**SERVICES AGREEMENT IN RESPECT OF THE PROVISION OF**

**MARKETING AND ADVERTISING SERVICES**

Between

**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)

(hereinafter referred to as “**SARS**”)

and

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

(herein represented by its authorised representative who warrants

that s/he is duly authorised to do so by virtue of a Resolution of the Directors)

(hereinafter referred to as “**the Service Provider**”)

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1. **INTRODUCTION**

* 1. SARS has issued a tender under request for proposal (“RFP 004/2019”)for the provision of marketing and advertising services, as more fully described therein.
  2. The Service Provider has submitted a proposal in response toRFP 004/2019(“**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 Services Agreement, the RFP, together with all annexures hereto, including all amendments, variations, and/or substitutions to the Agreement, which have been reduced to writing and signed by the duly authorised representatives of the Parties;
      2. **“Amount at Risk”** means the maximum percentage of the Service Provider’s total monthly invoice, which may be at risk in respect of Service Credits due to SARS resulting from any Service Level Failures;
      3. **“Applicable Law”** means any of the following to the extent applicable to the Service Provider 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;
      4. **“Brief”** means a specific written service instruction issued by SARS to the Service Provider to render the Services or part thereof, including *ad hoc* services as may be stipulated in the Brief;
      5. **“Business Day(s)”** means any day between and including Monday and Friday, except public holidays in South Africa;
      6. **“Commercially Reasonable Efforts”** means taking such steps and performing in such a manner as a well-managed company would undertake where such company was acting in a prudent and reasonable manner to achieve the particular result for its own benefit, provided always that such steps are within reasonable control of the Party;
      7. **“Deliverable”** means any report, results, documented analysis, strategy, findings, presentation, plan, product, creative conceptualisation, branding, material and other feedback provided as a product of the provision of the Services;
      8. **“Effective Date”** means **(TO BE ADDED)** irrespective of the signature date of this Agreement;
      9. **“Key Personnel”** means those members of staff, engagement partners and/or agents of the Service Provider who have been presented and assigned to SARS in the Service Provider’s Proposal, to execute the Services, and on the strength of whose expertise or capability RFP 004/2019 was awarded to the Service Provider;
      10. **“Losses”** means all losses, liabilities, costs, expenses, fines, penalties, damages and claims, and all related costs and expenses as determined in Law;
      11. **“Parties”** means SARS and the Service Provider and “Party” as the context requires is a reference to any one of them;
      12. **“RFP”** subject to any contrary indication, is reference to SARS’s Request for Proposals No. 004/2019 for the provision of marketing and advertising services, which is incorporated herein by reference thereto;
      13. **“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;
      14. **“SARS Authorised Representative”** means the SARS employee designated / appointed in terms of this Agreement, or his/her appointed delegate, as the person who will interface with the Service Provider on all matters relating to the general administration of this Agreement, who will manage the overall performance of the Service Provider over the contract term and to whom all communications regarding this Agreement must be addressed;
      15. **“Senior Accounts Manager”** means a person designated by the Service Provider, as contemplated in **Clause 8.1.1**, who shall also be responsible for the management of the delivery of the Services in terms of this Agreement, and to whom all communications regarding this Agreement shall be sent;
      16. **“Service Level”** means the minimum performance standard of compliance which must be met by the Service Provider when rendering the Services;
      17. **“Service Provider”** means **(TO BE ADDED)**, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_incorporated in accordance with the Laws of South Africa with registration number **(TO BE ADDED)** and with its registered and principal place of businessat **(TO BE ADDED)**;
      18. **“Services”** means provision by the Service Provider to SARS of services as more fully outlined in the RFP and contemplated in this Agreement, and includes, to the extent contemplated in the RFP, *ad hoc* services and 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;
      19. **“Termination Date”** means **(TO BE ADDED)**; and
      20. **“VAT”** means Value-Added Tax levied in terms of the Value-Added Tax Act, 1991 (Act No. 89 of 1991).
   3. 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.
   4. 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 Interpretation 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. SARS has appointed the Service Provider to provide the Services on a non-exclusive basis, which appointment the Service Provider has accepted, on the terms and conditions set forth hereunder.
  2. The appointment of the Service Provider is subject to the availability and assumption of proposed roles of all Key Personnel. SARS reserves the right to cancel this Agreement if, for any reason, any of the Key Personnel become unavailable to fulfil the Service Provider’s obligations herein, and a substitute acceptable to SARS is not available.

1. **DURATION**
   1. This Agreement commences on the Effective Date and shall endure for a period of thirty six (36) months until the Termination Date, unless terminated earlier in accordance with the terms of this Agreement.
2. **APPROACH IN THE PERFORMANCE OF THE SERVICES**
   1. This Agreement provides a framework for, and the general terms and conditions applicable to the Services.
   2. The Service Provider may only render the Services following a Brief, which must be executed subject to this Agreement. As contemplated in the RFP, the scope of Services envisages retainer based and *ad hoc* based Services. A Brief may therefore comprise of Services contemplated under retainer and/or *ad hoc* component(s) of the Services*.* The following engagement protocol is applicable:
   3. Each Brief shall indicate the following minimum requirements-
      1. Details, specifications and classification (i.e. whether retainer or *ad hoc* based) of the Services requested from the Service Provider;
      2. The timeframe within which the Services must be performed, together with the requisite Deliverables;
      3. Any additional Service Levels applicable to the Services procured in terms of the Brief and the corresponding Service Level Failure penalties;
      4. The costs of the Services, in so far as *ad hoc* Services are concerned, and which must be in accordance with the SARS Approved Pricing Schedule (**Annexure A**);
      5. The name/s and signatures of the duly delegated representatives of SARS’s Communication business unit and the Finance department: Provided that this requirement shall not be applicable to a Brief that **exclusively** solicits retainer based Services, wherein the Brief may be signed off on behalf of SARS by the SARS Authorised Representative; and
      6. Any additional conditions which may be applicable to the specific Brief.
   4. The Brief must be accepted by the Service Provider in writing before implementation.
   5. The Service Provider may not implement any Brief which does not comply with the provisions of **Clauses 5.3 and 5.4** above. 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 Brief.
3. **PRINCIPLES GOVERNING SERVICE LEVELS**
   1. **Service Levels List**

**Annexure B** lists Service Levels that will apply to the performance of the Services. The Service Provider shall comply with the prescribed Service Levels as of the Effective Date.

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

* + - * 1. the cause of the Service Level Failure; and
        2. a summary of the steps the Service Provider has taken to resolve the Service Level Failure and reduce, to the extent reasonably possible, the likelihood that such Service Level Failure will be repeated.
    1. Any failure by the Service Provider to perform any of the obligations set forth in this **Clause 6.2** during any given month will also be deemed to be a Service Level Failure.

* 1. **Rules Governing Service Credits**

* + 1. **General**

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

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

* + - 1. A price adjustment by means of a Service Credit due to SARS is without prejudice to and shall not limit any right SARS may have to terminate this Agreement and/or seek damages or other non-monetary remedies at Law resulting from, or otherwise arising in respect of, such Service Level Failure and any resulting termination of the Agreement.
      2. Notwithstanding the provisions of **Clauses 6.3.2.1** and **6.3.2.2** above, any claim for damages resulting from such Service Level Failure, in respect of which a Service Credit has already been effected, shall be reduced by the amount of that Service Credit.
    1. **Amount at Risk**
       1. The “Amount at Risk” with respect to Service Credits due by the Service Provider for Service Level Failures shall not exceed twenty per cent (20%) of the total amount invoiced to SARS in respect of such month,irrespective of the number of Service Level Failures.

* + - 1. Subject to **Clause 6.3.3.1**, the Service Provider shall credit the value of the percentage of the Amount at Risk (Service Credit), as indicated in **Annexure B**, in respect of each Service Level Failure to SARS.
    1. **Calculation of Service Credits**
       1. For each Service Level Failure the all-inclusive monthly amount payable to the Service Provider shall be reduced by the applicable Service Credits.
       2. If a single triggering event directly causes two (2) or more Service Level Failures in any month and but for such event, none of such Service Level Failures would have occurred, then SARS shall be entitled to receive only a single Service Credit for a single Service Level Failure (which SARS may select in its sole discretion).
       3. Service Credits arising in respect of the last month of the Agreement term shall be withheld out of the final payment due.
  1. **Excused Non-Performance**

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

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

1. **SARS’S OBLIGATIONS**
   1. SARS undertakes to:
      1. nominate a SARS Authorised Representative who will be responsible for, amongst others-
         1. acting as a central point of contact between SARS and the Service Provider;
         2. authorising the Service Provider to start with the Services;
         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. provide the Service Provider with the necessary documents and information in order for the Service Provider to render the Services;
      3. take timeous management decisions and give necessary approvals or authorisations to enable the Service Provider to fulfil its obligations under this Agreement;
      4. ensure that it designates employees for skills transfer purposes, and furnishes the Service Provider with the names of such designated employees;
      5. ensure that the designated employees contemplated above avail themselves and cooperate with the Service Provider for skills transfer purposes; and
      6. 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.
   2. Subject to the Key Personnel’s compliance with SARS’s access and security policies, provide the Key Personnel with access to the premises and facilities of SARS if necessary for the purposes of rendering the Services. No telephone, email and/or internet facilities will be provided to the Service Provider by SARS.
2. **SERVICE PROVIDER’S OBLIGATIONS**
   1. The Service Provider shall-
      1. ensure that the same Senior Accounts Manager contemplated in its Proposal is duly assigned as such, and assumes the attendant role and responsibilities for the duration of this Agreement;
      2. comply with this Agreement in executing the Services;
      3. ensure continuity of the Services to SARS, further that the 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;
      4. not change or replace the Key Personnel for the duration of this Agreement, except with the prior written consent of SARS. In this regard:
         1. 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;

* + - 1. 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. Such proposal must include the *Curriculum Vitae* of the proposed substitute;
      2. SARS may only approve a substitute which has similar or better qualifications, skills and experience; and
      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. provide the Services to SARS with due care, skill and diligence in accordance with the highest professional service standards and principles;
    2. act impartially and ethically at all times, and where applicable, act in accordance with the code of ethics / conduct of its profession;
    3. monitor the implementation of the Agreement against set targets, costs and timeframes;
    4. take Commercially Reasonable Efforts to prevent, overcome and mitigate any adverse effects that might ensue, to the extent required to achieve the relevant outcome;
    5. ensure that it adheres to written and reasonable requests or instructions by the SARS Authorised Representative or his/her designee;
    6. at its own expense, implement the approved skills transfer plan to designated employees of SARS. The Service Provider must, in this regard:
       1. submit a skills transfer plan to the SARS Authorised Representative, as contemplated in the RFP; and
       2. obtain the written approval of the SARS Authorised Representative or SARS representative indicated prior to implementation of the skills transfer plan;
    7. comply with all Applicable Law; and
    8. maintain timesheets in so far as *ad hoc* Services are concerned, which shall be in a format approved by SARS in writing.
  1. **Deliverables**
     1. The Service Provider shall present every Deliverable to SARS for acceptance and sign-off.
     2. SARS shall have the right to review and accept or reject all Deliverables and/or any components of such Deliverables to be provided by the Service Provider to SARS under this Agreement, or a Brief in particular.
     3. The Service Provider undertakes to avail itself to liaise with SARS regarding any queries arising with regard to a Deliverable.

* + 1. SARS undertakes not to unreasonably withhold the sign-off of any Deliverable. However, should SARS not accept a Deliverable, SARS will provide the Service Provider with written notice of its non-acceptance, as well as reasons therefore. The Service Provider must correct any deficiencies raised by SARS within five (5) Business Days (or such other shorter period as the circumstances may require) of receiving SARS's notice, where after the Deliverable will be resubmitted to SARS for another review.
    2. If SARS finds that the Service Provider was still unable to correct a deficiency, then SARS may in its sole discretion elect to–
       1. direct the Service Provider to continue its efforts to make the Deliverable acceptable to SARS, in which case the Service Provider shall continue such efforts; or
       2. invoke step-in rights as contemplated in **Clause 27** below; or
       3. reject the Deliverable for non-conformity and declare a dispute to be dealt with in terms of **Clause 19** below.

1. **MEETINGS AND REPORTING**
   1. The Senior Accounts Manager and SARS Authorised Representative or designee shall meet for meetings, in the manner prescribed in the RFP.
   2. The Service Provider shall be responsible for the correct recording of the meeting proceedings.
   3. The Service Provider shall deliver the record of the meeting proceedings to SARS, as contemplated in the RFP.
   4. SARS shall have the right to comment on and amend the record. SARS’s comments and amendments shall be discussed and/or confirmed at the next meeting between the Parties.
   5. The Parties may hold *ad hoc* meetings, at the reasonable request of either Party.
   6. **Clauses 9.2** and **9.3** shall be subject to **Clause** **33.12**.
   7. Reporting shall also be done by the Service Provider in the manner prescribed in the RFP.
   8. Information provided by the Service Provider in the reports or meetings should be accurate, relevant and sufficiently detailed to provide assurance that the Services or Brief(s) are on schedule.
2. **PRICING**
   1. The Service Provider will invoice SARS for Services rendered according to **Annexure A**.
   2. The monthly retainer fee stipulated in **Annexure A** represents the total amount payable per month to the Service Provider in respect of retainer based Services. The Service Provider will not be entitled to claim any additional payment in this regard, irrespective of the amount of time expended on such (retainer based) Services.
   3. Any fees or cost relating to *ad hoc* Services must be approved by SARS, prior to being incurred.
3. **INVOICING**
   1. The Service Provider shall invoice SARS for Services rendered monthly. It is specifically recorded that an Organ of State, SARS does not pay fees upfront, but pays for services actually rendered.
   2. Each invoice shall contain and be accompanied by-
      1. A description of the Services rendered;
      2. The amount of the Service Credits credited to SARS for Service Level Failures calculated with reference to the Service Levels set out in **Annexure B** / a Brief;
      3. A document depicting sign-off by SARS on the pertinent Deliverables;
      4. The Service Provider’s timesheets, in so far as *ad hoc* Services are concerned; and
      5. Any such details as may be reasonably requested by SARS from time to time.
   3. The Service Provider shall verify that each invoice is complete and accurate and that it conforms to the requirements of this **Clause 11** before issuing the invoice to SARS.
   4. The Service Provider shall deliver all invoices to the SARS Authorised Representative and copies to other SARS departments as may be instructed to do so from time to time by SARS.
   5. SARS shall pay undisputed amounts in an invoice owed to the Service Provider within thirty (30) days after SARS receives such invoice, if the invoice is accurate and meets the requirements of this Agreement.
   6. Should SARS query an item in an invoice, the Service Provider shall within two (2) days after a written request by SARS, provide SARS with any other documentation or information reasonably required by SARS in order to verify the accuracy of the amounts due on an invoice.

* 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. 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.
  2. All costs incurred in performing audits under this **Clause 11** will be borne by SARS unless audit findings reveal the Service Provider’s non-compliance with the terms of this Agreement and/or Applicable Law, in which event such costs will be borne by the Service Provider.

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 12** of this Agreement;
      2. If the dispute relates to (or equals in the case of disputed amounts that have already been paid) only a percentage of the invoiced amount, then SARS shall pay the undisputed amount in accordance with **Clause 11.5** above; and
      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.
   2. Any dispute arising in terms of **Clause 12.1** 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 Senior Accounts Manager or their designees for resolution.

* 1. The SARS’s Group Executive: Procurement and the Service Provider’s Senior Accounts Manager or their designees shall meet within five (5) Business Days of the referral of the dispute to resolve such dispute.
  2. In the event that the dispute remains unresolved after ten (10) days of its referral to the persons mentioned in **Clause 12.3**, either Party shall be entitled to refer the dispute for resolution in accordance with the provisions of **Clause 19** below: Provided that **Clause 19.1** will not apply to disputes contemplated in this **Clause 12**.

1. **RELATIONSHIP BETWEEN THE PARTIES**
   1. The Service Provider is an independent contractor, and under no circumstances will it be considered a 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, contractors or agents, and the entire management, direction and control of all such persons will be the responsibility of the Service Provider.
2. **THIRD PARTY COOPERATION**
   1. As part of the Services, where appropriate and when requested by SARS to do so, the Service Provider shall provide full co-operation to any third party that might be contracted by SARS on the same engagement or for purposes contemplated in **Clause 7.1.6** above, to the extent that the co-operation does not create a conflict of interests, breach of professional ethics or compromise the Service Provider’s Intellectual Property rights or interests.
   2. It is, however, agreed that the relationship between the Service Provider and any such party will not constitute an alliance or partnership and that neither the Service Provider nor the third party will be required to perform quality checks on the work of the other party, except where the third party is appointed for purposes contemplated in **Clause 7.1.6** above.
3. **SECURITY VETTING OF THE KEY PERSONNEL**
   1. SARS reserves the right at its sole and absolute discretion to perform a security check (vetting) on the Key Personnel involved with the performance of the Services.
   2. Where SARS, in its sole discretion, finds any of the Key Personnel to be a security risk, including where they are found to have criminal records, SARS will inform the Service Provider accordingly in writing and the Service Provider will be required to immediately remove such a person.
   3. The replacement of such person shall take place in accordance with **Clause 8.1.4** above, and within such reasonable period after having been so informed by SARS, so as to avoid affecting the continuity of the Services. Failure to do so will constitute a Service Level Failure.

1. **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” (hereinafter collectively referred to as “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 and 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. The Service Provider shall ensure that its personnel and necessary third party suppliers 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 Authorised Representative.
   4. 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.
   5. 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.
   6. Where the Service Provider is threatened with legal action which necessitates disclosure of Confidential Information of SARS, it shall give SARS written notice of such legal action within two (2) days of receipt of the threatened legal action. The Service Provider shall, together with the notice referred to above, deliver to SARS all documentation received or submitted in connection with the threatened legal action.
2. **INTELLECTUAL PROPERTY RIGHTS**
   1. Subject to **Clause 17.2** 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 as part of the Services, which transfer, make over and assignment is accepted by SARS.
   3. In addition to the provisions of **Clause 17.2** 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 shall indemnify and hold 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 execution of this Agreement.
3. **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.

* 1. The remedies set out in this Clause shall not be construed to be exhaustive of any other remedies available to the Parties.

1. **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.

* 1. If the dispute has not been resolved by negotiation as contemplated above or **Clause 12** where applicable, 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 in 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. **TERMINATION**
   1. **Termination for cause by SARS**
      1. SARS may, by giving notice to the Service Provider, terminate this Agreement or the rendering of the Services in whole or in part, as of a date set out in the notice of termination, in the event that the Service Provider fails to comply with the provisions in **Clause 16** of this Agreement or commits an act of insolvency as defined in the Insolvency Act, 1936 (Act No. 24 of 1936) or is placed under provisional liquidation or under business rescue proceedings or is finally liquidated. Notwithstanding the above, SARS may immediately terminate this Agreement without notice where the Service Provider breaches **Clause** **31.2**.
      2. SARS shall have no liability to the Service Provider with respect to a termination under **Clause 20.1.1**.
   2. **Termination Upon 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 designating a date upon which such termination shall become effective.
      2. The Service Provider shall notify SARS of any Change Event within ten (10) Business 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 20.2.2** 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 company) 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 20.2** 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.
2. **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. **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;

* + 1. 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;
    2. it will provide the Services in a cost-effective and expedient manner, thereby ensuring that no unnecessary or extraordinary costs are incurred and passed on to SARS. In particular, the Service Provider warrants to strictly adhere to the timelines set out in this Agreement and any Brief;
    3. 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 or any Brief;
    4. it has the necessary resources, skills, capacity and experience to render the Services to SARS in a diligent manner and in accordance with the highest professional and industry standards; and
    5. no facts or circumstances exist that may materially affect its capacity to perform its obligations under this Agreement.
  1. 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.
  2. The provisions of this Clause shall survive the termination of this Agreement.

1. **LIABILITY OF THE PARTIES**
   1. The Service Provider shall be liable to SARS for any direct damages and/or losses 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 (including legal costs) suffered by SARS as a result of gross negligence, wilful misconduct or breach by the Service Provider or its personnel of confidentiality provisions in this Agreement, breach of Applicable Laws, infringement of third party Intellectual Property rights or a criminal act committed by the Service Provider or any personnel of the Service Provider.
2. **INDEMNITY BY THE SERVICE PROVIDER**
   1. The Service Provider hereby indemnifies, holds harmless and agrees to defend SARS and its officers, employees, agents, successors and assigns, against all claims or losses arising from or in connection with, any of the following-
      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 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 agent, employee, customer, business invitee, business visitor or other person caused by the delictual conduct of the Service Provider or the Key Personnel; or
      4. Claims arising from damage to property owned or leased by SARS or belonging to a third party caused by the acts or omissions of the Service Provider or the Key Personnel.
3. **INSURANCE**
   1. The Service Provider shall on or before the Effective Date and 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 and/or public liability insurance cover as may be applicable, to cover the Service Provider against all actions, suits, claims or other expenses arising in connection with damages or losses for which it may be liable in terms of this Agreement.
   2. The Service Provider shall provide SARS with certificates of insurance, evidencing that the covers and policy endorsements required under this Agreement are maintained in force, on the Effective Date and provide evidence of renewal of the insurance at least three (3) Business Days prior to expiration thereof.
   3. The Service Provider shall provide SARS at least thirty (30) days’ notice prior to any material modification, cancellation or non-renewal of the insurance policies.
   4. In the case of loss or damage or other event that requires notice or other action under the terms of any insurance coverage set out in **Clause 25.1**, 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.
   5. 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 purchase the requisite insurance and deduct or offset the costs thereof from any monies due to the Service Provider by SARS under this Agreement.
4. **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.
5. **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 of a Brief.
   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 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.

1. **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.
2. **NON-SOLICITATION**
   1. During the term of this Agreement 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.
3. **ETHICAL BUSINESS PRACTICES**
   1. SARS has a policy of zero tolerance regarding corrupt activities. The Service Provider must 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 must 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 relevant law enforcement agency, 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 to, on written notice to the Service Provider and without liability, immediately terminate this Agreement.
4. **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 taxation 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.
5. **BROAD-BASED BLACK ECONOMIC EMPOWERMENT**
   1. The Service Provider commits and warrants to comply in all respects with the requirements of the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003) [hereafter referred to as the “B-BBEE Act”] as will be 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 maintain or improve upon the B-BBEE status level it had when the tender (RFP 004/2019) 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. A failure to provide a certified copy of its BEE rating status or a failure to comply with the provisions of this Clause is a material breach and will entitle SARS to terminate the Agreement by giving the Service Provider one (1) calendar month’s written notice.
6. **GENERAL**
   1. **Advertising and Marketing**

Except in so far as herein expressly provided, the Service Provider shall not make or issue any formal or informal announcement (with the exception of Stock Exchange announcements), advertisement or statement to the media in connection with this Agreement or otherwise disclose the existence of this Agreement or the subject matter thereof to any other person without the prior written consent of SARS.

* 1. **Authorised Signatories**

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

* 1. **Costs**

Each Party shall bear its own costs in respect of the negotiation, preparation and finalisation 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 each of 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. **Governing 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 Service Provider hereby consents to the jurisdiction of the High Court of the Republic of South Africa (Gauteng Division, Pretoria), in regard to all matters arising from this Agreement.

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* 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 arising from 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 of the Clauses or Provisions**

If any Clause or provision of this Agreement is found to be invalid, illegal or unenforceable in any way, such Clause or provision shall be deemed to be separate and severable from the remaining provisions of this Agreement, and the validity and enforceability of those provisions shall not be affected.

* 1. **Subcontracting**
     1. The Service Provider shall subcontract the Services to the subcontractor indicated in its Proposal submitted in response to the RFP, and in the manner contemplated in the RFP (a minimum of 30% of the value of the contract).
     2. Notwithstanding the provisions of this **Clause 33.10,** 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.
     3. 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.
     4. The Service Provider shall be responsible for all acts, omissions, defaults and negligence of its subcontractors and their experts, agents or employees as if they were those of the Service Provider, and shall not be absolved from its responsibility in terms of this Agreement on the basis that such persons were acting outside the scope of their engagement by the Service Provider.
     5. The Service Provider may not replace the subcontractor contemplated in **Clause 33.10.1** above without the prior written consent of SARS, which consent shall not be unreasonably withheld: Provided both the Service Provider and the then proposed subcontractor satisfy the subcontracting conditions and criteria stipulated in the RFP.
     6. In the event it becomes necessary for the Service Provider to change the subcontractor contemplated in **Clause 33.10.1** above, the Service Provider shall, subject to the criteria set out in the RFP, submit together with its request as set out in **Clause 33.10.5** above,a complete written proposal for SARS’s approval containing-
        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. written confirmation that the proposed subcontractor meets the subcontractor requirements stipulated in the RFP;
        6. an acceptable document depicting the B-BBEE status of the subcontractor; and
        7. a CSD report for the proposed subcontractor.

SARS reserves the right to call upon additional information when assessing a request for subcontracting.

* + 1. 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 Signatory/ies 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 Signatories. Any document executed by the Parties purporting to amend, substitute or revoke this Agreement or any part hereof, shall be titled an “Addendum” to this Agreement.

1. **SIGNATORIES**

**As Authorised Signatories for the South African Revenue Service**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

1. Chief Officer: Governance, International Relations, Strategy and Communications

Date signed:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

1. Group Executive: Procurement

Date signed:

**As Authorised Signatory for the Service Provider**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Full Names:

Capacity:

Date signed: