**SERVICES AGREEMENT** **IN RESPECT OF THE APPOINTMENT OF A SERVICE PROVIDER FOR THE DEVELOPMENT AND IMPLEMENTATION OF A BUSINESS CONTINUITY MANAGEMENT PROGRAMME**

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 68/2018)** for the development and implementation of a Business Continuity Management Programme (the “Services”), as more fully described therein.
  2. The Service Provider has submitted a proposal in response to **RFP 68/2018** (“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. “**Agreement**” means this Agreement and the annexures hereto;
      2. “**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;
      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 output, outcome, report, documented analysis, strategy, results and other feedback produced / provided by the Service Provider for, or on behalf of, SARS as part of the Services pursuant to this Agreement;
      6. “**Key Account Manager**” means a person designated by the Service Provider, as contemplated in **Clause 6.1.1**, 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)**,notwithstanding date of signature;

* + 1. “**Key Personnel**”means the Lead Implementer contemplated in **RFP 68/2018**, together with those members of staff of the Service Provider and/or its agents who have been presented to SARS in the Proposal and assigned by the Service Provider to provide 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 Lehae La SARS, 299 Bronkhorst Street, Nieuw Muckleneuk, Pretoria;
    4. “**RFP 68/2018**” refers to SARS’s invitation to service providers to submit tenders for the development and implementation of a Business Continuity Management Programme, as contemplated therein, which RFP is incorporated herein by reference;
    5. “**Services**” means the development and implementation of a Business Continuity Management Programme by the Service Provider to SARS, as contemplated in **RFP 68/2018**, 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;
    6. “**Service Provider**” means **(TO BE ADDED)**,a company with registration number **(TO BE ADDED)** incorporated in accordance with the Laws of South Africa with its registered and principal address at **(TO BE ADDED)**; and
    7. “**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; 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 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.
  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. 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.
  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 may 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. 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 by SARS for the development and implementation of a Business Continuity Management Programme contemplated in **RFP 68/2018**, and has accepted such appointment.
   2. 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**

* 1. This Agreement will be effective from theEffective Date and will endure for a period of eighteen (18) months, until Termination Date, unless otherwise earlier terminated in terms this Agreement.

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

* 1. The Service Provider will provide the Services to SARS, subject to the terms and conditions contained in this Agreement.
  2. The Service Provider must, within five (5) days of the Effective Date, based on the technical approach or methodology proposed in its Proposal, develop a detailed project execution plan for approval by SARS. The said project execution plan must comply with the minimum requirements below:
     1. The plan must reflect–
        1. detailed activities, including skills transfer, to be performed by the Service Provider under each phase of the Services;
        2. the sequence and timing of activities of the Service Provider;
        3. any information or directive required of SARS by the Service Provider;
        4. Deliverables to be produced with each activity;
        5. subject to the approved and awarded pricing, a breakdown of the cost of the resources assigned to the production of the Deliverables under each phase; and
        6. any other information which may be relevant according to the professional judgment of the Service Provider: Provided it is relevant to the Services.
  3. The project execution plan contemplated in **Clause 5.2** above must be approved by the SARS Designated Representative in writing before execution.
  4. The Service Provider may not deviate from the project execution plan without the prior written consent of the SARS Designated Representative.

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

* + 1. Ensure that its Key Personnel devote such time, attention and skill in performing the Services as may be reasonably required for the proper discharge of its duties under this Agreement;
    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. In the event of any doubt regarding what constitutes highest professional standards, the Parties shall request a directive from the relevant regulatory authority;
    4. Act impartially and ethically at all times, and where applicable, act in accordance with the code of ethics / conduct of its profession;
    5. Comply with all Applicable Law;
    6. Execute the Services as contemplated in **RFP 68/2018**;
    7. Implement the approved skills transfer plan as submitted with its Proposal; and
    8. Monitor the implementation of the Services against set targets, costs, and time frames.
  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 equal or better credentials, in line with the timeframes then stipulated by SARS.

* 1. **DELIVERABLES** 
     1. The Service Provider shall present Deliverables to SARS for acceptance and signoff.
     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 thereof.

* + - 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, where after 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.
      3. The Service Provider undertakes to duly consider the comments and input of SARS and to amend / improve the Deliverable as per the feedback of SARS.
    1. In the event a 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 28** below; or
       3. reject the Deliverable for non-conformity and declare a dispute to be dealt with in terms of **Clause 22**.
  1. **AUDIT RIGHTS**
     1. The Service Provider shall, for the duration of this Agreement and for a period of five (5) years after termination, maintain a complete audit trail of the Services performed under this Agreement, sufficient to permit a complete audit thereof.
     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. **PENALTIES**
     1. If the Service Provider fails to perform the Services within the specifications or turnaround times specified in this Agreement or the approved project execution plan contemplated in **Clause 5.2** above due to reasons solely attributable to the Service Provider, SARS shall, without prejudice to its other remedies under this Agreement, be entitled to deduct, as a penalty for non-performance, delayed performance or defective performance, an amount of up to ten percent (10%) of the amount due to the Service Provider in relation to the Deliverables or part of the Services out of which the performance failure triggering the penalty arose.
     2. A penalty is a non-performance, delayed performance or defective performance fee, and is payable regardless of the fact that the Service Provider ultimately delivers the pertinent performance.
  3. **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 its full co-operation to other third party service providers involved with, or contracted by SARS to assist with a matter that forms the subject of the Services or for purposes contemplated in **Clause 7.1.5** below.
     2. It is, however, agreed that the relationship between the Service Provider and a third party service provider will not constitute a partnership, and that neither the Service Provider nor the third party service provider will be required to manage or monitor the other party’s performance, except where the third party service provider is appointed for purposes contemplated in **Clause 7.1.5** below.

1. **SARS’S 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. Acting as a central point of contact between SARS and the Service Provider;
        2. Authorising the Service Provider to start with the Services or any part thereof;
        3. Approving invoices submitted by the Service Provider;
        4. Convening meetings with the Service Provider;
        5. Providing feedback to the Service Provider on Deliverables; and
        6. 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 Key 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.

* + 1. Where applicable, ensure that it designates employees for skills transfer purposes, and furnishes the Service Provider with names of such designated employees.
    2. 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. **PAYMENT**
   1. In consideration for the provision of the Services, SARS shall pay the Service Provider fees in accordance with **Annexure A (TO BE ADDED)** hereto, which fees are inclusive of VAT.
   2. **Annexure A** represents the full cost of the Services to SARS, and the Service Provider shall not be entitled to recover any other cost from SARS.
   3. Subject to **Clauses 9** and **10** below, SARS shall pay all undisputed invoices within thirty (30) days after SARS receives such invoice, provided the invoice is accurate and meets all legislative and other requirements in terms of this Agreement.
   4. SARS may set off any amounts due to SARS in terms of this Agreement against any amounts payable by SARS to the Service Provider.
2. **INVOICING AND RECORDS**
   1. The Service Provider shall invoice SARS for Services rendered pursuant to this Agreement on a frequency and terms indicated in **Annexure A1** **(to be attached hereto after award)**: Provided that such invoice may only be issued by the Service Provider to SARS once the pertinent Deliverables or payment milestone indicated in **Annexure A1** have been satisfactorily achieved by the Service Provider, and accordingly accepted and signed off by SARS.
   2. Each invoice shall contain or have attached such information, and be in such format and on such media as SARS may reasonably request and, at the minimum contain-
      1. a statement of the total amount due to the Service Provider for the Services, which must correspond with **Annexure A1**; a schedule describing the Services rendered during the relevant invoicing period; and a document depicting sign off by SARS on the pertinent Deliverables or payment milestone; and
      2. a SARS purchase order number.
   3. The Service Provider shall verify that each invoice is complete and accurate and that it conforms to the requirements of this Agreement (including by carrying out detailed checks of each invoice) before issuing the invoice to SARS.

* 1. The Service Provider shall deliver all invoices to the SARS Designated Representative and copies to other SARS departments as may be instructed to do so from time to time by SARS.
  2. The Service Provider shall maintain complete and accurate records of, and supporting documentation for, the amounts invoiced to and payments made by SARS hereunder.
  3. Within ten (10) days after SARS’s request, the Service Provider shall provide SARS with any documentation or information reasonably required by SARS in order to verify the Service Provider’s compliance with the requirements of this Agreement.

1. **DISPUTED CHARGES AND INVOICING ERRORS**

* 1. SARS may withhold payment of fees that SARS disputes in good faith or, if the disputed fees have already been paid, SARS may withhold an equal amount from a later payment, including disputes in respect of an error in an invoice or an amount paid. If SARS withholds any such amount-
     1. SARS shall promptly notify the Service Provider that it is disputing such amount, providing a reasonable explanation of the rationale therefore; and the Parties shall promptly first address such dispute in accordance with this **Clause 10**;
     2. If the dispute relates to (or equals in the case of disputed amounts that have already been paid) only a percentage of the invoiced amounts, then SARS shall pay the undisputed amount in accordance with **Clause 8.3** above; and
     3. If an invoice is identified as incorrect, then the Service Provider shall either issue a correct invoice if the amount has not yet been paid, or make a correction on the next invoice if the amount has been paid.

* 1. Any dispute arising in terms of **Clause 10.1** above and which remains unresolved for five (5) Business Days after it has arisen, shall be referred by either Party to SARS’s Group Executive: Procurement and the Service Provider’s Key Accounts Manager or persons of equivalent office or their designees for resolution.
  2. The persons mentioned in **Clause 10.2** above shall meet within five (5) Business Days of the referral of the dispute, to resolve such dispute.
  3. In the event that the dispute remains unresolved after ten (10) days of its referral to the persons mentioned in **Clause 10.3**, either Party shall be entitled to refer the dispute for resolution in accordance with the provisions of **Clause 22** below.

1. **MEETINGS AND REPORTS**
   1. The Parties agree that meetings between the Parties will be arranged on the following basis-

|  |  |  |
| --- | --- | --- |
| **Type of meeting** | **Frequency** | **Purpose of the meeting** |
| Progress updates | Weekly or as often as is determined to be necessary by SARS | Reviewing the progress of the Services within the relevant phase. |
| Service relationship  review | As and when requested by either Party | To report on the overall progress of the Services and to discuss service execution issues i.e. problems, risks, administrative issues etc. |
| *Ad hoc* | On reasonable request | To discuss any issues relating to the Services. |

* 1. The Service Provider shall be responsible for minuting of meeting proceedings.
  2. 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.
  3. 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 between the Parties.
  4. In addition to the progress updates mentioned in **Clause 11.1** above, the Service Provider shall, at no cost to SARS, provide a formal monthly progress report and a comprehensive consolidated report after every phase of the Business Continuity Management Programme. The monthly progress report must address all issues in the Project execution plan relating to the project phase which the Service Provider is executing, including progress made by the Service Provider regarding implementation of the Skills Transfer Plan contemplated in this Agreement.
  5. It is the responsibility of the Service Provider to supply accurate and relevant information and reports.
  6. 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.

1. **INTELLECTUAL PROPERTY RIGHTS**
   1. Subject to **Clause 12.2** 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 Key Personnel and which relate to the Services will vest exclusively in SARS. To this end, the Service Provider irrevocably and in perpetuity transfers, makes over and assigns to SARS all such Intellectual Property rights which may come into existence, which transfer, make over and assignment is accepted by SARS.
   3. In addition to the provisions of **Clause 12.2** 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).
   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 Service Provider shall not, during the term of this Agreement and after its expiration, disclose any proprietary or confidential information (including personal information) relating to the Services, this Agreement or SARS’s business or operations to any third party without the prior written consent of SARS.
   2. “Proprietary information and confidential information” shall for purposes of this Agreement mean, but shall not be limited to trade secrets, know-how, technology, techniques or methods of operating employed by SARS, taxpayer information; SARS Confidential Information as defined in the Tax Administration Act, 2011 (Act No. 28 of 2011) as well as any information considered confidential in terms of any other Act administered by the Commissioner for SARS, internal SARS policies and/or employee details to which the Service Provider may become privy during the contract term.
   3. Where the Service Provider is not certain about the confidentiality or otherwise of information, it shall treat the information as confidential until otherwise advised by 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 secure and confidential. The Service Provider undertakes not to disclose such information without first obtaining the written consent of SARS.
   5. Where the Service Provider is called upon to disclose confidential SARS information due to legal process, the Service Provider shall where legally permitted within two (2) days of being so called upon notify SARS of such an event.
   6. The Service Provider shall ensure that its personnel involved with the rendering of the Services to SARS individually signs the SARS Oath / Affirmation of Secrecy before commencing with execution of this Agreement, and submit the original thereof to the SARS Designated Representative.
   7. The Service Provider shall not remove from SARS’s premises any documents or materials relating to the Services or SARS’s business without first obtaining the written consent of SARS.
   8. The Service Provider must 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 (including relevant support staff) 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 the subsistence of 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.
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.
   2. Where SARS establishes the Service Provider’s Key Personnel to be a security risk, SARS will inform the Service Provider accordingly and the Service Provider shall replace such Key Personnel with another one of equal or better qualification(s) and experience.
4. **LIABILITY OF THE PAR****TIES**
   1. The Service provider shall be liable to SARS for any direct damages incurred by SARS due to failure by the Service Provider 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 gross negligence, wilful misconduct, a breach of confidentiality provisions stipulated in this Agreement; infringement of a third party’s intellectual property rights, or a criminal act committed by the Service Provider or any Key Personnel of the Service Provider.
5. **INDEMNITY**
   1. The Service Provider hereby indemnifies, holds harmless and agrees to defend SARS and its officers, employees, agents, successors-in-title, and assigns, from any and all Losses arising from, or in connection with, any of the following-
      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 its Key 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 its Key Personnel; and
      4. Third party claims arising from damage to property owned or leased by SARS or a third party caused by the acts or omissions of the Service Provider or its Key Personnel.
6. **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 has the requisite insurance to cover any form of claim that may be instituted against it as a result of it executing this Agreement; 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 this Agreement and that Defaulting Party fails to remedy such default or breach within seven (7) Business Days after receipt of a written notice given by the other Party (the “Aggrieved Party”) calling upon the Defaulting Party to remedy such default or breach, then the Aggrieved Party may, without prejudice to any other rights which it may have in terms hereof or at law-
      1. claim specific performance;
      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
      3. claim any money due and payable in terms of this Agreement, and claim damages from the Defaulting Party.
   2. The remedies set out in this Clause shall not be construed to be exhaustive of any other remedies available to the Parties.
2. **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 seven (7) 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 seven (7) days from 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);
      4. commits any acts of insolvency set out in section 8 of the Insolvency Act, 1936 (Act No. 24 of 1936);
      5. is placed under business rescue proceedings, as contemplated in Chapter 6 of the Companies Act, 2008 (Act No. 71 of 2008);
      6. fails to satisfy a final judgment against the Service Provider for a period of ten (10) Business Days or more after it comes to the notice of the Service Provider;
      7. makes any arrangement or compromise with its creditors generally or ceases to carry on business; and/or
      8. Fails to comply with **Clause 13** above.

* + 1. SARS shall have no liability to the Service Provider with respect to a termination under this **Clause 19.1**, 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, at any time 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 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 19.2.2** 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 19.2** 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, war, rebellion, riot, civil commotion, lockout, interference by trade unions, suspension of labour, fire, accident, or (without regard to the foregoing enumeration) of any circumstances arising or action taken beyond the reasonable control of the Parties hereto preventing them or any of them from the performance of any obligation hereunder (any such event hereinafter called “*force majeure* event”) then the Party affected by such *force majeure* event shall be relieved of its obligations hereunder during the period that such *force majeure* continues.
   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* 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.
2. **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.
3. **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, and 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-*** 
     1. **(TO BE ADDED)**
  2. SARS’s email address for communications, and/or correspondences in connection with the performance of the Services: **(TO BE ADDED)**
  3. The Service Provider’s email address for communications, and/or correspondences in connection with the performance of the Services: **(TO BE ADDED)**
  4. 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.
  5. 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.*
  6. 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.
  7. 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.
  8. 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. **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. **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. **Costs**

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

* 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. **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. **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 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. **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. **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 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:
        1. Full details and business references of the subcontractor;
        2. A full description of the part of the Services it proposes for subcontracting;
        3. Full details of how the Service Provider will manage the performance of the Services by the subcontractor;
        4. The value of the Services proposed to be subcontracted, expressed as a percentage;
        5. An acceptable document depicting the B-BBEE status level of the subcontractor; and
        6. A CSD report for the proposed subcontractor.
     3. SARS reserves the right to call upon additional information when assessing a request for subcontracting.
     4. Notwithstanding the provisions of this **Clause 24.9** 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.
     5. Subject to the provisions of **Clause 24.9.1** above,the Service Provider shall ensure that a subcontracting agreement entered into between the Service Provider and the subcontractor binds the subcontractor to the terms and conditions of this Agreement.
     6. Nothing contained herein shall create a contractual relationship between SARS and the subcontractor.

* 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(s) 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. **Whole Agreement and Amendment**

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

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 of this Agreement, the Service Provider is and will remain compliant throughout the duration thereof with all Applicable Law 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 forthwith, without any liability except payment of fees for Services rendered.
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 “B-BBEE Act”], as amended from time to time and the Codes of Good Practice issued in terms of the B-BBEE Act.
   2. During the currency of this Agreement the Service Provider shall remain BEE compliant and at least maintain the B-BBEE status level it had when the tender **(RFP 68/2018)** was awarded.
   3. SARS may, in writing, from time to time call upon the Service Provider to provide proof of its B-BBEE status.
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 one hundred and eighty (180) 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 service provider 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. **NON-SOLICITATION**
   1. During the term of this Agreement and for two (2) years after termination for whatever reason, neither Party may, without the prior written consent of the other Party, either directly or indirectly, solicit or attempt to solicit, any person employed by a Party: Provided that, either Party may employ any person employed by a Party, where the person employed responded to a publicly accessible advertisement or similar online publicity without being directly solicited by the other Party.
6. **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 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.
   3. The Service Provider warrants that there are no contracts, restrictions or other matters which would interfere with its ability to discharge its obligations under this Agreement. If, while executing its duties and responsibilities under this Agreement, the Service Provider becomes aware of any potential or actual conflict between its interests and those of SARS, the Service Provider shall immediately inform SARS. Where SARS forms the view that such a conflict does or could exist, it may direct the Service Provider to take action(s) to resolve that conflict, and the Service Provider shall comply with that instruction.
7. **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 indicate the possibility of corrupt activities, improper or fraudulent practices, 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. In such instances, the Service Provider undertakes to use all reasonable efforts to facilitate any such investigation or enquiry. In the event that an act of corruption, fraud or other criminal activity is proven, SARS will be entitled, on written notice to the Service Provider, to immediately terminate this Agreement.
8. **INSURANCE**
   1. The Service Provider shall, for the duration of this Agreement, have and maintain in force adequate insurance cover consistent with acceptable and prudent business practices and acceptable to SARS, which shall include, without limitation, professional indemnity insurance cover against all actions, suits, claims or other expenses arising in connection with damages or loss for which the Service Provider may be liable in terms of this Agreement.
   2. The Service Provider shall provide SARS with certificates of insurance, evidencing that the insurance cover required under this Agreement are maintained in force, on the date of signing this Agreement and provide evidence of renewal of such insurance at least three (3) Business Days prior to expiration thereof.
   3. In case of loss or damage or other event that requires notice or other action under the terms of any insurance coverage set out above, the Service Provider shall be solely responsible to take such action. The Service Provider shall provide SARS with contemporaneous notice and with such other information as SARS may request regarding the event.
   4. Without limiting the generality of SARS’s rights and remedies in this Agreement, in the event of a failure by the Service Provider to take out or maintain any insurance required hereunder, or to provide evidence of renewal within the period indicated herein, SARS may, at its discretion, purchase the requisite insurance and deduct or offset the costs thereof from any monies due to the Service Provider by SARS under this Agreement.

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

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| --- | --- |
| **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**  **MOALOSI BOROTHO**  **ACTING GROUP EXECUTIVE:**  **PROCUREMENT**  **DATE:** | **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**  **BONGIWE MABANGA**  **GROUP EXECUTIVE: GOVERNANCE, RISK AND QUALITY**  **DATE:** |
|  |  |

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

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

**NAME:**

**CAPACITY:**

**PLACE:**

**DATE**