

**SERVICES AGREEMENT IN RESPECT OF EVENT MANAGEMENT SERVICES
FOR SARS' 25TH ANNIVERSARY**

Between

SOUTH AFRICAN REVENUE SERVICE

An Organ of State established in terms of section 2 of the South African Revenue Service Act, 1997 (Act No. 34 of 1997)

(hereinafter referred to as "**SARS**")

and

(TO BE ADDED)

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

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

(hereinafter referred to as "**the Service Provider**")

TABLE OF CONTENTS

1. INTRODUCTION	3
2. DEFINITIONS AND INTERPRETATION	3
3. DURATION.....	9
4. SERVICE PROVIDER'S OBLIGATIONS.....	10
5. SARS' OBLIGATIONS	11
6. PRICING AND INVOICING.....	11
7. DISPUTED CHARGES AND INVOICING ERRORS.....	13
8. THIRD PARTY COOPERATION	14
9. SECURITY VETTING OF THE SERVICE PROVIDER'S PERSONNEL	15
10. WARRANTIES	15
11. MEETINGS AND REPORTING	16
12. CONFIDENTIALITY.....	17
13. INTELLECTUAL PROPERTY	19
14. BREACH	20
15. DISPUTE RESOLUTION.....	21
16. TERMINATION.....	22
17. ADDRESSES	24
18. LIABILITY	25
19. INDEMNITY BY THE SERVICE PROVIDER	26
20. INSURANCE	26
21. FORCE MAJEURE.....	27
22. STEP IN RIGHTS	28
23. RELATIONSHIP BETWEEN THE PARTIES	28
24. CONFLICT OF INTERESTS.....	29
25. TAX COMPLIANCE.....	29
26. GENERAL	30

1. INTRODUCTION

- 1.1 SARS invited proposals for the appointment of a Service Provider to provide event management services for SARS' 25th Anniversary through Request for Proposals No. 10/2022 ("**RFP**"), as more fully described therein.
- 1.2 The Service Provider submitted a proposal in response to the RFP ("Proposal").
- 1.3 SARS accepted the Proposal and appointed the Service Provider to provide the Services.
- 1.4 The Service Provider has accepted the appointment, and the Parties herein record the terms and conditions of their agreement.

2. DEFINITIONS AND INTERPRETATION

- 2.1 The headings to the clauses in this Agreement are for reference purposes only and will not govern or affect the interpretation of or modify or amplify the terms in this Agreement.
- 2.2 Unless inconsistent with the context, the words and expressions have the following meanings and similar expressions will have corresponding meanings-
 - 2.2.1 "**Agreement**" means this Services Agreement, the RFP, the Proposal, to the extent same is consistent with this document and the RFP, and all annexures hereto. Also included are all amendments, variations and/or substitutions to the Agreement, which have been reduced to writing and signed by the Authorised Signatories;
 - 2.2.2 "**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 original 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;
- 2.2.2.5 Any direction, policy or order that is given by a Regulatory Authority; or
- 2.2.2.6 Applicable State protocol;
- 2.2.3 “**Authorised Signatory**” means a signatory authorised by SARS and the Service Provider respectively to sign the Agreement, any amendments and/or addenda hereto;
- 2.2.4 “**Business Day**” means any day other than a Saturday, Sunday or public holiday in South Africa;
- 2.2.5 “**Commencement Date**” is **(TO BE ADDED)**, notwithstanding the date of signature of this Agreement;
- 2.2.6 “**Commercially Reasonable Efforts**” means taking such steps and performing in such a manner as a well-managed entity would where such entity was acting in a prudent and reasonable manner to achieve the particular result for its own benefit: Provided always that such steps are within the reasonable control of the Party;
- 2.2.7 “**Confidential Information**” means Personal Information defined as such in terms of POPIA; any proprietary or confidential information or data of any nature, tangible or intangible, oral or in writing, in any form or on any medium, whether received by direct communication or observation by

the Receiving Party. It includes SARS Confidential Information and Taxpayer Information as defined in Chapter 6 of the Tax Administration Act, 2011 (Act No. 28 of 2011), as well as any information required to be kept confidential in terms of any other Applicable Law.

Information must be regarded as confidential if by its nature, content, or circumstances of disclosure of the information is, or ought reasonably to have been identified by a receiving party as such by reason of such information not being generally known to, or readily ascertainable by third parties generally. Such information includes-

- (a) information regarding personnel, independent contractors and suppliers of the Disclosing Party, processes, procedures, projections, manuals, forecasts and analyses, security or intellectual property owned by or licensed to the Disclosing Party;
- (b) information relating to the knowledge, know-how, expertise, trade secrets and activities of the Disclosing Party;
- (c) information relating to the Services and any aspect thereof; and
- (d) any information which a Party (without creating a presumption that only so designated information is confidential), acting reasonably, may designate in writing, at the time of disclosure to the Receiving Party, as being confidential information;

2.2.8 **“Designated Representative”** means the SARS employee designated in terms of this Agreement, or his/her appointed

delegate, as the person who will interface with the Service Provider on all matters relating to the general administration of this Agreement, and who will manage the overall performance of the Service Provider over the contract term and to whom all SARS directed communication regarding this Agreement must be addressed;

2.2.9 “**Key Account Manager**” means a member of the Service Provider’s Personnel designated as such by the Service Provider, as contemplated in the RFP, responsible for the oversight and overall management of this Agreement on behalf of the Service Provider; who shall also act as central point of contact between SARS and the Service Provider;

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

2.2.11 “**Parties**” means SARS and the Service Provider and “party” as the context requires, is a reference to any one of them;

2.2.12 “**POPIA**” means the Protection of Personal Information Act, 2013 (Act No.4 of 2013);

2.2.13 “**Regulatory Authority**” means any organ of state, government agency or institution, International Body or Organisation which has–

2.2.13.1 jurisdiction over the Services or parts thereof; or

2.2.13.2 administrative or oversight responsibility pertaining to any Applicable Law;

2.2.14 “**RFP**” means SARS’ invitation to service providers to submit proposals for the provision of event management services for SARS’ 25th Anniversary dated 15 July 2022, with reference

number RFP 10/2022, which is incorporated herein by reference;

2.2.15 “**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 Lehae La SARS, 299 Bronkhorst Street, Nieuw Muckleneuk, Pretoria;

2.2.16 “**Service Provider**” means **(TO BE ADDED)**, a company incorporated as such in accordance with the Laws of South Africa with registration number **(TO BE ADDED)** and with its principal place of business at **(TO BE ADDED)**;

2.2.17 “**Service Provider’s Personnel**” means those members of staff, contractors, and agents of the Service Provider who have been assigned by the Service Provider to provide the Services to SARS;

2.2.18 “**Services**” means the provision of event management services for SARS’ 25th Anniversary and related services as contemplated in this Agreement including functions or responsibilities not specifically mentioned therein but which are reasonably and necessarily required for the proper and complete execution of the Services; and

2.2.19 “**Termination Date**” is the date the Services are concluded, as contemplated in the RFP: Provided that the contract period shall not go beyond 31 October 2022.

2.3 Any reference in this Agreement to-

2.3.1 A clause shall, subject to any contrary indication, mean reference to a clause in this Agreement; and

2.3.2 A person refers to any person including juristic entities.

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

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

2.4.2 When any number of days is prescribed in this Agreement, same shall be calculated exclusively of the first and inclusively of the last day unless the latter falls on a day which is not a Business Day, in which case the last day shall be the next Business Day;

2.4.3 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 will be the subsequent Business Day;

2.4.4 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;

2.4.5 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;

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

2.4.7 References to day/s, month/s or year/s shall be construed as calendar day/s, month/s or year/s; and

- 2.4.8 Reference to a Party includes that Party's successor-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 The termination of this Agreement will not affect the provisions which are intended to operate after any such termination or which of necessity must continue to have effect after such termination, notwithstanding that the clauses themselves do not expressly provide for this.
- 2.7 The Agreement is fully binding on the executors, administrators, trustees, permitted assigns or liquidators of the Parties as fully and effectually as if they had signed this Agreement in the first instance and reference to any Party is deemed to include such Party's estate, heirs, executors, administrators, trustees, permitted assigns or liquidators, as the case may be.
- 2.8 Where figures are referred to in numerals and in words, and there is a conflict between the two, the words shall prevail.
- 2.9 The provisions of this Agreement shall not be construed against or interpreted to the disadvantage of the Party responsible for the drafting or preparation of such provisions.

3. DURATION

- 3.1 This Agreement commences on the Commencement Date, and subsists until the Termination Date, unless terminated earlier in accordance with the terms of this Agreement.

4. SERVICE PROVIDER'S OBLIGATIONS

4.1 The Service Provider must-

- 4.1.1 ensure that the Key Account Manager contemplated in its Proposal is duly assigned as such, and assumes the attendant role and responsibilities for the duration of this Agreement;
- 4.1.2 ensure that Service Provider's Personnel or other personnel observe confidentiality and do not use any information obtained pursuant to this Agreement for any reason other than for reasons envisaged in this Agreement;
- 4.1.3 execute the Services, as contemplated in the RFP;
- 4.1.4 monitor implementation of the Services against set targets, costs and timeframes;
- 4.1.5 ensure that the Service Provider's Personnel devote such time, attention and skill in executing the Services as may be reasonably required for the proper discharge of its duties under this Agreement;
- 4.1.6 charge fees for Services rendered to SARS in accordance with the SARS approved pricing;
- 4.1.7 take Commercially Reasonable Efforts to prevent, overcome and mitigate any adverse effects that might ensue, to the extent required to achieve the relevant outcome;
- 4.1.8 ensure that it adheres to written and reasonable requests or instructions of the Designated Representative, in so far as same are lawful and consistent with this Agreement; and
- 4.1.9 the Service Provider must implement the Services in line with this Agreement.

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

5. SARS' OBLIGATIONS

- 5.1 SARS must-
- 5.1.1 comply with Applicable Law;
 - 5.1.2 provide the Service Provider with timeous management decisions and any necessary approvals or authorisations to enable the Service Provider to fulfil its obligations under this Agreement;
 - 5.1.3 make available to the Service Provider all relevant information at its disposal, which is reasonably required for the rendering of the Services; and
 - 5.1.4 monitor and review the Service Provider's performance in terms of this Agreement.

6. PRICING AND INVOICING

- 6.1 The approved pricing is as per the pricing schedule accepted by SARS,

attached hereto as “**Annexure A**”.

- 6.2 Apart from the pricing reflected in **Annexure A**, no other fee or cost will be covered by SARS.
- 6.3 As an Organ of State, SARS does not pay fees upfront or make any advance payments. In this regard, the Service Provider must only invoice SARS on completion of applicable tasks and activities indicated in the approved detailed project plan.
- 6.4 The Service Provider must verify that each invoice is complete and accurate, and that it conforms to the detailed project plan.
- 6.5 The Service Provider must submit all invoices to the Designated Representative.
- 6.6 Subject to **clause 7.1** below, SARS shall pay undisputed amounts in an invoice owed to the Service Provider within thirty (30) days after SARS receives such invoice if the invoice is accurate and meets the requirements of this Agreement.
- 6.7 Should SARS query an item in an invoice, the Service Provider must, within two (2) days after a written request by SARS, provide SARS with any other documentation or information reasonably required by SARS in order to verify the accuracy of amounts indicated in an invoice.
- 6.8 SARS may withhold, deduct or set off from any monies due and owing to the Service Provider in terms of this Agreement, an amount equal to the amount of any outstanding claims that SARS may have against the Service Provider for damages, costs or any other indebtedness arising out of this Agreement: Provided that SARS will provide the Service Provider with written notice of its intention to offset, supported by reasonable detail of the actual damages, costs or indebtedness incurred and sought to be offset by SARS.
- 6.9 A certificate of indebtedness signed by the Chief Financial Officer of SARS reflecting the amount due and payable under **clause 6.8** above shall be

sufficient and conclusive proof of the contents and correctness thereof for the purposes of with-holding, deduction or set off by SARS or for provisional sentence, summary judgment or any other proceedings against the Service Provider in a court of law and shall be valid as a liquid document for such purposes.

6.10 If the Service Provider fails to perform the Services within the specifications or turnaround times specified in this Agreement or the detailed project plan contemplated herein, due to reasons solely attributable to the Service Provider, SARS shall, without prejudice to its other remedies under this Agreement, be entitled to deduct, as a penalty, for non-performance, delayed performance or defective performance, an amount of up to ten percent (10%) of the amount due to the Service Provider: Provided that SARS will provide the Service Provider with written notice of its intention to so deduct, supported by reasonable detail of the actual penalty levied.

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

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 subsequent 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 6.6** 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 three (3) Business Days after it has arisen, shall be referred by either Party to the SARS' Head of Procurement and the Service Provider's Key Account Manager or their designees for resolution.

7.3 The SARS' Head: Procurement and the Service Provider's Key Account Manager or their designees shall meet within three (3) Business Days of the referral of the dispute to resolve such dispute.

7.4 In the event that the dispute remains unresolved after three (3) Business 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 15.1** below: Provided that **clause 15.1** will not apply to disputes contemplated in this clause.

8. THIRD PARTY COOPERATION

8.1 As part of the Services, where appropriate and when requested by SARS to do so, the Service Provider shall provide full co-operation to any third party that might be contracted by SARS on the same or related engagement, to the extent that the co-operation does not create a conflict of interests, breach of professional ethics or compromise the Service Provider's Intellectual Property rights or interests.

8.2 It is, however, agreed that the relationship between the Service Provider and any such third party will not constitute an alliance or partnership and that neither the Service Provider nor the third party will be required to perform quality checks on the work of the other party.

9. SECURITY SCREENING OF THE SERVICE PROVIDER'S PERSONNEL

9.1 The Service Provider's attention is brought to the provisions of paragraph 16.17 in the RFP. To that end, SARS may, subject to Applicable Law and without limitation to what is contemplated in paragraph 16.17 of the RFP, call for a personal background screening, including criminal activity and convictions reports on any or all of the Service Provider's Personnel.

9.2 The provisions of this clause do not limit the scope of screening or vetting that SARS may require of the Service Provider.

9.3 Where SARS establishes any of the Service Provider's Personnel to be a security risk, SARS will inform the Service Provider accordingly in writing and the Service Provider will be required to immediately remove and replace such a person with a suitable replacement.

9.4 The cost of all screening and vetting contemplated in this clause shall be borne by the Service Provider.

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 principal and not an agent of an undisclosed principal;

10.1.3 the execution of this Agreement does not constitute a violation of any statute, judgment, order, decree or regulation or rule of any court, competent authority or arbitrator or competent jurisdiction applicable or relating to the Service Provider, its assets or its business, or its memorandum of incorporation or any other documents or any binding obligation, contract or

agreement to which it is a party or by which it or its assets are bound;

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

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 acknowledges that time is of the essence in this Agreement, and therefore warrants that it has the capacity to timeously deliver the Services;

10.1.7 it has the requisite insurance contemplated in this Agreement;

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

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

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

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

10.3 The provisions of this clause shall survive termination of this Agreement.

11. MEETINGS AND REPORTING

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

11.2 Reporting shall be done by the Service Provider in the manner prescribed in the RFP or as may reasonably be required by SARS.

11.3 Any information provided by the Service Provider in meetings or report(s) must be accurate, relevant and sufficiently detailed.

12. CONFIDENTIALITY

12.1 Neither Party may, both during the term of this Agreement and after its expiration, disclose any Confidential Information to any third party without the prior written consent of the other.

12.2 The Service Provider shall ensure that the Service Provider's Personnel individually take the SARS Oath / Declaration of Secrecy before commencing with execution of this Agreement, and shall submit the original copies of such Oath / Declaration to the SARS Designated Representative.

12.3 SARS reserves the right to continually monitor and verify that the Service Provider's Personnel have individually taken the SARS Oath / Declaration of Secrecy.

12.4 The Service Provider must protect the interests of SARS and its Confidential Information by-

12.4.1 making available such Confidential Information only to those of the Service Provider's Personnel who are actively involved in the execution of its obligations under this Agreement and then only on a "need to know" basis;

12.4.2 putting in place information security practices and procedures reasonably acceptable to SARS to prevent unauthorised disclosure and taking all practical steps to impress upon the Service Provider's Personnel who need to be given access to Confidential Information, the secret and confidential nature thereof;

- 12.4.3 not using any Confidential Information of SARS, or disclosing directly or indirectly any Confidential Information of SARS to third parties, whether during the subsistence of this Agreement or thereafter; and
- 12.4.4 ensuring that all Confidential Information of SARS which has or will come into the possession of the Service Provider and the Service Provider's Personnel, will at all times remain the sole and absolute property of SARS.
- 12.5 Where the Service Provider is served with a request, demand or court papers which seek the disclosure of Confidential Information of SARS, the Service Provider shall, without disclosing such Confidential Information, forthwith and no later than 24 hours from the time of receipt of such request, demand or court papers, transmit all such document(s) served on it to the Designated Representative, whereupon SARS will respond as necessary.
- 12.6 The Service Provider shall not remove from SARS' premises any documents or material relating to the Services or SARS' business without first obtaining the written consent of SARS.
- 12.7 Upon SARS' request, the Service Provider must promptly return all documents, material, information, or data relating to the Services to SARS.
- 12.8 The Service Provider must, where applicable, comply with the provisions of POPIA, and ensure that Personal Information (as defined in POPIA) –
- 12.8.1 made available to it by SARS in the execution of the Services is kept confidential and processed only for the purpose of executing the Service Provider's obligations in terms of this Agreement; and
- 12.8.2 is kept secure as contemplated in POPIA. The Service Provider must immediately notify the SARS' Designated Representative in writing at his/her provided contact email address, and the

SARS Anti-Corruption Unit at the email address: anti-corruption@sars.gov.za, where the Service Provider or the Service Provider's Personnel have reasonable grounds to believe or suspect that any Personal Information processed or held by the Service Provider pursuant to this Agreement has been unlawfully accessed or acquired by any person through unauthorised means.

- 12.9 The Service Provider may not disclose/share any of SARS' Confidential Information with any Person, including its affiliates, outside the borders of South Africa, unless it obtains prior, written consent from SARS, which consent will, if granted (at the sole discretion of SARS), be subject to section 72 of POPIA. In this regard and in the event the written consent is obtained, the Service Provider fully indemnifies SARS and its employees against all and any third party damages, liability claims, Losses or the like occasioned by or as a result of i) the Service Provider exchanging, sharing or having exchanged or shared SARS Confidential Information; ii) the Service Provider failing to comply with POPIA in its exchange / sharing of SARS Confidential Information or iii) breach by the recipient of the information of POPIA or POPIA equivalent laws.
- 12.10 The Service Provider fully indemnifies SARS and its employees against all and any third party damages, liability claims, Losses or the like which may be occasioned by or as a result of any failure by the Service Provider and/or the Service Provider's Personnel to comply with this **clause 12**.
- 12.11 The provisions of this clause shall survive the termination or cancellation of this Agreement for any reason whatsoever.

13. INTELLECTUAL PROPERTY

- 13.1 The Parties will each retain ownership of their pre-existing intellectual property rights.
- 13.2 Subject to Applicable Law and pre-existing intellectual property rights of the Service Provider and/or any third party, all intellectual property rights to

literary works created in the course of executing the Services shall vest exclusively in SARS.

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

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

14. BREACH

14.1 If a Party (the "Defaulting Party") is in default or breach of any term of this Agreement and that Defaulting Party fails to remedy such default or breach within seven (7) Business Days after receipt of a written notice given by the other Party (the "Aggrieved Party") calling upon the Defaulting Party to remedy such default or breach, then the Aggrieved Party may, without prejudice to any other rights which it may have in terms hereof or at law-

14.1.1 claim specific performance;

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

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

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

15. DISPUTE RESOLUTION

- 15.1 In the event of any dispute arising out of or in connection with this Agreement, the Parties shall try to resolve the dispute by negotiation. This entails that the one Party invites the other in writing to a meeting and attempts to resolve the dispute within seven (7) days from date of the written invitation.
- 15.2 If the dispute has not been resolved by such negotiation as contemplated above, or in **clause 7**, the Parties shall submit the dispute to the Arbitration Foundation of Southern Africa (“AFSA”) administered mediation, failing which the dispute shall be determined as below.
- 15.3 Save in respect of those provisions 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 the AFSA or its successor, by an arbitrator or arbitrators appointed by AFSA.
- 15.4 Neither Party shall be precluded from obtaining interim relief or an interim remedy from a court of competent jurisdiction pending the decision of the arbitrator.
- 15.5 This clause is severable from the rest of the provisions of this Agreement so that it will operate and continue to operate notwithstanding any actual or alleged voidness, voidability, unenforceability, termination, cancellation, expiry or accepted repudiation of this Agreement.
- 15.6 Subject to **clause 7** above, neither Party shall be entitled to withhold performance of any of its obligations in terms of this Agreement pending the settlement of, or decision in, any dispute arising between the Parties and each Party shall, in such circumstances, continue to comply with its obligations in terms of this Agreement: Provided that SARS shall not pay any invoice in respect of which there is a pending dispute.

16. TERMINATION

16.1 Termination for cause by SARS

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

16.1.1.1 breaches the confidentiality provisions of this Agreement;

16.1.1.2 breaches Applicable Law;

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

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

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

16.1.1.6 commits or participates in any unlawful, dishonest or unethical act in executing this Agreement.

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

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

- 16.3.1 In the event of a sale, acquisition, merger, or other change of control of the Service Provider (a “Change Event”) where such Change Event is achieved, directly or indirectly, in a single transaction or series of related transactions, or in the event of a sale of all or substantially all of the assets of the Service Provider in a single or series of related transactions, then the Service Provider shall notify SARS of such Change Event within five (5) Business Days after the Change Event is achieved.
- 16.3.2 No sale, acquisition, merger or other change of control shall be effective against and legally binding on SARS if the Service Provider failed to notify SARS, as required by **clause 16.3.1** above.
- 16.3.3 SARS may terminate this Agreement, at any time after being notified by the Service Provider of the Change Event, by giving the Service Provider thirty (30) days’ written notice designating a date upon which such termination shall become effective.
- 16.3.4 In the event that the Service Provider fails to notify SARS, as required by **clause 16.3.1** above, then SARS may upon discovery of the Change Event terminate the Agreement by giving the Service Provider five (5) days’ written notice and designating a date upon which such termination shall be effective.
- 16.3.5 SARS shall have no liability to the Service Provider with respect to termination of the Agreement in terms of this clause.
- 16.3.6 “**Control**” in terms of this clause means, with regard to any entity, the right or power to dictate the management of and otherwise control such entity by any of the following-

- 16.3.6.1 holding directly or indirectly the majority of the issued share capital or stock (or other ownership interest if not a company) of such entity ordinarily having voting rights;
 - 16.3.6.2 controlling the majority of the voting rights in such entity; or
 - 16.3.6.3 having the right to appoint or remove directors holding a majority of the voting rights at meetings of the board of directors of such entity.
- 16.3.7 Any termination of this Agreement pursuant to the provisions of this clause shall be without prejudice to any prior claim, which either Party may have.

17. ADDRESSES

- 17.1 Each Party chooses the addresses set out below its name as its address to which all notices and other communications must be delivered for the purposes of this Agreement and its *domicilium citandi et executandi* (“*domicilium*”) at which all documents in legal proceedings in connection with this Agreement must be served.
- 17.2 SARS’ physical address for **service of notices and legal processes** is as indicated in **clause 2.2.15** above.
- 17.3 Service Provider’s physical address for **service of notices and legal processes** is as indicated in **clause 2.2.15** above.
- 17.4 SARS’ email address for communications, and/or correspondences in connection with the execution of the Services: **(TO BE ADDED)**
- 17.5 The Service Provider’s email address for communications, and/or correspondences in connection with the execution of the Services: **(TO BE ADDED)**

- 17.6 Any notice or communication required or permitted to be given to a Party pursuant to the provisions of this Agreement shall be valid and effective only if in writing and sent to a Party's chosen address of *domicilium*, provided that documents in legal proceedings in connection with this Agreement may only be served at a Party's physical address.
- 17.7 Any Party may by written notice to the other Party, change its chosen address to another address, provided that-
- 17.7.1 the change shall become effective on the tenth (10th) Business Day after the receipt or deemed receipt of the notice by the addressee; and
- 17.7.2 any change in a Party's *domicilium* shall only be to an address in South Africa, which is not a post office box or a *poste restante*.
- 17.8 The Parties record that whilst they may correspond via email for operational reasons, no formal notice required in terms of this Agreement, nor any amendment or variation to this Agreement may be given or concluded via email.

18. LIABILITY

- 18.1 The Service Provider shall be liable to SARS, where SARS has suffered any direct damages and/or Losses as a result of the Service Provider's failure to observe its obligations in terms of this Agreement.
- 18.2 The Service Provider shall further be liable to SARS for all indirect and consequential or special damages and/or Losses suffered by SARS as a result of gross negligence, wilful misconduct or breach by the Service Provider or the Service Provider's Personnel of confidentiality provisions in this Agreement, breach of Applicable Law, infringement of third party intellectual property rights or a criminal act committed by the Service Provider, the Service Provider's Personnel or any employee of the Service

Provider.

19. INDEMNITY BY THE SERVICE PROVIDER

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

19.1.1 third party claims attributable to any breach of the provisions of this Agreement by the Service Provider;

19.1.2 third party claims attributable to theft, fraud or other unlawful activity or any negligent, wilful or fraudulent conduct by the Service Provider or the Service Provider's Personnel and claims attributable to errors and/or omissions;

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

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

20. INSURANCE

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

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

20.3 In the event of loss or damage or other event that requires notice or other action under the terms of any insurance coverage indicated herein, the Service Provider shall be solely responsible to take such action. The Service Provider shall provide SARS with contemporaneous notice and with such other information as SARS may request regarding the event.

21. FORCE MAJEURE

21.1 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 21.2** and **21.3** herein, be relieved of its obligations hereunder during the period that such *force majeure* subsists.

21.2 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.

21.3 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.

21.4 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.

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

22. STEP IN RIGHTS

22.1 In addition to any other rights and remedies that it may have in terms of this Agreement or otherwise, including the right to terminate this Agreement, SARS may in its sole discretion elect to temporarily step in and take over the Services as contemplated below, immediately upon SARS' identification or the Service Provider's notification to SARS of the occurrence of any adverse event which may affect continuity of the Services.

22.2 For the purposes of this clause, SARS may (at its option), either itself or by the procurement of an alternative third party service provider, temporarily take over the provision of the Services to ensure that the objectives of this Agreement and critical timelines are achieved.

22.3 To the extent that SARS exercises its right to assume the rendering of the Services or part thereof itself, or by a third party service provider, the Service Provider shall not be entitled to any fees and/or payment. SARS shall not, under any circumstances, by virtue of any assumption, be obliged, deemed or required to take over or assume responsibility for the conduct of the Service Provider's business operations.

23. RELATIONSHIP BETWEEN THE PARTIES

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

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

24. CONFLICT OF INTERESTS

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

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

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

25. TAX COMPLIANCE

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

26. GENERAL

26.1 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.

26.2 Authorised Signatories

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

26.3 Costs

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

26.4 Counterparts

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

26.5 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.

26.6 **Governing Law and Jurisdiction**

26.6.1 This Agreement shall 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.

26.6.2 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.

26.7 **No Cession or Assignment Without Consent**

Subject to Applicable Law, neither Party may assign, cede, sub-contract, delegate, or in any other manner transfer any benefit, rights and/or obligations arising from this Agreement, without the prior written consent of the other Party, which consent shall not be unreasonably withheld.

26.8 **No Withholding of Consents**

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

26.9 **Severability**

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

the invalidity.

26.10 Waiver

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

26.11 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, disclaimers, qualifications, variation or consensual cancellation will be of any force or effect unless reduced to writing and signed by the Authorised Signatories. Any document executed by the Parties purporting to amend, substitute or revoke this Agreement or any part hereof, shall be titled an “**Addendum**” to this Agreement.

SIGNED AT PRETORIA FOR AND BEHALF OF SARS

Signatory as per Delegation of Authority

Date:

Signatory as per Delegation of Authority

Date:

FOR THE SERVICE PROVIDER

Full Names : _____

Signature : _____

Capacity : _____

Date : _____

Place : _____

DRAFT