**Printing, Packing and Labelling of Communication Material Services AGREEMENT**

**BETWEEN**

**SOUTH AFRICAN REVENUE SERVICE**

[an organ of state outside the public administration established in terms of section 2 of the South African Revenue Service Act, 1997 (Act 34 of 1997)]

And

[TO BE ADDED]

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1. **PREAMBLE**
   1. The South African Revenue Service through a Request for Proposals No. **RFP 45 of 2018** invited bids for the printing, packing and labelling of SARS Communications material services.
   2. The Service Provider submitted a bid to SARS in response to the aforementioned.
   3. **RFP 45 of 2018** is incorporated into this Agreement by reference.
2. **DEFINITIONS AND INTERPRETATION**
   1. The head notes to the Clauses of this Agreement are for reference purposes only and will not govern or affect the interpretation of nor modify nor amplify the terms of this Agreement.
   2. Unless inconsistent with the context, the words and expressions have the following meanings and similar expressions will have corresponding meanings:
   3. “**Agreement**” means this Agreement and all annexures hereto. Also included are all amendments, variations, and/or substitutions to the Agreement, which have been reduced to writing and signed by both parties;
   4. “**Amount at Risk**” means a maximum of twenty five percent (25%) of the Service Provider’s total invoice in respect of a Purchase Order, which may be at risk in respect of Service Credits due to SARS resulting from any Service Level Failures;
   5. “**Applicable Law**”means any of the following to the extent applicable to the Service Provider or its subcontractors and where applicable, to SARS or the Services-
3. Any statute, regulation, policy, by-law, ordinance or subordinate legislation;
4. 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 respective signatories authorised by SARS and the Service Provider to sign the Agreement;
   2. “**Business Day**” means any day other than a Saturday, Sunday or public holiday in South Africa;
   3. “**Commencement Date**” means **[TO BE ADDED]**, notwithstanding the date of the signing of this Agreement;
   4. “**Commercially Reasonable Efforts**” means taking such steps and performing in such a manner as a well-managed company would where such company was acting in a prudent and reasonable manner to achieve the particular result for its own benefit, provided always that such steps are within the reasonable control of the Party;
   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. “**Designated Representative**” each of the Parties’ designated employee assigned to the daily administration of activities of this Agreement;
   7. “**Parties**” means SARS and the Service Provider and “party” as the context requires, is a reference to any one of them;
   8. “**RFP 45 of 2018** subject to any contrary indication refers to SARS’s invitation to tender for the provision of printing, packing and labelling of SARS Communications material services dated **[TO BE ADDED]**, which is incorporated herein by reference thereto;
   9. “**SARS**” means the **SOUTH AFRICAN REVENUE SERVICE**, an organ of state established in terms of the South African Revenue Service Act, 1997 (Act No. 34 of 1997), with its principal address at **Lehae La SARS, 299 Bronkhorst Street, Nieuw Muckleneuk, PRETORIA**;
   10. “**Services**” means the provision by the Service Provider to SARS of printing, packing and labelling of SARS Communications material services as contemplated in **RFP 45 of 2018** including functions or responsibilities not specifically mentioned herein but which are reasonably and necessarily required for the proper performance and provision of the Services;
   11. “**Service Credit (s)”** means a percentage of the Amount at Risk chargeable against a Service Level Failure that will be recoverable from the Service Provider via credit note or otherwise at SARS’ discretion.
   12. **“Service Level”** means the minimum performance standard that the Service Provider must adhere to in the provision of the Services.;
   13. **“Service Level Failure”** means failure by the Service Provider to meet a Service Level;
   14. “**Service Product (s)**” means any of the Deliverable (s) as contemplated in **RFP 45 of 2018**;
   15. **“Service Provider**” means **[TO BE ADDED** **[TO BE ADDED]**,;
   16. **“Service Request”** means a specific written service instruction issued to the Service Provider to render the Services or part thereof, in terms of this Agreement, specifying the Services and/or Deliverables to be provided by the Service Provider to SARS, and signed by the SARS Designated Representative

* 1. **“Termination Date”** means **[TO BE ADDED]**; and
  2. “**VAT**” means Value-Added Tax levied in terms of the Value-Added Tax Act, 1991 (Act No. 89 of 1991).
  3. Any reference in this Agreement to:
     1. a “**Clause**” shall, subject to any contrary indication, be construed as a reference to a Clause in this Agreement;
     2. “**Law**” shall be construed as any law (including common or customary Law), or statute, constitution, decree, judgment, treaty, regulation, directive, by-law, order or any other legislative measure of any government, local government, statutory or regulatory body or court; and
     3. a “**Person**” refers to any person, firm, company, corporation, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the foregoing.
  4. 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, same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a day which is not a Business Day, in which case the last day shall be the next succeeding Business Day;
     3. 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;
     4. 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;
     5. any reference in this Agreement to this Agreement or any other Agreement or document shall be construed as a reference to this Agreement or, as the case may be, such other agreement or document as same may have been, or may from time to time be, amended, varied, negotiated or supplemented;
     6. no provision of this Agreement constitutes a stipulation for the benefit of any Person who is not a Party to this Agreement;
     7. references to day/s, month/s or year/s shall be construed as calendar day/s, month/s or year/s; and
     8. a reference to a Party includes that Party’s successors-in-title and permitted assigns.
  5. 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*.
  6. 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.
  7. The termination of this Agreement will not affect the provisions of this Agreement which operate after any such termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the Clauses themselves do not expressly provide for this.
  8. This Agreement is binding on the executors, administrators, trustees, permitted assigns or liquidators of the Parties as fully and effectually as if they had signed this Agreement in the first instance and 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.
  9. Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.
  10. None of the provisions hereof shall be construed against or interpreted to the disadvantage of the Party responsible for the drafting or preparation of such provision.

1. **APPOINTMENT**
   1. SARS hereby appoints the Service Provider to provide the Services, which appointment the Service Provider accepts on the terms and conditions set forth hereunder.
   2. The Service Provider will be utilised on an *ad hoc* basis, as and when required by SARS. SARS does not guarantee that the Service Provider will receive Service Requests during the term of this Agreement.
2. **PRICE**
   1. Subject to **clauses 10** and 11below, SARS shall pay the Service Provider the prices set out in **Annexure** “**A**” hereto for the Services.
   2. The price is inclusive of VAT as well as all costs associated with the performances of the Services.
3. **DURATION**

The Agreement shall be effective for a period contemplated in **RFP 45 of 2018** reckoned from the Commencement Date and shall subsist until the Termination Date, unless terminated earlier in terms of this Agreement.

1. **APPROACH TO THE DELIVERY OF THE SERVICES**
   1. The Service Provider shall at the Commencement Date provide SARS with a dedicated email address for purposes of communication with the Service Provider in connection with the Services. All communications to the dedicated email address of the Service Provider shall be presumed received on the day of dispatch.
   2. As and when SARS needs a Service Product, SARS will issue a Service Request to the Service Provider via the dedicated email address, detailing amongst others; the:
      1. Service Products required;
      2. Quantity;
      3. Packaging and sorting instructions;
      4. The required weight requirements of each package; (where necessary)
      5. The address of the recipient of the Service Product;
      6. Applicable turnaround times for performance of the Services; and
      7. The name/s and signature the SARS Designated representatives and/or their appointed delegates.
   3. The Service Provider shall provide SARS with a written quotation of the Services set forth in the Service Request in line with the price of the **RFP 45 of 2018** within the time set out in the Service Request.
   4. The provisions of this Agreement shall apply to each and every Service Request.

