Service Provider’s Personnel 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;

2.2.12 **“Losses”** means all losses, liabilities, costs, expenses, fines, penalties, damages and claims, and all related costs and expenses as determined in Law;

- 2.2.13 **“National Bargaining Forum Constitution”** means the Constitution attached hereto and marked **Annexure B**, which is incorporated herein by reference;
- 2.2.14 **“Parties”** means SARS and the Service Provider and “party” as the context requires is a reference to any one of them;
- 2.2.15 **“POPIA”** means the Protection of Personal Information Act, 2013 (Act No.4 of 2013);
- 2.2.16 **“Regulatory Authority”** means any organ of state, government agency or institution, International Body or Organisation which has–
- 2.2.16.1 jurisdiction over the Services or parts thereof; or
- 2.2.16.2 administrative or oversight responsibility pertaining to any Applicable Law;
- 2.2.17 **“RFP”** means SARS’ invitation to service providers to submit proposals for the appointment of a Chairperson for the SARS National Bargaining Forum, issued by SARS on 29 April 2022, with reference number RFP 02/2021, which is incorporated herein by reference;
- 2.2.18 **“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 299 Bronkhorst Street, Nieuw Muckleneuk, Pretoria;
- 2.2.19 **“Service Provider”** means **(TO BE ADDED)**, a company incorporated as such in accordance with the Laws of South Africa with registration number **(TO BE ADDED)** and with its principal place of business at **(TO BE ADDED)**;
- 2.2.20 **“Service Provider’s Personnel”** means the Chairperson, the Alternative Chairperson and those members of staff of the Service Provider who have been assigned by the Service Provider to the provision of the Services;

- 2.2.21 **“Services”** means the provision by the Service Provider to SARS of a Chairperson or an Alternate Chairperson to the National Bargaining Forum; the National Consultative Forum and ancillary sub-structures/forums, to perform the functions and execute responsibilities contemplated in the RFP and **Annexure B**; as well as functions or responsibilities not specifically mentioned therein but which are reasonably and necessarily required for the proper and complete execution of the Services; and
- 2.2.22 **“Termination Date”** is **(TO BE ADDED)**.
- 2.3 Any reference in this Agreement to-
- 2.3.1 A clause shall, subject to any contrary indication, be construed as a reference to a clause in this Agreement; and
- 2.3.2 A person refers to any person, including juristic entities.
- 2.4 Unless inconsistent with the context or save where the contrary is expressly indicated-
- 2.4.1 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 Definitions and Interpretation clause, effect shall be given to it as if it was a substantive provision of this Agreement;
- 2.4.2 when any number of days is prescribed in this Agreement, same shall be calculated exclusively of the first and inclusively of the last day unless the latter falls on a day which is not a Business Day, in which case the last day shall be the next Business Day;
- 2.5 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.
- 2.6 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.
- 2.7 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.

2.8 No provision of this Agreement shall be construed to provide a benefit of any person who is not a party to this Agreement.

2.9 References to day/s, month/s or year/s shall be construed as calendar day/s, month/s or year/s.

2.10 Reference to a Party includes that Party's successors-in-title and permitted assigns.

2.11 Unless inconsistent with the context, an expression which denotes-

2.11.1 Any one gender includes the other gender; and

2.11.2 The singular includes the plural and *vice versa*.

2.12 The termination of this Agreement will not affect the provisions which are intended to 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.

2.13 This Agreement is fully binding on the executors, administrators, trustees, permitted assigns or liquidators of the Parties as fully and effectually as if they had signed this Agreement in the first instance and reference to any Party is deemed to include such Party's estate, heirs, executors, administrators, trustees, permitted assigns or liquidators, as the case may be.

2.14 Where figures are referred to in numerals and in words, and there is any conflict between the two, the words shall prevail.

2.15 The provisions of this Agreement shall not be construed against or interpreted to the disadvantage of the Party responsible for the drafting or preparation of such provisions.

3. DURATION

3.1 This Agreement commences on the Commencement Date and subsists until the

Termination Date, unless terminated earlier in accordance with the terms of this Agreement.

4. SARS' OBLIGATIONS

4.1 SARS must:

4.1.1 in writing, on Commencement Date, nominate a 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 Designated Person, in which event SARS must give the Service Provider at least 24 hours' written notice of such change;

4.1.2 provide the Service Provider with timeous management decisions and any necessary approvals or authorisations to enable the Service Provider to fulfil its obligations under this Agreement;

4.1.3 make available to the Service Provider all relevant information and data at its disposal, which is reasonably required for the rendering of the Services; and

4.1.4 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.

4.2 Subject to the Service Provider's Personnel's compliance with SARS' access and security policies, provide the Service Provider's Personnel with access to the premises and facilities of SARS if necessary for the purposes of rendering the Services.

5. SERVICE PROVIDER'S DUTIES AND OBLIGATIONS

5.1 The Service Provider must -

5.1.1 render the Services to SARS. In this regard, the Service Provider may only, with prior and timeous notice to SARS, deploy the Alternative Chairperson where the Chairperson is not available. Notwithstanding, SARS reserves the right to wait for a reasonable period for the Chairperson to become

available, where it would be in the best interests of the affected parties for the relevant function to be performed by the Chairperson;

- 5.1.2 ensure that the Key Account Manager contemplated in its Proposal is duly assigned as such, and assumes the attendant role and responsibilities for the duration of this Agreement;
- 5.1.3 ensure that where required, the Service Provider's Personnel are properly registered, licensed or accredited with the appropriate Regulatory Authorities, and remain so registered for the duration of this Agreement;
- 5.1.4 ensure that Service Provider's Personnel or other personnel observe confidentiality and do not use any information obtained pursuant to this Agreement for any reason other than for reasons envisaged in this Agreement;
- 5.1.5 execute the Services according to this Agreement;
- 5.1.6 ensure that the Chairperson and the Alternate Chairperson are acquainted with **Annexure B** and ensures compliance therewith;
- 5.1.7 monitor implementation of the Services against set targets, costs and timeframes;
- 5.1.8 carry out all written and reasonable instructions received from SARS timeously and in a diligent manner;
- 5.1.9 ensure that the Service Provider's Personnel devote such time, attention and skill in executing the Services as may be reasonably required for the proper discharge of its duties under this Agreement;
- 5.1.10 not change or replace the Key Accounts Manager without the prior written consent of SARS and in this regard-
 - 5.1.10.1 The Service Provider may make a written request to SARS to replace its Key Accounts Manager, where such member has become incapacitated and/or unable to perform his/her duties under the Agreement;

- 5.1.10.2 The Service Provider's request to SARS for the substitution of the Key Accounts Manager shall include the reason for the request and a proposal to replace the Key Accounts Manager with a person of equal or better qualification(s), skills and experience. Such proposal must include the *curriculum vitae* of the proposed substitute;
- 5.1.10.3 SARS may only approve a substitute which has similar or better qualifications, skills and experience; and
- 5.1.10.4 Should SARS, in its discretion reasonably consider the Key Accounts Manager to be incompetent or unsatisfactory, the Service Provider will have to replace at its own cost, the Key Accounts Manager with a person having equal or better qualifications, skills and experience in line with the timeframes then stipulated by SARS;
- 5.1.11 charge fees for Services rendered to SARS in accordance with the SARS approved pricing;
- 5.1.12 provide the Services in accordance with the highest professional standards;
- 5.1.13 act impartially and ethically at all times, and where applicable, act in accordance with the code of ethics / conduct of its profession;
- 5.1.14 exercise reasonable care and diligence in the discharge of its obligations in terms of the Agreement;
- 5.1.15 take Commercially Reasonable Efforts to prevent, overcome and mitigate any adverse effects that might ensue, to the extent required to achieve the relevant outcome; and
- 5.1.16 ensure that it adheres to written and reasonable requests or instructions by the Designated Representative, in so far as same are lawful and consistent with this Agreement.

5.2 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.

- 5.3 For the duration of this Agreement and for a period of five (5) years after termination, and subject to Applicable Law, the Service Provider must maintain a record of the Services executed. The Service Provider must provide SARS and its auditors access at reasonable times, and subject to reasonable written notice, 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. All costs incurred in performing audits under this clause will be borne by SARS, unless audit findings reveal the Service Provider's non-compliance with the terms of this Agreement and/or requirements of a Regulatory Authority or similar institution having jurisdiction over SARS and/or the Service Provider, in which event such costs will be borne by the Service Provider.

6. MEETINGS

- 6.1 The Parties may hold *ad hoc* meetings at the reasonable request of either Party to discuss the execution of the Services. Such meetings shall be at no cost to SARS.

7. PRICING AND INVOICING

- 7.1 The Service Provider must invoice SARS for Services rendered according to the rates in the pricing schedule accepted by SARS, attached hereto as **Annexure A**.
- 7.2 Apart from the pricing reflected in **Annexure A**, no other fee or cost will be covered by SARS. Furthermore, in the event that a meeting is postponed by the Service Provider due to non-compliance with any procedural requirements or due to a lack of preparation, the Service Provider shall not charge SARS any fees in respect of that meeting.
- 7.3 The Service Provider must invoice SARS for Services rendered monthly. Each invoice shall contain-
- 7.3.1 a full description of the Services rendered and an indication whether the Services were rendered by the Chairperson or the Alternate Chairperson;
 - 7.3.2 cost per item;

- 7.3.3 the total costs / fees payable by SARS; and
- 7.3.4 any such details as may be reasonably requested by SARS from time to time.
- 7.4 The Service Provider must verify that each invoice is complete and accurate, and that it conforms to the requirements of this clause before issuing the invoice to SARS.
- 7.5 The Service Provider must submit all invoices to the Designated Representative and where requested to do so by the Designated Representative, send copies to other SARS officials.
- 7.6 Subject to **clause 8.1** below, SARS shall pay undisputed amounts in an invoice owed to the Service Provider within thirty (30) days after SARS receives such invoice, if the invoice is accurate and meets the requirements of this Agreement.
- 7.7 Should SARS query an item in an invoice, the Service Provider must, within two (2) days after a written request by SARS, provide SARS with any other documentation or information reasonably required by SARS in order to verify the accuracy of amounts indicated in an invoice.
- 7.8 SARS may withhold, deduct or set off from any monies due and owing to the Service Provider in terms of this Agreement, an amount equal to the amount of any outstanding claims that SARS may have against the Service Provider for damages, costs or any other indebtedness arising out of this Agreement: Provided that SARS will provide the Service Provider with written notice of its intention to offset, supported by reasonable detail of the actual damages, costs or indebtedness incurred and sought to be offset by SARS.
- 7.9 A certificate of indebtedness signed by the Chief Financial Officer of SARS reflecting the amount due and payable under **clause 7.8** above shall be sufficient and conclusive proof of the contents and correctness thereof for the purposes of with-holding, deduction or set off by SARS or for provisional sentence, summary judgment or any other proceedings against the Service Provider in a court of law and shall be valid as a liquid document for such purposes.
- 7.10 If the Service Provider fails to perform the Services within the specifications or

turnaround times specified in the RFP and **Annexure B**, due to reasons solely attributable to the Service Provider, SARS shall, without prejudice to its other remedies under this Agreement, be entitled to deduct, as a penalty, for non-performance, delayed performance or defective performance, an amount of up to ten percent (10%) of the amount due to the Service Provider in the pertinent month or succeeding invoice due and payable to the Service Provider: Provided that SARS will provide the Service Provider with written notice of its intention to so deduct, supported by reasonable detail of the actual penalty levied.

- 7.11 A penalty is a non-performance, delayed performance or defective performance fee, and is payable regardless of the fact that the Service Provider ultimately delivers the pertinent performance.

8. DISPUTED CHARGES AND INVOICING ERRORS

- 8.1 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 subsequent payment, including disputes in respect of an error in an invoice or an amount paid. If SARS withholds any such amount-

8.1.1 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 8** of this Agreement;

8.1.2 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 7.6** above; and

8.1.3 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.

- 8.2 Any dispute arising in terms of **clause 8.1** 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 Service Provider's Key Account Manager or their designees for resolution.

8.3 The SARS Chief Procurement Officer and the Service Provider's Key Account Manager or their designees shall meet within five (5) Business Days of the referral of the dispute to resolve such dispute.

8.4 In the event that the dispute remains unresolved after seven (7) days of its referral to the persons mentioned in **clause 8.3**, either Party shall be entitled to refer the dispute for resolution in accordance with the provisions of **clause 15** below: Provided that **clause 15.1** will not apply to disputes contemplated in this **clause 8**.

9. RELATIONSHIP BETWEEN THE PARTIES

9.1 The Service Provider is an independent contractor and under no circumstances will it be considered a partner, joint venture partner or employee of SARS in the execution of this Agreement.

9.2 The Service Provider's Personnel engaged by the Service Provider will be the Service Provider's employees, contractors or agents, and the entire management, direction and control of all such persons will be the responsibility of the Service Provider. The Service Provider is liable to SARS for the performance, malperformance, acts and/or omissions of any of the Service Provider's Personnel or other personnel involved in the execution of this Agreement.

10. THIRD PARTY COOPERATION

10.1 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 4.1.4** 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.

10.2 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, except where the third party is appointed for purposes contemplated in **clause 4.1.4** above.

11. SECURITY VETTING OF THE SERVICE PROVIDER'S PERSONNEL

11.1 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 –

11.1.1 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

11.1.2 provide a personal background screening report from a reputable screening agency on personal status such as but not limited to the following:

- a) citizenship status report;
 - b) criminal activity report; and
 - c) credit worthiness report,
- of any or all of the Service Provider's Personnel.

11.2 SARS also reserves the right at its sole and absolute discretion to perform a security check (vetting) or any personal background screening on any or all of the Service Provider's Personnel.

11.3 SARS reserves the right to terminate this Agreement where it establishes that any of the Service Provider's Personnel is a security risk.

12. CONFIDENTIALITY

12.1 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.

12.2 The Service Provider shall ensure that the Service Provider's Personnel and other personnel involved with the rendering of the Services individually signs the SARS Oath / Declaration of Secrecy before commencing with execution of this Agreement, and submit the original thereof to SARS for record keeping purposes.

12.3 The Service Provider shall not remove from SARS' premises any documents or materials relating to the Services or SARS' business without first obtaining the written consent of SARS.

- 12.4 The Service Provider must protect the interests of SARS and its Confidential Information by-
- 12.4.1 making available such Confidential Information only to those of its personnel who are actively involved in the execution of its obligations under this Agreement and then only on a “need to know” basis;
 - 12.4.2 putting in place information security practices and procedures reasonably acceptable to SARS to prevent unauthorised disclosure and taking all practical steps to impress upon those personnel who need to be given access to Confidential Information, the secret and confidential nature thereof; and
 - 12.4.3 ensuring that all Confidential Information of SARS which has or will come into the possession of the Service Provider and its personnel, will at all times remain the sole and absolute property of SARS.
- 12.5 Where the Service Provider is threatened with legal action, which necessitates disclosure of Confidential Information of SARS, it shall give SARS written notice of such legal action within two (2) days of receipt of the threatened legal action. The Service Provider shall, together with the notice referred to above, deliver to SARS all documentation received or submitted in connection with the threatened legal action.
- 12.6 In addition to the above, the Service Provider must comply with the provisions of POPIA, and ensure that Personal Information (as defined in POPIA) –
- 12.6.1 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;
 - 12.6.2 is kept secure as contemplated in POPIA; and
 - 12.6.3 immediately notify the 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, where the Service Provider or the Service Provider’s Personnel have reasonable grounds to believe or suspect that any Personal Information processed by the Service Provider

pursuant to this Agreement has been unlawfully accessed or acquired by any person through unauthorised means.

12.7 The Service Provider may not disclose/share any Confidential Information with any Person, including its affiliates, outside the borders of South Africa, unless it obtains prior, written consent jointly from SARS and the structures which are beneficiaries of the Services, which consent will, if granted (at the sole discretion of SARS and the aforementioned beneficiaries), 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, its employees and the aforementioned beneficiaries 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 Confidential Information; ii) the Service Provider failing to comply with POPIA in its exchange / sharing of Confidential Information or iii) breach by the recipient of the information of POPIA or POPIA equivalent laws.

12.8 The provisions of this Clause shall survive the termination or cancellation of this Agreement for any reason whatsoever.

13. INTELLECTUAL PROPERTY

13.1 The Parties will each retain ownership of their pre-existing intellectual property rights.

13.2 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.

13.3 In the event of the Service Provider's intellectual property being incorporated into any aspect of the Services being rendered in terms of this Agreement, the Service Provider hereby grants SARS a non-exclusive, royalty free license for the duration of this Agreement to use such intellectual property for its own purposes in connection with the Services.

13.4 The Service Provider warrants to SARS that it holds the right, title and interest to the intellectual property it will be utilising to render the Services, alternatively it has procured the necessary rights from the relevant third party and indemnifies SARS against any claim of infringement, which any third party may make or bring against SARS as a result of this Agreement.

14. BREACH

14.1 If a Party (the “Defaulting Party”) is in default or breach of any term 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-

14.1.1 claim specific performance;

14.1.2 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

14.1.3 claim any money due and payable in terms of this Agreement and claim damages from the Defaulting Party.

14.2 The remedies set out in this clause shall not be construed to be exhaustive of any other remedies available to the Parties.

15. DISPUTE RESOLUTION

15.1 In the event of any dispute arising out of or in connection with this Agreement, the Parties shall try to resolve the dispute by negotiation. This entails that the one Party invites the other in writing to a meeting and attempts to resolve the dispute within seven (7) days from date of the written invitation.

15.2 If the dispute has not been resolved by such negotiation as contemplated above, or in **clause 8**, the Parties shall submit the dispute to the Arbitration Foundation of Southern Africa (“AFSA”) administered mediation, failing which the dispute shall be determined as below.

15.3 Save in respect of those provisions in this Agreement which provide for their own remedies which would be incompatible with arbitration, any dispute arising from, or in connection with this Agreement and not resolved as contemplated above will finally be resolved by arbitration in accordance with the Rules of AFSA or its successor, by an

arbitrator or arbitrators appointed by AFSA.

- 15.4 Neither Party shall be precluded from obtaining interim relief or an interim remedy from a court of competent jurisdiction pending the decision of the arbitrator.
- 15.5 This clause is 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.
- 15.6 Subject to **clause 8.1** above, 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 its obligations in terms of this Agreement: Provided that SARS shall not pay any invoice in respect of which there is a pending dispute.

16. TERMINATION

16.1 Termination for cause by SARS

16.1.1 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–

16.1.1.1 breaches the confidentiality provisions of this Agreement;

16.1.1.2 breaches Applicable Law;

16.1.1.3 is found guilty of an offence in terms of Applicable Law;

16.1.1.4 commits an act of insolvency as defined in the Insolvency Act, 1936 (Act No. 24 of 1936) or is placed under provisional liquidation or under business rescue proceedings or is finally liquidated;

16.1.1.5 commits an act of professional misconduct or professional or technical incompetence, which is substantial and serious; or

16.1.1.6 commits or participates in any unlawful, dishonest or unethical act in performing its obligations under this Agreement.

16.2 SARS shall have no liability to the Service Provider with respect to a termination under this clause.

16.3 **Termination Upon Sale, Acquisition, Merger or Change of Control**

16.3.1 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.

16.3.2 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 16.3.1** above.

16.3.3 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.

16.3.4 In the event that the Service Provider fails to notify SARS, as required by **clause 16.3.1** 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.

16.3.5 SARS shall have no liability to the Service Provider with respect to termination of the Agreement in terms of this clause.

16.3.6 "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-

16.3.6.1 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;

16.3.6.2 controlling the majority of the voting rights in such entity; or

16.3.6.3 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.

16.3.7 Any termination of this Agreement pursuant to the provisions of this clause shall be without prejudice to any prior claim which either Party may have.

17. ADDRESSES

17.1 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.

17.2 SARS' physical address for **service of notices and legal processes** is-

Attention: Head - Corporate Legal Services
Lehae La SARS
299 Bronkhorst Street
Nieuw Muckleneuk
PRETORIA

17.3 Service Provider's physical address for **service of notices and legal processes** is-

Attention: **(TO BE ADDED)**

17.4 SARS' email address for communications, and/or correspondences in connection with the execution of the Services is: **(TO BE ADDED)** and carbon copy **(TO BE ADDED)**.

17.5 The Service Provider's email address for communications, and/or correspondences in connection with the execution of the Services is: **(TO BE ADDED)**.

17.6 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.

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

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

17.7.2 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*.

17.8 The Parties record that whilst they may correspond via 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.

18. WARRANTIES

18.1 The Service Provider hereby represents and warrants to SARS that-

18.1.1 this Agreement has been duly authorised and executed by it and constitutes a legal, valid and binding set of obligations on it;

18.1.2 it is acting as principal and not as an agent of an undisclosed principal;

18.1.3 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 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;

18.1.4 it has the necessary capacity, skills and resources to render the Services to SARS in a diligent manner;

18.1.5 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;

18.1.6 it has the capacity to timeously deliver the Services;

18.1.7 it has the requisite insurance contemplated in this Agreement;

18.1.8 it shall not, in executing the Services, breach or infringe any intellectual property right of a third party;

18.1.9 no factual circumstances exist that may materially affect its capacity to perform its obligations under this Agreement;

18.1.10 it, along with the Service Providers 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

18.1.11 it is familiar with and will comply with Applicable Law.

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

18.3 The provisions of this clause shall survive the termination of this Agreement.

19. LIABILITY

19.1 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.

19.2 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 or breach by the Service Provider or the Service Provider's Personnel of confidentiality provisions in this Agreement, breach of Applicable Law, infringement of third party intellectual property rights or a criminal act committed by

the Service Provider, the Service Provider's Personnel or any employee of the Service Provider.

20. INDEMNITY BY THE SERVICE PROVIDER

20.1 The Service Provider hereby indemnifies, holds harmless and agrees to defend SARS and its officers, employees, agents, successors and assigns, against all claims or Losses arising from or in connection with, any of the following-

20.1.1 Third party claims attributable to any breach of the provisions of this Agreement by the Service Provider;

20.1.2 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;

20.1.3 Third party claims arising from or related to the death or bodily injury of any agent, employee, customer, business invitee, business visitor or other person caused by the delictual conduct of the Service Provider or the Service Provider's Personnel; or

20.1.4 Claims arising from damage to property owned or leased by SARS or belonging to a third party caused by the acts or omissions of the Service Provider or the Service Provider's Personnel.

21. INSURANCE

21.1 The Service Provider must, on or before the Commencement Date and for the duration of this Agreement, have and maintain adequate insurance cover consistent with acceptable and prudent business practices and acceptable to SARS, which must include, without limitation, professional indemnity insurance cover against all actions, suits, claims or other expenses arising in connection with damages or Losses for which it is liable in terms of this Agreement.

21.2 The Service Provider must, on Commencement Date, provide SARS with certificates of insurance evidencing that the insurance covers and policy endorsements required under this Agreement are in place, and thereafter provide evidence of renewal of such insurance at least three (3) Business Days prior to expiration thereof.

- 21.3 The Service Provider must provide SARS at least thirty (30) days' notice prior to any material modification of the insurance policies contemplated in this Agreement.
- 21.4 In the event of loss or damage or other event that requires notice or other action under the terms of any insurance coverage indicated herein, 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.
- 21.5 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.

22. FORCE MAJEURE

- 22.1 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 22.2 and 22.3** herein, be relieved of its obligations hereunder during the period that such *force majeure* subsists.
- 22.2 Should a *force majeure* event arise, the affected Party shall within ten (10) 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.
- 22.3 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.

22.4 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.

22.5 SARS shall be entitled to use the services of other parties during *force majeure* events declared by the Service Provider.

23. CONFLICT OF INTEREST

23.1 Neither the Service Provider or the Service Provider's Personnel must have any interest or receive any remuneration in connection with the execution of the Services, except as provided for in this Agreement.

23.2 The Service Provider acknowledges that the execution of the Services require an impeccable level of independence and objectivity. The Service Provider must not have or undertake duties or interests that create or might reasonably be anticipated to create an actual or perceived conflict with its duties and interests in executing this Agreement. The Service Provider must have systems in place to identify potential conflicts and to bring them to the attention of SARS.

23.3 The Service Provider warrants that there are no contracts, restrictions or other matters which would interfere with its ability to discharge its obligations under this Agreement. If, while executing its duties and responsibilities under this Agreement, the Service Provider becomes aware of any potential or actual conflict between its interests and those of SARS, the Service Provider must immediately inform SARS. Where SARS forms the view that such a conflict does or could exist, it may direct the Service Provider to take action(s) to resolve that conflict, and the Service Provider shall comply with that instruction.

24. BROAD-BASED BLACK ECONOMIC EMPOWERMENT

24.1 The Service Provider must remain BEE compliant and maintain or improve upon the B-BBEE status level it had when the tender (RFP) was awarded.

25. TAX COMPLIANCE

25.1 The Service Provider represents and warrants that, as of the Commencement 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.

26. DISENGAGEMENT ASSISTANCE

- 26.1 The Parties hereby acknowledge that, notwithstanding the termination of this Agreement for any reason whatsoever, the immediate and seamless transition of the Services to an incoming service provider is imperative. To this extent and without any derogation to any claims sounding in money, which either Party may have or allege against the other Party, the Service Provider shall not be entitled to withhold any information, files, records or reports, or any assistance as set out in the clauses below that will be crucial to effect the immediate and seamless transition of the Services.
- 26.2 For a period of one (1) month after termination of this Agreement for whatsoever reason or such earlier period as the Parties may agree, the Service Provider will provide SARS or SARS' newly designated service provider such assistance as SARS may reasonably require to facilitate the immediate transition of the Services in as seamless a manner as possible ("Disengagement Assistance").
- 26.3 Without limiting the generality of the foregoing, the Service Provider shall, at no additional cost, deliver to SARS on a date specified by SARS, such information and documentation relating to the Services as SARS may reasonably require, to facilitate the immediate transition of the Services in as seamless a manner as possible.
- 26.4 The Service Provider undertakes to use its best endeavours to ensure that all files and records are complete, up to date and adhere to professional quality standards, and legislative requirements, failing which SARS reserves the right to demand that the Service Provider brings the files, records and/or reports up to standard.

27. NON-SOLICITATION

- 27.1 Neither Party may, either during the term of this Agreement and for twelve (12) months after termination for whatever reason, 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.

28. GENERAL

28.1 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.

28.2 Authorised Signatories

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

28.3 Costs

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

28.4 Counterparts

This Agreement may be executed in one or more counterparts, each of which shall be deemed to be 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.

28.5 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.

28.6 Governing Law and Jurisdiction

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

28.6.2 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.

28.7 No Cession or Assignment Without Consent

Subject to Applicable Law, neither Party shall be entitled to assign, cede, subcontract, 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.

28.8 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.

28.9 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.

28.10 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 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.

28.11 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.

SIGNED AT PRETORIA FOR AND BEHALF OF SARS

As Authorised Signatories for the South African Revenue Service

Name:

Designation:

Date signed:

Name:

Designation:

Date signed:

FOR THE SERVICE PROVIDER

Full Names : _____

Signature : _____

Capacity : _____

Date : _____

Place : _____