**SERVICES AGREEMENT FOR THE APPOINTMENT AS SERVICE PROVIDER AND CHAIRPERSON TO THE SARS NATIONAL BARGAINING FORUM**

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

**THE SERVICE PROVIDER**,incorporated in accordance with the laws of South Africa with registration number: 0000/000000/00.

**(“Service Provider”)**

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### INTERPRETATION

* 1. The headings in this Agreement are for reference purposes only and will not govern or affect the interpretation of nor modify nor amplify the terms of this Agreement.
  2. Unless inconsistent with the context, the words and expressions have the following meanings and similar expressions will have corresponding meanings-
     1. “**Agreement**” means this Services Agreement, including all annexures and/or schedules to this Agreement;
     2. “**Applicable Law**”means any of the following to the extent applicable to the Service Provider and where applicable, to SARS or the Services-

1. Any statute, regulation, policy, by-law, ordinance or subordinate legislation;
2. The common law;

1. Any binding court order, judgment or decree;
2. Any applicable industry code of conduct, policy or standard enforceable by law; or
3. Any applicable direction, policy or order that is given by a regulatory authority;
   * 1. “**Authorised Representatives**” mean those signatories authorised by SARS and the Service Provider, respectively, to sign this Agreement;
     2. “**Bargaining Unit**” means all permanent employees employed in terms of the provisions of the South African Revenue Service Act, 1997 (Act No. 34 of 1997) and who are employed in job grades 1 to 6;
     3. “**Business Day**” means any day between and including Monday and Friday, except public holidays in South Africa observed by SARS;
     4. “**Commencement Date**” means **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ 2018**, notwithstanding date of signature;
     5. “**Deliverable**”means any output, outcome or result produced by the Service Provider for, or on behalf of SARS, as part of the Services pursuant to this Agreement;
     6. “**Losses**” means all losses, liabilities, costs, expenses, fines, penalties, damages and claims, and all related costs and expenses as determined in Law;
     7. “**National Bargaining Forum**” means the sole bargaining forum for SARS and its employees employed in the Bargaining Unit;
     8. “**National Bargaining Forum Constitution**” means the legal document setting forth the rules governing the activities of the National Bargaining Forum, which document has been signed by the South African Revenue Service, Public Servants Association of South Africa and the National Education Health and Allied Workers Union, attached hereto as **Annexure B**;
     9. “**National Forums**” means the National Bargaining Forum and the National Consultative Forum collectively, whose composition is set out in the National Bargaining Forum Constitution;
     10. “**National Consultative Forum**” means the forum within which consultations between SARS and recognised trade unions will take place;
     11. “**Parties**” means SARS and the Service Provider and “party” as the context requires, is a reference to any one of them;
     12. “**Pricing Schedule**” means the Service Provider’s VAT inclusive schedule of Applicable Tariffs attached hereto as **Annexure A**;
     13. “**RFP**”subject to any contrary indication, is reference to SARS’s Request for Proposals No. 21/2017 for the appointment of a Chairperson to the SARS National Bargaining Forum, which is incorporated herein by reference thereto;
     14. “**SARS**” means the **SOUTH AFRICAN REVENUE SERVICE**, an organ of state within the public administration but outside the public service established in terms of Section 2 of the South African Revenue Service Act, 1997 (Act No. 34 of 1997), with its principal address at Lehae La SARS, 299 Bronkhorst Street, Nieuw Muckleneuk, Pretoria;
     15. “**SARS’s Designated Representative**” means the SARS official contemplated in **Clause 8.1.1** below;
     16. “**Service Provider**” means **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**, incorporated in accordance with the Laws of South Africa with registration number 0000/000000/00 and registered address at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_;
     17. “**Service Provider’s Personnel**” means those members of staff of the Service Provider, including contracted staff, who have been dedicated to the provision of the Services to SARS, and on the strength of whose expertise the Service Provider warrants the ability to provide the Services;

* + 1. “**Services**” means the provision of services by the Service Provider to SARS as contemplated in the RFP and in accordance with this Agreement, including those services, functions or responsibilities not specifically mentioned herein but which are reasonably and necessarily required for the proper performance and provision of the Services;
    2. “**Signature Date**” means the date on which the last Party affixes its signature to this Agreement;
    3. “**Termination Date**”means **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ 2021**; and
    4. “**VAT**” means Value-Added Tax levied in terms of the Value-Added Tax Act, 1991 (Act No. 89 of 1991).
  1. Any reference in this Agreement to-
     1. “**Clause**” shall, subject to any contrary indication, be construed as a reference to a Clause in this Agreement; and
     2. “**Person**” refers to any person including juristic entities.
  2. Unless inconsistent with the context or save where the contrary is expressly indicated-
     1. if any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that it appears only in the definition Clause, effect shall be given to it as if it were a substantive provision of this Agreement;
     2. when any number of days is prescribed in this Agreement, such a period shall be computed by excluding the first and including the last day unless the last day falls on a day which is not a Business Day, in which case the last day shall be the next succeeding Business Day;
     3. in the event that the day for payment of any amount due in terms of this Agreement should fall on a day which is not a Business Day, the relevant day for payment will be the subsequent Business Day;
     4. in the event that the day for performance of any obligation to be performed in terms of this Agreement should fall on a day which is not a Business Day, the relevant day for performance will be the subsequent Business Day;
     5. any reference in this Agreement to an enactment is to that enactment as at the Signature Date and as amended or re-enacted from time to time;
     6. no provision of this Agreement constitutes a stipulation for the benefit of any Person who is not a Party to this Agreement; and
     7. a reference to a Party includes that Party’s successors-in-title and permitted assigns, including any other Persons contemplated in **Clause 1.8** of this Agreement.
  3. Unless inconsistent with the context, an expression which denotes-
     1. any one gender includes the other gender; and
     2. the singular includes the plural and *vice versa*.
  4. Unless it is clear from a specific Clause in which a term has been defined that such definition has limited application to the relevant Clause, any term defined within the context of any particular Clause in this Agreement shall bear the same meaning as ascribed to it throughout the Agreement, notwithstanding that that term has been defined in a specific Clause.
  5. The termination of this Agreement will not affect the provisions of this Agreement which operate after any such termination or which of necessity must continue to have effect after such termination, notwithstanding that the clauses themselves do not expressly provide for this.
  6. This Agreement is binding on the executors, administrators, trustees, permitted assigns or liquidators of the Parties as fully and effectually as if they had signed this Agreement in the first instance and reference to any Party is deemed to include such Party’s estate, heirs, executors, administrators, trustees, permitted assigns or liquidators, as the case may be.
  7. Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.
  8. 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.

### APPOINTMENT

* 1. SARS issued a Request for Proposals for the appointment of a Chairperson to the SARS National Bargaining Forum under RFP 21/2017.
  2. The Service Provider submitted a proposal to SARS to render the Services. SARS accepted the proposal and hereby appoints the Service Provider to provide the Services.
  3. The performance of the Services shall be subject to the terms and conditions of this Agreement.
  4. The Service Provider represents that it has, and warrants that throughout the duration of this Agreement it shall have the resources, skills, qualifications, experience and capacity necessary to provide the Services in a diligent manner.
  5. In reliance on these statements and representations, SARS has selected and appointed the Service Provider to render the Services, on a non-exclusive basis, which appointment the Service Provider accepts.
  6. 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.

### DURATION

* 1. This Agreement commences on the Commencement Date and will endure for a period of thirty sixty (36) months, unless terminated earlier in accordance with the terms of this Agreement.

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### SERVICES

* 1. The Parties agree that the Service Provider has been appointed to render the Services.
  2. The scope of work includes but is not limited to the following-
     1. presiding over and conducting all meetings of the National Forums, including sub-forums, multilateral meetings, regional forums and according to proper meeting procedures;
     2. facilitating the effective functioning of the National Bargaining and National Consultative Forums, including sub-forums and the implementation of procedures set out in the Constitution of the National Bargaining Forum;
     3. facilitating engagements and negotiations at the National Bargaining Forum by promoting consensus and conclusion of collective agreements;
     4. facilitating consultations and discussions at the National Consultative Forum and promoting consensus between the parties;
     5. facilitating the promotion of enhanced relationships between the parties to the National Forums;
     6. approving and signing off the minutes of meetings after approval thereof by the National Forums;
     7. drawing up an annual report of activities of the National Forums for submission to the parties by after the end of the financial year (31 March); and
     8. performing such duties as may be requested by the parties to the National Forums and the National Bargaining Forum Constitution.
  3. The Service Provider shall provide the Services utilising the requisite skills and expertise highlighted in the Service Provider’s proposal and in accordance with the highest professional standards generally acceptable in its profession. In the event of any doubt regarding what constitutes generally acceptable standards, the Parties shall request a directive from the relevant regulatory authority.

### INVOICING AND PAYMENT

* 1. All fees will be charged according to the Service Provider’s Pricing Schedule.
  2. The Service Provider shall be entitled to recover travel expenses for *ad hoc* meetings (i.e. meetings other than the set meetings of the National Forums and their sub-forums / structures), in accordance with SARS’s Internal Policy: Subsistence Allowance and Travel Related Claims. Any material costs will be communicated to SARS in writing and approval status conveyed by SARS, subject to SARS obtaining procurement approval, prior to being incurred.
  3. 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.
  4. The Service Provider shall render invoices to SARS on a regular basis, which intervals may not exceed one hundred and twenty (120) days. SARS shall not be obliged to pay invoices submitted for Services rendered more than one hundred and twenty (120) days prior to the date of the invoice.
  5. The invoice will include a detailed description of the Services rendered and time spent (where applicable), as well as the total fees payable in respect of the applicable Services.
  6. The Service Provider shall verify that each invoice is complete and accurate and that it conforms to the requirements of this **Clause 5** before issuing the invoice to SARS.
  7. The Service Provider shall deliver all invoices to the SARS office designated by SARS from time to time.
  8. Unless SARS disputes any item on the invoice, and provided the invoice is accurate and meets the requirements of this Agreement, SARS will pay the invoiced amount within thirty (30) days of receipt of the invoice.

* 1. SARS may set off any undisputed amounts due to SARS in terms of this Agreement against any amounts payable by SARS to the Service Provider.
  2. The Service Provider shall maintain complete and accurate records of, and supporting documentation for, the amounts invoiced to and payments made by SARS hereunder.
  3. The Service Provider shall within ten (10) days after SARS’s request, 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.

### DISPUTED CHARGES AND INVOICING ERRORS

* 1. SARS may withhold payment of fees and charges that SARS disputes in good faith, including disputes in respect of an error on an invoice or an amount paid or, if the disputed fees have already been paid, SARS may withhold an equal amount from a later payment.
  2. In the event that SARS disputes an item on the invoice, SARS will do so by giving written notice to the Service Provider within five (5) days of receipt of the invoice. The notice shall set out the disputed items on the invoice and the reasons therefore. The Parties shall promptly first address such dispute in accordance with this Clause.
  3. If the dispute relates to only certain of the amounts included on an invoice (or equals in the case of disputed amounts that have already been paid), then SARS shall pay the undisputed amounts in accordance with **Clause 5.8**.
  4. 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.
  5. The Parties’ senior managers (one level up from the Service Provider’s representative contemplated in **Clause 7.1** below and a SARS Designated Representative) shall meet to resolve the dispute within five (5) days of SARS giving notice of the dispute. The senior managers shall endeavour to resolve the dispute within five (5) days of its referral to them.
  6. Where the dispute remains unresolved after the informal procedures set out in **Clause 6.5** above have been followed, the dispute shall be dealt with in terms of the dispute resolution procedures set out in **Clause 24** of this Agreement.

### SERVICE PROVIDER’S UNDERTAKINGS AND OBLIGATIONS

* 1. The Service Provider undertakes to-
     1. nominate and supply the contact details of a representative, who must be a senior level employee from the Service Provider’s Personnel, who shall be responsible for the day to day management of the delivery of the Services, liaising with a SARS Designated Representative in respect of the performance of the Services and resolution of any disputes in terms of this Agreement;
     2. assign suitably qualified and skilled personnel to provide the Services in terms of this Agreement;
     3. ensure that its personnel devote such time, attention and skill in performing the Services as may be reasonably required for the proper discharge of its duties under this Agreement;
     4. render the Services to SARS in accordance with the highest professional standards;
     5. conduct its business activities in the utmost good faith, honesty, integrity and transparency, and consistently uphold the interests and needs of SARS as a client before any other consideration. In this regard the Service Provider acknowledges that any acts of bad faith may lead to SARS electing not to make further use of the services of the Service Provider;
     6. charge fees for Services rendered to SARS in accordance with the Service Provider’s Pricing Schedule;
     7. provide SARS with accurate and complete invoices, free from duplicated items and/or calculation errors;
     8. for the duration of this Agreement and for a period of five (5) years after the termination of this Agreement, maintain a complete audit trail of the Services performed under this Agreement, sufficient to permit a complete audit thereof. The Service Provider shall provide SARS and SARS’s auditors access at reasonable times to information, records and documentation relating to the Services for the purpose of performing audits, examinations and inspections in order to verify the Service Provider’s compliance with the terms of this Agreement and/or to enable SARS to comply with the requirements of any regulatory authority and/or regulators and governmental entities having jurisdiction. 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;
     9. immediately inform SARS if any of the Service Provider’s Personnel are suspended, found guilty of misconduct by the Service Provider or any regulatory authority, or found guilty of a criminal act by a court;
     10. ensure that appropriate data security measures are put in place, in order to preserve the confidentiality and integrity of all electronic information, at all times;
     11. take all reasonable measures to ensure the safety and confidentiality of documentary information relating to the Services at its premises;
     12. comply with all legislation relating to the protection of personal information; and
     13. comply with Applicable Law.

### SARS’S UNDERTAKINGS AND OBLIGATIONS

* 1. SARS undertakes to-
     1. Nominate a representative who will be responsible for managing the delivery of the Services by the Service Provider, including but not limited to-
        1. acting as central point of contact between SARS and the Service Provider;
        2. authorising the Service Provider to start with the Services;
        3. approval of invoices submitted by the Service Provider;

* + - 1. acceptance of Deliverables; and
      2. convening meetings with the Service Provider.
    1. Furnish the Service Provider with access to SARS personnel, any relevant information and records necessary for the Service Provider to perform the Services in compliance with the terms and conditions of this Agreement.

### MEETINGS AND REPORTS

* 1. In order to manage the Services provided by the Service Provider to SARS, the Parties agree that meetings between the Parties will be arranged on the following basis-

|  |  |  |
| --- | --- | --- |
| **Type of meeting** | **Frequency** | **Purpose of the meeting** |
| Service relationship  review | Annually | To report on the overall progress of the Services and to discuss service execution issues i.e. problems, risks, administrative issues etc. |

* 1. The Service Provider must draw up an annual report of the activities of the National Forums for submission to SARS by no later than thirty (30) days after the end of the SARS financial year (31 March).
  2. It is the responsibility of the Service Provider to supply accurate and relevant information and reports.
  3. Any information provided by the Service Provider in the reports or meetings must be sufficiently detailed to provide assurance that the Services are on schedule.
  4. The Parties may hold *ad hoc* meetings at the reasonable request of either Party.

### PENALTIES

* 1. If the Service Provider fails to perform the Services within the specifications or turnaround times specified in this Agreement 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.

* 1. 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.

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### THIRD PARTY CO-OPERATION

* 1. As part of the Services, where appropriate and when requested by SARS to do so, the Service Provider shall provide its full co-operation to any third party involved with, or contracted by SARS to assist with, a matter that forms the subject of the Services.
  2. It is, however, agreed that the relationship between the Service Provider and any third party will not constitute a partnership, and that neither the Service Provider nor the third party will be required to manage or monitor the other’s performance.
  3. Any complaints from the Service Provider relating to an actual or perceived lack of co-operation by the third party must promptly be brought to SARS’s attention.

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

* 1. SARS reserves the right, in its sole and absolute discretion to do a security check (vetting) on the Service Provider’s Personnel.
  2. The Service Provider will procure from its personnel such documentation as may be reasonably requested by SARS, to enable SARS to conduct such security checks as aforementioned.
  3. Where SARS finds any of the Service Provider’s Personnel to be a security risk, SARS will inform the Service Provider accordingly and the Service Provider will immediately replace such Person with a suitably qualified substitute.

### INTELLECTUAL PROPERTY RIGHTS

* 1. Each Party will retain ownership of its existing intellectual property rights.

* 1. All right, title and interest in and to documentation directly relating to the Services which may be created, written and/or presented by the Service Provider and or its agents and personnel and which relate to the Services will however vest exclusively in SARS. To this end, the Service Provider irrevocably makes over and assigns to SARS all intellectual property rights which may come into existence which transfer, make over and assignment is accepted by SARS.

### CONFIDENTIALITY

* 1. The Parties shall ensure that prior to commencing the performance of the Services all the Service Provider’s Personnel shall sign the SARS Oath of Secrecy and submit the original thereof to SARS for record keeping purposes.
  2. The Service Provider undertakes that for the term of this Agreement and after the expiration or earlier termination of this Agreement for any reason, it will keep confidential all proprietary information, including any trade secrets and/or all information of a confidential nature which SARS from time to time communicates to the Service Provider, its agents and/or personnel. This includes the knowledge acquired by the Service Provider, its agents and/or personnel as a result of the work to be performed by the Service Provider in terms of this Agreement and which by its nature, is intended to be kept confidential.
  3. For purposes of this Agreement, the expression “Confidential Information” shall include, but shall not be limited to SARS’s operating procedures, internal policies, manuals, computer infrastructure, hardware, software, methods and techniques, know-how, operating costs, as well as the names of service providers and/or potential service providers with whom SARS has not yet contracted but intends contracting for purposes of establishing business relationships to which the Service Provider may become privy during the contract term, as well as, SARS Confidential Information and Taxpayer Information as defined in Chapter 6 of the Tax Administration Act, 2011 (Act No. 28 of 2011), as well as any information required to be kept confidential by any other Act administered by the Commissioner for SARS.
  4. 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 must be kept confidential. The Service Provider undertakes not to disclose such information without first obtaining the written consent of SARS.
  5. If the Service Provider is uncertain about whether information is to be treated as confidential in terms of this Clause, it shall be obliged to treat it as such until advised otherwise, in writing, by SARS.
  6. The Service Provider will protect the interests of SARS and its Confidential Information by-
     1. making available such Confidential Information only to those of its personnel who are actively involved in the execution of its obligations under this Agreement and then only on a “need to know” basis;
     2. putting in place internal security procedures reasonably acceptable to SARS to prevent unauthorised disclosure and taking all practical steps to impress upon those personnel who need to be given access to Confidential Information, the secret and confidential nature thereof;
     3. not using any Confidential Information of SARS, or disclosing directly or indirectly any Confidential Information of SARS to third parties, whether during this Agreement or thereafter; and
     4. ensuring that all Confidential Information of SARS which has or will come into the possession of the Service Provider and its personnel, will at all times remain the sole and absolute property of SARS.
  7. Confidential Information shall not include information that-
     1. is lawfully in the public domain at the time of disclosure;
     2. subsequently and lawfully becomes part of the public domain by publication or otherwise;
     3. subsequently becomes available to a Party from a source other than the disclosing Party, which source is lawfully entitled without any restriction on disclosure to disclose such Confidential Information;

* + 1. is disclosed pursuant to a requirement or request by operation of Law, regulation or court order;

* + 1. is independently developed or learned by a receiving Party without reference to or use of the Confidential Information of the other Party; or
    2. is disclosed by the receiving Party with the disclosing Party’s prior written approval.
  1. 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 five (5) 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.
  2. The provisions of this Clause shall survive the termination or cancellation of this Agreement for any reason whatsoever.

### LIABILITY OF THE PARTIES

* 1. The Service Provider agrees that, in the event of a breach of any of the provisions of this Agreement by the Service Provider, the Service Provider will be liable to SARS for all Losses which constitute direct and/or general damages.
  2. Subject to **Clause 15.3**, the Parties agree that, in the event of a breach of any of the provisions of this Agreement, the defaulting Party will not be liable to the other Party for any Losses which constitute indirect, special and/or consequential damages.
  3. Notwithstanding anything to the contrary set forth in **Clause 15.2** above or this Agreement in general, the Service Provider agrees that it will be liable to SARS for Losses which constitute indirect, special and/or consequential damages where such damages are caused by:
     1. a breach of any confidentiality provisions contained in this Agreement;
     2. the Service Provider’s or its personnel wilful misconduct, dishonesty or gross negligence regardless of whether such Losses arise out of contract or delict; and/or
     3. breach of Applicable Law by the Service Provider.

### INDEMNITY

* 1. The Service Provider hereby indemnifies, holds harmless and agrees to defend SARS and its officers, employees, agents, successors, and assigns, from any and all Losses arising from, or in connection with, any of the following-
     1. third party claims arising from or related to the death or bodily injury of any SARS agent, employee, business invitee, business visitor or other Person on SARS’s premises caused by the negligent acts or omissions of the Service Provider or the Service Provider’s Personnel;
     2. third party claims arising from damage to property owned or leased by SARS or a third party caused by the Service Provider’s or the Service Provider Personnel’s negligence or misconduct; and
     3. third party claims attributable to any breach of the provisions of this Agreement by the Service Provider.
  2. The provisions of this Clause shall survive the termination of this Agreement.

### INSURANCE

* 1. The Service Provider shall-
     1. on or before the Commencement Date and for the duration of this Agreement, have and maintain in force professional indemnity insurance coverage to cover any claims, Losses and/or damages for which it may be liable in terms of this Agreement;
     2. at SARS’s request and within two (2) days of such request, provide SARS with a copy of the aforementioned insurance policy; and
     3. update and/or amend the policy as requested by SARS, including increasing the amount of cover provided in such policy, subject to mutual agreement between the parties.

