

**MASTER SERVICES AGREEMENT IN RESPECT OF THE APPOINTMENT OF A
PANEL OF ATTORNEYS**

Between

The **SOUTH AFRICAN REVENUE SERVICE**, an organ of state established in terms of
Section 2 of the South African Revenue Service Act, 1997 (Act No. 34 of 1997).

(hereinafter referred to as “SARS”)

And

.....

A legal entity incorporated in accordance with the laws of South Africa
(Registration Number: TO BE ADDED) of the registered address indicated in
Annexure B hereto (herein represented by its authorised representative who warrants
that s/he is duly authorised to do so)

(hereinafter referred to as “Service Provider”)

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1. INTRODUCTION

- 1.1 SARS issued a tender under request for proposal (**RFP 13/2020**) for the establishment of a panel of attorneys (the Panel), as more fully described in the RFP.
- 1.2 The Service Provider submitted a proposal in response to the RFP (“the Proposal”).
- 1.3 Pursuant to the RFP and the proposal, SARS has placed the Service Provider on the Panel, to provide the Services on an *ad hoc* basis, as may be required by SARS.
- 1.4 This Agreement contains the terms and conditions of engagement by SARS of the Service Provider.

2. INTERPRETATION

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

2.2 Unless inconsistent with the context, the words and expressions have the following meanings, and similar expressions will have corresponding meanings-

2.2.1 “**Agreement**” means this Master Services Agreement, the RFP and all annexures hereto, which form an integral part of this Agreement. Also included are all amendments, variations, and/or substitutions to the Agreement, which have been reduced to writing and signed by both Parties;

2.2.2 “**Applicable Law**” means any of the following to the extent applicable to the Service Provider and where applicable, to SARS or the Services:

2.2.2.1 Any statute, regulation, by-law, ordinance or

subordinate legislation;

2.2.2.2 The common law;

2.2.2.3 Any binding court order, judgment or decree;

2.2.2.4 Any applicable industry code of conduct, policy or standard enforceable by law; or

2.2.2.5 Any applicable direction, policy or order that is given by a Regulatory Authority;

2.2.3 “**Attorney Tier**” means the level of experience of an Attorney, based on his/her number of years of relevant post-article experience, as contemplated in the RFP;

2.2.4 “**Authorised Representative**” means signatories authorised by SARS and the Service Provider respectively to sign the Agreement and any amendments or addenda thereto on its behalf;

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

2.2.6 “**Designated Representative**” means a person designated by each Party for the management of the Services in terms of the Agreement and to whom all communication regarding this Agreement shall be sent;

2.2.7 “**Effective Date**” means **(TO BE ADDED)**, notwithstanding the date of signature of this Agreement;

2.2.8 “**Key Personnel**” means those members of staff of the Service Provider who have been assigned by the Service Provider to the provision of the Services to SARS as indicated in the Service Provider’s Proposal, and on the strength of whose expertise the Service Provider warrants its capabilities to provide the Services;

- 2.2.9 “**Losses**” means all losses, liabilities, costs, expenses, fines, penalties, damages and claims, and all related costs and expenses as determined in Law;
- 2.2.10 “**Parties**” means the South African Revenue Service and the Service Provider and “**Party**” is a reference to any one of them;
- 2.2.11 “**Regulatory Authority**” means any organ of state, government agency or institution, International Body or Organisation which has–
- 2.2.11.1 jurisdiction over the Services or parts thereof; or
- 2.2.11.2 administrative or oversight responsibility pertaining to any Applicable Law;
- 2.2.12 “**RFP**”, subject to any contrary indication, refers to SARS’s invitation to service providers to tender for the appointment to a panel of attorneys as contemplated therein, bearing number 13/2020 and dated 30 October 2020, which RFP is incorporated herein by reference;
- 2.2.13 “**SARS**” means the **SOUTH AFRICAN REVENUE SERVICE**, an organ of state established in terms of Section 2 of the South African Revenue Service Act, 1997 (Act No. 34 of 1997), with its principal address at **299 Bronkhorst Street, Nieuw Muckleneuk, Pretoria**;
- 2.2.14 “**SARS’s Designated Official**” means any SARS official indicated as such in any Service Request issued to the Service Provider as such;
- 2.2.15 “**Services**” means the provision of legal services to SARS as contemplated in the RFP and in this Agreement, in the specific category to which the Service Provider has been appointed to the Panel, 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;

2.2.16 “**Service Request**” means a specific written instruction, issued to the Service Provider by SARS, requesting the Service Provider to render the Services or part thereof, and signed by the SARS Designated Official; and

2.2.17 “**Termination Date**” means **(TO BE ADDED)**.

2.3 Any reference in this Agreement to-

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

2.3.2 “**Person**” refers to any person including juristic entities.

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

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

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

2.4.3 any reference in this Agreement to an enactment is to that enactment as at the signature date and as amended or re-enacted from time to time;

2.4.4 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;

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

2.4.6 a reference to a Party includes that Party's successors-in-title and permitted assigns.

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

2.5.1 any one gender includes the other gender; and

2.5.2 the singular includes the plural and *vice versa*;

2.6 Where any term is defined within the context of any particular Clause in this Agreement, the term so defined, unless it is clear from the Clause in question that the term so defined has limited application to the relevant Clause, shall bear the same meaning as ascribed to it for all purposes in terms of this Agreement, notwithstanding that that term has not been defined in such Clause.

2.7 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 termination, notwithstanding that the Clauses themselves may not expressly provide for this.

2.8 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 executors, administrators, trustees, permitted assigns or liquidators, as the case may be.

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

2.10 The Parties hereby agree that this Agreement shall not be construed

against a Party on the grounds that such Party drafted, or was responsible for drafting any or the majority of the provisions.

3. APPOINTMENT

3.1 The Service Provider has been appointed to the Panel, in the category or categories indicated in the letter of award issued by SARS to the Service Provider in relation to the RFP, attached herein as **Annexure C**, and has accepted such appointment.

3.2 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.

4. DURATION

4.1 This Agreement will be effective from the Effective Date and will endure for a period of sixty (60) months, until the Termination Date, unless otherwise earlier terminated in terms this Agreement.

5. APPROACH IN THE DELIVERY OF THE SERVICES

5.1 SARS has appointed service providers to the Panel, as contemplated in the RFP. The Service Provider, being a panellist, may be required to perform the Services, as and when required by SARS.

5.2 SARS may, from time to time, as and when needed, issue a Service Request to the Service Provider to perform Services identified in the Service Request.

5.3 The Service Provider is expected to know the service category/ies to which it has been appointed to the Panel, and may therefore not accept a Service Request in respect of Services or a service category for which it has not been appointed to the Panel. It is specifically recorded that where the Service Provider does accept any work for a service category for which it has not been appointed, such conduct will be deemed to be unethical and SARS will not pay for any such work, regardless of whether or not value is

received by SARS.

- 5.4 This Agreement provides a framework for, and the general terms and conditions applicable to the Services.
- 5.5 The provisions of this Agreement shall apply to each and every Service Request.
- 5.6 The Service Provider must, when required to do so, provide the Services subject to the terms and conditions of this Agreement generally, and in particular subject to the specifications set forth in the relevant Service Request.
- 5.7 Each Service Request shall contain, at the minimum, the information set out below, namely:
- 5.7.1 Details and specifications of the Services required from the Service Provider;
 - 5.7.2 The applicable Attorney Tier, which would be suitable to deal with the Service Request according to SARS. In the event that SARS has omitted to prescribe the applicable Attorney Tier, the Service Provider must confirm the Attorney Tier with SARS **prior** to commencing work on the Service Request;
 - 5.7.3 Unless otherwise expressly indicated in a Service Request, the Service Provider shall allocate only one Attorney, of the Attorney Tier indicated in the Service Request. Should the Service Provider unilaterally decide to allocate the Service Request (or any aspect thereof) to more than one Attorney, SARS will not pay for the additional Attorney not indicated in the Service Request;
 - 5.7.4 The timeframe within which the Services must be performed, where possible;
 - 5.7.5 The full names and signatures of the SARS Designated Official;

- 5.7.6 Where appropriate, the Service Levels applicable to the Services procured in terms of the Service Request; and
- 5.7.7 Any additional provisions which may be relevant to the pertinent Service Request.
- 5.8 The Service Request must be accepted by the Service Provider in writing before implementation.
- 5.9 The Service Provider may not implement any of the Services without a duly issued, signed and accepted Service Request. For this purpose, it is expressly recorded that the Service Provider shall not have any right of recourse or claim against SARS, whether financial or otherwise, as a result of any Services rendered or work done without a duly signed off Service Request.
- 5.10 Should the Service Provider be of the opinion that the Attorney Tier prescribed by SARS in respect of a specific Service Request is unsuitable, relative to the nature of the matter, the Service Provider must-
- 5.10.1 where such an opinion is formulated **prior** to accepting a Service Request, promptly advise SARS of such, and recommend an appropriate Attorney Tier to SARS, for its approval in writing. If SARS accepts the recommendation, it shall issue an updated Service Request reflecting such recommended Attorney Tier; and
- 5.10.2 where such an opinion is formulated **during** implementation of a Service Request, the Service Provider must promptly, in writing, inform the SARS Designated Official of same, and recommend an appropriate Attorney Tier to SARS for its approval in writing. The Service Provider may only reallocate the Service Request to the Attorney Tier recommended after SARS's written approval, which shall serve as an amendment to the Service Request.

6. INVOICING AND PAYMENT

- 6.1 All fees will be charged according to **Annexure A** attached hereto.
- 6.2 In no circumstances, may the Service Provider unilaterally increase its fees. Should the Service Provider do so, such conduct would be considered as a breach, and SARS will not pay that invoice.
- 6.3 The Service Provider shall render invoices to SARS on a regular basis.
- 6.4 The invoice must include a detailed description of the Services rendered under the Service Request; time spent; the name of the Attorney who performed the Services; Attorney Tier; applicable rates as approved by SARS; Counsel's fees where applicable, indicated as disbursements and accompanied by Counsel's bill to the Service Provider; as well as the total fees payable in respect of the Services. For this purpose, the Service Provider must ensure that its billing system is aligned with and reflects SARS's requirements.
- 6.5 Provided all necessary supporting documents are attached and the requirements of this Agreement regarding invoicing are complied with, SARS will pay the invoiced amount within thirty (30) days of receipt of the invoice, unless SARS disputes any item on the invoice.

7. DISPUTED CHARGES AND INVOICING ERRORS

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

7.1.1 SARS shall promptly notify the Service Provider that it is disputing such amount, providing a reasonable explanation of the rationale therefore and the Parties shall promptly first address such dispute in accordance with this **Clause 7** of this Agreement;

- 7.1.2 If the dispute relates to (or equals in the case of disputed amounts that have already been paid) only a percentage of the invoiced amount, then SARS shall pay the undisputed amount in accordance with **Clause 6.5** above; and
- 7.1.3 If an invoice is identified as incorrect, then the Service Provider shall either issue a correct invoice if the amount has not yet been paid, or make a correction on the next invoice if the amount has been paid.
- 7.2 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 Chief Procurement Officer and the Service Provider's relevant director / partner or their designees for resolution.
- 7.3 The SARS Chief Procurement Officer and the Service Provider's relevant director / partner or their designees shall meet within five (5) Business Days of the referral of the dispute to resolve such dispute.
- 7.4 In the event that the dispute remains unresolved after seven (7) days of its referral to the persons mentioned in **Clause 7.3**, the Service Provider must submit the invoice to the Legal Practice Council for assessment.

8. SERVICE PROVIDER'S OBLIGATIONS

- 8.1 The Service Provider shall-
- 8.1.1 nominate from its Key Personnel a person who shall be known as the Designated Representative;
- 8.1.2 ensure that it adheres to written and reasonable requests or instructions by the SARS Designated Representative, provided such requests or instructions are lawful, and are within the framework of this Agreement;
- 8.1.3 on or before the 07th of each succeeding month, in the manner contemplated in the RFP, provide the SARS Designated Official

with a Monthly Report for the previous month, indicating all matters handled by the Service Provider on instruction of the said SARS Designated Official, status / progress in relation to such matters and any outstanding instructions required of SARS;

8.1.4 ensure that the Key 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;

8.1.5 not change or replace the Key Personnel for the duration of this Agreement, except with the prior written consent of SARS. In this regard:

8.1.5.1 The Service Provider may make a request to SARS to replace a member of its Key Personnel, where such member has become incapacitated and/or unable to perform his/her duties under the Agreement;

8.1.5.2 The Service Provider's request to SARS for the substitution of the Key Personnel shall include the reason for the request and a proposal to replace the Key Personnel with a person of equal or better qualification(s) and experience. Such proposal must include the *curriculum vitae* of the proposed substitute;

8.1.5.3 SARS may only approve a substitute which has similar or better qualifications, skills and experience; and

8.1.5.4 Should SARS, in its discretion reasonably consider a member of the Key Personnel to be incompetent or unsatisfactory, the Service Provider will have to replace at its cost, that member with one having equal or better credentials, in line with the timeframes then stipulated by SARS;

8.1.6 the Service Provider must act impartially and ethically at all times, and where applicable, act in accordance with the code of ethics /

conduct of its profession;

8.1.7 comply with all Applicable Law; and

8.1.8 comply with this Agreement.

8.2 **AUDIT RIGHTS**

8.2.1 The Service Provider must, in implementing this Agreement, and for a period of five (5) years or such other longer period as may be prescribed by Applicable Law, reckoned from the date on which a particular matter was closed, maintain an audit trail of the Services performed under this Agreement, sufficient to permit a complete an audit thereof, by or on behalf of SARS.

8.2.2 The Service Provider shall provide SARS and SARS's auditors access at all 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.

8.2.3 All costs incurred in performing audits under this **Clause 8.2** 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 such costs shall be borne by the Service Provider.

8.3 **SERVICE LEVELS**

8.3.1 SARS may, at the time of issuing a Service Request, determine and/or prescribe certain performance standards (Service Levels) that the Service Provider should comply with in the performance of the requested Services. In certain instances, failure by the Service Provider to meet the Service Levels may have a material

and adverse impact on the operations of SARS. The Service Provider is therefore required to acquaint itself with such Service Levels as may be indicated in the Service Request, and advise SARS upfront where it is of the opinion that it will not be in a position to meet such Service Levels.

8.4 THIRD PARTY SERVICE PROVIDER CO-OPERATION

8.4.1 Subject to Applicable Law, where appropriate and when requested by SARS to do so, the Service Provider shall provide full co-operation to other third party service providers that might be contracted by SARS on the same engagement.

8.4.2 It is, however, agreed that the relationship between the Service Provider and third party service providers will not constitute an alliance.

9. SARS'S OBLIGATIONS

9.1 SARS undertakes to-

9.1.1 Nominate a Designated Representative;

9.1.2 If required by the Service Provider, furnish the Service Provider with any relevant information necessary for the Service Provider to perform the Services in compliance with the terms and conditions of this Agreement;

9.1.3 Subject to compliance with SARS's access and physical security policies, provide the Service Provider's personnel with access to the premises of SARS, if necessary, for the purposes of rendering the Services;

9.1.4 Comply with Applicable Law; and

9.1.5 Monitor and review the Service Provider's performance in terms of this Agreement.

10. WARRANTIES

- 10.1 The Service Provider hereby represents and warrants to SARS that-
- 10.1.1 this Agreement has been duly authorised and executed by it and constitutes a legal, valid and binding set of obligations on it;
 - 10.1.2 it is acting as a principal and not as an agent of an undisclosed principal;
 - 10.1.3 the execution and performance of the terms and conditions of this Agreement does not constitute a violation of any statute, judgment, order, decree or regulation or rule of any court, competent authority or arbitrator or competent jurisdiction applicable or relating to the Service Provider, its assets or its business, or its memorandum of incorporation, 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;
 - 10.1.4 it has the necessary resources, skills, qualifications and experience to render the Services to SARS according to the highest ethical standards and of such a quality or standard, as may reasonably be expected of an attorney;
 - 10.1.5 it will provide the Services in a cost-effective and expedient manner, thereby ensuring that no unnecessary or extraordinary costs are incurred and passed on to SARS;
 - 10.1.6 it has the requisite insurance cover, as contemplated in **Clause 20** below; and
 - 10.1.7 in providing the Services, it shall not breach or infringe any third party Intellectual Property rights.
- 10.2 It is expressly agreed between the Parties that each warranty and

representation given by the Service Provider in its Proposal, in response to the RFP and this Agreement, is material to this Agreement and induced SARS to conclude this Agreement.

10.3 By bidding, the Service Provider is deemed to have satisfied itself regarding all conditions affecting this Agreement, and must at all times comply with the manifest intent and obligations of this Agreement.

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

11. RELATIONSHIP BETWEEN THE PARTIES

11.1 Subject to **Clause 3.2** above, it is recorded that the relationship between the Parties is that of Attorney and Client. Except in so far as SARS may authorise the Service Provider to execute a mandate or perform an act on its behalf in terms of a Service Request issued pursuant hereto, nothing in this Agreement may be construed to create a partnership, agency or any like arrangement between the Parties.

12. SECURITY VETTING OF SERVICE PROVIDER'S RESOURCES

12.1 SARS reserves the right at its sole and absolute discretion to perform a security check (vetting) on the Service Provider's Key Personnel.

12.2 Where SARS establishes the Service Provider's Key Personnel to be a security risk, SARS will inform the Service Provider accordingly and the Service Provider shall replace such Key Personnel with another one of equal or better qualification(s) and experience.

13. CONFLICT OF INTERESTS

13.1 The Service Provider must comply with Applicable Law in so far as issues related to conflict of interests are concerned, and ensure that it and/or its Key Personnel do not have any direct or indirect personal interests in any matters arising in terms of this Agreement.

13.2 No Key Personnel may participate in any decision relating to anything contemplated in this Agreement or a Service Request where such decision affects his or her personal interests or the interests of any corporate entity in which he or she holds a direct or indirect interest.

13.3 SARS may, on an *ad hoc* basis, request the Service Provider or any member of its Key Personnel to declare any interest they may have in a particular matter.

14. NON-SOLICITATION

14.1 During the term of this Agreement and for two (2) years after termination for whatever reason, neither Party may, without the prior written consent of the other Party, either directly or indirectly, solicit or attempt to solicit, any person employed by a Party: Provided that, either Party may employ any person employed by a Party, where the person employed responded to a publicly accessible advertisement or similar online publicity without being directly solicited by the other Party.

15. CONFIDENTIALITY

15.1 The Parties undertake that for the duration of this Agreement and after the expiration or earlier termination of this Agreement for any reason, a Party will keep confidential all proprietary information, including any trade secrets and/or all information of a confidential nature, which a Party communicates to the other Party, its agents and/or employees, from time to time. This includes the knowledge acquired by a Party, its agents and/or employees because of the work to be performed in terms of this Agreement and which by its nature is intended to be kept confidential.

15.2 Confidential Information means any proprietary and confidential information or data of any nature, tangible, or intangible, oral or in writing, in any form or on any medium. For purposes of this Agreement, the expression "proprietary information and confidential information of SARS" shall include, but not be limited to, Service Requests, the technical detail, programme content, techniques, know-how, methods of operating, costs, training courses, taxpayer information and names of clients and/or potential clients

with whom SARS has not yet contracted but intends contracting for purposes of establishing business relationships to which the Service Provider may become privy to during the term of the Agreement.

- 15.3 The Service Provider further, in particular undertakes to keep confidential all 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 Applicable Law.
- 15.4 If the Service Provider is uncertain about whether information is to be treated as confidential in terms of this **Clause 15**, it shall be obliged to treat it as such until clearance is obtained, in writing, from SARS.
- 15.5 The Service Provider shall ensure that as of the Effective Date its Key Personnel and/or agents and/or employees involved in the rendering of the Services sign the **SARS Oath / Affirmation of Secrecy** and shall submit the original thereof to SARS's Designated Representative.
- 15.6 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 two (2) 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.
- 15.7 The Service Provider specifically acknowledges that all information relating to the Services, including and not limited to, literary works produced thereunder are of a sensitive nature and secret. The Service Provider undertakes not to disclose such information without first obtaining the written consent of SARS.
- 15.8 The Service Provider shall not remove from SARS's premises any documents nor materials relating to the Services or SARS's business without first obtaining the written consent of SARS.
- 15.9 Upon SARS's request or completion of a Service Request, the Service Provider will promptly return all documents, materials, information, or data

relating to the Services to SARS. Data must be returned in a form reasonably acceptable to SARS or, if SARS so elects, the Service Provider must destroy such data promptly.

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

16. INTELLECTUAL PROPERTY RIGHTS

16.1 Subject to **Clause 16.2** below, each Party shall retain all right, title and interest, in and to its processes, designs, drawings, specifications, formulae, databases, algorithms, models, methods, know-how, techniques, concepts, ideas, documents or other tools (“Intellectual Property”).

16.2 Subject to pre-existing Intellectual Property rights of the Service Provider and/or any third party, all Intellectual Property rights in and to literary works which may be created and/or written by the Service Provider and/or its Key Personnel and which relate to the Services will vest exclusively in SARS. To this end, the Service Provider irrevocably and in perpetuity transfers, makes over and assigns to SARS all such Intellectual Property rights which may come into existence, which transfer, make over and assignment is accepted by SARS.

16.3 The Service Provider hereby indemnifies and holds SARS harmless against Losses, proceedings and expenses of whatsoever nature in respect of any infringement by the Service Provider of Intellectual Property rights of a third party as a result of the acts or omissions of the Service Provider or its Key Personnel in the execution of this Agreement.

17. BREACH

17.1 If a Party (the “Defaulting Party”) is in default or breach of any obligation which arises in terms of this Agreement and that Defaulting Party fails to remedy such default or breach within seven (7) Business Days after receipt of a written notice given by the other Party (the “Aggrieved Party”) calling upon the Defaulting Party to remedy such default or breach, then the Aggrieved Party may, without prejudice to any other rights which it may

have in terms hereof or at law-

17.1.1 claim specific performance;

17.1.2 cancel this Agreement and claim damages from the Defaulting Party, such cancellation to be effective immediately on receipt by the Defaulting Party of a written notice to that effect; or

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

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

18. DISPUTE RESOLUTION

18.1 In the event of any dispute other than a dispute relating to matters dealt with under **Clause 7** above 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.

18.2 If the dispute has not been resolved by such negotiation as contemplated above, the Parties may submit the dispute to the Arbitration Foundation of Southern Africa ("AFSA"), for resolution through AFSA administered mediation, failing which the dispute shall be determined as below.

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

18.4 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.

18.5 Neither Party shall be entitled to withhold performance of any of their obligations in terms of this Agreement pending the settlement of, or decision in, any dispute arising between the Parties and each Party shall, in such circumstances continue to comply with their obligations in terms of this Agreement: Provided that SARS shall not pay any invoice in respect of which there is a pending dispute.

18.6 The provisions of this Clause shall not preclude—

18.6.1 any of the Parties from accessing and obtaining any interim relief on an urgent basis or other conservatory relief from a court of competent jurisdiction; and

18.6.2 SARS from approaching the Legal Practice Council for resolution of disputes on pertinent matters over which the Legal Practice Council has jurisdiction.

19. LIABILITY OF THE PARTIES

19.1 A Party shall be liable to the other Party for any direct damages and/or Losses incurred by the latter Party due to failure by the Party to perform its obligations in the manner required by this Agreement.

19.2 The Service Provider shall be liable to SARS for all indirect and consequential or special damages and/or Losses suffered by SARS as a result of gross negligence, wilful misconduct or a breach of **Clause 15** above; breach of Applicable Laws, infringement of a third party's Intellectual Property rights or a criminal act committed by the Service Provider or any employees of the Service Provider.

20. INSURANCE

20.1 The Service Provider shall on or before the Effective Date and for the duration of this Agreement-

- 20.1.1 be in possession of a valid and current Fidelity Fund certificate;
- 20.1.2 have adequate professional indemnity insurance to cover any claims, Losses and/or damages for which it may be liable in terms of this Agreement; and
- 20.1.3 at SARS's request and within two (2) days of such request, provide SARS with a copy of a current fidelity fund certificate and proof of adequate professional indemnity insurance.

21. INDEMNITY BY THE SERVICE PROVIDER

- 21.1 The Service Provider hereby indemnifies, holds harmless and agrees to defend SARS and its officers, employees, agents, successors-in-title, and assigns, from any and all Losses arising from, or in connection with, any of the following-
 - 21.1.1 Third party claims attributable to any breach of the provisions of this Agreement by the Service Provider;
 - 21.1.2 Third party claims attributable to theft, fraud or other unlawful activity or any negligent, wilful or fraudulent conduct by the Service Provider or the Key Personnel and claims attributable to errors and/or omissions;
 - 21.1.3 Third Party claims arising from or related to the death or bodily injury of any SARS agent, employee, business invitee, or business visitor or other person on SARS's premises caused by the negligent acts or omissions of the Service Provider or the Key Personnel; and
 - 21.1.4 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 Key Personnel's negligence or misconduct.

22. ADDRESSES

- 22.1 Each Party chooses the addresses set out below its name as its address to which all notices and other communications must be delivered for the purposes of this Agreement and its *domicilium citandi et executandi* (“*domicilium*”) at which all documents in legal proceedings in connection with this Agreement must be served.
- 22.2 SARS’s physical address for **service of notices and legal processes** is as indicated in **Clause 2.2.13** above.
- 22.3 Service Provider’s physical address for **service of notices and legal processes** is as indicated in **Annexure B**.
- 22.4 SARS’s email address for communications, and/or correspondences in connection with the performance of the Services: fft-professionalservices@sars.gov.za.
- 22.5 The Service Provider’s email address for communications, and/or correspondences in connection with the performance of the Services is set out in **Annexure B**.
- 22.6 Any notice or communication required or permitted to be given to a Party pursuant to the provisions of this Agreement shall be valid and effective only if in writing and sent to a Party’s chosen address of *domicilium*, provided that documents in legal proceedings in connection with this Agreement may only be served at a Party’s physical address.
- 22.7 Any Party may by written notice to the other Party, change its chosen address to another address, provided that-
- 22.7.1 the change shall become effective on the tenth (10th) Business Day after the receipt or deemed receipt of the notice by the addressee; and
- 22.7.2 any change in a Party’s *domicilium* shall only be to an address in South Africa, which is not a post office box or a *poste restante*.

- 22.8 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.
- 22.9 Any notice to a Party in a correctly addressed envelope and 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.
- 22.10 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.

23. FORCE MAJEURE

- 23.1 In the event of any circumstance arising or action taken beyond the reasonable control of a Party or the Parties hereto, such as but not limited to war, rebellion, riot, civil commotion, lockout, fire, accident, operation of law, Applicable Law, epidemic, pandemic or any other circumstance preventing the Parties or any of them from the performance of any obligation hereunder (any such event hereinafter called "*force majeure* event") then the Party affected by such *force majeure* event shall, subject to **Clauses 23.2** and **23.3** herein, be relieved of its obligations hereunder during the period that such *force majeure* subsists.
- 23.2 Should a *force majeure* event arise, the affected Party shall within seven (7) days of the commencement of the event notify the other Party of the event, giving sufficient details thereof, including details of how the event has impacted the affected Party's ability to perform in terms of the Agreement, as well as the estimated duration of the event or disturbing circumstances.
- 23.3 The affected Party's relief is only to the extent so prevented and to the extent that the affected Party is not the cause of the *force majeure* event. Such Party shall not be liable for any delay or failure in the performance of any obligations hereunder or loss or damage which the other Party may

suffer due to or resulting from the *force majeure* event.

23.4 The affected Party shall use commercially reasonable efforts to remove the disturbance with the least possible delay so that its obligations can be fulfilled as soon as reasonably possible, in the manner provided for in this Agreement.

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

24. TERMINATION

26.1 Termination for cause by SARS

26.1.1 SARS may, by giving notice to the Service Provider, terminate this Agreement or the rendering of the Services in whole or in part, as of a date set out in the notice of termination, in the event that the Service Provider-

26.1.1.1 commits a material breach of this Agreement, which breach is not cured within seven (7) days after notice of the breach from SARS to the Service Provider;

26.1.1.2 commits a material breach of this Agreement that is not capable of being cured;

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

26.1.1.4 commits an act of insolvency as defined in the Insolvency Act, 1936 (Act No. 24 of 1936) or is placed under voluntary or compulsory liquidation (whether provisional or final) or business rescue proceedings are commenced against the Service Provider;

26.1.1.5 a final 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; and/or, the Service Provider makes any arrangement or composition with its creditors generally or ceases to carry on business;

26.1.1.6 fails to comply with **Clause 1516** above;

26.1.1.7 commits an act of professional misconduct as contemplated in Applicable Law; or

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

26.1.2 SARS shall have no liability to the Service Provider with respect to a termination under this **Clause 26.1**, except for amounts actually due and payable in respect of the completion of any phase of the Services.

25. TAX COMPLIANCE

25.1 The Service Provider represents and warrants that as of the Effective Date, it is and will remain compliant for the duration of this Agreement with all Applicable Law relating to taxation in the Republic of South Africa.

26. BROAD-BASED BLACK ECONOMIC EMPOWERMENT

26.1 The Service Provider must remain BEE compliant, at the mandatory or better status level as contemplated in the RFP.

27. GENERAL

27.1 Advertising and Marketing

Except in so far as herein expressly provided, the Service Provider shall not make or issue any formal or informal announcement (with the exception of Stock Exchange announcements), advertisement, or statement to the

media in connection with this Agreement or otherwise disclose the existence of this Agreement or the subject matter thereof to any other person without the prior written consent of SARS.

27.2 **Authorised Signatories**

The Parties agree that this Agreement and any schedules, annexures or addenda thereto shall not be valid unless signed by all Authorised Representatives of both Parties.

27.3 **Costs**

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

27.4 **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.

27.5 **Covenant of Good Faith**

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

27.6 **Governing Law and Jurisdiction**

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

27.6.2 The Service Provider hereby consents to the jurisdiction of the

High Court of the Republic of South Africa (Gauteng Division, Pretoria) in regard to all matters arising from this Agreement.

27.7 No Cession or Assignment Without Consent

Neither Party shall be entitled to assign, cede, delegate, or in any other manner transfer any benefit, rights and/or obligations arising from this Agreement.

27.8 No Withholding of Consents

Subject to Applicable Law, where agreement, approval, acceptance, consent, or similar action by either Party is required under this Agreement, such action shall not be unreasonably delayed or withheld. An approval, acceptance, consent or similar action by a Party under this Agreement shall not relieve the other Party from the responsibility of complying with the requirements of this Agreement, nor shall it be construed as a waiver of any rights under this Agreement.

27.9 Severability of the Clauses or Provisions

If any Clause or provision of this Agreement is found to be invalid, illegal or unenforceable in any way, such Clause or provision shall be deemed to be separate and severable from the remaining provisions of this Agreement, and the validity and enforceability of such remaining provisions shall not be affected. If, however, any invalid term is capable of amendment to render it valid, the Parties agree to negotiate in good faith an amendment to remove the invalidity.

27.10 Waiver

No change, waiver or discharge from the terms and conditions of this Agreement shall be valid unless in writing and signed by the Authorised Representatives of both Parties, and any such change, waiver or discharge will be effective 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 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.

27.11 Whole Agreement and Amendment

This Agreement constitutes the whole of the Agreement between the Parties relating to the subject matter hereof and no amendment, alteration, addition, variation or consensual cancellation will be of any force or effect unless reduced to writing and signed by the Parties' 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 this Agreement.

SIGNED AT PRETORIA BY THE SARS'S AUTHORISED REPRESENTATIVES

CHIEF LITIGATION OFFICER

DATE:

CHIEF FINANCIAL OFFICER

DATE:

SIGNED BY THE SERVICE PROVIDER'S AUTHORISED REPRESENTATIVE

NAME:

CAPACITY:

PLACE:

DATE: