SERVICES AGREEMENT

BETWEEN

SOUTH AFRICAN REVENUE SERVICE

“SARS”

AND

………………………………………………….

Registration Number………………

“SERVICE PROVIDER”

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1. **INTERPRETATION and DEFINITIONS**
   1. The headings to the clauses of this agreement shall have no effect upon its interpretation, and the various provisions of this agreement constitute an indivisible contract.
   2. In this agreement, except where the context clearly indicates a contrary intention, the singular includes the plural and *vice versa.* Words importing the masculine gender include other genders and vice versa**.**
   3. In this agreement, unless the context indicates a contrary intention, the following words and expressions bear the meanings assigned to them and cognate expressions bear corresponding meanings;
      1. **“Agreement”** means this Agreement and all annexures and schedules attached or that may be attached thereto from time to time.
      2. **“Business Day”** meansany day of the week except a Saturday; Sunday and/or official public holidays
      3. **“Business Hours”** means hours between 08h00 until 16h00 of a Business Day;
      4. **“Effective Date”** means **………………………….** notwithstanding the date of the last signing signatory of this Agreement;
      5. “**Packaged water”** means Packaged water as defined in the Regulations relating to all Packaged water in terms of GNR.718 of 28 July 2006:
      6. **“Parties”** means the parties to this agreement; being SARS and the Service provider and the “party” refers to each of these separately;
      7. **“Responsible SARS person”** means such person as nominated by SARS from time to time;
      8. **“SARS”** means the South African Revenue Service, an organ of the State established in terms of the South African Revenue Act , 1997 (No 34 of 1997);

* + 1. **“Services”** means the installation, supply and maintenance of silver coated free standing water dispensers and the supply and delivery of Packaged water to various SARS offices/sites as agreed to between the Parties;
    2. **“Service Provider”** means **…………………..**registration number **…………………..**, a company duly incorporated in the Republic of South Africa with its principal and domicilium address at **…………………………………..**

1. **APPOINTMENT**
   1. SARS appoints the Service Provider to render the Services as defined in **Clause 1.3.10** above which appointment the Service Provider accepts subject to the terms and conditions of this Agreement.

* 1. The appointment is on an “as and when” and a non-exclusive basis and the procurement of the Services will be subject to a SARS’s office placing an order with the Service Provider.

1. **TERM OF THE AGREEMENT**
   1. The Service Provider will render the Services to SARS for a period of 36 (thirty six) months from the Effective Date [Term of the Agreement] unless this Agreement is terminated earlier in terms hereof.
2. **FEES FOR THE SERVICES**
   1. In consideration for the provision of the Services, the Service Provider shall charge SARS the following monthly fees in respect of each SARS offices where the Services are rendered:
      1. R……… monthly rental per water dispenser unit;
      2. R……… 19L replenishment water bottle (delivery charges included); and,
      3. R……… every six months - maintenance fees per water dispenser unit.

* 1. All fees and charges in terms of this Agreement shall be inclusive of VAT.

* 1. The fees payable in terms of this Agreement shall, on each anniversary of the Agreement, be increased by the then applicable consumer price index percentage.

1. **PAYMENT**

* 1. Subject to **Clauses 6** and **7** below, SARS shall pay all undisputed invoices within thirty (30) days after SARS receives such invoice, provided the invoice is accurate. Late payments by SARS are to be charged at interest equal to prime interest rate charged by the South Africa Reserve Bank from time to time.
  2. The fees payable to the Service Provider by SARS in terms of this Agreement shall be paid free of any deduction, set-off, demand or exchange, bank commission or charges, provided that the Service Provider shall, in respect of any credits due to SARS in terms of **Clause 11.2** below, issue SARS with a credit note to the value of the credits accrued by SARS in the relevant month within fourteen (14) days of the date of the invoicing.

1. **INVOICING AND RECORDS**
   1. The Service Provider shall invoice SARS for Services performed pursuant to this Agreement on a monthly basis in arrears on or before the fifth (5th) Business Day of the month following the month in which the Service Provider rendered the Services to SARS.
   2. Each invoice shall contain or have attached such information, and be in such format and on such media as SARS may reasonably request and, at the minimum:

* + 1. The total number of Packaged water bottles ordered by and delivered to the relevant SARS office or site; and,
    2. a SARS purchase order number.
  1. The Service Provider shall deliver all invoices to a SARS’s designated representative of the SARS office or site that requested the Services and supply copies thereof to other SARS departments, if instructed to do so by SARS.
  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. Within ten (10) days after SARS’s request, the Service Provider shall provide SARS with any documentation or information reasonably required by SARS in order to verify the Service Provider’s compliance with the requirements of this clause.
  4. The Service Provider shall verify that each invoice is complete and accurate and that it conforms to the requirements of this Agreement (including by carrying out detailed checks of each invoice) before issuing the invoice to SARS.

1. **DISPUTED CHARGES AND INVOICING ERRORS**

* 1. SARS may withhold payment of monthly fees that SARS disputes in good faith or, if the disputed monthly fees have already been paid, SARS may withhold an equal amount from a later payment, including disputes in respect of an error in an invoice or an amount paid. If SARS withholds any such amount:
     1. SARS shall promptly notify the Service Provider that it is disputing such amount providing a reasonable explanation of the rationale therefor; and the Parties shall promptly first address such dispute in accordance with this **Clause 7** of this Agreement;

* + 1. If the dispute relates to (or equals in the case of disputed amounts that have already been paid) only a percentage of the invoiced amount, then SARS shall pay the undisputed amount in accordance with **Clause 5.1** above.

* + 1. 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.
  1. Any dispute arising in terms of **Clause 7.1** above and which remains unresolved for five (5) Business Days after it has arisen, shall be referred by either Party to SARS’s Procurement Executive and Service Provider’s Chief Executive Officer or their designees for resolution.
  2. The SARS’s Procurement Executive and the Service Provider’s Chief Executive Officer or their designees shall meet within five (5) Business Days of the referral of the dispute to resolve such dispute.
  3. In the event that the dispute remains unresolved after ten (10) days of its referral to the persons mentioned in **Clause 7.3**, either Party shall be entitled to refer the dispute for resolution in accordance with the provisions of **Clause 23** below.

1. **RESPONSIBILITY OF THE SERVICE PROVIDER**
   1. Without limiting the requirements set out in the Specifications section of the request for tender document (**RFP 21/2019**), a extract copy thereof is attached as marked **Annexure A**, the Service Provider shall be responsible throughout the Term of the Agreement for the:
      1. Ensuring that the Service Provider fault/problem reporting is prominently displayed on the water dispensing units;
      2. Continually monitor the Service Provider’s compliance with the Service Levels set out in **Clause 11** of in this Agreement and report any service failures to SARS.
      3. Routine and adequate replenishment of the Packaged water,
      4. Repair; maintenance and servicing of water dispensers in accordance with the specifications of the original equipment manufacturer.
      5. Ensuring that the Packaged water complies with any standard issued from time to time by the South African Bureau Standards; or other industry regulatory bodies and/or applicable legislation.
      6. Compliance by the Service Provider with all the requirements of the Specifications document*.*
2. **GUARANTEE OF SERVCES’ UTULISATION****.** 
   1. The Service Provider acknowledges that the supply and delivery of Packaged water will be dictated by the particular demands of each SARS’s office/site. SARS does not guarantee that the Service Provider will receive any minimum requests for the Services.
3. **RECORDAL OF DELIVERIES**
   1. The Service Provider must keep a written record of all deliveries made to any SARS office/site with a detailed description of items delivered.
   2. A delivery note must be presented and signed off by the responsible SARS contact person for all deliveries
   3. The Service Provider acknowledges that SARS will not affect payment for the Services unless the invoice is accompanied by signed–off delivery notes as provided for in **Clause 10.2** above.
4. **SERVICE LEVELS**

* 1. Repairs and replacement of water dispensing equipment
     1. The Service Provider shall in the execution of the Service in terms hereof comply with the following performance standards (“Service Levels”) in respect of all SARS offices or sites where the Service are performed:
        1. Ensure that the water dispensing equipment is operational at all times;
        2. The service provider must carry replacement water dispensers when attending to calls relating to faulty water dispensers
        3. The following response times (“Response Times”) will be applicable in respect of repair and/or maintenance of water dispensers and delivery of bottled water. The Service Provider must strictly adhere to these Response Times

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Description | SARS Office hours | Metropolitan area | Outlying area | Far outlying area |
| Repair/Replacement of water dispenser | 08h00 to 16h00 | 2 Business Days | 3 Business Days | 15 days |
| Delivery of bottled water | 08h00 to 16h00 | 2 Business Days | 5 Business Days | 30 Business Days |

* 1. **Appendices A1** to **A7** hereto lists the SARS offices that are classified as being in a Metropolitan, Outlying and Far Outlying area. These Appendices will be amended by agreement between the Parties as and when required to include other SARS office that request the Service after the Effective Date.
  2. Four Incidents of failure to comply with any of the aforementioned Service Levels in any month with respect to a SARS office or site shall constitute a Service Level failure in respect of that office or site and will entitled SARS to a credit of ten percent (10%) on the fees payable by the relevant office in respect of the relevant month The Service Provider shall issue SARS with a credit note to effect the reduction of the monthly fees as a result of Service Level failures by the Service Provider.
  3. Notwithstanding the provisions of **Clause 11.2** above, SARS reserves the right to summarily terminate this Agreement on the date state in the termination notice in the event that the Service Provider fails to adhere to the Service Levels contained in this **Clause 11**.
  4. Notwithstanding the provisions of **Clause 11.2** above, should the Service Provider fail to comply with the terms and conditions of this Agreement, SARS may instruct a third party service provider to remedy such failure,
  5. The Service Provider accepts the responsibility of any difference in costs incurred by SARS in the event that the services of a third party service provider are utilised as provided in **Clause 11.4** above.

1. **HEALTH, SAFETY AND SECURITY PROCEDURES AND GUIDELINES**
   1. All Service Provider personnel:
      1. Operating at any SARS office must sign the SARS **“Oath of** **Secrecy”.**
      2. Attending SARS offices/sites must first report to the SARS’s responsible person for that particular SARS office/site before any replenishment, repairs, or installations may be done.
      3. Wear the appropriate form of identification that is visible at all times when at SARS’s office/sites.
2. **LOSS OR DAMAGE OF EQUIPMENT**
   1. The Service Provider retains all risks of loss and damage to any of its equipment left at SARS’s office/site notwithstanding the fact that SARS may have consented to the equipment being left on its premises
   2. Notwithstanding the provisions of **Clause 13.2** above , the Service Provider shall be entitled to charge SARS for the replacement value or actual costs value of the equipment that has been lost or maliciously damaged where the following maximums are exceeded:

Count is from lost or damaged item one (1) nationally

* + 1. 100 Bottles ( damaged or lost);
    2. 10 water dispenser units (damaged or lost)

1. **SARS OBLIGATIONS**
   1. SARS undertakes to:-
      1. Report all service failures and/or problems through the Service Provider’s customer care number , to wit, **……………** and lodgement of the complainant via email to the following address ………………..
      2. Nominate a representative who shall liaise with the Service Provider’s account executive in respect of the day to day management of the Services.
      3. If required by the Service Provider, furnish the Service Provider with any relevant information, which is necessary for the Service Provider to perform the Services in compliance with the terms and conditions of this Agreement.
2. **SECURITY VETTING OF THE SERVICE PROVIDER RESOURCES**
   1. SARS reserves the right at its sole and absolute discretion to do a security check (vetting) on the Service Provider personnel involved with the performance of the Services.

* 1. Where SARS finds a Service Provider’s employee or agent to be a security risk, SARS will inform the Service Provider accordingly and the Service Provider shall replace such employee or agent with another employee or agent with equal qualification(s) and experience.

1. **LIABILITY OF THE PARTIES**

* 1. A Party shall be liable to the other Party for any actual damages incurred by such Party as a result of the other Party’s failure to perform its obligations in the manner required by this Agreement.
  2. Liability for indirect-, consequential and special damages shall be excluded, save where damages are incurred by a Party as a result of fraud committed by an employee/s of the , alternatively due to breach of **Clause 31** by the other Party~~.~~

1. **WARRANTIES**
   1. The Service Provider hereby represents and warrants to SARS that-
      1. this Agreement has been duly authorised and executed by it and constitutes a legal, valid and binding set of obligations on it;
      2. it is acting as a principal and not as an agent of an undisclosed principal;
      3. the execution and performance of the terms and conditions of this Agreement does not constitute a violation of any statute, judgment, order, decree or regulation or rule of any court, competent authority or arbitrator or competent jurisdiction applicable or relating to the Service Provider, its assets or its business, or its memorandum, articles of association or any other documents or any binding obligation, contract or Agreement to which it is a party or by which it or its assets are bound; and,
      4. it is expressly agreed between the Parties that each warranty and representation given by the Service Provider in this Agreement is material to this Agreement and induced SARS to conclude this Agreement.
   2. The provisions of this Clause shall survive the termination of this Agreement.
2. **INDEMNITY**

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

1. **BREACH**

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

1. **TERMINATION**
   1. SARS reserves the right to terminate this Agreement or temporarily defer the provision of the Services, or any part thereof, at any stage by giving the Service Provider twenty (20) Business Days’ of its intention to act in terms of Clause, should SARS, in its sole and absolute discretion, decide not to proceed with the Services.
   2. SARS may, upon written notice to the Service Provider, terminate this Agreement immediately if:
      1. the Service Provider is placed in liquidation, whether provisionally or finally; or
      2. the Service Provider is placed under business rescue as contemplated in Chapter 6 of the Companies Act, 2008 ( Act. 71 of 2008); or
      3. the Service Provider is convicted of any offence which comprises an element of fraud or dishonesty; or
      4. the Service Provider commits an act of insolvency as contemplated in the Insolvency Act, 1936 ( Act No. 24 of 1936); or
      5. the Service Provider undergoes a change of Control, in which case “Control” shall mean, with regard to any entity, the right or power to dictate the management of and otherwise control such entity by any of:
         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;
         2. controlling the majority of the voting rights in such entity; or 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.
   3. Any termination of this Agreement pursuant to the provisions of this **Clause 0** shall be without prejudice to any claim which either Party may have in respect of any prior breach of the terms and conditions of this Agreement by the other Party.
2. **FORCE MAJEURE**
   1. In the event of any act beyond the control of the Parties, strike, war, warlike operation, rebellion, riot, civil commotion, lockout, interference by trade unions, suspension of labour, fire, accident, or (without regard to the foregoing enumeration) of any circumstances arising or action taken beyond the reasonable control of the Parties hereto preventing them or any of them from the performance of any obligation hereunder (any such event hereinafter called "force majeure event") then the party affected by such force majeure event shall be relieved of its obligations hereunder during the period that such force majeure continues..
   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. In the event that the Service Provider is for any reason other than as provided for in this Clause unable to provide the Services for the full duration of this Agreement-
      1. the Service Provider shall serve SARS with a written notice requesting an extension of the duration of this Agreement at least seven (7) Business Days prior to the end of the duration of this Agreement; and
      2. SARS shall consider the request and revert to the Service Provider by no later than five (5) Business Days from date of receipt of the notice referred to in **Clause 21.4.1**
3. **RELATIONSHIP BETWEEN THE PARTIES**
   1. The Service Provider is an independent contractor and under no circumstances will it be a partner, joint venture partner, agent, or an employee of SARS in the performance of its duties and responsibilities pursuant to the Agreement.
   2. All personnel used by the Service Provider will be the Service Provider’s employees, contractors, or agents, and the entire management, direction, and control of all such persons will be and remain the responsibility of the Service Provider.
4. **AUDIT RIGHTS**
   1. SARS reserves the right to have the Service Provider’s Packaged water tested by an independent company to verify that the water complies with the requirements of the Specifications and/or any legislations applicable to the Services.
   2. The Service Provider shall 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 and 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.
   3. All costs incurred in performing audits under this **Clause 23** 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.
5. **DISPUTE RESOLUTION**
   1. If a dispute between the Parties arises out of or is related to this Agreement, the Parties shall meet and negotiate in good faith to attempt to resolve the dispute. If, after twenty (20) Business Days from the date upon which the dispute was declared by a party by written notice, the dispute is not resolved, the matter shall be determined in accordance with the provisions set out below.
   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. 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.
   4. Neither Party shall be entitled to withhold performance of any of their obligations in terms of this Agreement pending the settlement of, or decision in, any dispute arising between the Parties. Each party shall, in such circumstances continue to comply with their obligations in terms of this Agreement.
6. **ADDRESSES**
   1. Each Party chooses the addresses set out opposite its name below as its addresses to which all notices and other communications must be delivered for the purposes of this Agreement and its *domicilium citandi et executandi (“domicilium”)* at which all documents in legal proceedings in connection with this Agreement must be served.
   2. SARS’s physical address for ***service of notices and legal processes***-
      1. **The Executive: Procurement**

**570 Ferhsen Street**

**Brooklynbridge**

**Linton House**

**Brooklyn – Pretoria.**

* 1. SARS’s email address for communications and/or correspondences in connection with the performance of the Services: [eisaacs@sars.gov.za](mailto:eisaacs@sars.gov.za)
  2. The Service Provider’s physical address for ***service of notices and legal processes-*** 
     1. **……………..**

**…………………….**

**………………………**

**………………………………..**

* 1. The Service Provider’s email address for communications and/or correspondences in connection with the performance of the Services: ………………………
  2. Any notice or communication required or permitted to be given to a Party pursuant to the provisions of this Agreement shall be valid and effective only if in writing and sent to a Party’s chosen address, provided that documents in legal proceedings in connection with this Agreement may only be served at a Party’s *physical address.*
  3. Any Party may by written notice to the other Parties, change its chosen address to another address, provided that-
  4. The change shall become effective on the tenth (10th) (Business Day after the receipt or deemed receipt of the notice by the addressee, and;
  5. 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.*
  6. 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.
  7. Any notice to a Party in a correctly addressed envelope and which is delivered by hand at a Party’s chosen address shall be deemed to have been received on the day of delivery, unless the contrary is proved.
  8. The parties record that whilst they may correspond via email during the currency of this Agreement for operational reasons, no formal notice required in terms of this Agreement, nor any amendment or variation to this Agreement may be given or concluded via email.

1. **GENERAL**
   1. **NO ASSIGNMENT WITHOUT CONSENT**

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

* 1. **NO SALE, ACQUISITION, MERGER OR CHANGE OF CONTROL.**
     1. In the event of a sale, acquisition, merger, or other change of control [a “Change Event’] of the Service Provider where such control is acquired, 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 sixty (60) days after the last to occur of such events, SARS may terminate this Agreement by giving the Service Provider at least sixty (60) days’ prior written notice and designating a date upon which such termination shall be effective.
     2. The Service Provider shall notify SARS if there is any such 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 unless the prior written consent of SARS was obtained.
     4. SARS shall have no liability 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:
        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;
        2. controlling the majority of the voting rights in such entity; or
        3. having the right to appoint or remove directors holding a majority of the voting rights at meetings of the board of directors of such entity.
  2. **SEVERABILITY**

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

* 1. **ADVERTISING AND MARKETING**

Neither Party 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 the other Party.

* 1. **WAIVER**

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

* 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 signatories 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 each of them without delay.

* 1. **APPLICABLE LAW**

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

* 1. **WHOLE AGREEMENT AND AMENDMENT**

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

* 1. **ORDER OF PRECEDENCE**

In the event of a conflict between the documents comprising this Agreement such conflict shall be resolved in accordance with the order of precedence (in descending order of priority) as follows (i) this Agreement (ii) and any annexures and/or schedules to this Agreement.

* 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.

1. **JURISDICTION**

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

1. **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, failing which SARS shall be entitled to terminate this agreement without any liability to the Service Provider except payment of fees for Services rendered.
   2. In addition to the above, the Service Provider shall not later than three (3) weeks after each anniversary of this Agreement submit to the Executive: Procurement a valid tax clearance certificate for the current year.
2. **BROAD-BASED BLACK ECONOMIC EMPOWERMENT**.
   1. The Service Provider acknowledges that Broad-Based Black Economic Empowerment is a business and social imperative in order to achieve a non-racial, non-sexist and equitable society in South-Africa.
   2. In pursuance of this objective the Service Provider commits and warrants to comply in all respects with the requirements of the Broad-Based Black Economic Empowerment Act 53 of 2003 (hereafter referred to as the BBBEE Act) as will be amended from time to time, and the Codes of Good Practice Issued in terms of the BBBEE Act.
   3. Upon signature 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.
   4. During the currency of this Agreement (including any extension or renewal hereof which may apply), the Service Provider shall use reasonable endeavours to maintain and improve its current BEE rating status.
   5. A failure to provide a certified copy of its BEE rating status or a failure to comply with provisions of this clause will entitle SARS to terminate the Agreement by giving the Service Provider one(1) month's written notice.
3. **DISENGAGEMENT ASSISTANCE**
   1. The Service Provider will for a period of one (1) month after the expiry or termination of this Agreement for whatsoever reason or such other period as the Parties may agree, whichever is applicable, and at SARS’s request provide SARS or SARS’s designated service provider such assistance as SARS may reasonably request to facilitate the transition of the Services to SARS or such designated service provider in as seamless a manner as possible (‘Disengagement Assistance’).
   2. Without limiting the generality of the foregoing, the Service Provider shall at no additional cost to SARS:
      1. Deliver to SARS such information relating to the Services as SARS may reasonably request on the date specified by SARS.
      2. Remove the Service Provider’s equipment from all SARS offices, provided that the Service Provider shall be entitled to twenty (20) Business Days in which to remove the equipment.
   3. SARS will pay the Service Provider for the Disengagement Assistance as if the Service Provider was performing the Services for the Disengagement Assistance period and all the terms and condition of this Agreement shall apply during the Disengagement Assistance period.
   4. SARS or its designated service provider shall have the option exercisable on a contract by contract basis to assume contracts for any Services provided by third parties to the Service Provider and used exclusively by the Service Provider to provide the Services to SARS.
   5. In the case of third party service providers used by the Service Provider to provide Services to SARS, the Service Provider shall use commercially reasonable efforts to arrange for the provision of the Services by the third party to SARS under terms at least as favourable as those in the third party service contract.
4. **CONFIDENTIAL INFORMATION**
   1. A party (“Receiving Party”) undertakes that for the duration of this Agreement and after the expiration or earlier termination of this Agreement for any reason, it will keep confidential all proprietary information, including any trade secrets and/or all information of a confidential nature which the other party (“Disclosing Party”) from time to time communicates to the Receiving Party, its agents and/or its employees. This includes the knowledge acquired by the Receiving Party, its agents and/or its employees as a result of the work to be performed by the Service Provider in terms of this Agreement and which by its nature is, intended to be kept confidential.
   2. If the Receiving Party is uncertain about whether information is to be treated as confidential in terms of this **Clause 31**, it shall be obliged to treat it as such until clearance is obtained, in writing, from the Disclosing Party.
   3. The Service Provider shall ensure that prior to commencing the performance of the Services all its personnel involved in the rendering of such Services shall sign the ***SARS Oath of Secrecy*** and submit the original thereof to SARS for record keeping purposes.
   4. For purposes of this Agreement, the expression proprietary information and confidential information of the disclosing party shall include, but shall not be limited to, the technical detail, programme content, techniques, know-how, methods of operating, costs, training courses, taxpayer information and names of clients and/or potential clients with whom the disclosing party has not yet contracted but intends contracting for purposes of establishing business relationships to which the receiving party may become privy during the contract term.
   5. The Parties agree that all trade and professional secrets and other secrets or confidential information or methods of work supplied by the one Party to the other shall not be disclosed to any third party without first obtaining the written consent of the other Party.
   6. Where a Party is threatened with legal action to disclose the confidential information of the other Party, such Party shall give the other Party written notice of such legal action within (2) two days of receipt of the threatened legal action. The Party shall together with the notice referred to above, deliver to the other Party all documentation received or submitted in connection with the threatened legal action.
   7. The Service Provider shall not remove from SARS’s premises any documents or materials relating to the Services or SARS’s business without first obtaining the written consent of SARS.
   8. The provisions of this clause shall survive the termination or cancellation of this Agreement for any reason whatsoever.
5. **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).

* 1. 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.

**For the Service Provider**

**SIGNED FOR AND ON BEHALF OF** **THE SERVICE PROVIDER** **AT \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Full names:**

**Signature:**

**Capacity:**

**Date of signature:**

**SIGNED FOR AND ON BEHALF OF SARS AT PRETORIA**

|  |
| --- |
| 1. **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**   **…………………………………….**  **Group Executive: (Business)**  **Date of signature:** |
| 1. **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**   **Acting Group Executive: Procurement**  **Date of signature** |