### WARRANTIES

* 1. The Service Provider hereby represents and warrants to SARS that-
     1. this Agreement has been duly authorised and executed by it and constitutes a legal, valid and binding set of obligations on it;
     2. it is acting as a principal and not as an agent of an undisclosed principal;
     3. the execution and performance of the terms and conditions of this Agreement does not constitute a violation of any statute, judgment, order, decree or regulation or rule of any court, competent authority or arbitrator or competent jurisdiction applicable or relating to the Service Provider, its assets or its business, or its memorandum of incorporation or any other documents or any binding obligation, contract or agreement to which it is a party or by which it or its assets are bound;
     4. it will provide the Services in a cost-effective and expedient manner, thereby ensuring that no unnecessary or extraordinary costs are incurred and passed on to SARS;
     5. it has the requisite insurance to cover professional indemnity claims that may be instituted against it;
     6. it will comply with Applicable Law; and
     7. it has the necessary resources, skills, capacity and experience to render the Services to SARS, time being of the essence.
  2. It is expressly agreed between the Parties that each warranty and representation given by the Service Provider in this Agreement is material to this Agreement and induced SARS to conclude this Agreement.
  3. The provisions of this Clause shall survive the termination of this Agreement.

### BREACH

* 1. If a Party (the “Defaulting Party”) is in default or breach of any obligation which arises in terms of the Agreement and that Defaulting Party fails to remedy such default or breach within fourteen (14) Business Days after receipt of a written notice given by the other Party (the “Aggrieved Party”) calling upon the Defaulting Party to remedy such default or breach, then the Aggrieved Party may, without prejudice to any other rights which it may have in terms hereof or at Law-

* + 1. claim specific performance;
    2. cancel this Agreement, such cancellation to be effective immediately on receipt by the Defaulting Party of a written notice to that effect; or
    3. claim any money due and payable in terms of this Agreement and claim damages from the Defaulting Party.
  1. The remedies set out in this Clause shall not be construed to be exhaustive of any other remedies available to the Parties.

### TERMINATION FOR CAUSE

* 1. SARS may, by giving notice to the Service Provider, terminate this Agreement in whole or in part, as of a date set out in a written notice of termination, in the event that the Service Provider commits a material breach of this Agreement or-

* + 1. is placed under voluntary or compulsory liquidation (whether provisional or final);
    2. commits any of the acts of insolvency set out in section 8 of the Insolvency Act, 1936 (Act No. 24 of 1936);

* + 1. is placed under business rescue as contemplated in Chapter 6 of the Companies Act, 2008 (Act No. 71 of 2008);
    2. the Service Provider makes any arrangement or compromise with its creditors generally or ceases to carry on business; or
    3. a final and unappealable judgment against the Service Provider remains unsatisfied for a period of ten (10) Business Days or more after it comes to the notice of the Service Provider.
  1. Any termination of this Agreement pursuant to the provisions of this **Clause 20** will be without SARS incurring any liability in connection with such termination, or prejudice to any claim which SARS may have in respect of any prior breach of the terms and conditions of this Agreement by the Service Provider.

### REQUIRED ACTION ON TERMINATION

* 1. Upon termination of this Agreement–
     1. each Party shall return to the other immediately upon demand, or within such reasonable period as the Parties may agree upon all information, documentation, software, and reports that belong to the other Party, as well as all Confidential Information disclosed to it;
     2. the Service Provider shall render the necessary Disengagement Assistance to SARS, as more fully set out in **Clause** **30**; and

* + 1. the Service Provider shall immediately cease to provide the Services, subject to **Clause** **30**.

### FORCE MAJEURE

* 1. In the event of any act beyond the control of the Parties, strike, war, rebellion, riot, civil commotion, lockout, 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 which fell due before the said *force majeure*).
  2. The affected Party’s relief is only to the extent so prevented and such Party shall not be liable for any delay or failure in the performance of any obligations hereunder or loss or damage which the other Party may suffer due to or resulting from the *force majeure* event, provided always that a written notice shall be promptly given of any such inability by the affected Party.
  3. Any Party invoking *force majeure* shall upon termination of such *force majeure* give prompt written notice thereof to the other Party. Should a *force majeure* event continue for a period of more than thirty (30) days, then either Party has the right to cancel this Agreement.
  4. Any strike, lock-out, interference by trade unions, suspension of labour or other industrial action directly related to a Party as employer and which could have been avoided by steps which such Party might reasonably have been expected to take acting as a reasonable prudent employer, does not constitute a *force majeure* event.

### RELATIONSHIP BETWEEN THE PARTIES

* 1. The Service Provider is an independent contractor and under no circumstances will it be partner, joint venture partner, agent or employee of SARS in the performance of its duties and responsibilities pursuant to the Agreement.
  2. The entire management, direction and control of the Service Provider’s Personnel will be the responsibility of the Service Provider.

### DISPUTE RESOLUTION

* 1. In the event of a dispute of whatsoever nature which arises out of or in connection with this Agreement, including any dispute as to the validity, existence, enforceability, interpretation, application, implementation, breach, termination or cancellation of this Agreement or as to the Parties’ rights and/or obligations in terms of this Agreement or in connection with any documents furnished by the Parties in terms of this Agreement, the Parties shall meet and negotiate in good faith to attempt to resolve the dispute. This entails that the one Party invites the other in writing to a meeting and attempts to resolve the dispute within seven (7) days from date of the written invitation. If the dispute has not been resolved by such negotiation, the Parties shall submit the dispute to the Arbitration Foundation of Southern Africa (“AFSA”) administered mediation, failing which the dispute shall be determined as below.
  2. Save in respect of those provisions of this Agreement which provide for their own remedies which would be incompatible with arbitration, or in the event of either Party instituting urgent action against the other in any court of competent jurisdiction, any dispute arising from, or in connection with, this Agreement will finally be resolved by arbitration in accordance with the Rules of the Arbitration Foundation of Southern Africa (the “Foundation”) or its successor, by an arbitrator or arbitrators appointed by the Foundation.
  3. Neither Party shall be precluded from obtaining interim relief on an urgent basis or other conservatory relief from a court of competent jurisdiction pending the decision of the arbitrator.
  4. This **Clause 24** will be severable from the rest of the provisions of this Agreement so that it will operate and continue to operate notwithstanding any actual or alleged voidness, voidability, unenforceability, termination, cancellation, expiry or accepted repudiation of this Agreement.
  5. Subject to **Clauses 5.8** and **6.3** above, neither Party shall be entitled to withhold performance of any of its obligations in terms of this Agreement pending the settlement of, or decision in, any dispute arising between the Parties. Each Party shall, in such circumstances, continue to comply with its obligations in terms of this Agreement.

### ADDRESSES

* 1. Each Party chooses the address set out below its name as its address to which all notices and other communications must be delivered for the purposes of this Agreement and its *domicilium citandi et executandi (“domicilium”)* at which all documents in legal proceedings in connection with this Agreement must be served.
  2. SARS’s physical address for ***service of notices and legal processes*** shall be as follows-
     1. **Group Executive: Corporate Legal Services**

**Khanyisa Building**

**281 Middel Street**

**Nieuw Muckleneuk**

**PRETORIA**

* 1. The Service Provider‘s physical address for ***service of notices and legal processes***shall be as follows-
     1. **Chief Executive Officer**

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

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* 1. 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.
  2. Any Party may by written notice to the other Party, change its chosen address to another address, provided that-
     1. the change shall become effective on the tenth (10th) Business Day after the receipt or deemed receipt of the notice by the addressee; and
     2. any change in a Party’s *domicilium* shall only be to an address in South Africa, which is not a post office box or a *poste restante.*
  3. Any notice to a Party contained in a correctly addressed envelope and sent by prepaid registered post to it at a Party’s chosen address shall be deemed to have been received on the fifth (5th) Business Day after posting.
  4. Any notice to a Party in a correctly addressed envelope and which is delivered by hand to a Party’s chosen address shall be deemed to have been received on the day of delivery, unless the contrary is proved.
  5. The Parties record that whilst they may correspond via e-mail 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 e-mail.

### GENERAL

* 1. **No Assignment Without Consent**

Subject to Applicable Law, 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.

* 1. **No Sale, Acquisition, Merger or Change of Control**
     1. In the event of a sale, acquisition, merger, or other change of control of the Service Provider (a “Change Event”), where such Change Event is achieved, directly or indirectly, in a single transaction or series of related transactions, or in the event of a sale of all or substantially all of the assets of the Service Provider in a single or series of related transactions, then, at any time within thirty (30) days after being notified by the Service Provider of the last of such events to occur, SARS may terminate this Agreement by giving the Service Provider thirty (30) days’ written notice and designating a date upon which such termination shall be effective.
     2. The Service Provider shall notify SARS if there is any Change Event within ten (10) days after becoming aware of the anticipated Change Event.
     3. No sale, acquisition, merger or other change of control shall be effective against and legally binding on SARS if the prior written consent of SARS was not obtained.
     4. SARS shall have no liability to the Service Provider with respect to termination of the Agreement in terms of this Clause.
     5. “Control” in terms of this Clause shall mean, with regard to any entity, the right or power to dictate the management of and otherwise control such entity by any of the following-
        1. holding directly or indirectly the majority of the issued share capital or stock (or other ownership interest if not a corporation) of such entity ordinarily having voting rights;

* + - 1. controlling the majority of the voting rights in such entity; or
      2. having the right to appoint or remove directors holding a majority of the voting rights at meetings of the board of directors of such entity.
  1. **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.

* 1. **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.

* 1. **Waiver**

No change, waiver or discharge of the terms and conditions of this Agreement shall be valid unless in writing and signed on behalf 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.

* 1. **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.

* 1. **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 Representatives of both Parties.

* 1. **Counterparts**

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

* 1. **Applicable Law** **and Jurisdiction**
     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.
     2. The Parties hereby irrevocably and unconditionally consent to the non-exclusive jurisdiction of the High Court of the Republic of South Africa (Gauteng Division, Pretoria) in regard to all matters arising from this Agreement.
  2. **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 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 Agreement and assigned a sequential letter to be included in the title.

* 1. **Covenant of Good Faith**

Each Party agrees that, in its respective dealings with the other Party under or in connection with this Agreement, it shall act in good faith.

* 1. **Costs**

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

### BROAD-BASED BLACK ECONOMIC EMPOWERMENT (“BBBEE”)

* 1. The Service Provider commits and warrants to comply in all respects with the requirements of the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003) (hereafter referred to as the B-BBEE Act) as amended from time to time, and the Codes of Good Practice issued in terms of the B-BBEE Act.
  2. Upon the Commencement Date of this Agreement and one (1) calendar month after the expiry of a current certificate for a particular year, the Service Provider shall provide SARS with a certified copy of its BEE rating status from an agency accredited by the South African National Accreditation System or a certificate from the Companies and Intellectual Property Commission or a sworn affidavit, confirming annual turnover and level of black ownership in the case of an Exempted Micro Enterprise and Qualifying Small Enterprise.
  3. During the currency of this Agreement, the Service Provider shall remain BEE compliant, with a minimum B-BBEE status level of contributor 3.
  4. A failure to comply with the provisions of **Clause 27.3** above is a material breach and will entitle SARS to terminate the Agreement.

### TAX COMPLIANCE

* 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.
  2. A failure to comply with the provisions of this Clause will constitute a material breach and will entitle SARS to terminate the Agreement, without any liability except payment of fees for Services rendered.

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### ETHICAL BUSINESS PRACTICES

* 1. SARS has a policy of zero tolerance regarding corrupt activities. The Service Provider will promptly report to SARS and the relevant authorities any suspicion of corruption on the part of their personnel, as well as any behaviour by any of those persons that is likely to constitute a contravention of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004).
  2. Neither Party will offer, promise or make any gift, payment, loan, reward, inducement benefit or other advantage to any of the other Party's personnel.
  3. If the results of any audit of the Services conducted by or on behalf of SARS indicates the possibility of corrupt activities, improper or fraudulent practices or theft, SARS will, after allowing the Service Provider reasonable opportunity to investigate that possibility, have the right either by itself, or by its agents, or by requesting the police, to investigate all the relevant circumstances, to question any relevant personnel of the Service Provider or a third party, and the Service Provider will use all reasonable efforts to facilitate any such investigation or enquiry. In the event that an act of corruption, fraud or theft is proven, SARS will be entitled, on written notice to the Service Provider, to immediately terminate this Agreement.

### DISENGAGEMENT ASSISTANCE

* 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.

* 1. 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’s 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”).

# 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.

* 1. 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.

### CONFLICT OF INTERESTS

* 1. The Service Provider acknowledges that the execution of the Services require an impeccable level of independence and objectivity. The Service Provider must therefore, not have or undertake duties or interests that may create or might reasonably be anticipated to create an actual or perceived conflict with its duties and interests in executing the Services. The Service Provider must have systems in place to identify potential conflicts and to bring them to the attention of SARS.
  2. The Service Provider undertakes to notify SARS, at the earliest opportunity practical in the circumstances, when an actual or potential conflict of interests is identified, or at any other time whilst acting for SARS. In such an event, SARS will have the right to determine a matter to be a conflict and will have the right to terminate any instruction.
  3. The Service Provider may, subject to any condition which may be imposed by SARS, elect to terminate this Agreement if a conflict of interests arises.

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

**SIGNED AT PRETORIA.**

|  |  |
| --- | --- |
| 1. **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**   **xxxxxxxxxxxxxxxxxxxxxxx**  **Group Executive: Employment Relations**  **Date of signature:** | 1. **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**   **xxxxxxxxxxxxxxxxxxxxxxx**  **Group Executive: Procurement**  **Date of signature:** |

**As Authorised Representative for the Service Provider-**

**SIGNED AT \_\_\_\_\_\_\_\_\_\_\_\_ ON THIS \_\_\_\_\_\_\_\_ DAY OF \_\_\_\_\_\_\_ 2018.**

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| --- |
| **SIGNATURE:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**  **FULL NAMES AND SURNAME:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**  **CAPACITY:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** |