* 1. The Service Provider will provide the Services to SARS subject to the terms and conditions of this Agreement generally, and in particular, subject to the specifications set forth in the relevant Service Request.
  2. It is agreed that notwithstanding any purchase orders, order forms or the like which SARS may provide to the Service Provider requesting any Services to be provided, such documents shall not be binding between the Parties unless they are preceded by a Service Request.
  3. SARS shall after receipts of the written quotation peruse same and either reject or confirm the written quotation. Where SARS accepts the written quotation, SARS shall sign off on the quotation and give the Service Provider a final artwork in print –ready file format.
  4. The Service Provider will provide SARS with print proofs of ordered Service Products as evidenced in the sign off quotation within twenty four (24) hours of receipt of the final artwork for approval.
  5. The Service Provider shall commence with print run of the ordered Service Products immediately upon receiving the approval contemplated in **clause** **6.7** above.
  6. The Service Provider specifically undertakes and agrees to package the Service Products in strict accordance with the instructions of SARS, particularly instructions relating to the mass weight of the Service Products, failing which the Service Provider shall be solely responsible, and for its own account bear all extra collection and delivery charges which SARS may incur from other service providers as a result of the Service Provider’s non-adherence to the mass weight packing instructions of SARS. In such event, SARS will be entitled to deduct and offset any such amount against monies due by SARS to the service provider, in terms of the procedure contemplated in **Clause 10** below.
  7. In the event of the Service Products failing to meet the technical specifications as per the requirements of **RFP 45 of 2018** SARS shall give written notice to the Service Provider of the defects in the Service Products, and Service Provider shall remedy the defects within the turnaround time set forth in the written notice.

1. **COMPLIANCE WITH SERVICES LEVELS** 
   1. **Service Levels List**

**Annexure B** lists Service Levels that will apply to the Service Level Failures. The Parties may from time to time add new Service Levels by mutual agreement. The Service Provider shall comply with the prescribed Service Levels as of the Commencement Date.

* 1. **Monitoring, Measuring and Reporting**
     1. The Service Provider shall:
        1. Be responsible for monitoring, measuring and reporting on the Service Provider’s compliance with the Service Levels;
        2. Monitor its performance of the Services with respect to the Service Levels on a continuous basis and measure and provide SARS with a report on such performance (Status Report) together with its invoice on a Purchase Order;
        3. The Service Provider shall include the following information in each Status Report with respect to any Service Level Failure under a Purchase Order:
           1. the nature and date of the Service Level Failure;
           2. the cause of the Service Level Failure; and
           3. a summary of the steps taken by the Service Provider to resolve the Service Level Failure and reduce, to the extent reasonably possible, the likelihood of such Service Level Failure happening in future.
  2. **Service Credits**

* + 1. Service Credits are not an estimate of the loss or damage that may be suffered by SARS as a result of the Service Level Failure.

* + 1. A price adjustment by means of a Service Credit due to SARS is without prejudice to and shall not limit any right SARS may have to terminate this Agreement and/or seek damages or other non-monetary remedies at Law resulting from, or otherwise arising in respect of, such Service Level Failure and any resulting termination.

* + 1. The Service Provider shall together with the submission of its invoice under a Purchase Order issue SARS with a credit note reflecting the monetary value of any Service Credits that accrued to SARS.
  1. **Calculation of Service Credits**
     1. For each Service Level Failure, the Service Provider shall credit SARS with the amount indicated in **Column D** of **Annexure** **B**;
     2. If a single triggering event directly causes two (2) or more Service Level Failures under a Purchase Order and but for such event, none of such Service Level Failures would have occurred, then SARS shall be entitled to receive only a single Service Credit for a single Service Level Failure (which SARS may select in its sole discretion).
     3. Service Credits arising in respect of the last month of the Agreement term shall be withheld out of the final payment due.
  2. **Excused Non Performance**
     1. Where the Service Provider can establish to the reasonable satisfaction of SARS that:
        1. the cause of its failure to achieve a Service Level was a factor outside of the reasonable control of the Service Provider (i.e. a *force majeure* event);
        2. the Service Provider would have achieved such Service Level but for such factor;
        3. the Service Provider used Commercially Reasonable Efforts to perform and achieve that Service Level notwithstanding the presence and impact of such factor; and
        4. the Service Provider is without fault in causing such factor,

then, no Service Credit shall be assessed against the Service Provider for any resulting Service Level Failure and the Service Provider shall otherwise be excused from achieving such Service Level for as long as the circumstances relating to such factor and preventing achievement of such Service Level prevail and the Service Provider continues to use Commercially Reasonable efforts to prevent, overcome and mitigate the adverse effects of such factor to the extent required to achieve the applicable Service Level.

1. **SERVICE PROVIDER UNDERTAKINGS**
   1. The Service Provider undertakes to -
      1. Resolve all written queries by SARS within twelve (12) hours of receipt thereof;
      2. Provide the Services in accordance with the highest professional standards;
      3. Ensure that it has suitable staff and sufficient resources at all times in order to properly render the Services to SARS;
      4. At all times act in an ethical manner and refrain from any corrupt business practices;
      5. Perform the Services on an emergency basis, if and when required by SARS. The Service Provider shall in such situations, if specifically requested by SARS, provide the Services at no additional cost;
      6. Ensure that it has sufficient contingency plans in place, and agree that it shall at all times be responsible to SARS, for the fulfilment of its obligations under this Agreement. To this effect, the Service Provider undertakes to SARS that it shall not be adversely affected by any labour issues of whatsoever nature that may arise between the Service Provider and its employees, including any strike action or ‘go slow’ whether protected or unprotected.
      7. Exercise reasonable care and diligence in the discharge of its obligations in terms of the Agreement;
      8. Ensure its personnel observe and adhere to SARS’s security policies and procedures, especially those policies that relate to access to SARS’s premises; and
      9. Appoint a Designated Representative .
2. **SARS UNDERTAKINGS**
   1. SARS undertakes to:
      1. Pay the Service Provider for the Services, subject to the provisions set out in **clauses 10** and **11** below.
      2. Where necessary and subject to SARS access Policies, give the Service Provider access to SARS’s premises
      3. Cooperate with the Service Provider at all times for purposes of facilitating the timeous and efficient supply and delivery of the Services.
      4. Appoint a Designated Representative.
3. **INVOICING**
   1. The Service Provider shall invoice SARS for the Services in arrears on or before the fifth (5th) Business Day of the month following the month in which the Services were rendered.
   2. Each invoice shall have attached to it such information, and be in such form and on such media, as SARS may reasonably request and at the minimum shall contain:
      1. a statement of the total amount due to the Service Provider based on Services Items that were supplied and delivered to SARS; and
      2. a valid SARS purchase order number.
   3. The Service Provider shall deliver all invoices to the Designated Representative.

* 1. The Service Provider shall maintain complete and accurate records of, and supporting documentation for, the amounts invoiced to and payments made by SARS hereunder.
  2. Within ten (10) days after SARS’s request, the Service Provider shall provide SARS with any other documentation or information reasonably required by SARS in order to verify the accuracy of the amounts due on an invoice and the Service Provider’s compliance with the requirements of this Agreement.
  3. The Service Provider shall verify (by carrying out detailed checks of each invoice) that each invoice is complete and accurate, and that it conforms to the requirements of this Agreement before issuing the invoice to SARS.
  4. The Service Provider shall for the duration of this Agreement and 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 auditors access at reasonable times to information, records and documentation relating to the Services for the purpose of performing audits, examinations and inspections of the Service Provider 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, regulators and/or governmental entities having jurisdiction.
  5. All costs of the auditors incurred in performing audits under **clause 10.8**will be borne by SARS, unless audit findings reveal the Service Provider’s non-compliance with the terms of this Agreement and/or Applicable Law, in which event the costs shall be for the account of the Service Provider.
  6. SARS may withhold, deduct or set off from any monies due and owing to the Service Provider either in terms of this Agreement or otherwise, 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 details of the actual damages, costs or indebtedness incurred by SARS.
  7. A certificate of indebtedness signed by the Chief Financial Officer of SARS reflecting the amount due and payable under **clause 10.9** above shall be sufficient and prima facie 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.

1. **DISPUTED CHARGES AND INVOICING ERRORS**

* 1. SARS may withhold payment that SARS disputes in good faith or, if the disputed payment has already been paid, SARS may withhold an equal amount from a later payment, including disputes in respect of an error on an invoice or an amount paid.
  2. If SARS withholds any such amount:-
     1. SARS shall within five (5) days notify the Service Provider in writing 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.
     2. 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 4.1** above.
     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.
  3. SARS shall not be responsible for paying interest on undercharged amounts.
  4. Any dispute arising in terms of **clause 11.1** above and which remains unresolved for five (5) Business Days after it has arisen shall be referred by either Party to SARS’s Group Executive: Procurement and the office of the Service Provider’s Managing Director or their duly delegated representatives for resolution.
  5. The Parties’ representatives, contemplated in **clause 11.4** above, shall meet within five (5) Business Days of the referral of the dispute and aim to resolve the dispute.
  6. In the event that the dispute remains unresolved after ten (10) Business Days of its referral to the persons mentioned in **clause 11.4** either Party shall be entitled to refer the dispute for resolution in accordance with the provisions of **clause 22** below.

1. **WARRANTIES**
   1. The Service Provider hereby represents and warrants that:
      1. It is acting as the Principal and not an agent of an undisclosed principal;
      2. It has the necessary skills, expertise, experience and resources that are required for the rendering of the Services in terms of this Agreement;
      3. It has the capacity to timeously deliver the Services, time being of the essence;
      4. It will provide the Services in a cost-effective manner, thereby ensuring that no unnecessary or extraordinary costs are incurred and passed on to SARS;
      5. The execution and performance of the terms and conditions of this Agreement is legal and binding and does not constitute a violation of any law, judgment, its founding documents or binding agreements to which it is party or by which it or its assets are bound;
      6. 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.
2. **CONFIDENTIALITY**
   1. The Service Provider shall not during the term of this Agreement and after its expiration, disclose any proprietary or confidential information relating to the Services, this Agreement or SARS’s business or operations to any third party without the prior written consent of SARS.
   2. “Proprietary information and confidential information” shall for purposes of this Agreement refer to, but shall not be limited to trade secrets, know-how, technology, techniques or methods of operating employed by SARS, taxpayer information and SARS Confidential Information as defined in the Tax Administration Act, 2011 (Act No. 28 of 2011), as well as any information considered confidential in terms of any other Tax Act administered by the Commissioner for SARS, internal SARS policies and/or employee details to which the Service Provider may become privy to during the contract term.
   3. Where the Service Provider is not certain about the confidentiality or otherwise of information, it shall treat the information as confidential until otherwise advised by SARS.
   4. Where the Service Provider is called upon to disclose confidential SARS information due to legal process, the Service Provider shall within 2 (two) days of being so called upon notify SARS of such an event.
   5. The Service Provider shall ensure that its Personnel involved with the rendering of the Services to SARS will sign the SARS Oath of Secrecy.
3. **SECURITY VETTING OF THE SERVICE PROVIDER’S PERSONNEL**
   1. SARS reserves the right at its sole and absolute discretion to do a security check on the Service Provider’s personnel involved with the performance of the Services.
   2. Where SARS finds the Service Provider’s employee or agent to be a security risk, SARS will inform the Service Provider accordingly and the Service Provider shall forthwith replace such employee, or agent with another employee, or agent with equal skill and experience.
4. **LIABILITY OF PARTIES**
   1. Subject to **clause 6.10**,the Service Provider shall be liable to SARS, where SARS has suffered any direct damages and/or losses as a result of the Service Provider’s failure to observe its obligations in terms of the Agreement.
   2. The Service Provider shall further be liable to SARS for all indirect damages and/or losses suffered by SARS as a result of breach of confidentiality provisions of this Agreement, ethical duty; negligence or a criminal act committed by the Service Provider or employees of the Service Provider.
5. **INDEMNITY**

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

1. **BREACH**
   1. Where a party (the “Defaulting Party”) breaches any of the provisions herein, the other party (the “Aggrieved Party”) may give notice to the Defaulting Party and request it to remedy the breach within a period of seven (7) days, or within such further period as may be agreed upon by the Parties. Where there is a conflict between a time period stipulated in this **clause 17.1**, and a Service Request, the Service Request shall prevail over this **clause 17.1**
   2. If the Defaulting Party fails to remedy the breach within the specified time, then the Aggrieved Party may claim specific performance, or terminate the agreement forthwith and claim damages from the Defaulting Party.
   3. Notwithstanding **clause 17.2** above, the Aggrieved Party shall be entitled to any other remedies at law, as may be applicable.
   4. The Service Provider acknowledges that it is a material term of this Agreement that the Service Levels prescribed in **Annexure B**, must be maintained throughout the duration of this Agreement. The parties agree that multiple Service Level Failures will constitute sufficient proof of persistent non-compliance by the Service Provider with SARS’s prescribed Service Levels and that such persistent non-compliance will constitute a material breach of this Agreement.
2. **TERMINATION**
   1. This Agreement will terminate on Termination date.
   2. SARS may, by giving written notice to the Service Provider, terminate this Agreement should the Service Provider attain the twenty five (25%) percent Amount at Risk threshold during any twelve month period during the subsistence of this Agreement, or commit the same Service Level Failures on four occasions during any consecutive two Purchase Orders.
   3. SARS shall bear no liability towards the Service Provider, in the event of termination of the Agreement pursuant to **clause 18.2** above, with the exception of payment of amounts that are actually due and payable in respect of Services rendered.
   4. In the event that the Service Provider is unable to pay its debts or has an administrator, judicial manager, liquidator or similar person or officer appointed, or where it becomes the subject of business rescue proceedings, compromises generally with its creditors, is unable to pay any judgment granted against it within 10 (ten) days, cease for any other reason to carry on business, or in the reasonable opinion of SARS, any of these events appear likely, SARS may terminate this Agreement without any liability to the Service Provider.
   5. SARS may, by giving notice to the Service Provider, terminate the Agreement, in respect of the Services (in whole or in part), as of a date specified in the notice of termination in the event that the Service Provider, without SARS’s prior written consent:
      1. sells all or substantially all of its assets; or
      2. undergoes a change of ownership/management.. For this purpose a change of ownership/management shall be deemed to have occurred in circumstances where any natural or legal person acquires the ability, by virtue of ownership, rights of appointment, voting rights, management agreement, or agreement of any kind, to control or direct, directly or indirectly, the board or executive body or decision making process or management of the Service Provider.
3. **FORCE MAJEURE**
   1. In the event of any act beyond the control of the Parties, such as war, rebellion, riot, civil commotion, 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 shall not be recognised as a *force majeure* event.
4. **RELATIONSHIP BETWEEN PARTIES**
   1. The Service Provider is an independent contractor and shall not be construed as a partner, joint venture partner or agent, or employee of SARS in the performance of its duties and responsibilities pursuant to this Agreement.
5. **NON–EXCLUSIVITY**

* 1. The Service Provider is appointed to provide the Services to SARS on a non-exclusive basis and SARS will not be precluded from obtaining Services that may be similar or identical to the Services from any other service provider.
  2. Nothing contained herein will in any way be construed or constitute a guarantee in favour of the Service Provider that the Service Provider will receive any work or contract from SARS for Services in the future, whether under this Agreement or otherwise.

1. **DISPUTE RESOLUTION**
   1. In the event of any dispute arising out of or in connection with this Agreement, the Parties shall try to resolve the dispute by negotiation. This entails that the one Party invites the other in writing to a meeting and attempts to resolve the dispute within seven (7) days from date of the written invitation. If the dispute has not been resolved by such negotiation, the Parties shall submit the dispute to the Arbitration Foundation of Southern Africa (“AFSA”) administered mediation, failing which the dispute shall be determined as below.
   2. A dispute which cannot be amicably settled between the parties in terms of **clause 22.1** above shall be referred to arbitration in accordance with the Rules of Arbitration Foundation of Southern Africa.
   3. This clause will not be applicable to such provisions in this Agreement which provide for their own remedies and which remedies would not be compatible with arbitration; or in the event of either Party seeking urgent relief in a court of competent jurisdiction.
   4. This clause is not applicable in the event where a Party has instituted an urgent action against the other in any court of competent jurisdiction.
   5. This clause will be severable from the rest of the provisions of this Agreement so that it will operate and continue to operate notwithstanding any actual or alleged voidness, voidability, unenforceability, termination, cancellation, expiry or accepted repudiation of this Agreement.
   6. Subject to **clause 11.1**, where the resolution of a dispute is pending, neither Party may in such circumstances suspend their obligations under this Agreement.
2. **BROAD BASED BLACK ECONOMIC EMPOWERMENT**
   1. The Service Provider commits and warrants compliance in all respects with the requirements of the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003) [hereinafter referred to as the “BBBEE Act”], as amended from time to time and the Codes of Good Practice issued in terms of the BBBEE 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 (including any extension or renewal hereof which may apply), the Service Provider shall remain BEE compliant, failing which it must provide written confirmation from a verification agent that it is in the process of being rated.
3. **TAX COMPLIANCE**
   1. The Service Provider warrants that as of the Commencement Date it is in full compliance with, and throughout the term of this Agreement shall remain in full compliance with all the applicable laws relating to taxation in the Republic of South Africa.
   2. If the Service Provider fails to remain compliant as contemplated in **clause 24.1** above, SARS may terminate the Agreement immediately. SARS will have no liability to the Service Provider with respect to such termination.
4. **GENERAL**
   1. **Cession/Assignment** - Neither party shall be entitled to assign, cede, sub contract, or delegate any rights and/or obligations or any benefit arising from this Agreement, without obtaining the prior written consent of the other Party, which consent shall not be unreasonably withheld, except that SARS’ exercise of such rights shall be subject to Applicable Law.
   2. **Severability** - Where any of the terms and conditions of this Agreement is found 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.
   3. **Waiver** - No change, waiver or discharge of the terms and conditions of this Agreement shall be valid unless reduced to writing and signed by an Authorised Representative of the Party against which such change, waiver or discharge will be effective and only in that 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 be construed 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.
   4. **Authorised Signatories** - The Parties agree that this Agreement and any Schedules, Annexures or Addenda to this Agreement shall not be valid unless signed by all authorised signatories of SARS.
   5. **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.
   6. **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.
   7. **Law Governing Contract** - This Agreement shall be governed by the laws of the Republic of South Africa, and the Parties hereby consent to the non-exclusive jurisdiction of the North Gauteng High Court, Pretoria.
   8. **Covenant in 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.
   9. **Costs** - Each Party shall bear and pay its own costs of or incidental to the drafting, preparation and execution of this Agreement.
5. **ADDRESSES**
   1. All notices forming part of legal proceedings must be served at the physical address of a Party, whilst any other communication (including, without limitation, any approval, consent, demand, query or request) may be sent by registered post, delivered by hand, transmitted by facsimile or electronic mail to the recipient Party at its relevant address/numbers set out below:

**For SARS:**

Attention: Group Executive- Procurement

Linton House, Brooklyn Bridge

570 Fehrsen

Brooklyn

Pretoria

Facsimile number: 086 2744 956

Email address:

**For Service Provider**

Attention:

Facsimile number:

Email address:

* 1. Either Party may, by written notice to the other Party, change any of the addresses or numbers at which, or the designated persons for whose attention legal notices or other communications should be given, provided that such change/s will not become effective until 7 (seven) days after notice to this effect was given.
  2. Any notice or other communication given by any Party to the other Party which:
     1. Is sent by registered post to the addressee at its specified address shall be rebuttably presumed to have been received by the addressee on the seventh (7th) day after the date of posting; or
     2. Is delivered by hand during the normal business hours of the addressee at its specified address shall be rebuttably presumed to have been received by the addressee at the time of delivery; or
     3. Is transmitted by fax to the addressee at the addressee’s specified fax number shall be rebuttably presumed to have been received by the addressee on the date of transmission as indicated on the sender’s facsimile report; or
     4. Is transmitted by electronic mail to the addressee at the addressee’s specified electronic mail address shall be rebuttably presumed to have been received by the addressee on the date of transmission as reflected on the sender’s electronic mail records.
  3. The provisions of this **clause 26** shall not invalidate any notice or other communication actually received by a Party, even if not given in the manner prescribed.
  4. The Parties choose their respective addresses in **clause 26.1** above as their respective domicilia citandi et executandi at which all documents relating to any legal proceedings to which they are Party must be served.

1. **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 a Service Request.
   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. The Service Provider will be notified of any complaints received by SARS from the third party relating to a perceived lack of co-operation with such third party, upon which the Service Provider must take immediate steps to remedy the situation.

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**SIGNED AT PRETORIA IN THIS DAY…………..OF…………………………2018**.

**FOR AND BEHALF OF SARS**

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

**NOXOLO NGUBO**

**ACTING GROUP EXECUTIVE: PROCUREMENT**

**DATE**

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

**CHIEF OFFICER**

**COMMUNICATIONS & STRATEGY**

**DATE:**

**FOR AND ON BEHALF OF SERVICE PROVIDER**

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

**FULL NAMES AND SURNAME:**

**CAPACITY:**

**DATE:**