**SERVICES AGREEMENT** **IN RESPECT OF THE ESTABLISHMENT OF A PANEL OF EXPERT ADVISORY SERVICES (FORENSIC INVESTIGATIONS, INTERNAL AUDIT, FINANCIAL RISK MANAGEMENT, VALUATIONS ADVICE, DEBT MANAGEMENT AND DIGITAL FORENSIC 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

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

**(“Service Provider”)**

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1. **INTRODUCTION**

* 1. SARS has issued a tender under request for proposal **(RFP 052/2018)** for the provision of advisory services (the “Services”) as more fully described therein.
  2. The Service Provider has submitted a proposal in response to **RFP 052/2018** (the Proposal’).
  3. SARS accepted the proposal of the Service Provider, and the Parties now wish to record the terms and conditions of their agreement.

1. **INTERPRETATION**
   1. The headings to the Clauses of this Agreement are for reference purposes only and will not govern or affect the interpretation of nor modify nor amplify the terms of this Agreement.
   2. Unless inconsistent with the context, the words and expressions have the following meanings, and similar expressions will have corresponding meanings-
      1. **Applicable law”** means any of the following to the extent applicable to the Service Provider and where applicable, to SARS or the Services:
         1. Any statute, regulation, policy, by-law, ordinance or subordinate legislation;
         2. The common law;
         3. Any binding court order, judgment or decree;
         4. Any applicable industry code of conduct, policy or standard enforceable by law; or
         5. Any applicable direction, policy or order that is given by a regulatory authority.
      2. “**Agreement**” means this Agreement and the annexures hereto;
      3. “**Authorised Representative**” means signatories authorised by SARS and the Service Provider respectively to sign the Agreement and any amendments or addenda thereto on its behalf;
      4. “**Business Day**” means any day other than a Saturday, Sunday or public holiday in the Republic of South Africa;
      5. **Deliverable**” means any report, results, documented analysis, strategy, findings, presentation and other feedback provided as a product of the provision of the Services;
      6. “**Designated Representative**” means a person designated by each Party for the day to day management of the delivery of Services in terms of the Agreement, including resolution of disputes, and to whom all communication regarding this Agreement shall be sent.
      7. “**Effective Date**” means **(TO BE ADDED)**;

* + 1. **“Key Personnel”** means those members of staff of the Service Provider and/or its agents who have been assigned by the Service Provider to the provision of the Services to SARS, and on the strength of whose expertise the Service Provider warrants its capabilities to provide the Services;

* + 1. “**Losses”** means all losses, liabilities, costs, expenses, fines, penalties, damages and claims, and all related costs and expenses as determined in Law;
    2. “**Parties**”means the South African Revenue Service and the Service Provider and “Party”is a reference to any one of them;
    3. “**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 **299 Bronkhorst Street**, **Nieuw Muckleneuk**, **Pretoria**;
    4. “**RFP 052/2018**” refers to SARS’s invitation to service providers to tender for the provision of expert advisory services as contemplated therein which RFP is incorporated herein by reference;
    5. **“Services**” means the provision of expert advisory services as contemplated in **RFP 052/2018**, and in this Agreement, in the specific service category to which the Service Provider has been appointed to the Panel, including those services, functions or responsibilities not specifically mentioned herein but which are reasonably and necessarily required for the proper performance and provision of the Services.
    6. “**Service Provider**” means **(TO BE ADDED)** a company with **Registration No.** **(TO BE ADDED)** incorporated in accordance with the Laws of South Africa with its registered and principal address at **(TO BE ADDED).**
    7. “**Service Request”** means a specific written instruction, issued to the Service Provider by SARS, requesting the Service Provider to render the Services or part thereof, and signed by the SARS Designated Representative.
    8. “**Termination Date**” means **(TO BE ADDED)**

* 1. Any reference in this Agreement to-
     1. **“Clause”** shall, subject to any contrary indication, be construed as a reference to a Clause hereof;
     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 Definitions 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, 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 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 shall 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 shall 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. any reference in this Agreement to this Agreement or any other Agreement or document shall be construed as a reference to this Agreement or, as the case may be, such other agreement or document as same may have been, or may from time to time be, amended, varied, negotiated or supplemented;
    7. no provision of this Agreement constitutes a stipulation for the benefit of any Person who is not a party to this Agreement;
    8. references to day/s, month/s or year/s shall be construed as calendar day/s, month/s or year/s; and,
    9. a reference to a Party includes that Party’s successors-in-title and permitted assigns.
  1. 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*;
  2. 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.
  3. The termination of this Agreement will not affect the provisions of this Agreement which operate after any such termination or which of necessity must continue to have effect after such termination, notwithstanding that the Clauses themselves may not expressly provide for this.
  4. 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.
  5. Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.
  6. The Parties hereby acknowledge that this Agreement was negotiated fairly between them at arm’s length and that the final terms thereof are the product of the Parties’ negotiations and accordingly the provisions of 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.

1. **APPOINTMENT**
   1. The Service Provider has been appointed to the SARS Panel of Expert Advisors contemplated in **RFP 052/2018**, in the category indicated in **Annexure A** and has accepted such appointment.
   2. The Service Provider will be utilised on an ad hoc basis, as and when required by SARS. SARS does not guarantee that the Service Provider will receive Service Requests during the term of this Agreement
   3. The Service Provider represents that it has, and warrants that throughout the duration of this Agreement it shall have the resources, skills, qualifications and experience necessary to provide the Services according to the highest professional standards.
2. **DURATION**

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

1. **APPROACH IN THE DELIVERY OF THE SERVICES**

* 1. SARS has appointed service providers to a panel for expert advisory services contemplated in **RFP 052/2018**. The Service Provider, being a panellist, may be required to perform the Services, as and when required by SARS.
  2. SARS may, from time to time, as and when needed, issue a Service Request to the Service Provider to perform Services identified in the Service Request.
  3. This Agreement provides a framework for, and the general terms and conditions applicable to the Services.

* 1. The provisions of this Agreement shall apply to each and every Service Request issued under this Master Agreement.
  2. The Service Provider will, when required to do so, provide the Services subject to the terms and conditions of this Agreement generally, and in particular subject to the specifications set forth in the relevant Service Request.
  3. Each Service Request shall contain, at the minimum, the information set out below, namely:
     1. Details and specifications of the Services requested from the Service Provider;
     2. The time frame within which the Services must be performed;
     3. The desired Deliverables;
     4. The costs for the Services;
     5. The full names and signatures of the SARS Designated Representative, and the SARS Procurement Executive/Group Executive;
     6. Nature of reporting and frequency thereof;
     7. The Service Levels applicable to the Services procured in terms of the Service Request and the corresponding Performance Failure penalties; and
     8. Any additional provisions which may be applicable to the Service Category or specific Service Request.
  4. The Service Request must be accepted by the Service Provider in writing before implementation.
  5. The Service Provider may not implement any of the Services without a duly issued, signed and accepted Service Request. For this purpose, it is expressly recorded that the Service Provider shall not have any right of recourse or claim against SARS, whether financial or otherwise, as a result of any Services rendered or work done without a duly signed off Service Request.

1. **SERVICE PROVIDER’S OBLIGATIONS**
   1. The Service Provider shall-
      1. Nominate from its Key Personnel a person who shall be known as the Designated Representative.

* + 1. Ensure that its Key Personnel devote such time, attention and skill in performing the Services;
    2. Ensure that it adheres to written and reasonable requests or instructions by the SARS Designated Representative;
    3. Perform the Services with due care and diligence, in a professional and accurate manner and in conformity with the highest professional standards;
    4. Upon conclusion of the Services or a Service Request, give a formal presentation to SARS on the overall performance on the Services or Service Request, as well as the outcomes thereof; and
    5. Comply with all Applicable Law;
  1. The Service Provider shall not substitute the Key Personnel without the prior written approval of SARS. The Service Provider may make a request to SARS to replace a member of its Key Personnel, where such member has become incapacitated and/or unable to perform his/her duties under the Agreement.
  2. The Service Provider’s request to SARS for the substitution of the Key Personnel shall include the reason for the request and a proposal to replace the Key Personnel with a person of equal or better qualification(s) and experience.
  3. Should SARS, in its discretion reasonably consider a member of the Key Personnel to be incompetent or unsatisfactory, the Service Provider will have to replace at its cost, that member with one having similar or better credentials, in line with the timeframes then stipulated by SARS

* 1. **DELIVERABLES** 
     1. The Service Provider shall obtain SARS’s signoff for every Deliverable under a Service Request.
     2. Should SARS not accept a Deliverable:-
        1. SARS will provide the Service Provider with written notice of its non-acceptance, as well as reasons therefore.

* + - 1. The Service Provider must, at its own cost, correct any deficiencies raised by SARS within five (5) Business Days (or such other shorter period as the circumstances may require) of receiving the notice from SARS, whereafter the Deliverable will be resubmitted to SARS for another review.
      2. The Service Provider undertakes to avail itself to liaise with SARS regarding any queries arising with regard to a Deliverable, and to assist SARS with its review of the Deliverable.
      3. The Service Provider undertakes to duly consider the comments and input of SARS and to amend/improve the Deliverable as per the feedback by SARS.
    1. In the event the deficiency/ies is still not corrected by the Service Provider after the first resubmission, SARS may, at its sole discretion, elect to :-
       1. direct the Service Provider to continue its efforts to make the Deliverable acceptable to SARS, in which event the Service Provider shall continue such efforts at its own cost;
       2. invoke step-in rights as contemplated in **Clause 23** below ; or
       3. reject the Deliverable for non-conformity and declare a dispute to be dealt with in terms of **Clause 17**.
  1. **AUDIT RIGHTS**
     1. The Service Provider shall, for the duration of this Agreement and for a period of five (5) years after the termination of this Agreement, maintain a complete audit trail of the Services performed under this Agreement, sufficient to permit a complete audit thereof.
     2. The Service Provider shall provide SARS and SARS’s auditors access at reasonable times to information, records and documentation relating to the Services for the purpose of performing audits, examinations and inspections in order to verify the Service Provider’s compliance with the terms of this Agreement and/or to enable SARS to comply with the requirements of any regulatory authority and/or regulators and governmental entities having jurisdiction.
     3. All costs incurred in performing audits under this **Clause 6.6** will be borne by SARS unless audit findings reveal the Service Provider’s non-compliance with the terms of this Agreement and/or Applicable Law, in which event such costs shall be borne by the Service Provider.
  2. **SERVICE LEVELS AND PENALTIES**
     1. SARS will, at the time of issuing a Service Request, determine and/or prescribe certain performance standards (Service Levels) that the Service Provider should comply with in the performance of the requested Services.. The Service Request will also indicate the penalty applicable to the failure to meet a Service Level by the Service Provider.
     2. Failure by the Service Provider to adhere to Service Levels will entitle SARS to levy a financial penalty for the transgressed Service Level.
     3. Notwithstanding the imposition of a financial penalty in respect of a Performance Failure, SARS reserves the rights and without derogation to any other remedies it may have in law, to-
        1. terminate the Agreement for breach by the Service Provider;
        2. cancel a Service Request with immediate effect; or
        3. reallocate with immediate effect the Service Request to another service provider. In such an event, the outgoing Service Provider shall be obliged, and for the Service Provider’s own account, to assist in a seamless transition of the Services to the incoming service provider.

* + 1. Cancelation or reallocation of Services in respect of a Service Request 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.
  1. **THIRD PARTY SERVICE PROVIDER CO-OPERATION**
     1. As part of the Services, where appropriate and when requested by SARS to do so, the Service Provider shall provide full co-operation to other third party service providers that might be contracted by SARS on the same engagement or for purposes contemplated in contemplated in **Clause 7.1.5** below.
     2. It is, however, agreed that the relationship between the Service Provider and third party service providers will not constitute an alliance and that neither the Service Provider nor the third party service providers will be required to perform quality checks on the work of the other party, except where the third Party is appointed for purposes contemplated in **Clause 7.1.5** below.

1. **SARS OBLIGATIONS**

* 1. SARS undertakes to -
     1. Nominate a Designated Representative who will be responsible for managing the delivery of the Services by the Service Provider, including but not limited to:
        1. Approving invoices submitted by the Service Provider;
        2. Convening meetings with the Service Provider;
        3. Providing feedback to the Service Provider on Deliverables; and
        4. Approving and signing-off on Deliverables.
     2. If required by the Service Provider, furnish the Service Provider with any relevant information necessary for the Service Provider to perform the Services in compliance with the terms and conditions of this Agreement.
     3. Where applicable, provide the Service Provider with its response to and/or comments on draft documents, reports, and findings within seven (7) days of receipt of such documents.
     4. Subject to compliance with SARS’s access and physical security policies, provide the Service Provider’s personnel with access to the premises of SARS if necessary for the purposes of rendering the Services.
     5. Monitor and review the Service Provider’s performance in terms of this Agreement. SARS, however, reserves the right, at its exclusive discretion, to appoint a third party to monitor and review the Service Provider’s performance in terms of this Agreement. For this purpose SARS shall not appoint any service provider appointed pursuant to **RFP 052/2018** ;
     6. Where applicable, ensure that it designates employees for skills transfer purposes, and furnish the Service Provider with names of such designated employees;
     7. Ensure that the designated employees contemplated in **Clause 7.1.6** above avail themselves and cooperate with the Service Provider for skills transfer purposes.

1. **INTELLECTUAL PROPERTY RIGHTS**
   1. Subject to **Clause 8.2** below, each Party shall retain all right, title and interest, in and to its processes, designs, drawings, specifications, formulae, databases, algorithms, models, methods, know-how, techniques, concepts, ideas, documents or other tools (“Intellectual Property”).
   2. Subject to pre-existing Intellectual Property rights of the Service Provider and/or any third party, all Intellectual Property rights in and to literary works which may be created, written and/or presented by the Service Provider and or its agents and employees and which relate to the Services will vest exclusively in SARS. To this end, the Service Provider irrevocably and in perpetuity transfers, makes over and assigns to SARS all such Intellectual Property rights which may come into existence, which transfer, make over and assignment is accepted by SARS.
   3. In addition to the provisions of **Clause 8.2** above, the Service Provider waives the moral rights conferred upon it as author of literary works by section 20(1) of the Copyright Act, 1978 (Act No. 98 of 1978), as amended.
   4. The Service Provider warrants that in providing the Services, it shall not breach or infringe any third party Intellectual Property rights.
   5. The Service Provider hereby indemnifies and holds SARS harmless against Losses, claims, demand, proceedings, damages, costs, charges and expenses of whatsoever nature in respect of the Service Provider’s infringement of Intellectual Property rights of a third party as a result of the action or actions of the Service Provider in its execution of this Agreement.
2. **CONFIDENTIALITY**
   1. The Parties undertake that for the duration of this Agreement and after the expiration or earlier termination of this Agreement for any reason, a Party will keep confidential all proprietary information, including any trade secrets and/or all information of a confidential nature, which a Party communicates to the other Party, its agents and/or employees, from time to time. This includes the knowledge acquired by a Party, its agents and/or employees because of the work to be performed in terms of this Agreement and which by its nature is intended to be kept confidential.
   2. Confidential Information means any proprietary and confidential information or data of any nature, tangible, or intangible, oral or in writing, in any form or on any medium. For purposes of this Agreement, the expression “proprietary information and confidential information of SARS” shall include, but not be limited to, the technical detail, programme content, techniques, know-how, methods of operating, costs, training courses, taxpayer information and names of clients and/or potential clients with whom SARS has not yet contracted but intends contracting for purposes of establishing business relationships to which the Service Provider may become privy to during the term of the Agreement.
   3. The Service Provider further, in particular undertakes to keep confidential all SARS Confidential Information and Taxpayer Information as defined in Chapter 6 of the Tax Administration Act, 2011 (Act No. 28 of 2011), as well as any information required to be kept confidential by any other legislation administered by the Commissioner for SARS or otherwise. .
   4. If the Service Provider is uncertain about whether information is to be treated as confidential in terms of this **Clause 9**, it shall be obliged to treat it as such until clearance is obtained, in writing, from SARS.
   5. The Service Provider shall ensure that prior to commencing the performance of the Services in terms of the first Service Request that may be issued to it; its Key Personnel and/or agents and/or employees involved in the rendering of the Services sign the **SARS Oath of Secrecy** and shall submit the original thereof to the SARS’s Designated Representative.
   6. Where a Party is threatened with legal action to disclose the confidential information of the other Party, such Party shall give the other Party written notice of such legal action within two (2) days of receipt of the threatened legal action. The Party shall together with the notice referred to above, deliver to the other Party all documentation received or submitted in connection with the threatened legal action.
   7. The Service Provider specifically acknowledges that all information relating to the Services, including and not limited to, literary works produced thereunder are of a sensitive nature and secret. The Service Provider undertakes not to disclose such information without first obtaining the written consent of SARS.
   8. The Service Provider shall not remove from SARS’s premises any documents nor materials relating to the Services or SARS’s business without first obtaining the written consent of SARS.
   9. Upon SARS’s request or completion of a Service Request, the Service Provider will promptly return all documents, materials, information, or data relating to the Services to SARS. Data must be returned in a form reasonably acceptable to SARS or, if SARS so elects, the Service Provider must destroy such data promptly.
   10. The provisions of this Clause shall survive the termination or cancellation of this Agreement for any reason whatsoever.
3. **SECURITY VETTING OF SERVICE PROVIDER’S RESOURCES**
   1. SARS reserves the right at its sole and absolute discretion to perform a security check (vetting) on the Service Provider’s Key Personnel and/or agents.
   2. Where SARS establishes the Service Provider’s Key Personnel and/or agents to be a security risk, SARS will inform the Service Provider accordingly and the Service Provider shall replace such Key Personnel and/or agent with another one of equal qualification(s) and experience.
4. **LIABILITY OF THE PAR****TIES**
   1. A Party shall be liable to the other Party for any direct damages incurred by the latter Party due to failure by the Party to perform its obligations in the manner required by this Agreement.
   2. The Service Provider shall further be liable to SARS for all indirect and consequential or special damages and/or Losses suffered by SARS because of a breach of **Clause 9** above; infringement of a third party’s intellectual property rights or a criminal act committed by the Service Provider or any employees/agents of the Service Provider.
   3. The Service Provider hereby indemnifies, holds harmless and agrees to defend SARS and its officers, employees, agents, successors - title, and assigns, from any and all Losses arising from, or in connection with, any of the following-
      1. Third party claims attributable to any breach of the provisions of this Agreement by the Service Provider;
      2. Third party claims attributable to theft, fraud or other unlawful activity or any negligent, wilful or fraudulent conduct by the Service Provider or the Service Provider’s Personnel and claims attributable to errors and/or omissions;
      3. Third Party claims arising from or related to the death or bodily injury of any SARS agent, employee, business invitee, or business visitor or other person on SARS’s premises caused by the negligent acts or omissions of the Service Provider or the Service Provider’s personnel; and
      4. Third Party claims arising from damage to property owned or leased by SARS or a third party caused by the Service Provider’s or the Service Provider personnel’s negligence or misconduct.
5. **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, articles of association or any other documents or any binding obligation, contract or Agreement to which it is a party or by which it or its assets are bound;
      4. it has the necessary resources, skills, capacity and experience to render the Services to SARS; and
      5. no facts or circumstances exist that may materially affect its capacity to perform its obligations under this Agreement.
   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. By bidding, the Service Provider is deemed to have satisfied itself regarding all conditions affecting this Agreement, and must at all times comply with the manifest intent and obligations of this Agreement.
   4. The provisions of this Clause shall survive the termination of this Agreement.

1. **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; or
      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

* 1. The Service Provider acknowledges that it is a material term of this Agreement that the Service Levels contained in a Service Request must be maintained throughout the duration of a Service Request. The Parties agree that multiple Performance Failures will constitute sufficient proof of persistent non-compliance by the Service Provider of SARS’s prescribed Service Levels and that such persistent non-compliance will constitute a 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.

1. **TERMINATION**

* 1. **Termination for Cause**

* + 1. SARS may, by giving notice to the Service Provider, terminate this Agreement as of a date set out in the notice of termination, in the event that the Service Provider-
       1. commits a material breach of this Agreement, which breach is not cured within fourteen (14) days after notice of the breach from SARS to the Service Provider;

* + - 1. commits a material breach of this Agreement that is not capable of being cured within fourteen (14) days from the notice of the breach;
      2. commits numerous breaches of this Agreement that collectively constitute a material breach, even if cured;
      3. is placed under voluntary or compulsory liquidation (whether provisional or final) or business rescue proceedings are commenced against the Service Provider; and/or
      4. a final judgment against the Service Provider remains unsatisfied for a period of (10) ten Business Days or more after it comes to the notice of the Service Provider; and/or, the Service Provider makes any arrangement or composition with its creditors generally or ceases to carry on business.
      5. Fails to comply with **Clauses 8 or 9** above;

,

* + 1. SARS shall have no liability to the Service Provider with respect to a termination under this **Clause 14.1**, except for amounts actually due and payable in respect of the completion of any phase of the Services.
  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, the Service Provider shall promptly notify SARS of the Change Event, within the time frame contemplated in Clause 14.2.2 below. SARS may, at any time after being so notified of the Change Event, 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 the Change Event is achieved.
     3. No sale, acquisition, merger or other change of control shall be effective against and legally binding on SARS if the Service Provider failed to notify SARS, as required by **Clause 14.2.2** above, and SARS may upon discovery of the Change Event terminate the Agreement by giving the Service Provider thirty (30) days’ written notice and designating a date upon which such termination shall be effective.
     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;
        2. controlling the majority of the voting rights in such entity; or
        3. having the right to appoint or remove directors holding a majority of the voting rights at meetings of the board of directors of such entity.
     6. Any termination of this Agreement pursuant to the provisions of this **Clause 14.2** shall be without prejudice to any claim which either Party may have in respect of any prior breach of the terms and conditions of this Agreement by the other Party.

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

* 1. 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.
  2. 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.
  3. 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.

1. **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 this Agreement.
   2. All personnel used by the Service Provider will be the Service Provider’s employees, directors, contractors or agents, and the entire management, direction, and control of all such persons will be and remain the responsibility of the Service Provider.
2. **DISPUTE RESOLUTION**

* 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. 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, any dispute arising from, or in connection with, this Agreement and not resolved as contemplated above will finally be resolved by arbitration in accordance with the Rules of AFSA or its successor, by an arbitrator or arbitrators appointed by AFSA.
  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 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. Neither Party shall be entitled to withhold performance of any of their obligations in terms of this Agreement pending the settlement of, or decision in, any dispute arising between the Parties and each party shall, in such circumstances continue to comply with their obligations in terms of this Agreement: Provided that SARS shall not pay any invoice in respect of which there is a pending dispute.

1. **ADDRESSES**
   1. Each Party chooses the addresses set out below its name as its address to which all notices and other communications must be delivered for the purposes of this Agreement and its *domicilium citandi et executandi (“domicilium”)* at which all documents in legal proceedings in connection with this Agreement must be served.
   2. SARS’s physical address for ***service of notices and legal processes*-**
      1. **The Group Executive: Corporate Legal Services**

**Khanyisa Building**

**281 Middel Street**

**Nieuw Muckleneuk**

**PRETORIA**

* 1. Service Provider’s physical address for ***service of notices and legal processes-***

**(TO BE ADDED)**

* 1. SARS’s email address for communications, and/or correspondences in connection with the performance of the Services: **(TO BE ADDED)**
  2. The Service Provider’s email address for communications, and/or correspondences in connection with the performance of the Services: **(TO BE ADDED)**
  3. 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.
  4. 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.*
  5. 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; or
  6. Any notice to a Party in a correctly addressed envelope and delivered by hand at a Party’s chosen address shall be deemed to have been received on the day of delivery, unless the contrary is proved.
  7. The Parties record that whilst they may correspond via email during the currency of this Agreement for operational reasons, no formal notice required in terms of this Agreement, nor any amendment or variation to this Agreement may be given or concluded via email.

1. **GENERAL**
   1. **No Assignment Without Consent**

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. **Subcontracting**
     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.
     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 to subcontract,a complete written proposal for SARS’s approval containing at least,-
     3. Full details and business references of the subcontractor;
     4. A full description of the part of the Services/Service Request it proposes for subcontracting;
     5. Full details of how the Service Provider will manage the performance of the Services by the subcontractor;
     6. The value of the Service Request proposed to be subcontracted, expressed as a percentage;
     7. The B-BBEE status and certificate of the subcontractor; and
     8. The Tax Clearance Certificate of the subcontractor.
     9. SARS reserves the right to call upon additional information when assessing a request for subcontracting
     10. Notwithstanding the provisions of this **Clause 19.2** 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.
     11. Subject to the provisions of **Clause 19.2 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.
     12. Nothing contained herein shall create a contractual relationship between SARS and the subcontractor.
  2. **Severability**

Should any of the terms and conditions of this Agreement be held to be invalid, unlawful, or unenforceable, such terms and conditions shall be severable from the remaining terms and conditions, which shall continue to be valid and enforceable. If any term or condition held to be invalid is capable of amendment to render it valid, the Parties shall 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 by an Authorised Representative of the Party against which such change, waiver or discharge is sought to be enforced, and any such change, waiver or discharge will be effective only in the specific instance and for the purpose given. No failure or delay on the part of either Party hereto in exercising any right, power, or privilege under this Agreement will operate as a waiver thereof, nor will any single or partial exercise of any right, power, or privilege preclude any other or further exercise thereof, or the exercise of any other right, power, or privilege.

* 1. **No Withholding Of Consents**

Except where expressly provided as being in the sole discretion of a Party, where agreement, approval, acceptance, consent, or similar action by either Party is required under this Agreement, such action shall not be unreasonably delayed or withheld. An approval, acceptance, consent or similar action by a Party under this Agreement 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.

* 1. **Authorised Signatories**

The Parties agree that this Agreement and any Schedules, Annexures or Addenda thereto shall not be valid unless signed by all Authorised Representatives of SARS and the Service Provider.

* 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. **Whole Agreement and Amendment**

This Agreement constitutes the whole of the Agreement between the Parties relating to the subject matter hereof and no amendment, alteration, addition, variation or consensual cancellation will be of any force or effect unless reduced to writing and signed by the Parties’ Authorised Representatives. Any document executed by the Parties purporting to amend, substitute or revoke this Agreement or any part hereof, shall be titled an "Addendum" 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.

1. **APPLICABLE LAW AND JURISDICTION**
   1. This Agreement will be governed by and construed in accordance with the 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.
   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. **TAX COMPLIANCE**
   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.
   2. Failure to comply with the provisions of this Clause will constitute a material breach and will entitle SARS to terminate this Agreement forthwith
3. **BROAD-BASED BLACK ECONOMIC EMPOWERMENT**
   1. The Service Provider commits and warrants compliance in all respects with the requirements of the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003) [hereinafter referred to as the “BBBEE Act”], as amended from time to time and the Codes of Good Practice issued in terms of the BBBEE 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, at the mandatory or better status level contemplated in RFP **052/2018**, failing which SARS reserves the right to terminate this Agreement for material breach.
4. **STEP IN RIGHTS**
   1. In addition to any other rights and remedies that it may have in terms of this Agreement or otherwise, including the right to terminate this Agreement, SARS may, in its sole discretion, elect to temporarily take over the Services as contemplated below, immediately upon SARS’s identification or the Service Provider's notification of the occurrence of any event which SARS considers, in its sole discretion, to be an event which may affect the continuity of the Services or implementation thereof.
   2. For purposes of this clause, SARS may (at its option), either itself or by the procurement of an alternate third party service provider, temporarily take over the provision of the Services until such time as SARS is able to make permanent alternate arrangements for the provision of the Services, which right shall apply for a period of no more than 180 (one hundred and eighty) days from the date that SARS temporarily takes over the provision of the Services. The Service Provider shall, upon the request of SARS, fully co-operate with and assist SARS during any such temporary take-over of the Services.
   3. To the extent that SARS exercises its right to assume the rendering of the Services or part thereof itself, or by a third party service provider, the Service Provider shall not be entitled to any fees and/or payment during the period for which SARS or the third party assumes the Services, SARS shall not, under any circumstances by virtue of any assumption, be obliged or deemed or required to take over or assume responsibility for the conduct of the Service Provider's business operations.
5. **CONFLICT OF INTERESTS**
   1. Neither the Service Provider nor the Key Personnel shall have any interest or receive any remuneration in connection with the performance of the Services, except as provided for in this Agreement.
   2. The Service Provider must at all times act impartially and ethically, and where applicable, act in accordance with the code of ethics / conduct of its profession.
   3. 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.
   4. 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.
6. **NON-SOLICITATION**

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

**SIGNED AT PRETORIA BY THE SARS’S AUTHORISED REPRESENTATIVES**

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| --- | --- |
| **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**  **Moalosi Borotho**  **Acting Group Executive**  **Procurement**  **Date:** | **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** |

**SIGNED BY THE SERVICE PROVIDER’S AUTHORISED REPRESENTATIVE**

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

**NAME:**

**CAPACITY:**

**PLACE:**

**DATE**