

SERVICES AGREEMENT IN RESPECT OF THE APPOINTMENT OF A SERVICE PROVIDER FOR THE PROVISIONING OF PAPER PRODUCTS TO SARS

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

[TO BE ADDED],

a legal entity incorporated in accordance with the laws of South Africa with 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**")

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1. INTRODUCTION

- 1.1 SARS issued a tender for the appointment of a Service Provider for the provisioning of Goods to SARS as set out and more fully described in **RFP 052/2022 (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, subject to conditions indicated in the RFP and herein, appoints the Service Provider, to provide the Services on an *ad hoc* basis, as and when required by SARS.
- 1.4 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 Purchase Orders during the term of this Agreement.

2. INTERPRETATION

- 2.1 The head notes to the Clauses of this Agreement are for reference purposes only and will not govern or affect the interpretation of nor modify nor amplify the terms of this Agreement.
- 2.2 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, together with all annexures hereto, including all amendments, variations, and/or substitutions to the Agreement, which have been reduced to writing and signed by the duly authorised representatives of the 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 direction, policy or order that is given by a regulatory authority or another duly authorised functionary of the State;
- 2.2.3 “**Authorised Signatory**” means signatories authorised by SARS and the Service Provider respectively to sign this Agreement;
- 2.2.4 “**Business Day(s)**” means any day between and including Monday and Friday, except public holidays in South Africa;
- 2.2.5 “**Commercially Reasonable Efforts**” means taking such steps and performing in such a manner as a well-managed company would undertake where such company was acting in a prudent and reasonable manner to achieve the particular result for its own benefit, provided always that such steps are within the reasonable control of the Party;
- 2.2.6 “**Delivery Note**” means a note or document provided by the Service Provider to SARS detailing the Goods being delivered by reference to their description as well as quantity, which document must be signed off by a SARS Authorised Representative at the relevant SARS office;
- 2.2.7 “**Effective Date**” means **[TO BE ADDED]** irrespective of the signature date of this Agreement;
- 2.2.8 “**Goods**” means the “Paper products” listed in the **RFP**;
- 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 SARS and the Service Provider and “Party” as the context requires, is a reference to any one of them;
- 2.2.11 “**Performance Failure**” means a failure to attain a prescribed Service Level, which will entitle SARS to levy a financial penalty as contemplated in **Clause 9.2** below or which may result in the termination of this Agreement;
- 2.2.12 “**Purchase Order**” means a written request by SARS to the Service Provider, stipulating in detail- (i) the description and quantity of Goods to be delivered by the Service Provider, (ii) the relevant SARS office at which the Goods is to be delivered, and (iii) the details of the SARS Authorised Representative to whom the Goods must be delivered at the relevant SARS office;
- 2.2.13 “**RFP**” refers to SARS’ invitation and solicitation pack to service providers to submit proposals for the provisioning of Paper Products, bearing number

05/2022 and dated **[TOBE ADDED]**, which RFP is incorporated herein by reference;

- 2.2.14 “**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;
- 2.2.15 “**SARS Authorised Representative**” means a representative authorised by SARS to sign-off Delivery Notes presented by the Service Provider to SARS upon delivery of the Goods at any SARS office;
- 2.2.16 “**Service Hours**” means the time between 8:00am and 3:00pm on weekdays;
- 2.2.17 “**Service Level**” means the minimum performance standard of compliance which must be met by the Service Provider when rendering the Services, as detailed in **Annexure D** of the RFP;
- 2.2.18 “**Service Provider**” means **[TO BE ADDED]** , a legal entity incorporated in accordance with the Laws of South Africa with registration number **[TO BE ADDED]** and with its place of business at **[TO BE ADDED]** ;
- 2.2.19 “**Services**” means the provisioning of Paper Products to SARS by the Service Provider as contemplated in the RFP and in this Agreement, including those services, functions or responsibilities not specifically mentioned herein but which are reasonably and necessarily required for the proper performance and provision of the Services;
- 2.2.20 “**Termination Date**” means **[TO BE ADDED]**; and
- 2.2.21 “**VAT**” means Value-Added Tax levied in terms of the Value-Added Tax Act, 1991 (Act No. 89 of 1991).
- 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 herein; 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 Interpretation Clause, effect shall be given to it as if it were a substantive provision of this Agreement;
- 2.4.2 when any number of days is prescribed in this Agreement, same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a day which is not a Business Day, in which case the last day shall be the next 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 shall 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 constitutes a stipulation for the benefit of 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 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 do 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 estate, heirs, 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 acknowledge 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 SARS appointed the Service Provider to provide the Services to SARS on a non-exclusive basis, which appointment the Service Provider accepted.
- 3.2 The Service Provider is appointed to provide the Services in **Region xxxx**.

4. DURATION

This Agreement commences on the Effective Date and shall endure for a period of **three (3) years** unless terminated earlier in accordance with the terms of this Agreement, whichever comes first,.

5. SCOPE OF WORK

- 5.1 The scope of the services is defined in the RFP.
- 5.2 The Service Provider shall supply Goods as and when valid Purchase Orders are placed by SARS.
- 5.3 The Service Provider must supply Goods to SARS in accordance with the specifications in the Purchase Order, as well as the terms and conditions of this Agreement.
- 5.4 Service Provider must deliver the Goods to the relevant SARS office in

accordance with each Purchase Order received from SARS.

6. SARS'S OBLIGATIONS

6.1 SARS undertakes to-

6.1.1 nominate a SARS Authorised Representatives who will be responsible for managing the delivery of the Services by the Service Provider to their relevant SARS office, and approve invoices submitted by the Service Provider. Notwithstanding this Clause, the signing of the Delivery Note by a SARS Authorised Representative does not indicate acceptance by SARS that the Goods meet all of the specifications set out in the Purchase Order.

6.1.2 co-operate with the Service Provider at all times for purposes of facilitating the timeous and efficient delivery of the Services.

6.1.3 subject to the Service Provider's compliance with SARS's access and security policies, provide the Service Provider with access to the premises and facilities of SARS where necessary for the purposes of rendering the Services.

7. SERVICE PROVIDER'S OBLIGATIONS

7.1 The Service Provider shall-

7.1.1 nominate a representative, who shall be responsible for the management of the delivery of Services and resolution of any disputes in terms of this Agreement.

7.1.2 execute the Services, as contemplated in the RFP;

7.1.3 act impartially and ethically at all times;

7.1.4 take Commercially Reasonable Efforts to prevent, overcome and mitigate any adverse effects that might ensue, to the extent required to achieve the relevant outcome;

7.1.5 ensure that it adheres to written and reasonable requests or instructions by a SARS Authorised Representative, in so far as same are lawful and consistent with this Agreement;

7.1.6 ensure that it, together with its personnel, observes and adheres to SARS's security policies and procedures, especially those policies that relate to access to SARS's premises;

- 7.1.7 keep accurate and easy to read records of SARS Purchase Orders, and upon request, furnish SARS with activity reports related to the Services.
- 7.1.8 comply with Applicable Law;
- 7.1.9 perform the Services during the Service Hours, except where otherwise agreed by prior arrangements between the SARS Authorised Representative and the Service Provider otherwise;
- 7.1.10 the Service Provider will supply the Goods to SARS within the timeframes provided for in **Annexure D** of the RFP;
- 7.1.11 the Service Provider shall upon delivery of the Goods hand to the relevant SARS Authorised Representative a Delivery Note in duplicate, which must be signed off by the SARS Authorised Representative. The Service Provider shall ensure that it keeps one (1) copy, whilst the other is left with the SARS Authorised Representative;
- 7.1.12 the Service Provider must put in place mechanisms to be able to supply the Goods to SARS in the case of emergencies, at no additional cost, within the specified timeframe provided for in **Annexure D** of the RFP. Such mechanisms must include a readily available vehicle for transportation of the Goods, adequate stock in hand and the necessary personnel to render the Services to SARS on an emergency basis;
- 7.1.13 in the event that the Service Provider supplies SARS with incorrect Goods (incorrect description, quantity or specifications), the Service Provider shall upon notification by SARS collect and replace such Goods within the timeframe provided for in **Annexure D** of the RFP at its own cost; and
- 7.1.14 where the Service Provider supplies the Goods to the wrong address, the Service Provider shall upon notification by SARS, rectify at its own cost, such an error within the timeframe provided for in **Annexure D** of the RFP.

8. SERVICE LEVELS

- 8.1 **Annexure D** to the RFP lists Service Levels that will apply to the performance of the Services. The Parties may from time to time add new Service Levels by mutual agreement. The Service Provider shall comply with the prescribed Service Levels as of the Effective Date:
- 8.2 Adherence to these Service Levels is crucial to the delivery of the Services at acceptable levels.

9. PERFORMANCE FAILURES

9.1 Any failure to meet a Service Level will be deemed to be a Performance Failure and will entitle SARS to levy a financial penalty for the transgressed Service Level, as contemplated in **Clause 9.2** below.

9.2 Penalties

9.2.1 If the Service Provider fails to perform the Services in accordance with the specifications or turnaround times specified in this Agreement due to reasons solely attributable to the Service Provider, SARS shall, without prejudice to its other remedies under this Agreement, be entitled to deduct, as a penalty for non-performance, delayed performance or defective performance, an amount of up to ten percent (10%) of the amount due to the Service Provider in relation to the part of the Services out of which the performance failure triggering the penalty arose.

9.2.2 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.

9.3 Remedies

9.3.1 Notwithstanding the imposition of a financial penalty (as contemplated in **Clause 9.2**) in respect of a Performance Failure(s), SARS reserves the rights and without derogation to any other remedies it may have in law, to terminate the Agreement for breach by the Service Provider as provided for in **Clause 14** below.

9.3.2 Termination in terms of this Clause shall be without any liability to SARS except for payment for the Services already rendered by the Service Provider, less applicable financial penalties.

9.3.3 SARS specifically records that acceptance of delivery does not amount to acceptance of the condition of the Goods delivered. SARS reserves the right to, within a reasonable time, reject delivered items if the condition thereof is unsatisfactory to it. In that event, SARS will, in writing, notify the Service Provider of the critical items and request the Service Provider to collect the Goods and replace such within a timeframe stipulated in this Agreement or the written notification, at no extra charge to SARS.

10. PRICING

- 10.1 The Service Provider must invoice SARS for Services rendered according to the pricing accepted by SARS, as per **Annexure xx**.
- 10.2 The pricing shall be fixed for the duration of this Agreement and is inclusive of VAT.
- 10.3 Apart from the pricing accepted by SARS **Annexure xx**, no other fee or cost will be covered by SARS.

11. INVOICING

- 11.1 The Service Provider shall invoice SARS for Services rendered in the month in which such were rendered
- 11.2 Each invoice shall contain-
 - 11.2.1 a statement of the total amount due to the Service Provider;
 - 11.2.2 a valid SARS Purchase Order number; and
 - 11.2.3 any such details as may be reasonably requested by SARS from time to time.
- 11.3 The Service Provider shall verify that each invoice is complete and accurate, and that it conforms to the requirements of this **Clause 11** before issuing the invoice to SARS.
- 11.4 The Service Provider shall deliver invoices to the relevant SARS Authorised Representative, and copies to other SARS departments as may be instructed to do so from time to time.
- 11.5 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.
- 11.6 The Service Provider shall maintain complete and accurate records of, and supporting documentation for, the amounts invoiced to and payments made by SARS hereunder.
- 11.7 Should SARS query an item in an invoice, the Service Provider shall 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 the amounts due on an invoice.

11.8 The Service Provider shall for the duration of this Agreement and for a period of five (5) years after termination, maintain a complete audit trail of the Services performed under this Agreement, sufficient to permit a complete audit thereof. The Service Provider shall provide SARS and SARS's auditors access at reasonable times to information, records and documentation relating to the Services for the purpose of performing audits, examinations, and inspections in order to verify the Service Provider's compliance with the terms of this Agreement and/or to enable SARS to comply with the requirements of any regulatory authority and/or regulators and governmental entities having jurisdiction.

11.9 All costs incurred in performing audits under this **Clause 11** 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 will be borne by the Service Provider.

12. DISPUTED CHARGES AND INVOICING ERRORS

12.1 SARS may withhold payment of charges that SARS disputes in good faith or, if the disputed charges 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-

12.1.1 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 12**;

12.1.2 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 11.5** above; and

12.1.3 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.

12.2 Any dispute arising in terms of **Clause 0** above and which remains unresolved for five (5) Business Days after it has arisen, shall be referred by either Party to SARS's Senior Manager: Procurement and the Service Provider's Managing Director (or equivalent) or their designees for resolution.

12.3 The SARS's Senior Manager: Procurement and the Service Provider's Managing Director (or equivalent) or their designees shall meet within five (5) Business Days of the referral of the dispute to resolve such dispute.

12.4 In the event that the dispute remains unresolved after seven (7) days of its referral to the persons mentioned in **Clause 12.3**, either Party shall be entitled to refer the dispute for resolution in accordance with the provisions of **Clause 15** below: Provided that **Clause 15.1** will not apply to disputes contemplated in this **Clause 12**.

13. CONFIDENTIALITY

13.1 The Service Provider shall not, during the term of this Agreement and after its expiration, disclose any proprietary or confidential information (including personal information) relating to the Services, this Agreement or SARS's business or operations to any third party without the prior written consent of SARS.

13.2 "Proprietary information and/or confidential information" shall for purposes of this Agreement mean, but shall not be limited to methods of operating employed by SARS, taxpayer information; SARS Confidential Information as defined in the Tax Administration Act, 2011 (Act No. 28 of 2011), as well as any information considered confidential in terms of any other Act administered by the Commissioner for SARS, internal SARS policies and/or employee details to which the Service Provider may become privy during the contract term.

13.3 The Service Provider shall ensure that it signs the SARS Oath / Affirmation of Secrecy before commencing with execution of this Agreement and submit the original thereof to SARS Procurement.

13.4 Where the Service Provider is threatened with legal action, which necessitates disclosure of Confidential Information of SARS, it shall give SARS written notice of such legal action within two (2) days of receipt of the threatened legal action. The Service Provider shall, together with the notice referred to above, deliver to SARS all documentation received or submitted in connection with the threatened legal action.

14. BREACH

14.1 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-

- 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 Neither Party shall be precluded from obtaining interim relief on an urgent basis or other conservatory relief from a court of competent jurisdiction, if the dispute has not been resolved by such negotiation as contemplated in **Clause 15.1** or **Clause 12** where applicable.
- 15.3 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.
- 15.4 Neither Party shall be entitled to withhold performance of any of their obligations in terms of this Agreement pending the settlement of 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.

16. ADDRESSES

16.1 Each Party chooses the address set out below its name as its address to which all notices and other communications must be delivered for the purposes of this Agreement and its *domicilium citandi et executandi* (“*domicilium*”) at which all documents in legal proceedings in connection with this Agreement must be served.

16.2 SARS’s physical address for **service of notices and legal processes-**

16.2.1 **Head: Corporate Legal Services**
Khanyisa Building
281 Middel Street
Brooklyn
Pretoria

16.3 The Service Provider’s physical address for **service of notices and legal processes-**

16.3.1 **[INERT NAME AND SURNAME]**
[ADDRESS LINE 1]
[ADDRESS LINE 2]
[ADDRESS LINE 3]

16.4 SARS’s email address for communications and/or correspondence in connection with the performance of the Services is: **[TO BE ADDED]**

16.5 The Service Provider’s email address for communications, and/or correspondence in connection with the performance of the Services is: **[TO BE ADDED].**

16.6 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.

16.7 Any Party may by written notice to the other Party, change its chosen address to another address, provided that-

16.7.1 the change shall become effective on the tenth (10th) Business Day after the receipt or deemed receipt of the notice by the addressee; and

- 16.7.2 any change in a Party's *domicilium* shall only be to an address in South Africa, which is not a post office box, private bag or a *poste restante*.
- 16.8 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.
- 16.9 Any notice to a Party in a correctly addressed envelope and which is delivered by hand at a Party's chosen address shall be deemed to have been received on the day of delivery unless the contrary is proved.
- 16.10 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.

17. WARRANTIES

- 17.1 The Service Provider hereby represents and warrants to SARS that-
- 17.1.1 this Agreement has been duly authorised and executed by it and constitutes a legal, valid and binding set of obligations on it;
- 17.1.2 it is acting as a principal and not as an agent of an undisclosed principal;
- 17.1.3 it has the necessary resources, and capacity to render the Services to SARS in a diligent manner;
- 17.1.4 no facts or circumstances exist that may materially affect its capacity to perform its obligations under this Agreement; and
- 17.1.5 it will comply with Applicable Law.
- 17.2 It is expressly agreed between the Parties that each warranty and representation given by the Service Provider in this Agreement is material to this Agreement and induced SARS to conclude this Agreement.
- 17.3 The provisions of this Clause shall survive the termination of this Agreement.

18. LIABILITY OF THE PARTIES

- 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 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 its personnel of confidentiality provisions in this Agreement, breach of Applicable Laws, infringement of third-party intellectual property rights or a criminal act committed by the Service Provider or any employees 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 its 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 its 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 its personnel.

20. FORCE MAJEURE

20.1 In the event of any act beyond the control of the Parties, war, rebellion, riot, civil commotion, lockout, interference by trade unions, suspension of labour, fire, accident, or (without regard to the foregoing enumeration) of any circumstances arising or action taken beyond the reasonable control of the Parties hereto preventing them or any of them from the performance of any obligation hereunder (any such event hereinafter called "*force majeure* event") then the Party affected by such *force majeure* event shall be relieved of its obligations hereunder during the period that such *force majeure* continues.

20.2 The affected Party's relief is only to the extent so prevented and such Party shall not be liable for any delay or failure in the performance of any obligations hereunder or loss or damage which the other Party may suffer due to or

resulting from the *force majeure* event, provided always that a written notice shall be promptly given of any such inability by the affected Party.

20.3 Any Party invoking *force majeure* shall upon termination of such *force majeure* event give prompt written notice thereof to the other Party. Should the *force majeure* event continue for a period of more than thirty (30) days, then either Party has the right to terminate this Agreement.

21. CONFLICT OF INTERESTS

21.1 Neither the Service Provider nor its personnel shall have any interest or receive any remuneration in connection with the execution of the Services, except as provided for in this Agreement.

21.2 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.

21.3 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 shall 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.

22. TAX COMPLIANCE

22.1 The Service Provider represents and warrants that as of the Effective Date, the Service Provider is and will remain compliant throughout the duration thereof with all Applicable Law relating to tax in South Africa.

23. BROAD-BASED BLACK ECONOMIC EMPOWERMENT

23.1 The Service Provider must remain B-BBEE compliant and maintain or improve the B-BBEE status level it had when this RFP was awarded.

24. SUBCONTRACTING

- 24.1 Subject to Applicable Law, the Service Provider shall not without the prior written consent of SARS, which consent shall not be unreasonably withheld, subcontract any of the Services required in terms of this Agreement to any third party. It is expressly recorded that SARS will not approve a proposed subcontracting if, in the exclusive judgment of SARS, the subcontracting will result in prejudice or potential prejudice to other service providers.
- 24.2 Whenever the Service Provider wishes to subcontract any part of the Services in terms hereof, the Service Provider shall submit, together with its request as set out in **Clause 24.1** above, a complete written proposal for SARS's approval containing-
- 24.3 Full details and business references of the subcontractor;
- 24.3.1 A full description of the part of the Services it proposes for subcontracting;
- 24.3.2 Full details of how the Service Provider will manage the performance of the Services by the subcontractor;
- 24.3.3 The value of the contract proposed to be subcontracted, expressed as a percentage;
- 24.3.4 The B-BBEE status and certificate / sworn affidavit of the subcontractor; and
- 24.3.5 Confirmation of tax compliance of the subcontractor.
- 24.3.6 Notwithstanding the provisions of this **Clause 24**, the Service Provider shall remain the only Party wholly responsible for the due performance of its obligations in terms of this Agreement and compliance with the terms and conditions thereof.
- 24.3.7 Subject to the provisions of **Clause 24.1** above, the Service Provider shall ensure that a subcontracting agreement entered into between the Service Provider and the subcontractor binds the subcontractor to the terms and conditions of this Agreement.
- 24.3.8 Nothing contained herein shall create a contractual relationship between SARS and the subcontractor.

25. GENERAL

25.1 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.

25.2 Authorised Signatories

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

25.3 Costs

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

25.4 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.

25.5 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.

25.6 Governing Law

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

25.7 No Cession or Assignment Without Consent

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

25.8 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.

25.9 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.

25.10 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 of both Parties, and any such change, waiver or discharge will be effective only in the specific instance and for the purpose given. No failure or delay on the part of either Party hereto in exercising any right, power, or privilege under this Agreement will operate as a waiver thereof, nor will any single or partial exercise of any right, power, or privilege preclude any other or further exercise thereof, or the exercise of any other right, power, or privilege.

25.11 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 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.

26. SIGNATORIES

As Authorised Signatory for the South African Revenue Service-

Name:

Capacity

Place:

Date of signature:

As Authorised Signatory for the Service Provider-

Name:

Capacity:

Place:

Date: