

**MASTER SERVICES AGREEMENT IN RESPECT OF THE APPOINTMENT  
OF A SERVICE PROVIDER FOR THE PROVISION OF HEALTH RISK  
MANAGEMENT SERVICES (RFP 26/2019)**

Between

**SOUTH AFRICAN REVENUE SERVICE**

An organ of state established in terms of section 2 of the South African  
Revenue Service Act, 1997 (Act No. 34 of 1997)  
(hereinafter referred to as "**SARS**")

and

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a legal entity incorporated in accordance with the laws of South Africa  
(Registration Number: \_\_\_\_\_) of the registered address at

**[TO BE ADDED]**

(herein represented by its authorised representative who warrants  
that s/he is duly authorised to do so)  
(hereinafter referred to as "**the Service Provider**")

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## 1. INTRODUCTION

- 1.1 SARS issued a tender under request for proposal **RFP 26/2019 (RFP)** for the appointment of a service provider for the provision of health-risk management services (RFP 26/2019) as more fully described in the RFP.
- 1.2 The Service Provider submitted a proposal in response to the RFP (“the Proposal”).
- 1.3 Pursuant to the RFP and the Proposal, SARS has appointed the Service Provider to provide the Services to it.
- 1.4 This Agreement contains the terms and conditions of engagement between SARS and the Service Provider.

## 2. INTERPRETATION

- 2.1 The headings to the Clauses in this Agreement are for reference purposes only, and will not govern or affect the interpretation of nor modify nor amplify the terms thereof.
- 2.2 Unless inconsistent with the context, the words and expressions used in this document will have the following meanings, and similar expressions will have corresponding meanings-
  - 2.2.1 **Accounts Manager**” means a person designated by the Service Provider as such, as contemplated in the RFP, whose responsibilities shall include the management of the execution of the Services in terms of this Agreement, and who shall act as central point of contact for the Service Provider, and to whom all necessary communications regarding this Agreement shall be sent by SARS;

- 2.2.2 “**Agreement**” means this Services Agreement, the RFP, together with all annexures hereto, including all amendments, variations, and/or substitutions to the Agreement, which have been reduced to writing and signed by the duly authorised representatives of the Parties;
- 2.2.3 “**Applicable law**” means any of the following, to the extent applicable to the Service Provider and where applicable, to SARS or the Services:
- 2.2.3.1 Any statute, regulation, policy, by-law, ordinance or subordinate legislation;
  - 2.2.3.2 The common law;
  - 2.2.3.3 Any binding court order, judgment or decree;
  - 2.2.3.4 Any applicable industry code of conduct, policy or standard enforceable by law; or
  - 2.2.3.5 Any applicable direction, policy or order that is given by a regulatory authority;
- 2.2.4 “**Authorised Representative**” means signatories authorised by SARS and the Service Provider respectively to sign this Agreement;
- 2.2.5 “**Business Day**” means any day other than a Saturday, Sunday or public holiday in the Republic of South Africa;
- 2.2.6 “**Deliverable**” means any report, results, documented analysis, strategy, findings, presentation and other feedback required or provided as a product of the provision of the Services;
- 2.2.7 “**Effective Date**” means **[TO BE ADDED]**, notwithstanding date of signature hereto;

- 2.2.8 “**Key Personnel**” means those members of staff of the Service Provider and/or its agents who have been 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. Key Personnel includes the Accounts Manager;
- 2.2.9 “**Losses**” means all losses, liabilities, costs, expenses, fines, penalties, damages and claims, and all related costs and expenses as determined in Law;
- 2.2.10 “**Parties**” means the South African Revenue Service and the Service Provider and “Party” is a reference to any one of them;
- 2.2.11 “**RFP**” refers to **RFP 26/2019**, which is SARS’ invitation to service providers to tender in respect of the appointment of a service provider for the provision of health risk management services, which RFP is incorporated herein by reference;
- 2.2.12 “**SARS**” means the **SOUTH AFRICAN REVENUE SERVICE**, an organ of state established in terms of Section 2 of the South African Revenue Service Act, 1997 (Act No. 34 of 1997), with its principal address at **299 Bronkhorst Street, Nieuw Muckleneuk, Pretoria**;
- 2.2.13 “**SARS Designated Representative**” means the SARS Designated Representative contemplated in **Clause 6** of this Agreement;
- 2.2.14 “**Services**” means the provision of health risk management services by the Service Provider to SARS, as contemplated in the RFP, and in this Agreement, including those services,

functions or responsibilities not specifically mentioned herein but which are reasonably and necessarily required for the proper performance and provision of the Services.

2.2.15 “**Service Provider**” means **[TO BE ADDED]** a legal entity incorporated in accordance with the laws of South Africa with registration number: **[TO BE ADDED]** and its registered address at **[TO BE ADDED]**;

2.2.16 “**Termination Date**” means **[TO BE ADDED]**;

2.3 Any reference in this Agreement to-

2.3.1 “**Clause**” shall, subject to any contrary indication, be construed as a reference to a Clause hereof;

2.3.2 “**Person**” refers to any person including juristic entities.

2.4 Unless inconsistent with the context or save where the contrary is expressly indicated -

2.4.1 if any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that it appears only in the Interpretation Clause, effect shall be given to it as if it were a substantive provision of the Agreement;

2.4.2 when any number of days is prescribed in this Agreement, same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a day which is not a Business Day, in which case the last day shall be the next succeeding Business Day;

2.4.3 in the event that the day for the performance of any obligation in terms of this Agreement should fall on a day which is not a Business Day, the relevant day for performance shall be the next Business Day;

- 2.4.4 any reference herein to an enactment is to that enactment as at the signature date hereof, and as amended or re-enacted from time to time;
  - 2.4.5 any reference herein to “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;
  - 2.4.6 no provision of this Agreement constitutes a stipulation for the benefit of any Person who is not a party hereto;
  - 2.4.7 references to day/s, month/s or year/s shall be construed as calendar day/s, month/s or year/s; and,
  - 2.4.8 a reference to a Party includes that Party’s successors-in-title and permitted assigns.
- 2.5 Unless inconsistent with the context, an expression which denotes -
- 2.5.1 any one gender includes the other gender; and
  - 2.5.2 the singular includes the plural and *vice versa*;
- 2.6 Where any term is defined within the context of any particular Clause in this Agreement, the term so defined, unless it is clear from the Clause in question that the term so defined has limited application to the relevant Clause, shall bear the same meaning as ascribed to it for all purposes in terms of this Agreement, notwithstanding that that term has not been defined in such Clause.
- 2.7 The termination of this Agreement will not affect the provisions of this Agreement which operate after any such termination or which of necessity must continue to have an effect after such termination,

notwithstanding that the Clauses themselves may not expressly provide for this.

2.8 This Agreement is binding on the executors, administrators, trustees, permitted assigns or liquidators of the Parties as fully and effectually as if they had signed this Agreement in the first instance and reference to any Party is deemed to include such Party's estate, heirs, executors, administrators, trustees, permitted assigns or liquidators, as the case may be.

2.9 Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.

2.10 The Parties agree that this Agreement shall not be construed against a Party on the grounds that such Party drafted, or was responsible for drafting any or the majority of the provisions.

### **3. APPOINTMENT**

3.1 SARS hereby appoints the Service Provider to deliver the Services, which appointment the Service Provider accepts subject to the terms and condition set forth in this Agreement.

3.2 The Service Provider shall render the Services on an ad hoc basis, and as and when required by SARS.

3.3 The Service Provider represents that it has, and warrants that throughout the duration of this Agreement it shall have the resources, skills, qualifications and experience necessary to provide the Services according to the highest professional standards.

### **4. DURATION**

This Agreement will be effective from the Effective Date and will endure until the Termination Date, unless otherwise terminated earlier in terms this Agreement.

**5. SERVICE PROVIDER'S OBLIGATIONS**

5.1 The Service Provider shall ensure that -

- 5.1.1 It engages the same Key Personnel and Accounts Manager contemplated in its Proposal;
- 5.1.2 Its Key Personnel devote such time, attention and skill in performing the Services;
- 5.1.3 It aligns its allocation of Key Personnel to the pertinent needs of SARS in particular circumstances, thereby ensuring that the skill allocated matches the pertinent need being addressed;
- 5.1.4 All Key Personnel are accordingly licensed, qualified and registered with applicable Authorities, as may be prescribed by Applicable Law;
- 5.1.5 It takes all reasonable precautions to preserve the integrity and corresponding confidentiality of information obtained in the exercise of its obligations herein.
- 5.1.6 It adheres to written and reasonable requests or instructions by the SARS Designated Representative, provided such requests or instructions are lawful, and are within the framework of this Agreement;
- 5.1.7 It performs the Services with due care and diligence, in a professional and accurate manner and in conformity with the highest professional standards;
- 5.1.8 It complies with all Applicable law and this Agreement;
- 5.1.9 It act impartially and ethically at all times, and where applicable, it acts in accordance with the code of ethics / conduct of its profession;

- 5.1.10 It monitors the execution of Services against prescribed Service Levels, costs and timeframes;
  - 5.1.11 It takes commercially reasonable efforts to prevent, overcome and mitigate any adverse effects that might ensue, to the extent required to achieve the relevant outcome; and
  - 5.1.12 It has adequate information security measures reasonably expected to protect the confidentiality of information handled in the execution of this Agreement. The Service Provider must further ensure that such measures are up to date and consistent with information security best practice standards.
- 5.2 The Service Provider shall not-
- 5.2.1 Substitute the Key Personnel or any member thereof 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 this Agreement.
  - 5.2.2 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. Such proposal must include the *Curriculum Vitae* of the proposed substitute.
  - 5.2.3 The Service Provider must keep a log of all Key Personnel assigned to execute the work assigned to it by SARS and avail such log to SARS on request.
  - 5.2.4 Should SARS, in its discretion reasonably consider a member of the Key Personnel to be incompetent or unsatisfactory, the Service Provider will have to replace at its

cost, that member with one having similar or better credentials, in line with the timeframes then stipulated by SARS.

### 5.3 DELIVERABLES

5.3.1 The Service Provider shall obtain SARS' acceptance and signoff for every Deliverable submitted to SARS in terms of this Agreement.

5.3.2 Should SARS not accept a Deliverable:-

5.3.2.1 SARS will provide the Service Provider with written notice of its non-acceptance, as well as reasons therefore.

5.3.2.2 The Service Provider must, at its own cost, correct any deficiencies raised by SARS within five (5) Business Days (or such other shorter period as the circumstances may require) of receiving the notice from SARS, whereafter the Deliverable will be resubmitted to SARS for review.

5.3.2.3 The Service Provider undertakes to avail itself to liaise with SARS regarding any queries arising with regard to a Deliverable, and to assist SARS with its review of the Deliverable.

5.3.2.4 The Service Provider undertakes to duly consider the comments and input of SARS and to amend/improve the Deliverable as per the feedback by SARS.

5.3.3 In the event the deficiency/ies is still not corrected by the Service Provider after the first resubmission, SARS may, at its sole discretion, elect to :-

5.3.3.1 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;

5.3.3.2 invoke step-in rights as contemplated in **Clause 23** below ; or

5.3.3.3 reject the Deliverable for non-conformity and declare a dispute to be dealt with in terms of **Clause 17**.

#### 5.4 **THIRD PARTY SERVICE PROVIDER CO-OPERATION**

5.4.1 As part of the Services, where appropriate and when requested by SARS to do so, the Service Provider shall provide full co-operation to other third party service providers that might be contracted by SARS on the same engagement or for purposes contemplated in **Clause 6.1.5** below.

5.4.2 It is, however, agreed that the relationship between the Service Provider and third party service providers will not constitute an alliance and that neither the Service Provider nor the third party service providers will be required to perform quality checks on the work of the other party, except where the third Party is appointed for purposes contemplated in **Clause 6.1.5** below.

#### 5.5 **AUDIT RIGHTS**

The Service Provider shall, for the duration of this Agreement and for a period of five (5) years after the termination, maintain a complete audit trail of the Services performed under this Agreement, sufficient to permit a complete audit thereof.

5.5.1 The Service Provider shall provide SARS and SARS' 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.

5.5.2 All costs incurred in performing audits under this clause will be borne by SARS unless audit findings reveal the Service Provider's non-compliance with the terms of this Agreement and/or Applicable law, in which event such costs shall be borne by the Service Provider.

## 5.6 **SERVICE LEVELS AND PENALTIES**

### 5.6.1 **Service Levels List**

**Annexure [TO BE ADDED]** lists performance standards (hereinafter referred to as "Service Levels") that will apply to the performance of the Services. The Parties may from time to time add new Service Levels by mutual agreement. The Service Provider shall comply with the prescribed Service Levels as of the Effective Date.

### 5.6.2 **Monitoring, Measuring and Reporting**

5.6.2.1 The Service Provider shall:

5.6.2.1.1 Be responsible for monitoring, measuring and reporting on the Service Provider's compliance with the Service Levels;

5.6.2.1.2 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”);

5.6.2.1.3 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;

5.6.2.1.4 The Service Provider shall provide SARS with detailed supporting information for each Monthly Performance Report in soft-copy, or as otherwise reasonably requested by SARS; and

5.6.2.1.5 The Service Provider shall include the following information in each Monthly Performance Report with respect to any Performance Failure during any given month:

5.6.2.1.5.1 the nature and date of the Service Level Failure;

5.6.2.1.5.2 the cause of the Service Level Failure; and

5.6.2.1.5.3 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.

5.6.2.2 Any failure by the Service Provider to perform any of the obligations set forth in this **Clause 5.6.2** during any given month will also be deemed to be a Service Level Failure.

### 5.6.3 **Rules Governing Financial Penalty**

#### 5.6.3.1 **General**

A Financial Penalty is a price adjustment deductible or levied by SARS against fees due to the Service Provider in respect of non-compliance by the Service Provider with applicable Service Levels annexed hereto. (.

### 5.6.4 **Status of Financial Penalties**

5.6.4.1 Financial Penalties are not an estimate of the loss or damage that may be suffered by SARS as a result of the Service Level Failure.

5.6.4.2 A price adjustment by means of a Financial Penalty 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.

5.6.4.3 Notwithstanding the provisions of **Clauses 5.6.4.1** and **5.6.4.25.6.4.2**, any claim for damages resulting from any Service Level Failure, in respect of which a Financial Penalty has already been effected, shall be reduced by the amount of that Financial Penalty.

## **6. SARS OBLIGATIONS**

6.1 SARS undertakes to -

6.1.1 Nominate a SARS Designated Representative/s who will be responsible for managing the delivery of the Services by the Service Provider, including but not limited to:

6.1.1.1 Acting as point of contact between SARS and the Service Provider in respect of the delivery of the Services to SARS;

6.1.1.2 Approving invoices submitted by the Service Provider;

6.1.1.3 Convening meetings with the Service Provider;

6.1.1.4 Providing feedback to the Service Provider on Deliverables; and

6.1.1.5 Approving/Accepting and signing-off on Deliverables;

6.1.2 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;

6.1.3 Where applicable or necessary, promptly provide the Service Provider with its response to and/or comments on draft documents, reports, and findings;

6.1.4 Subject to compliance with SARS's access and physical security policies, provide the Service Provider's personnel with access to the premises of SARS if necessary for the purposes of rendering the Services; and

6.1.5 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.

## 7. **PRICING, INVOICING, DISPUTED CHARGES AND INVOICING ERRORS**

### 7.1 **Pricing**

The Service Provider must invoice SARS for Services rendered according to the RFP and the fee schedule set out in **Annexure [TO BE ADDED]**. Apart from the pricing detailed in **[TO BE ADDED]**, no other fee or cost will be covered by SARS.

### 7.2 **Invoicing**

7.2.1 Each invoice shall contain-

7.2.1.1 A description of the Services rendered;

7.2.1.2 The amount of the Financial Penalties accrued to SARS for Service Level Failures as calculated with reference to the Service Levels regime set out in **Annexure [TO BE ADDED]**, hereof. (SARS reserves the right to query this information in terms of the protocol set out below).

- 7.2.1.3 A document depicting acceptance by SARS of the pertinent Deliverables for which payment is claimed; and
- 7.2.1.4 Any such details as may be reasonably requested by SARS from time to time.
- 7.2.2 The Service Provider shall verify that each invoice is complete and accurate and that it conforms to the requirements of this Agreement before issuing the invoice to SARS.
- 7.2.3 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.
- 7.2.4 SARS shall pay undisputed amounts in an invoice owed to the Service Provider, reduced by set-off of any Financial Penalties accruing to SARS, within thirty (30) days after SARS receives such invoice, if the invoice is accurate and meets the requirements of this Agreement.
- 7.2.5 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 a response and any other documentation or information reasonably required by SARS in order to verify the accuracy of the amounts claimed in an invoice.

### 7.3 **Disputed charges and invoicing errors**

- 7.3.1 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, if the error or dispute is discovered or raised after payment. If SARS withholds any such amount-

- 7.3.2 SARS shall then 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 the process below:
- 7.3.2.1 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 portion in accordance with **Clause 7.2.4** above; and
- 7.3.2.2 If an invoicing error is confirmed or a dispute justified, then the Service Provider shall either issue a credit invoice if the amount has not yet been paid, or make an adjustment as necessary in the next invoice if the amount has been paid already.
- 7.3.3 Any dispute arising in terms of this **Clause 7** and which remains unresolved for five (5) Business Days after it has arisen shall be referred by either Party to SARS Group Executive: Procurement and the Service Provider's Key Accounts Manager or their designees for resolution.
- 7.3.4 The SARS Group Executive: Procurement and the Service Provider's Accounts Manager or their designees shall meet within five (5) Business Days of the referral of the dispute to resolve such dispute.
- 7.3.5 In the event that the dispute remains unresolved after ten (10) days of its referral to the persons mentioned in **Clause 7.3.4**, either Party shall be entitled to refer the dispute for resolution in accordance with the provisions of **Clause 17** below: Provided that **Clause 17.1** will not apply to disputes contemplated in this **Clause 7**.

## 8. INTELLECTUAL PROPERTY RIGHTS

- 8.1 Subject to **Clause 8.2** below, each Party shall retain all right, title and interest, in and to its processes, designs, drawings, specifications, formulae, databases, algorithms, models, methods, know-how, techniques, concepts, ideas, documents or other tools (“Intellectual Property”).
- 8.2 Subject to pre-existing Intellectual Property rights of the Service Provider and/or any third party, all Intellectual Property rights in and to literary works which may be created, written and/or presented by the Service Provider and/or its agents and employees and which relate to the Services will vest exclusively in SARS. To this end, the Service Provider irrevocably and in perpetuity transfers, makes over and assigns to SARS all such Intellectual Property rights which may come into existence, which transfer, make over and assignment is accepted by SARS.
- 8.3 In addition to the provisions of **Clause 8.2** above, the Service Provider waives the moral rights conferred upon it as author of literary works by section 20 (1) of the Copyright Act, 1978 (Act No. 98 of 1978).
- 8.4 The Service Provider warrants that in providing the Services, it shall not breach or infringe any third party Intellectual Property rights.
- 8.5 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.

## **9. CONFIDENTIALITY**

- 9.1 The Parties undertake that for the duration of this Agreement and after the expiration or earlier termination of thereof for any reason, a Party will keep confidential all proprietary information, including any trade secrets and/or all information of a confidential nature, which a Party communicates to the other Party, its agents and/or employees, from time to time. This includes the knowledge acquired by a Party, its agents and/or employees because of the work to be performed in terms of this Agreement and which by its nature is intended to be kept confidential.
- 9.2 Confidential Information means any proprietary, personal and confidential information or data of any nature, tangible, or intangible, oral or in writing, in any form or on any medium. For purposes of this Agreement, the expression “proprietary information and confidential information of SARS” shall include, but not be limited to, the technical detail, programme content, techniques, know-how, methods of operating, costs, training courses, taxpayer information and names of clients and/or potential clients with whom SARS has not yet contracted but intends contracting for purposes of establishing business relationships to which the Service Provider may become privy to during the term of this Agreement.
- 9.3 The Service Provider further, in particular undertakes to keep confidential all SARS Confidential Information and Taxpayer Information as defined in Chapter 6 of the Tax Administration Act, 2011 (Act No. 28 of 2011), as well as any information required to be kept confidential by any other legislation, whether administered by the Commissioner for SARS or otherwise.
- 9.4 If the Service Provider is uncertain about whether information is to be treated as confidential in terms of this clause, it shall be obliged to treat it as such until clearance is obtained, in writing, from SARS.

- 9.5 The Service Provider shall ensure that prior to commencing the performance of the Services, its Key Personnel and/or agents and/or employees involved in the rendering of the Services sign the **SARS Oath of Secrecy** and shall submit the original thereof to the SARS's Designated Representative.
- 9.6 Where a Party is threatened with legal action to disclose the confidential information of the other Party, such Party shall give the other Party written notice of such legal action within two (2) days of receipt of the threatened legal action. The Party shall, together with the notice referred to above, deliver to the other Party all documentation received or submitted in connection with the threatened legal action.
- 9.7 The Service Provider specifically acknowledges that all information relating to the Services, including and not limited to, literary works produced thereunder are of a sensitive nature and secret. The Service Provider undertakes not to disclose such information without first obtaining the written consent of SARS.
- 9.8 The Service Provider shall not remove from SARS's premises any documents nor materials relating to the Services or SARS's business without first obtaining the written consent of SARS.
- 9.9 Upon SARS's request, termination, or cancellation of this Agreement for any reason whatsoever, the Service Provider must promptly return all documents, materials, information, or data relating to the Services to SARS. Data must be returned in a form reasonably acceptable to SARS or, if SARS so elects, the Service Provider must destroy such data promptly.
- 9.10 The provisions of this Clause shall survive the termination or cancellation of this Agreement for any reason whatsoever.

## 10. SECURITY VETTING OF SERVICE PROVIDER'S RESOURCES

10.1 SARS reserves the right at its sole and absolute discretion to perform a security check (vetting) on the Service Provider's Key Personnel and/or agents.

10.2 Where SARS establishes the Service Provider's Key Personnel and/or agents to be a security risk, SARS will inform the Service Provider accordingly and the Service Provider shall replace such Key Personnel and/or agent with another one of equal qualification(s) and experience.

## 11. LIABILITY OF THE PARTIES

11.1 A Party shall be liable to the other Party for any direct damages incurred by the latter Party due to failure by the Party to perform its obligations in the manner required by this Agreement.

11.2 The Service Provider shall further be liable to SARS for all indirect and consequential or special damages and/or Losses suffered by SARS because of a breach of **Clause 9** above; infringement of a third party's intellectual property rights or a criminal act committed by the Service Provider or any employees/agents of the Service Provider.

11.3 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-

11.3.1 Third party claims attributable to any breach of the provisions of this Agreement by the Service Provider;

11.3.2 Third party claims attributable to theft, fraud or other unlawful activity or any negligent, wilful or fraudulent conduct by the Service Provider or the Service Provider's

Personnel and claims attributable to errors and/or omissions;

11.3.3 Third Party claims arising from or related to the death or bodily injury of any SARS agent, employee, business invitee, or business visitor or other person on SARS's premises caused by the negligent acts or omissions of the Service Provider or the Service Provider's personnel; and

11.3.4 Third Party claims arising from damage to property owned or leased by SARS or a third party caused by the Service Provider's or the Service Provider personnel's negligence or misconduct.

## **12. WARRANTIES**

12.1 The Service Provider hereby represents and warrants to SARS that-

12.1.1 this Agreement has been duly authorised and executed by it and constitutes a legal, valid and binding set of obligations on it;

12.1.2 it is acting as a principal and not as an agent of an undisclosed principal;

12.1.3 the execution and performance of the terms and conditions of this Agreement does not constitute a violation of any statute, judgment, order, decree or regulation or rule of any court, competent authority or arbitrator or competent jurisdiction applicable or relating to the Service Provider, its assets or its business, or its memorandum of incorporation, articles of association or any other documents or any binding obligation, contract or agreement to which it is a party or by which it or its assets are bound;

12.1.4 it has the necessary resources, skills, capacity and experience to render the Services to SARS; and

12.1.5 no facts or circumstances exist that may materially affect its capacity to perform its obligations under this Agreement.

12.2 It is expressly agreed between the Parties that each warranty and representation given by the Service Provider in its Proposal is material to this Agreement and induced SARS to conclude this Agreement.

12.3 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.

12.4 The provisions of this Clause shall survive termination of this Agreement.

### **13. BREACH**

13.1 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-

13.4.1 claim specific performance; or

13.4.2 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

13.2 The Service Provider acknowledges that it is a material term of this Agreement that the Service Levels contained in **Annexure [TO BE ADDED]** must be maintained throughout the duration of a this Agreement. The Parties agree that multiple Service Level Failures will constitute sufficient proof of persistent non-compliance by the Service Provider of SARS's prescribed Service Levels and that such persistent non-compliance will constitute a material breach of this Agreement.

13.3 The remedies set out in this clause shall not be construed to be exhaustive of any other remedies available to the Parties.

## 14. TERMINATION

### 14.1 Termination for Cause

14.1.1 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-

14.1.1.1 breaches **Clause 9** of this Agreement;

14.1.1.2 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.

14.1.1.3 commits an act of professional misconduct or professional or technical incompetence, which is substantial and serious; or

14.1.1.4 commits or participates in any unlawful, dishonest or unethical act in performing its obligations under this Agreement.

14.1.2 SARS shall have no liability to the Service Provider with respect to a termination under this Clause.

## 14.2 **No Sale, Acquisition, Merger or Change of Control**

14.2.1 In the event of a sale, acquisition, merger, or other change of control of the Service Provider (a "Change Event"), where such Change Event is achieved, directly or indirectly, in a single transaction or series of related transactions, or in the event of a sale of all or substantially all of the assets of the Service Provider in a single or series of related transactions, then, the Service Provider shall promptly notify SARS of the Change Event, within the time frame contemplated in **Clause 14.2.2** below. SARS may, at any time after being so notified of the Change Event, terminate this Agreement by giving the Service Provider thirty (30) days' written notice and designating a date upon which such termination shall be effective.

14.2.2 The Service Provider shall notify SARS if there is any Change Event within ten (10) days after the Change Event is achieved.

14.2.3 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 above, and SARS may upon discovery of the Change Event terminate this Agreement by giving the Service Provider thirty (30) days' written notice and designating a date upon which such termination shall be effective.

14.2.4 SARS shall have no liability to the Service Provider with respect to termination of this Agreement in terms of this Clause.

14.2.5 "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-

14.2.5.1 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;

14.2.5.2 controlling the majority of the voting rights in such entity; or

14.2.5.3 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.

14.2.6 Any termination of this Agreement pursuant to the provisions of this **Clause 14.2** shall be without prejudice to any claim which either Party may have in respect of any prior breach of the terms and conditions of this Agreement by the other Party.

## 15. **FORCE MAJEURE**

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

- 15.2 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.
- 15.3 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.
- 15.4 Any strike, lock-out, interference by trade unions, suspension of labour or other industrial action directly related to a Party as employer and which could have been avoided by steps which such Party might reasonably have been expected to take acting as a reasonable prudent employer, does not constitute a force majeure event.

## **16. RELATIONSHIP BETWEEN THE PARTIES**

- 16.1 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.
- 16.2 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.

## **17. DISPUTE RESOLUTION**

- 17.1 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.

- 17.2 If the dispute has not been resolved by such negotiation as contemplated above or **Clause 7.3.5** 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.
- 17.3 Save in respect of those provisions of this Agreement which provide for their own remedies which would be incompatible with arbitration, any dispute arising from, or in connection with, this Agreement and not resolved as contemplated above will finally be resolved by arbitration in accordance with the Rules of AFSA or its successor, by an arbitrator or arbitrators appointed by AFSA.
- 17.4 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.
- 17.5 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.
- 17.6 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.

## 18. ADDRESSES

18.1 Each Party chooses the addresses set out below 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.

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

18.1.1 **The Group Executive: Corporate Legal Services**

**Khanyisa Building**

**281 Middel Street**

**Nieuw Muckleneuk**

**PRETORIA**

**0181**

18.3 The Service Provider’s physical address for **service of notices and legal processes** is set out in **[TO BE ADDED]**

18.4 SARS’s email address for communications, and/or correspondences in connection with the performance of the Services: **rft-professionalservices@sars.gov.za**.

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

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.

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

18.6.1 the change shall become effective on the tenth (10<sup>th</sup>) Business Day after the receipt or deemed receipt of the notice by the addressee; and,

18.6.2 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*.

18.7 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 (5<sup>th</sup>) Business Day after posting; or

18.8 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.

18.9 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.

## **19. GENERAL**

### **19.1 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.

## 19.2 Subcontracting

19.2.1 Subject to Applicable Law, the Service Provider shall not without the prior written consent of SARS, which consent shall not be unreasonably withheld, subcontract any of the Services required in terms of this Agreement to any third party. It is expressly

recorded that SARS will not approve a proposed subcontracting if, in the exclusive judgment of SARS, the subcontracting will result in prejudice or potential prejudice to other service providers.

19.2.2 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,-

19.2.2.1 Full details and business references of the subcontractor;

19.2.2.2 A full description of the part of the Services it proposes for subcontracting;

19.2.2.3 Full details of how the Service Provider will manage the performance of the Services by the proposed subcontractor;

19.2.2.4 The value of the portion of the Services proposed to be subcontracted, expressed as a percentage;

19.2.2.5 an acceptable document depicting the B-BBEE status of the proposed subcontractor; and

19.2.2.6 a Central Supplier Database (CSD) report for the proposed subcontractor, which must reflect a current and positive tax compliance status of the subcontractor.

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

19.2.4 Notwithstanding the provisions of this **Clause 19.2** the Service Provider shall remain the only Party wholly responsible for the due performance of its obligations in terms of this Agreement and compliance with the terms and conditions thereof.

19.2.5 Subject to the provisions of **Clause 19.2.1** 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.

19.2.6 Nothing contained herein shall create a contractual relationship between SARS and the subcontractor.

### 19.3 **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.

#### 19.4 **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.

#### 19.5 **Waiver**

19.5.1 No change, waiver or discharge of the terms and conditions of this Agreement shall be valid unless in writing and signed by the Authorised Representatives of both Parties, and any such change, waiver or discharge will be effective only in the specific instance and for the purpose given.

19.5.2 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.

#### 19.6 **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.

**19.7 Authorised Representatives**

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.

**19.8 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.

**19.9 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 Authorised Representatives. Any document executed by the Parties purporting to amend, substitute or revoke this Agreement or any part hereof, shall be titled an "Addendum" and attached hereto.

**19.10 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.

**19.11 Costs**

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

**20. APPLICABLE LAW AND JURISDICTION**

20.1 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.

20.2 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.

**21. TAX COMPLIANCE**

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

21.2 Failure to comply with the provisions of this Clause will constitute a material breach and will entitle SARS to terminate this Agreement forthwith.

**22. BROAD-BASED BLACK ECONOMIC EMPOWERMENT**

22.1 The Service Provider commits and warrants compliance in all respects with the requirements of the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003) [hereinafter referred to as the "BBBEE Act"], as amended from time to time and the Codes of Good Practice issued in terms of the BBBEE Act.

22.2 The Service Provider shall, during the subsistence of this Agreement, remain BEE compliant and maintain or improve the B-BBEE status level contemplated in the RFP, failing which SARS reserves the right to terminate this Agreement for breach.

22.3 Within seven (7) days after the expiry of a current certificate for a particular year, the Service Provider shall provide SARS with a certified copy of its BEE rating status certificate from an agency accredited by the South African National Accreditation System or a certificate from the Companies and Intellectual Property Commission or a sworn affidavit, confirming annual turnover and level of black ownership in the case of an Exempted Micro Enterprise or Qualifying Small Enterprise.

## **23. STEP IN RIGHTS**

23.1 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.

23.2 For purposes of this clause, SARS may (at its option), either itself or by the procurement of an alternate third party service provider, temporarily take over the provision of the Services until such time as SARS is able to make permanent alternate arrangements for the provision of the Services, which right shall apply for a period of no more than 180 (one hundred and eighty) days from the date that SARS temporarily takes over the provision of the Services. The Service Provider shall, upon the request of SARS, fully co-operate with and assist SARS during any such temporary take-over of the Services.

23.3 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.

## **24. INSURANCE**

- 24.1 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 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.
- 24.2 The Service Provider shall, within one month of the Effective Date, provide SARS with certificates of insurance, evidencing that the cover required under this Agreement is maintained in force, and provide evidence of renewal of the insurance at least three (3) Business Days prior to expiration thereof.
- 24.3 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.
- 24.4 In the case of loss or damage or other event that requires notice or other action under the terms of any insurance coverage contemplated herein, 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.
- 24.5 Without limiting the generality of SARS' 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.

## **25. CONFLICT OF INTERESTS**

25.1 Neither the Service Provider nor the Key Personnel must have any interest or receive any remuneration in connection with the performance of the Services, except as provided for in this Agreement.

25.2 The Service Provider must at all times act impartially and ethically, and where applicable, act in accordance with the code of ethics / conduct of its profession.

25.3 The Service Provider must not have or undertake duties or interests that create or might reasonably be anticipated to create an actual or perceived conflict with its duties and interests in executing this Agreement. The Service Provider must have systems in place to identify potential conflicts and urgently bring such to the attention of SARS.

25.4 The Service Provider warrants that it does not currently have, and will refrain from taking on other contracts or work which might interfere with its ability to independently 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 or another client, it shall immediately inform SARS or such. 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, which action may include a recusal by the Service Provider from the execution any portion of the Services.

25.5 The Service Provider further warrants that it will not use any information received pursuant to this Agreement otherwise than for purposes intended in this Agreement.

**26. NON-SOLICITATION**

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

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

\_\_\_\_\_  
**Deliwe Rampa**  
**Acting Group Executive**  
**Procurement**  
**Date:**

\_\_\_\_\_  
**Sobantu Ndlangalavu**  
**Acting Group Executive**  
**Human Capital & Development**  
**Date:**

**SIGNED BY THE SERVICE PROVIDERS' AUTHORISED REPRESENTATIVE/S**

**Full Names:** \_\_\_\_\_

**Capacity:** \_\_\_\_\_

**Date signed:** \_\_\_\_\_

**Place:** \_\_\_\_\_