

MASTER SERVICES AGREEMENT IN RESPECT OF THE APPOINTMENT OF A SERVICE PROVIDER FOR THE PROVISION OF MEDICAL AID BROKERAGE SERVICES (RFP 12/2020)

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

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

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1. INTRODUCTION

- 1.1 SARS issued a tender under the Request for Proposal (**RFP 12/2020 - "RFP"**) for the appointment of a service provider for provision of medical aid brokerage services, as more fully described therein.
- 1.2 The Service Provider submitted a proposal in response to the **RFP** ("the Proposal").
- 1.3 SARS accepted the Proposal of the Service Provider, and the Parties now wish to record herein the terms and conditions of their agreement.

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 of this Agreement.
- 2.2 Unless inconsistent with the context, the words and expressions have the following meanings and similar expressions will have corresponding meanings-
 - 2.2.1 **"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;
 - 2.2.2 **"Applicable Law"** means any of the following to the extent applicable to the Service Provider and where applicable, to SARS or the Services-
 - 2.2.2.1 Any statute, regulation, policy, by-law, ordinance or subordinate legislation;
 - 2.2.2.2 The common law;
 - 2.2.2.3 Any binding court order, judgment or decree;
 - 2.2.2.4 Any applicable industry code of conduct, policy or standard enforceable by law; or

- 2.2.2.5 Any applicable direction, policy or order that is given by a regulatory authority;
- 2.2.3 “**Business Day(s)**” means any day between and including Monday and Friday, except public holidays in South Africa;
- 2.2.4 “**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;
- 2.2.5 “**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;
- 2.2.6 “**Effective Date**” means **[TO BE ADDED]** irrespective of the signature date of this Agreement;
- 2.2.7 “**Key Accounts Manager**” means a person designated by the Service Provider as such, as contemplated in in the **RFP**, whose responsibilities shall include the management of the execution of the Services in terms of this Agreement, and who shall as the central point of contact for the Service Provider, and to whom all communications regarding this Agreement shall be sent;
- 2.2.8 “**Key Personnel**” means those members of staff of the Service Provider and/or its agents who have been presented to SARS in the Proposal and assigned by the Service Provider to provide the Services to SARS, and on the strength of whose expertise the Service Provider warrants the ability to provide the Services;
- 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 SARS and the Service Provider and “Party” as the context requires is a reference to any one of them;
- 2.2.11 **“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;
- 2.2.12 **“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;
- 2.2.13 **“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 business at **(TO BE ADDED)**;
- 2.2.14 **“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 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; and
- 2.2.15 **“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 herein; and
- 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 this 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 Business Day;

2.4.3 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;

2.4.4 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;

2.4.5 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;

2.4.6 no provision of this Agreement constitutes a stipulation for the benefit of any Person who is not a party to this Agreement;

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 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 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 hereby acknowledge 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 appointed the Service Provider to provide the Services on a non-exclusive basis to SARS, which appointment the Service Provider accepted on the terms and conditions set forth hereunder.

4. DURATION

4.1 This Agreement commences on the Effective Date and terminates on the Termination Date, unless terminated earlier in accordance with the terms of this Agreement.

5. FEES and PAYMENT

- 5.1 The Parties specifically records herein that no fees are payable by SARS for the rendering of the Services.

- 5.2 The Service Provider will recover any broker from the relevant SARS's accredited medical aid schemes as prescribed in terms of the provisions of the Medical Aid Schemes Act, 1998 (Act 131 of 1998).

6. SARS'S OBLIGATIONS

- 6.1 SARS undertakes to:
 - 6.1.1 nominate a SARS Authorised Representative 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 a central point of contact between SARS and the Service Provider;
 - 6.1.1.2 authorising the Service Provider to start with the Services or any part thereof;
 - 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 and signing-off on Deliverables;
 - 6.1.2 provide the Service Provider with the necessary documents and information in order for the Service Provider to render the Services;
 - 6.1.3 take timeous management decisions and give necessary approvals or authorisations to enable the Service Provider to fulfil its obligations under this Agreement;

- 6.1.4 ensure that it designates employees for skills transfer purposes, and furnish the Service Provider with names of such designated employees;
- 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.
- 6.2 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.

7. SERVICE PROVIDER'S OBLIGATIONS

- 7.1 The Service Provider shall-
 - 7.1.1 appoint and provide SARS with the full contact details of a Key Accounts Manager;
 - 7.1.2 execute the Services, as contemplated in the **RFP**;
 - 7.1.3 ensure 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;
 - 7.1.4 not change or replace the Key Personnel for the duration of this Agreement, except with the prior written consent of SARS. In this regard:
 - 7.1.4.1 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;
 - 7.1.4.2 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.

- 7.1.4.3 such proposal must include the *curriculum vitae* of the proposed substitute;
- 7.1.4.4 SARS may only approve a substitute which has similar or better qualifications, skills and experience;
- 7.1.4.5 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;
- 7.1.5 provide the Services to SARS with due care, skill and diligence in accordance with the highest professional service standards and principles;
- 7.1.6 act impartially and ethically at all times, and where applicable, act in accordance with the code of ethics / conduct of its profession;
- 7.1.7 take Commercially Reasonable Efforts to prevent, overcome and mitigate any adverse effects that might ensue, to the extent required to achieve the relevant outcome;
- 7.1.8 ensure that it adheres to written and reasonable requests or instructions by the SARS Authorised Representative, in so far as same are lawful and consistent with this Agreement; and
- 7.1.9 comply with all Applicable law.

7.2 Deliverables

- 7.2.1 The Service Provider shall submit the reports (Deliverables) referred to in **paragraph 9.2.5** of the **RFP** in the format and within the turnaround times to be agreed between the Parties prior to the Effective Date.
- 7.2.2 The Service Provider shall present a draft of every Deliverable to SARS for acceptance and sign-off.

- 7.2.3 SARS shall have the right to review and accept or reject all Deliverables and/or any components of such Deliverables.
- 7.2.4 The Service Provider undertakes to avail itself to liaise with SARS regarding any queries arising with regard to a Deliverable.
- 7.2.5 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 must be resubmitted to SARS for another review.
- 7.2.6 If SARS finds that the Service Provider was still unable to correct a deficiency, then SARS may in its sole discretion elect to–
 - 7.2.6.1 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
 - 7.2.6.2 invoke step-in rights as contemplated in **Clause 23** below; or
 - 7.2.6.3 reject the Deliverable for non-conformity and declare a dispute to be dealt with in terms of **Clause 15** below.

8. MEETINGS AND REPORTING

- 8.1 The Key Accounts Manager and SARS Authorised Representative shall meet as and when required to discuss the execution of the Services.
- 8.2 The Service Provider shall be responsible for the correct recording of the meeting proceedings.

8.3 The Service Provider shall deliver the record of the meeting proceedings to SARS within two (2) Business Days after the date of the meeting or such shorter period as SARS may prescribe, in its absolute discretion, for SARS's perusal and verification.

8.4 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.

8.5 **Clauses 8.2 and 8.3** shall be subject to **Clause 28.12**.

8.6 Any information provided by the Service Provider in reports or meetings should be accurate, relevant and sufficiently detailed to provide assurance that the Services are on schedule.

9. RELATIONSHIP BETWEEN THE PARTIES

9.1 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.

9.2 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.

10. THIRD PARTY COOPERATION

10.1 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 6.1.5** 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.

10.2 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 6.1.5** above.

11. SECURITY VETTING OF THE KEY PERSONNEL

11.1 SARS reserves the right at its sole and absolute discretion to perform a security check (vetting) on the Key Personnel.

11.2 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 and replace such a person.

11.3 The replacement of such person shall take place in accordance with **Clause 7.1.4** above.

12. CONFIDENTIALITY

12.1 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.

12.2 "Proprietary information and/or confidential information" shall for purposes of this Agreement mean, but shall not be limited to trade secrets, know-how, technology, techniques or methods of operating employed by SARS, taxpayer information; SARS Confidential Information as defined in the Tax Administration Act, 2011 (Act No. 28 of 2011) as well as any information considered confidential in terms of any other Act administered by the Commissioner for SARS, internal SARS policies and/or employee details to which the Service Provider may become privy during the contract term.

12.3 The Service Provider shall ensure that its Key Personnel and other personnel involved with the rendering of the Services to SARS individually signs the SARS Oath / Affirmation of Secrecy before commencing with execution of this Agreement, and submit the original thereof to the SARS Authorised Representative.

- 12.4 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.
- 12.5 The Service Provider must protect the interests of SARS and its Confidential Information by-
- 12.5.1 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;
 - 12.5.2 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;
 - 12.5.3 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
 - 12.5.4 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.
- 12.6 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.
- 12.7 In addition to the foregoing provisions, the Service Provider shall strictly comply with the prescripts of the Protection of Personal Information Protection, 2013 (Act 4 of 2013), in connection with all Confidential Information, including Personal of Information made available to it in the execution of the Services.

13. INTELLECTUAL PROPERTY RIGHTS

- 13.1 Subject to **Clause 13.2** 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”).
- 13.2 Subject to pre-existing Intellectual Property rights of the Service Provider and/or any third party, all Intellectual Property rights in and to literary works which may be created, written and/or presented by the Service Provider and/or its Key Personnel and which relate to the Services will vest exclusively in SARS. To this end, the Service Provider irrevocably and in perpetuity transfers, makes over and assigns to SARS all such Intellectual Property rights which may come into existence, which transfer, make over and assignment is accepted by SARS.
- 13.3 In addition to the provisions of **Clause 13.2** 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).
- 13.4 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 the execution of this Agreement.

14. BREACH

- 14.1 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-
- 14.1.1 claim specific performance;

14.1.2 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

14.1.3 claim any money due and payable in terms of this Agreement and claim damages from the Defaulting Party.

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

15. DISPUTE RESOLUTION

15.1 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.

15.2 If the dispute has not been resolved by such negotiation as contemplated in **Clause 15.1**, 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.

15.3 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.

15.4 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.

15.5 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.

15.6 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.

16. TERMINATION

16.1 Termination for cause by SARS

16.1.1 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 –

16.1.1.1 breaches **Clause 12** of this Agreement;

16.1.1.2 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.

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

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

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

16.3 Termination Upon Sale, Acquisition, Merger or Change of Control

16.3.1 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 notify SARS of any Change Event within ten (10) Business Days after the Change Event is achieved.

- 16.3.2 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 16.1.1** above.
- 16.3.3 SARS may terminate this Agreement, at any time after being notified by the Service Provider of the Change Event, by giving the Service Provider thirty (30) days' written notice designating a date upon which such termination shall become effective.
- 16.3.4 In the event that the Service Provider fails to notify SARS, as required by **Clause 16.1.1** above, then 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.
- 16.3.5 SARS shall have no liability to the Service Provider with respect to termination of the Agreement in terms of this Clause.
- 16.3.6 "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-
- 16.3.6.1 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;
 - 16.3.6.2 controlling the majority of the voting rights in such entity; or
 - 16.3.6.3 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.

16.3.7 Any termination of this Agreement pursuant to the provisions of this **Clause 16.3** shall be without prejudice to any prior claim which either Party may have.

17. ADDRESSES

17.1 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.

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

17.2.1 **The Group Executive: Corporate Legal Services**
Khanyisa Building
281 Middel Street
Nieuw Muckleneuk
PRETORIA

17.3 The Service Provider chooses for the purpose of service of documents in legal proceedings its *domicilium citandi et executandi* as indicated in **Clause 2.2.13** above.

17.4 SARS’s email address for communications, and/or correspondences in connection with the performance of the Services: **(TO BE ADDED)**

17.5 The Service Provider’s email address for communications, and/or correspondences in connection with the performance of the Services: **(TO BE ADDED)**

17.6 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.

- 17.7 Any Party may by written notice to the other Party, change its chosen address to another address, provided that-
- 17.7.1 the change shall become effective on the tenth (10th) Business Day after the receipt or deemed receipt of the notice by the addressee; and
 - 17.7.2 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*.
- 17.8 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.
- 17.9 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.
- 17.10 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.

18. WARRANTIES

- 18.1 The Service Provider hereby represents and warrants to SARS that-
- 18.1.1 this Agreement has been duly authorised and executed by it and constitutes a legal, valid and binding set of obligations on it;
 - 18.1.2 it is acting as principal and not as an agent of an undisclosed principal;
 - 18.1.3 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 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;

- 18.1.4 it has the necessary resources, skills, capacity and experience to render the Services to SARS in a diligent manner;
 - 18.1.5 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;
 - 18.1.6 it has the capacity to timeously deliver the Services, time being of the essence;
 - 18.1.7 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;
 - 18.1.8 in providing the Services, it shall not breach or infringe any third party Intellectual Property rights;
 - 18.1.9 no facts or circumstances exist that may materially affect its capacity to perform its obligations under this Agreement; and
 - 18.1.10 it will comply with Applicable I.
- 18.2 It is expressly agreed between the Parties that each warranty and representation given by the Service Provider in this Agreement is material to this Agreement and induced SARS to conclude this Agreement.
- 18.3 The provisions of this Clause shall survive the termination of this Agreement.

19. LIABILITY OF THE PARTIES

- 19.1 The Service Provider shall be liable to SARS, where SARS has suffered any direct damages and/or Losses as a result of the Service Provider's failure to observe its obligations in terms of the Agreement.

19.2 The Service Provider shall be liable to SARS for all indirect and consequential or special damages and/or Losses 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 employees of the Service Provider.

20. INDEMNITY BY THE SERVICE PROVIDER

20.1 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-

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

20.1.2 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;

20.1.3 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

20.1.4 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.

21. INSURANCE

21.1 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, against all actions,

suits, claims or other expenses arising in connection with damages or loss for which it is liable in terms of this Agreement.

- 21.2 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 date of signing this Agreement and provide evidence of renewal of the insurance at least three (3) Business Days prior to expiration thereof.
- 21.3 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.
- 21.4 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 21.1**, 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.
- 21.5 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.

22. FORCE MAJEURE

- 22.1 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.

- 22.2 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.;
- 22.3 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.

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 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.
- 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. CONFLICT OF INTERESTS

- 24.1 Neither the Service Provider nor the Key Personnel shall have any interest or receive any remuneration in connection with the execution of the Services, except as provided for in this Agreement.
- 24.2 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.
- 24.3 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.

25. NON-SOLICITATION

- 25.1 During the term of this Agreement and for twelve (12) months 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.

26. TAX COMPLIANCE

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

27. BROAD-BASED BLACK ECONOMIC EMPOWERMENT

27.1 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.

26.1 During the currency of this Agreement, the Service Provider must remain BEE Compliant and maintain a B-BBEE status level it had when the tender (**RFP**) was awarded.

27.2 SARS may, in writing, from time to time call upon the Service Provider to provide proof of its B-BBEE Status.

27.3 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.

28. GENERAL

28.1 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.

28.2 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 both Parties.

28.3 Costs

Each Party shall bear its own costs in respect of the negotiation, preparation and

finalisation of this Agreement.

28.4 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.

28.5 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.

28.6 Governing Law and Jurisdiction

28.6.1 This Agreement will be governed by and construed in accordance with the law of the Republic of South Africa and all disputes, actions and other matters relating thereto will be determined in accordance with such law.

28.6.2 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.

28.7 No Cession or 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.

28.8 No Withholding of Consents

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.

28.9 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 such remaining provisions shall not be affected. If, however, any invalid term is capable of amendment to render it valid, the Parties agree to negotiate in good faith an amendment to remove the invalidity.

28.10 Subcontracting

28.10.1 Subject to Applicable Law, the Service Provider shall not without the prior written consent of SARS, which consent shall not be unreasonably withheld, subcontract any of the Services to any third party. It is expressly recorded that SARS will not approve a proposed subcontracting if, in the exclusive judgment of SARS, the subcontracting will result in prejudice or potential prejudice to other service providers.

28.10.2 Whenever the Service Provider wishes to subcontract any part of the Services in terms hereof, the Service Provider shall submit, together with its request as set out in **Clause 28.10.1** above, a complete written proposal for SARS's approval containing-

28.10.2.1 full details and business references of the subcontractor;

28.10.2.2 a full description of the part of the Services it proposes for subcontracting;

- 28.10.2.3 full details of how the Service Provider will manage the performance of the Services by the subcontractor;
- 28.10.2.4 the value of the Services proposed to be subcontracted, expressed as a percentage;
- 28.10.2.5 an acceptable document depicting the B-BBEE status and certificate of the subcontractor; and
- 28.10.2.6 a CSD report for the proposed subcontractor.

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

- 28.10.3 Notwithstanding the provisions of this **Clause 28.12**, 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.
- 28.10.4 Subject to the provisions of **Clause 28.10.1** 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.
- 28.10.5 Nothing contained herein shall create a contractual relationship between SARS and the subcontractor.

28.11 **Waiver**

No change, waiver or discharge of the terms and conditions of this Agreement shall be valid unless in writing and signed by the authorised signatories of both Parties, 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.

28.12 **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.

28.13 **SIGNATORIES**

As Authorised Signatories for the South African Revenue Service

1. Head: Employee Shared Services

Date signed:

2. Executive: Procurement
(Professional Services)

Date signed:

As Authorised Signatory for the Service Provider

Full Names:

Capacity:

Date signed: