**SERVICES AGREEMENT FOR THE PROVISION OF SHORT-TERM INSURANCE BROKERAGE SERVICES**

Between

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

**(“SARS”)**

And

**THE SERVICE PROVIDER**,incorporated in accordance with the laws of South Africa with registration number: 0000/000000/00.

**(“Service Provider”)**

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### INTERPRETATION

* 1. The headings in this Agreement are for reference purposes only and will not govern or affect the interpretation of nor modify nor amplify the terms of this Agreement.
  2. Unless inconsistent with the context, the words and expressions have the following meanings and similar expressions will have corresponding meanings-
     1. “**Agreement**” means this Services Agreement, including all annexures and/or schedules to this Agreement;
     2. “**Amount at Risk**” means the maximum percentage of the Service Provider’s total monthly invoice, which may be at risk in respect of Service Credits due to SARS resulting from any Service Level Failures;
     3. **“Applicable Law”** means any of the following to the extent applicable to the Service Provider or its subcontractors and where applicable, to SARS or the Services-

1. Any statute, regulation, policy, by-law, ordinance or subordinate legislation;
2. The common law;

1. Any binding court order, judgment or decree;
2. Any applicable industry code of conduct, policy or standard enforceable by law; or
3. Any applicable direction, policy or order that is given by a regulatory authority;
   * 1. **“Authorised Representatives”** mean those signatories authorised by SARS and the Service Provider respectively to sign this Agreement;
     2. “**Business Day**” means any day between and including Monday and Friday, except public holidays in South Africa observed by SARS;
     3. “**Commencement Date**” means **1 July 2018**, notwithstanding date of signature;
     4. “**Commercially Reasonable Efforts**” means taking such steps and performing in such a manner as a well-managed entity would undertake 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;
     5. “**Deliverable**”means any output, outcome or result produced by the Service Provider for, or on behalf of SARS, as part of the Services pursuant to this Agreement;
     6. “**Losses**” means all losses, liabilities, costs, expenses, fines, penalties, damages and claims, and all related costs and expenses as determined in Law;
     7. “**Parties**” means SARS and the Service Provider and “party” as the context requires, is a reference to any one of them;
     8. “**Pricing Schedule**” means the Service Provider’s schedule of costs attached hereto as **Annexure C**;
     9. “**RFP**”subject to any contrary indication, is reference to SARS’s Request for Proposals No. 20/2017 for the provision of short-term insurance brokerage services, which is incorporated herein by reference thereto;
     10. “**SARS**” means the **SOUTH AFRICAN REVENUE SERVICE**, an organ of state within the public administration but outside the public service 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;
     11. “**SARS’s Designated Representative**” means the SARS official contemplated in **Clause 9.1.1** below;
     12. “**Service Level**” means the minimum performance standard of compliance which must be met by the Service Provider when rendering the Services;
     13. “**Service Provider**” means **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**, incorporated in accordance with the Laws of South Africa with registration number 0000/000000/00 and registered address at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_;
     14. “**Service Provider’s Personnel**” means those members of staff of the Service Provider, including contracted staff, who have been dedicated to the provision of the Services to SARS, and on the strength of whose expertise the Service Provider warrants the ability to provide the Services;

* + 1. “**Services**” means the provision of short-term insurance brokerage services by the Service Provider to SARS as contemplated in the RFP and in accordance with 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. “**Signature Date**” means the date on which the last Party affixes its signature to this Agreement;
    3. “**Termination Date**”means 30 June 2023; and
    4. “**VAT**” means Value-Added Tax levied in terms of the Value-Added Tax Act, 1991 (Act No. 89 of 1991).
  1. Any reference in this Agreement to-
     1. “**Clause**” shall, subject to any contrary indication, be construed as a reference to a Clause in this Agreement; and
     2. “**Person**” refers to any person including juristic entities.
  2. Unless inconsistent with the context or save where the contrary is expressly indicated-
     1. if any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that it appears only in the definition Clause, effect shall be given to it as if it were a substantive provision of this Agreement;
     2. when any number of days is prescribed in this Agreement, such a period shall be computed by excluding the first and including the last day unless the last day falls on a day which is not a Business Day, in which case the last day shall be the next succeeding Business Day;
     3. in the event that the day for payment of any amount due in terms of this Agreement should fall on a day which is not a Business Day, the relevant day for payment will be the subsequent Business Day;
     4. 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;
     5. 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;
     6. no provision of this Agreement constitutes a stipulation for the benefit of any Person who is not a Party to this Agreement; and
     7. a reference to a Party includes that Party’s successors-in-title and permitted assigns, including any other Persons contemplated in **Clause 1.8** of this Agreement.
  3. Unless inconsistent with the context, an expression which denotes-
     1. any one gender includes the other gender; and
     2. the singular includes the plural and *vice versa*.
  4. Unless it is clear from a specific Clause in which a term has been defined that such definition has limited application to the relevant Clause, any term defined within the context of any particular Clause in this Agreement shall bear the same meaning as ascribed to it throughout the Agreement, notwithstanding that that term has been defined in a specific Clause.
  5. 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.
  6. 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.
  7. Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.
  8. None of the provisions hereof shall be construed against or interpreted to the disadvantage of the Party responsible for the drafting or preparation of such provision.

### APPOINTMENT

* 1. SARS issued a Request for Proposals for the provision of short-term insurance brokerage services under RFP 20/2017.
  2. The Service Provider submitted a proposal to SARS to render the Services. SARS accepted the proposal and hereby appoints the Service Provider to provide the Services.
  3. The performance of the Services shall be subject to the terms and conditions of this Agreement.
  4. The Service Provider represents that it has, and warrants that throughout the duration of this Agreement it shall have the resources, skills, qualifications, experience and capacity necessary to provide the Services in a diligent manner.
  5. In reliance on these statements and representations, SARS has selected and appointed the Service Provider to provide SARS with short-term insurance brokerage services on a non-exclusive basis, which appointment the Service Provider accepts.

### DURATION

* 1. This Agreement commences on the Commencement Date and will endure for a period of sixty (60) months, unless terminated earlier in accordance with the terms of this Agreement.

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### SERVICES

* 1. The Service Provider has been appointed to provide SARS the Services.
  2. The scope of work is set out in **Annexure A**, attached hereto.
  3. The Service Provider shall provide the Services utilising the requisite capacity and expertise highlighted in the Service Provider’s proposal, and in accordance with the highest professional standards generally acceptable in the short-term insurance industry. In the event of any doubt regarding what constitutes highest professional standards, the Parties shall request a directive from the relevant regulatory authority.

### INVOICING AND PAYMENT

* 1. SARS shall pay the Service Provider the total premium amount quoted by insurance underwriters for a financial year plus a brokerage fee of-
     1. R \_\_\_\_ inclusive of VAT for the year 1 July 2018 – 30 June 2019;
     2. R \_\_\_\_ inclusive of VAT for the year 1 July 2019 – 30 June 2020;
     3. R \_\_\_\_ inclusive of VAT for the year 1 July 2020 – 30 June 2021;
     4. R \_\_\_\_ inclusive of VAT for the year 1 July 2021 – 30 June 2022; and
     5. R \_\_\_\_ inclusive of VAT for the year 1 July 2022 – 30 June 2023.

* 1. The aforesaid annual brokerage fees must be divided into twelve (12) equal monthly payments per annum and be invoiced by the Service Provider to SARS on the first (1st) of each month, for the entire contract duration.
  2. Each invoice shall contain-
     1. a description of the Services rendered;
     2. the amount of the Service Credits credited to SARS for Service Level Failures calculated with reference to **Annexure B**; and
     3. any such details as may be reasonably requested by SARS from time to time.
  3. The Service Provider shall verify that each invoice is complete and accurate and that it conforms to the requirements of this **Clause 5** before issuing the invoice to SARS.
  4. The Service Provider shall deliver all invoices to the SARS office designated by SARS from time to time.
  5. Unless SARS disputes any item on the invoice, and provided the invoice is accurate and meets the requirements of this Agreement, SARS will pay the invoiced amount within thirty (30) days of receipt of the invoice, or such shorter period as may be stipulated, to the extent that any policies placed on SARS’s behalf are subject to premium warranty conditions.
  6. SARS may set off any undisputed amounts due to SARS in terms of this Agreement against any broker fee amounts payable by SARS to the Service Provider.
  7. The Service Provider shall maintain complete and accurate records of, and supporting documentation for, the amounts invoiced to and payments made by SARS hereunder.
  8. The Service Provider shall within ten (10) days after SARS’s request, provide SARS with any other documentation or information reasonably required by SARS in order to verify the accuracy of the amounts due on an invoice and the Service Provider’s compliance with the requirements of this Agreement.

### DISPUTED CHARGES AND INVOICING ERRORS

* 1. SARS may withhold payment of fees and charges that SARS disputes in good faith, including disputes in respect of an error on an invoice or an amount paid or, if the disputed fees have already been paid, SARS may withhold an equal amount from a later payment.
  2. In the event that SARS disputes an item on the invoice, SARS will do so by giving written notice to the Service Provider within five (5) days of receipt of the invoice. The notice shall set out the disputed items on the invoice and the reasons therefore. The Parties shall promptly first address such dispute in accordance with this Clause.
  3. If the dispute relates to only certain of the amounts included on an invoice (or equals in the case of disputed amounts that have already been paid), then SARS shall pay the undisputed amounts in accordance with **Clause 5.6**.
  4. 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.
  5. The Parties’ senior managers (one level up from the Service Provider’s representative contemplated in **Clause 8.1** below and a SARS Designated Representative) shall meet to resolve the dispute within five (5) days of SARS giving notice of the dispute. The senior managers shall endeavour to resolve the dispute within five (5) days of its referral to them.
  6. Where the dispute remains unresolved after the informal procedures set out in **Clause 6.5** above have been followed, the dispute shall be dealt with in terms of the dispute resolution procedures set out in **Clause 25** of this Agreement.

### PRINCIPLES GOVERNING SERVICE LEVELS

* 1. **Service Levels List**

**Annexure B** 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 Commencement Date.

* 1. **Monitoring, Measuring and Reporting**
     1. The Service Provider shall-
        1. be responsible for monitoring, measuring and reporting on the Service Provider’s compliance with the Service Levels;
        2. monitor its performance of the Services with respect to the Service Levels on a continuous basis and measure and provide SARS with a monthly report on such performance (the “**Monthly Performance Report**”);
        3. within six (6) Business Days after the end of each month deliver to SARS the Monthly Performance Report with respect to the Service Provider’s performance during such month;
        4. provide SARS with detailed supporting information for each Monthly Performance Report in soft-copy, as reasonably requested by SARS; and
        5. include the following information in each Monthly Performance Report with respect to any failure to achieve a Service Level during any given month (“**Service Level Failure**”)-
           1. the nature and date of the Service Level Failure;

* + - * 1. the cause of the Service Level Failure; and
        2. a summary of the steps the Service Provider has taken to resolve the Service Level Failure and reduce, to the extent reasonably possible, the likelihood that such Service Level Failure will be repeated.
    1. Any failure by the Service Provider to perform any of the obligations set forth in this **Clause 7.2** during any given month will also be deemed to be a Service Level Failure.

* 1. **Rules Governing Service Credits**

* + 1. **General**

A Service Credit is a price adjustment in any given month to reflect the reduced level of service experienced by SARS from the Service Provider during such month.

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

* + - 1. A price adjustment by means of a Service Credit due to SARS is without prejudice to and shall not limit any right SARS may have to terminate this Agreement and/or seek damages or other non-monetary remedies at Law resulting from, or otherwise arising in respect of, such Service Level Failure and any resulting termination.
      2. Notwithstanding the provisions of **Clauses 7.3.2.1** and **7.3.2.2** above, any claim for damages resulting from such Service Level Failure, in respect of which a Service Credit has already been effected, shall be reduced by the amount of that Service Credit.
    1. **Amount at Risk**
       1. The “Amount at Risk” with respect to Service Credits due by the Service Provider for Service Level Failures shall not exceed twenty per cent (20%) of the total amount invoiced to SARS in respect of such month,irrespective of the number of Service Level Failures.

* + - 1. Subject to **Clause 7.3.3.1**, the Service Provider shall credit the value of the percentage of the Amount at Risk (Service Credit) as indicated in **Annexure B** in respect of each Service Level Failure to SARS.
    1. **Calculation of Service Credits**
       1. For each Service Level Failure the all-inclusive monthly amount payable to the Service Provider shall be reduced by the applicable Service Credits.
       2. If a single triggering event directly causes two (2) or more Service Level Failures in any month and but for such event, none of such Service Level Failures would have occurred, then SARS shall be entitled to receive only a single Service Credit for a single Service Level Failure (which SARS may select in its sole discretion).
       3. Service Credits arising in respect of the last month of the Agreement term shall be withheld out of the final payment due.
  1. **Excused Non-Performance**

* + 1. Where the Service Provider can establish to the reasonable satisfaction of SARS that-
       1. the cause of its failure to achieve a Service Level was a factor outside of the reasonable control of the Service Provider (i.e. a *force majeure* event);
       2. the Service Provider would have achieved such Service Level but for such factor;
       3. the Service Provider used Commercially Reasonable Efforts to perform and achieve that Service Level notwithstanding the presence and impact of such factor; and
       4. the Service Provider is without fault in causing such factor,

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

### SERVICE PROVIDER’S UNDERTAKINGS AND OBLIGATIONS

* 1. The Service Provider undertakes to-
     1. nominate and supply the contact details of a representative, who must be a senior level employee from the Service Provider’s Personnel, who shall be responsible for the day to day management of the delivery of the Services, liaising with a SARS Designated Representative in respect of the performance of the Services and resolution of any disputes in terms of this Agreement;
     2. assign suitably qualified and skilled personnel to provide the Services in terms of this Agreement;
     3. ensure that its 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;
     4. render the Services to SARS in accordance with the highest professional standards and the Service Levels prescribed by SARS in **Annexure B**;
     5. conduct its business activities in the utmost good faith, honesty, integrity and transparency, and consistently uphold the interests and needs of SARS as a client before any other consideration. In this regard the Service Provider acknowledges that any acts of bad faith may lead to SARS electing not to make further use of the services of the Service Provider;
     6. only offer advice and render intermediary services in respect of financial products for which they are authorised or mandated in terms of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002) and the Short-term Insurance Act, 1998 (Act No. 53 of 1998);
     7. appropriately contain SARS’s risk, with respect to (i) sustained service delivery; (ii) cost containment; (iii) changes in law and the technology available to provide the Services; and (iv) SARS’s ability to handover the Services to a third party at termination of this Agreement; and (v) security of SARS’s data and confidential information;
     8. charge fees for Services rendered to SARS in accordance with the Service Provider’s Pricing Schedule, which is attached as **Annexure C**;
     9. refer all claims to the insurer timeously, in a diligent manner and in good faith;

* + 1. provide SARS with accurate and complete invoices, free from duplicated items and/or calculation errors;
    2. for the duration of this Agreement and for a period of five (5) years after the termination of this Agreement, maintain a complete audit trail of the Services performed under this Agreement, 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. 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;
    3. immediately inform SARS if any of the Service Provider’s Personnel are suspended, found guilty of misconduct by the Service Provider or any regulatory authority, or found guilty of a criminal act by a court;
    4. ensure that appropriate data security measures are put in place, in order to preserve the confidentiality and integrity of all electronic information, at all times;
    5. properly separate and protect all SARS’s funds in the manner contemplated in Applicable Law, and take all reasonable measures to ensure the safety and confidentiality of documentary information relating to the Services at its premises;
    6. where appropriate, ensure that suitable guarantees or professional indemnity or fidelity insurance cover, and mechanisms for adjustments of such guarantees or cover are in place;
    7. maintain its registration with the Financial Services Board;
    8. comply with all legislation relating to the protection of personal information; and
    9. comply with all legislation applicable to the Service Provider and relating to the Services, in particular legislation relating to the financial services industry.

### SARS’S UNDERTAKINGS AND OBLIGATIONS

* 1. SARS undertakes to-
     1. Nominate a representative who will be responsible for managing the delivery of the Services by the Service Provider, including but not limited to-
        1. acting as central point of contact between SARS and the Service Provider;
        2. authorising the Service Provider to start with the Services;
        3. approval of invoices submitted by the Service Provider;

* + - 1. acceptance of Deliverables; and
      2. convening meetings with the Service Provider.
    1. Furnish the Service Provider with access to SARS personnel, any relevant information and records necessary for the Service Provider to perform the Services in compliance with the terms and conditions of this Agreement.
    2. Promptly pay to the Service Provider the annual insurance premiums due in terms of the SARS short-term insurance portfolio.

### MEETINGS AND REPORTS

* 1. In order to manage the Services provided by the Service Provider to SARS, the Parties agree that meetings between the Parties will be arranged on the following basis-

|  |  |  |
| --- | --- | --- |
| **Type of meeting** | **Frequency** | **Purpose of the meeting** |
| SARS short-term insurance portfolio review | Quarterly | Reviewing the SARS short-term insurance portfolio with SARS Procurement and SARS Finance. |
| Service relationship  review | Annually | To report on the overall progress of the Services and to discuss service execution issues i.e. problems, risks, administrative issues etc. |

* 1. It is the responsibility of the Service Provider to supply accurate and relevant information and reports.
  2. Any information provided by the Service Provider in the reports or meetings must be sufficiently detailed to provide assurance that the Services are on schedule e.g. Claims and renewals.
  3. The Service Provider shall be responsible for minuting of meeting proceedings.
  4. The Service Provider shall deliver the minutes of a meeting to SARS within two (2) Business Days after the date of the meeting or such shorter period as SARS may prescribe, for SARS’s perusal and verification.
  5. SARS shall have the right to comment on and amend the minutes. SARS’s comments and amendments shall be discussed and/or confirmed at the next meeting.
  6. The Parties may hold *ad hoc* meetings at the reasonable request of either Party.

### APPROACH TO THE SERVICES

* 1. This Agreement provides a framework for, and the general terms and conditions applicable to, the Services that the Service Provider will provide to SARS under this Agreement.
  2. The Service Provider will provide the Services to SARS, subject to the general terms and conditions contained in this Agreement.

### THIRD PARTY CO-OPERATION

* 1. As part of the Services, where appropriate and when requested by SARS to do so, the Service Provider shall provide its full co-operation to any third party involved with, or contracted by SARS to assist with, a matter that forms the subject of the Services.
  2. It is, however, agreed that the relationship between the Service Provider and any third party will not constitute a partnership, and that neither the Service Provider nor the third party will be required to manage or monitor the other’s performance.
  3. Any complaints from the Service Provider relating to an actual or perceived lack of co-operation by the third party must promptly be brought to SARS’s attention.

### SECURITY VETTING OF THE SERVICE PROVIDER’S PERSONNEL

* 1. SARS reserves the right, in its sole and absolute discretion to do a security check (vetting) on the Service Provider’s Personnel.
  2. The Service Provider will procure from its personnel such documentation as may be reasonably requested by SARS, to enable SARS to conduct such security checks as aforementioned.
  3. Where SARS finds any of the Service Provider’s Personnel to be a security risk, SARS will inform the Service Provider accordingly and the Service Provider will immediately replace such Person with a suitably qualified substitute.

### INTELLECTUAL PROPERTY RIGHTS

* 1. Each Party will retain ownership of its existing intellectual property rights.

* 1. All right, title and interest in and to documentation directly relating to the Services which may be created, written and/or presented by the Service Provider and or its agents and personnel and which relate to the Services will however vest exclusively in SARS. To this end, the Service Provider irrevocably makes over and assigns to SARS all intellectual property rights which may come into existence which transfer, make over and assignment is accepted by SARS.

### CONFIDENTIALITY

* 1. The Parties shall ensure that prior to commencing the performance of the Services all the Service Provider’s Personnel shall sign the SARS Oath of Secrecy and submit the original thereof to SARS for record keeping purposes.
  2. The Service Provider undertakes that for the term of this Agreement and after the expiration or earlier termination of this Agreement for any reason, it will keep confidential all proprietary information, including any trade secrets and/or all information of a confidential nature which SARS from time to time communicates to the Service Provider, its agents and/or personnel. This includes the knowledge acquired by the Service Provider, its agents and/or personnel as a result of the work to be performed by the Service Provider in terms of this Agreement and which by its nature, is intended to be kept confidential.
  3. For purposes of this Agreement, the expression “Confidential Information” shall include, but shall not be limited to SARS’s operating procedures, internal policies, manuals, computer infrastructure, hardware, software, methods and techniques, know-how, operating costs, as well as the names of service providers and/or potential service providers with whom SARS has not yet contracted but intends contracting for purposes of establishing business relationships to which the Service Provider may become privy during the contract term, as well as, 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 any other Act administered by the Commissioner for SARS.
  4. 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 must be kept confidential. The Service Provider undertakes not to disclose such information without first obtaining the written consent of SARS.
  5. If the Service Provider is uncertain about whether information is to be treated as confidential in terms of this Clause, it shall be obliged to treat it as such until advised otherwise, in writing, by SARS.
  6. The Service Provider will protect the interests of SARS and its Confidential Information by-
     1. making available such Confidential Information only to those of its personnel who are actively involved in the execution of its obligations under this Agreement and then only on a “need to know” basis;
     2. putting in place internal security procedures reasonably acceptable to SARS to prevent unauthorised disclosure and taking all practical steps to impress upon those personnel who need to be given access to Confidential Information, the secret and confidential nature thereof;
     3. not using any Confidential Information of SARS, or disclosing directly or indirectly any Confidential Information of SARS to third parties, whether during this Agreement or thereafter; and
     4. ensuring that all Confidential Information of SARS which has or will come into the possession of the Service Provider and its personnel, will at all times remain the sole and absolute property of SARS.
  7. Confidential Information shall not include information that-
     1. is lawfully in the public domain at the time of disclosure;
     2. subsequently and lawfully becomes part of the public domain by publication or otherwise;
     3. subsequently becomes available to a Party from a source other than the disclosing Party, which source is lawfully entitled without any restriction on disclosure to disclose such Confidential Information;

* + 1. is disclosed pursuant to a requirement or request by operation of Law, regulation or court order;

* + 1. is independently developed or learned by a receiving Party without reference to or use of the Confidential Information of the other Party; or
    2. is disclosed by the receiving Party with the disclosing Party’s prior written approval.
  1. 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 five (5) 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.
  2. The provisions of this Clause shall survive the termination or cancellation of this Agreement for any reason whatsoever.

### LIABILITY OF THE PARTIES

* 1. The Service Provider agrees that, in the event of a breach of any of the provisions of this Agreement by the Service Provider, the Service Provider will be liable to SARS for all Losses which constitute direct and/or general damages.
  2. Subject to **Clause 16.3**, the Parties agree that, in the event of a breach of any of the provisions of this Agreement, the defaulting Party will not be liable to the other Party for any Losses which constitute indirect, special and/or consequential damages.
  3. Notwithstanding anything to the contrary set forth in **Clause 16.2** above or this Agreement in general, the Service Provider agrees that it will be liable to SARS for Losses which constitute indirect, special and/or consequential damages where such damages are caused by:
     1. a breach of any confidentiality provisions contained in this Agreement;
     2. the Service Provider’s, its personnel or any subcontractor’s wilful misconduct, dishonesty or gross negligence regardless of whether such Losses arise out of contract or delict; and/or
     3. breach of Applicable Law by the Service Provider.

### INDEMNITY

* 1. The Service Provider hereby indemnifies, holds harmless and agrees to defend SARS and its officers, employees, agents, successors, and assigns, from any and all Losses arising from, or in connection with, any of the following-
     1. third party claims arising from or related to the death or bodily injury of any SARS agent, employee, business invitee, business visitor or other Person on SARS’s premises caused by the negligent acts or omissions of the Service Provider or the Service Provider’s Personnel;
     2. 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 Service Provider Personnel’s negligence or misconduct; and
     3. third party claims attributable to any breach of the provisions of this Agreement by the Service Provider.
  2. The provisions of this Clause shall survive the termination of this Agreement.

### INSURANCE

* 1. The Service Provider shall-
     1. on or before the Commencement Date and for the duration of this Agreement, have and maintain in force professional indemnity insurance coverage of at least one hundred and fifty million rand (R150 000 000.00) to cover any claims, Losses and/or damages for which it may be liable in terms of this Agreement;
     2. at SARS’s request and within two (2) days of such request, provide SARS with a copy of the aforementioned insurance policy; and
     3. update and/or amend the policy as requested by SARS, including increasing the amount of cover provided in such policy, subject to mutual agreement between the parties.

### WARRANTIES

* 1. The Service Provider hereby represents and warrants to SARS that-
     1. this Agreement has been duly authorised and executed by it and constitutes a legal, valid and binding set of obligations on it;
     2. it is acting as a principal and not as an agent of an undisclosed principal;
     3. the execution and performance of the terms and conditions of this Agreement does not constitute a violation of any statute, judgment, order, decree or regulation or rule of any court, competent authority or arbitrator or competent jurisdiction applicable or relating to the Service Provider, its assets or its business, or its memorandum 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;
     4. 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;
     5. it has the requisite insurance to cover professional indemnity claims that may be instituted against it;
     6. it will comply with Applicable Law; and
     7. it has the necessary resources, skills, capacity and experience to render the Services to SARS.
  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.
  3. The provisions of this Clause shall survive the termination of this Agreement.

### BREACH

* 1. If a Party (the “Defaulting Party”) is in default or breach of any obligation which arises in terms of the Agreement and that Defaulting Party fails to remedy such default or breach within fourteen (14) 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-

* + 1. claim specific performance;
    2. cancel this Agreement, such cancellation to be effective immediately on receipt by the Defaulting Party of a written notice to that effect; or
    3. claim any money due and payable in terms of this Agreement and claim damages from the Defaulting Party.
  1. The Service Provider acknowledges that it is a material term of this Agreement that the Service Levels prescribed in **Annexure B** must be maintained throughout the duration of this Agreement. The Parties agree that multiple Service Level Failures will constitute material breach of this Agreement
  2. The remedies set out in this Clause shall not be construed to be exhaustive of any other remedies available to the Parties.

### TERMINATION FOR CAUSE

* 1. SARS may, by giving notice to the Service Provider, terminate this Agreement in whole or in part, as of a date set out in a written notice of termination, in the event that the Service Provider commits a material breach of this Agreement or-

* + 1. is placed under voluntary or compulsory liquidation (whether provisional or final);
    2. commits any of the acts of insolvency set out in section 8 of the Insolvency Act, 1936 (Act No. 24 of 1936);
    3. is placed under business rescue as contemplated in Chapter 6 of the Companies Act, 2008 (Act No. 71 of 2008);
    4. the Service Provider makes any arrangement or compromise with its creditors generally or ceases to carry on business; or
    5. a final and unappealable 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.
  1. Any termination of this Agreement pursuant to the provisions of this **Clause 21** will be without SARS incurring any liability in connection with such termination, or prejudice to any claim which SARS may have in respect of any prior breach of the terms and conditions of this Agreement by the Service Provider.

### REQUIRED ACTION ON TERMINATION

* 1. Upon termination of this Agreement–
     1. each Party shall return to the other immediately upon demand, or within such reasonable period as the Parties may agree upon all information, documentation, software, and reports that belong to the other Party, as well as all Confidential Information disclosed to it;
     2. the Service Provider shall render the necessary Disengagement Assistance to SARS, as more fully set out in **Clause** **31**;

* + 1. the Service Provider will retain only certain electronic records which it is legally required to retain;

* + 1. SARS will ensure that all fees due and payable to the Service Provider by SARS at the Termination Date, shall be paid to the Service Provider by no later than thirty (30) days following the date of termination; and

* + 1. the Service Provider shall immediately cease to provide the Services, subject to **Clause** **31**.

### FORCE MAJEURE

* 1. In the event of any act beyond the control of the Parties, strike, war, rebellion, riot, civil commotion, lockout, 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 (excluding payment obligations which fell due before the said *force majeure*).
  2. The affected Party’s relief is only to the extent so prevented and such Party shall not be liable for any delay or failure in the performance of any obligations hereunder or loss or damage which the other Party may suffer due to or resulting from the *force majeure* event, provided always that a written notice shall be promptly given of any such inability by the affected Party.
  3. Any Party invoking *force majeure* shall upon termination of such *force majeure* give prompt written notice thereof to the other Party. Should a *force majeure* event continue for a period of more than thirty (30) days, then either Party has the right to cancel this Agreement.
  4. Any strike, lock-out, interference by trade unions, suspension of labour or other industrial action directly related to a Party as employer and which could have been avoided by steps which such Party might reasonably have been expected to take acting as a reasonable prudent employer, does not constitute a *force majeure* event.

### RELATIONSHIP BETWEEN THE PARTIES

* 1. The Service Provider is an independent contractor and under no circumstances will it be partner, joint venture partner, agent or employee of SARS in the performance of its duties and responsibilities pursuant to the Agreement.
  2. The entire management, direction and control of the Service Provider’s Personnel will be the responsibility of the Service Provider.

### DISPUTE RESOLUTION

* 1. In the event of a dispute of whatsoever nature which arises out of or in connection with this Agreement, including any dispute as to the validity, existence, enforceability, interpretation, application, implementation, breach, termination or cancellation of this Agreement or as to the Parties’ rights and/or obligations in terms of this Agreement or in connection with any documents furnished by the Parties in terms of this Agreement, the Parties shall meet and negotiate in good faith to attempt to resolve the dispute. This entails that the one Party invites the other in writing to a meeting and attempts to resolve the dispute within seven (7) days from date of the written invitation. If the dispute has not been resolved by such negotiation, the Parties shall submit the dispute to the Arbitration Foundation of Southern Africa (“AFSA”) administered mediation, failing which the dispute shall be determined as below.
  2. Save in respect of those provisions of this Agreement which provide for their own remedies which would be incompatible with arbitration, or in the event of either Party instituting urgent action against the other in any court of competent jurisdiction, any dispute arising from, or in connection with, this Agreement will finally be resolved by arbitration in accordance with the Rules of the Arbitration Foundation of Southern Africa (the “Foundation”) or its successor, by an arbitrator or arbitrators appointed by the Foundation.
  3. Neither Party shall be precluded from obtaining interim relief on an urgent basis or other conservatory relief from a court of competent jurisdiction pending the decision of the arbitrator.
  4. This **Clause 25** 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.
  5. Subject to **Clauses 5.6** and **6.3** 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. Each Party shall, in such circumstances, continue to comply with its obligations in terms of this Agreement.

### ADDRESSES

* 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.
  2. SARS’s physical address for ***service of notices and legal processes*** shall be as follows-
     1. **Group Executive: Corporate Legal Services**

**Khanyisa Building**

**281 Middel Street**

**Nieuw Muckleneuk**

**PRETORIA**

* 1. The Service Provider‘s physical address for ***service of notices and legal processes***shall be as follows-
     1. **Chief Executive Officer**

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

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* 1. 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.
  2. Any Party may by written notice to the other Party, change its chosen address to another address, provided that-
     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
     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.*
  3. 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.
  4. Any notice to a Party in a correctly addressed envelope and which is delivered by hand to a Party’s chosen address shall be deemed to have been received on the day of delivery, unless the contrary is proved.
  5. The Parties record that whilst they may correspond via e-mail 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 e-mail.

### GENERAL

* 1. **No 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 in terms of this Agreement, without the prior written consent of the other Party, which consent shall not be unreasonably withheld.

* 1. **No Sale, Acquisition, Merger or Change of Control**
     1. In the event of a sale, acquisition, merger, or other change of control 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, at any time within thirty (30) days after being notified by the Service Provider of the last of such events to occur, SARS may terminate this Agreement by giving the Service Provider thirty (30) days’ written notice and designating a date upon which such termination shall be effective.
     2. The Service Provider shall notify SARS if there is any Change Event within ten (10) days after becoming aware of the anticipated Change Event.
     3. No sale, acquisition, merger or other change of control shall be effective against and legally binding on SARS if the prior written consent of SARS was not obtained.
     4. SARS shall have no liability to the Service Provider with respect to termination of the Agreement in terms of this Clause.
     5. “Control” in terms of this Clause shall mean, with regard to any entity, the right or power to dictate the management of and otherwise control such entity by any of the following-
        1. holding directly or indirectly the majority of the issued share capital or stock (or other ownership interest if not a corporation) of such entity ordinarily having voting rights;

* + - 1. controlling the majority of the voting rights in such entity; or
      2. 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.
  1. **Severability**

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

* 1. **Advertising and Marketing**

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

* 1. **Waiver**

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

* 1. **No Withholding of Consents**

Except where expressly provided as being in the sole discretion of a Party, where agreement, approval, acceptance, consent or similar action by either Party is required under this Agreement, such action shall not be unreasonably delayed or withheld. An approval, acceptance, consent or similar action by a Party under this Agreement (including in respect of a plan or Deliverable) shall not relieve the other Party from the responsibility of complying with the requirements of this Agreement, nor shall it be construed as a waiver of any rights under this Agreement, except as and to the extent otherwise expressly provided in such approval, acceptance or consent.

* 1. **Authorised Signatories**

The Parties agree that this Agreement and any contract document concluded in terms hereof shall not be valid unless signed by all Authorised Representatives of both Parties.

* 1. **Counterparts**

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

* 1. **Applicable Law** **and Jurisdiction**
     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.
     2. The Parties hereby irrevocably and unconditionally consent to the non-exclusive jurisdiction of the High Court of the Republic of South Africa (Gauteng Division, Pretoria) in regard to all matters arising from this Agreement.
  2. **Whole Agreement and Amendment**

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

* 1. **Covenant of Good Faith**

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

* 1. **Costs**

Each Party shall bear and pay its own costs of or incidental to the drafting, preparation and execution of this Agreement.

### BROAD-BASED BLACK ECONOMIC EMPOWERMENT (“BBBEE”)

* 1. The Service Provider commits and warrants to comply in all respects with the requirements of the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003) (hereafter referred to as the B-BBEE Act) as amended from time to time, and the Codes of Good Practice issued in terms of the B-BBEE Act.
  2. Upon the Commencement Date of this Agreement and one (1) calendar month after the expiry of a current certificate for a particular year, the Service Provider shall provide SARS with a certified copy of its BEE rating status from an agency accredited by the South African National Accreditation System or a certificate from the Companies and Intellectual Property Commission or a sworn affidavit, confirming annual turnover and level of black ownership in the case of an Exempted Micro Enterprise and Qualifying Small Enterprise.
  3. During the currency of this Agreement, the Service Provider shall remain BEE compliant, with a minimum B-BBEE status level of contributor 3.
  4. A failure to comply with the provisions of **Clause 28.3** above is a material breach and will entitle SARS to terminate the Agreement.

### TAX COMPLIANCE

* 1. The Service Provider represents and warrants that as of the Commencement Date of this Agreement, the Service Provider is and will remain compliant throughout the duration thereof with all Applicable Laws relating to tax in South Africa.
  2. A failure to comply with the provisions of this Clause will constitute a material breach and will entitle SARS to terminate the Agreement, without any liability except payment of fees for Services rendered.

### ETHICAL BUSINESS PRACTICES

* 1. SARS has a policy of zero tolerance regarding corrupt activities. The Service Provider will promptly report to SARS and the relevant authorities any suspicion of corruption on the part of their personnel, as well as any behaviour by any of those persons that is likely to constitute a contravention of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004).
  2. Neither Party will offer, promise or make any gift, payment, loan, reward, inducement benefit or other advantage to any of the other Party's personnel.
  3. If the results of any audit of the Services conducted by or on behalf of SARS indicates the possibility of corrupt activities, improper or fraudulent practices or theft, SARS will, after allowing the Service Provider reasonable opportunity to investigate that possibility, have the right either by itself, or by its agents, or by requesting the police, to investigate all the relevant circumstances, to question any relevant personnel of the Service Provider or a third party, and the Service Provider will use all reasonable efforts to facilitate any such investigation or enquiry. In the event that an act of corruption, fraud or theft is proven, SARS will be entitled, on written notice to the Service Provider, to immediately terminate this Agreement.

### DISENGAGEMENT ASSISTANCE

* 1. The Parties hereby acknowledge that, notwithstanding the termination of this Agreement for any reason whatsoever, the immediate and seamless transition of the Services to an incoming service provider is imperative. To this extent and without any derogation to any claims sounding in money, which either Party may have or allege against the other Party, the Service Provider shall not be entitled to withhold any information, files, records or reports, or any assistance as set out in the Clauses below that will be crucial to effect the immediate and seamless transition of the Services.

* 1. For a period of one (1) month after termination of this Agreement for whatsoever reason **or** for a period of two (2) months prior to the expiry of this Agreement, whichever is applicable, the Service Provider will provide SARS or SARS’s newly designated service provider such assistance as SARS may reasonably require to facilitate the immediate transition of the Services in as seamless a manner as possible (“Disengagement Assistance”).

# Without limiting the generality of the foregoing, the Service Provider shall, at no additional cost, deliver to SARS on a date specified by SARS, such information and documentation relating to the Services as SARS may reasonably require, to facilitate the immediate transition of the Services in as seamless a manner as possible.

* 1. The Service Provider undertakes to use its best endeavours to ensure that all files and records are complete, up to date and adhere to professional quality standards, and legislative requirements, failing which SARS reserves the right to demand that the Service Provider brings the files, records and/or reports up to standard.

* 1. SARS or its newly designated service provider shall have the option exercisable on a contract by contract basis to assume contracts for any Services provided by third parties to the Service Provider and used exclusively by the Service Provider to provide the Services to SARS.

* 1. Subject to **Clause 27.1**, and to the extent consistent with Applicable Law, in the case of third party service providers used by the Service Provider to provide Services to SARS, the Service Provider shall use Commercially Reasonable Efforts to arrange for the provision of the Services by the third party to SARS under terms at least as favourable as those in the third party service contract.

### CONFLICT OF INTERESTS

* 1. The Service Provider confirms that to the best of its knowledge it will not be acting in conflict with the interests of SARS when providing the Services.
  2. The Service Provider undertakes to notify SARS at the earliest opportunity practical in the circumstances, of the nature and extent of any direct or indirect interests which it may have in conflict with SARS’s interests.
  3. The Service Provider may, subject to any condition which may be imposed by SARS, elect to terminate this Agreement if a conflict of interests arises.

**As Authorised Representatives for the South African Revenue Service-**

**SIGNED AT PRETORIA.**

|  |  |
| --- | --- |
| 1. **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**   **xxxxxxxxxxxxxxxxxxxxxxx**  **Group Executive: Own Accounts**  **Date of signature:** | 1. **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**   **xxxxxxxxxxxxxxxxxxxxxxx**  **Group Executive: Procurement**  **Date of signature:** |

**As Authorised Representative for the Service Provider-**

**SIGNED AT \_\_\_\_\_\_\_\_\_\_\_\_ ON THIS \_\_\_\_\_\_\_\_ DAY OF \_\_\_\_\_\_\_ 2018.**

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| --- |
| **SIGNATURE:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**  **FULL NAMES AND SURNAME:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**  **CAPACITY:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** |