



**SERVICE LEVEL AGREEMENT**

Between

The **SOUTH AFRICAN REVENUE SERVICE**, an organ of state within the public administration but outside the public service established in terms of Section 2 of the South African Revenue Service Act, 1997 (Act No. 34 of 1997).

**(“SARS”)**

and

.....a private company incorporated in accordance with the laws of South Africa with registration number: .....

**(“Service Provider”)**

**FOR THE SUPPLY, DELIVERY, INSTALLATION AND MAINTENANCE OF DIESEL  
GENERATORS**

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## 1. APPOINTMENT

- 1.1 SARS issued a Request For Proposal under number RFP...../20.... (hereinafter referred to as the “RFP” and attached hereto as **Annexure A**) for the supply, delivery, installation and maintenance of diesel generators including the supply and installation of all ancillary equipment and electrical reticulation (defined in this Agreement as “Services”).
- 1.2 The Service Provider submitted a proposal (hereinafter referred to as the “Service Provider’s Proposal” and attached hereto as Annexure B) to SARS and SARS has accepted the proposal following SARS’s procurement process for such Services.
- 1.3 SARS therefore appoints the Service Provider on a non-exclusive basis, to provide the Services for the SARS’s office(s) listed in Annexure C, which appointment the Service Provider accepts subject to the terms and conditions of this Agreement.

## 2. INTERPRETATION

- 2.1 The head notes to the Clauses of this Agreement are for reference purposes only and will not govern or affect the interpretation of nor modify nor amplify the terms of this Agreement.
- 2.2 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 Agreement including any annexures referenced herein.
  - 2.2.2 **“Amount at Risk”** means the maximum percentage (20%) of the Service Provider’s total monthly invoice, which may be at risk in respect of Service penalties imposed resulting from any Service Level Failures;
  - 2.2.3 **“Authorised Representative”** mean signatories authorised by SARS and the Service Provider respectively to sign the Agreement and any amendments or addenda on their behalf;

- 2.2.4 **“Business Day”** means any day other than a Saturday, Sunday or public holiday in the Republic of South Africa;
- 2.2.5 **“Commencement Date”** means XXXXXXXXX notwithstanding the date when the last signature is affixed to this Agreement;
- 2.2.6 **“Confidential Information”** means any proprietary and confidential information or data of any nature, tangible or intangible, oral or in writing and in any format or medium, which (i) is received by the Receiving Party from the Disclosing Party; (ii) is received by the Receiving Party from a Third Party acting on behalf of the Disclosing Party; or (iii) comes to the knowledge of the Receiving Party by any other means. Confidential Information includes such information whether marked as ‘Confidential’ or with a similar legend or not.
- 2.2.6.1 Without limitation, the Confidential Information of SARS will include the following-
- 2.2.6.1.1 this Agreement; and
- 2.2.6.1.2 any other non-public information, regardless of whether such information is marked ‘Confidential’ or with another similar designation, including: SARS Data; SARS’s financial information; information regarding taxpayers/vendors; information regarding employees, independent contractors and suppliers of SARS and governmental entities; processes and plans of SARS and governmental entities; projections, manuals, forecasts, and analysis of SARS and governmental entities; SARS’s intellectual property or intellectual property licensed to SARS or a governmental entity, and any other information of SARS and governmental entities which would be deemed by a reasonable Person to be confidential or proprietary in nature.

- 2.2.6.2 Confidential Information will not include information that: (i) is in or enters the public domain without breach of this Agreement; (ii) the Receiving Party receives from a Third Party without restriction on disclosure and without breach of a non-disclosure obligation; or (iii) the Receiving Party knew prior to receiving such information from the Disclosing Party; or (vi) develops independently without reference to the Disclosing Party's Confidential Information (as established by documentary evidence). The onus will at all times rest on the Receiving Party to establish that such information falls within any such exclusion. Confidential Information will not be deemed to be within one of the foregoing exclusions merely because such information is embraced by more general information that is in the public domain or was already in the Disclosing Party's possession.
- 2.2.6.3 The determination of whether information is Confidential Information will not be affected by whether or not such information is subject to, or protected by, common law or statute related to copyright, patent, trademarks or otherwise;
- 2.2.7 **"Disclosing Party"** means the Party who furnishes or otherwise makes available such Party's Confidential Information to the other Party (including such other Party's personnel or Third Party suppliers, as applicable) or on whose behalf such Party's Confidential Information is furnished or otherwise made available to the other Party (including such other Party's personnel or Third Party suppliers, as applicable);
- 2.2.8 **"Losses"** means all losses, liabilities, costs, expenses, fines, penalties, damages and claims, and all related costs and expenses as determined in Law;
- 2.2.9 **"Parties"** means SARS and the Service Provider and **"Party"** as the context requires, is a reference to any one of them;

- 2.2.10 **“Receiving Party”** means the Party, other than the Disclosing Party, that receives disclosure of any Confidential Information;
- 2.2.11 **“SARS”** means the South African Revenue Service, an organ of state within the public administration but outside the public service established in terms of Section 2 of the South African Revenue Service Act, 1997 (Act No. 34 of 1997) with its principal address at 299 Bronkhorst Street, Nieuw Muckleneuk, Pretoria;
- 2.2.12 **“SARS Data”** means all information, whether or not Confidential Information, disclosed to the Service Provider by or on behalf of SARS, and includes information derived from such information;
- 2.2.13 **“SARS Representative”** will be such Person as may be nominated from time to time by SARS;
- 2.2.14 **“Service Provider”** means ....., a private company registered in accordance with the Laws of South Africa, with registration number ..... and its registered address at .....
- 2.2.15 **“Services”** means the supply, delivery and installation of the diesel generator including the supply and installation of all ancillary equipment and electrical reticulation works, as more fully set out in **Clause 4 and 5**;
- 2.2.16 **“Signature Date”** means the date of signature of this Agreement by the Party last signing;
- 2.2.17 **“Termination Date”** means XXXXXXXXXXXXXXXXXXXX;
- 2.2.18 **“Third Party”** means a Person other than SARS or the Service Provider;
- 2.2.19 **“VAT”** means Value-Added Tax levied in terms of the Value-Added Tax Act, 1991 (Act No. 89 of 1991);

2.3 Any reference in this Agreement to –

- 2.3.1 a **“Clause”** will, subject to any contrary indication, be construed as a reference to a Clause hereof;
  - 2.3.2 **“Law”** will be construed as any Law (including common or customary Law), or statute, constitution, decree, judgment, treaty, regulation, directive, by-law, order or any other legislative measure of any government, local government, statutory or regulatory body or court;
  - 2.3.3 a **“Person”** is a reference to any person, company, close corporation, trust, partnership or other entity, whether or not having separate legal personality;
- 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 definition Clause, effect will be given to it as if it was a substantive provision of this Agreement;
  - 2.4.2 when any number of days is prescribed in this Agreement, same will 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 will be the next succeeding Business Day;
  - 2.4.3 in the event that the day for payment of any amount due in terms of this Agreement should fall on a day which is not a Business Day, the relevant day for payment will be the subsequent Business Day;
  - 2.4.4 in the event that the day for performance of any obligation to be performed in terms of this Agreement should fall on a day which is not a Business Day, the relevant day for performance will be the subsequent Business Day;
  - 2.4.5 any reference in this Agreement to an enactment is to that enactment as at the Signature Date and as amended or re-enacted from time to time;
  - 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; and

- 2.4.7 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 genders; and
- 2.5.2 the singular includes the plural and vice versa.
- 2.6 The RFP and the Service Provider's proposal (**Annexures A and B**) forms an integral part hereof and words and expressions defined therein shall bear, unless the context otherwise requires, the same meaning in this Agreement. To the extent that there is any conflict between the RFP, Service Provider's Proposal and the provisions of this Agreement, the provisions of this Agreement shall prevail.
- 2.7 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, will bear the same meaning as ascribed to it for all purposes in terms of this Agreement, notwithstanding that the term has not been defined in that Clause.
- 2.8 The termination of this Agreement will not affect any of the provisions of this Agreement which operate after any such termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the Clauses themselves do not expressly provide for this.
- 2.9 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.
- 2.10 Where figures are referred to in numerals and in words, if there is any conflict between the two, the words will prevail.



2.11 The words "include" and "including" mean "include without limitation" and "including without limitation". The use of the words "include" and "including" followed by a specific example or examples will not be construed as limiting the meaning of the general wording preceding it.

2.12 For all purposes under this Agreement, a reference to "written" or "in writing" will exclude any data message and "signed" or "signature" will not include an electronic or advanced electronic signature. The terms "data message", "electronic signature" and "advanced electronic signature" will have the meanings assigned to it in the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002), as amended.

### **3. DURATION**

3.1 This Agreement commences on the Commencement Date, notwithstanding the date of signature hereof and will continue in full force and effect for a period of ..... (.....) months until the Termination Date, unless terminated earlier in terms of this Agreement.

### **4. SERVICES**

4.1 The Service Provider will render the Services on the terms and conditions contained in this Agreement generally and in accordance with the specifications set out in **Annexure A**, read together with **Annexure B**.

4.2 The Services will comprise of the supply, delivery, installation and maintenance of Diesel Generators including supply and installation of all ancillary equipment and electrical reticulation works.

### **5. SERVICES DESCRIPTION**

#### **5.1 Supply, delivery and installation**

**5.1.1 Supply, delivery and installation of a containerised .....kVA .... Prime rated diesel generator set with all integral accessories.**

5.1.2 Assembling and mounting down and rigging into place of the generator set.

5.1.3 Commissioning and testing – The contractor shall include for fully commissioning of the generating set including all control equipment and for the purpose of the required tests and shall provide all necessary instrument, tools, fuel and lubricating oil.

5.1.4 Supply, delivery and installation of all LV cables and cable ladders required from the main distribution board in the building to the new generator. Termination of these cables at the main distribution board will form part of this Contract.

5.1.5 Supply, delivery and installation of all switchgear and alterations required to the main distribution board to complete the electrical installation.

## 5.2 Maintenance and Preventative Maintenance

5.2.1 The Service Provider must furnish SARS with free Maintenance Plan period of 12 (twelve) months.

5.2.2 Preventative maintenance refers to planned maintenance of diesel Generator at prescribed periods.

5.2.3 The Service Provider undertakes to perform preventative maintenance of a Generator as per **Annexure D** and at the intervals indicated therein, so as to almost eliminate incidents of Generator unavailability.

## 5.3 Fault and/or Problem Management

5.3.1 Fault and/or Problem Management refers to the management of all Generator faults and/or problems reported by SARS.

5.3.2 SARS shall report all Generator faults and/or problems via the local SARS Facilities Helpdesk to the Service Provider's Service Centre (a "Service Call").

Both Parties shall follow the fault and/or problem reporting procedures set out in **Clause 10** below.

5.3.3 A qualified technician, employed by the Service Provider, will be available during Service Hours to provide troubleshooting and telephonic assistance to the SARS Service Call logger. Should a site visit by the Service Provider’s technicians be necessary, the site visit will take place in compliance with the response times as set out in Table 1 below. Upon arrival at the relevant Generator site the Service Provider’s technician shall report on the exact nature of the fault and provide a timeline for its resolution in the event that the fault cannot be resolved immediately.

5.3.4 Table 1 below sets out the different types of Service Calls, the hours between which the Services will be available (“Service Hours”) and each specific type of call that can be placed for Generator malfunctions and/or failures.

| Table 1          |                                  |  |   |
|------------------|----------------------------------|--|---|
| Incidents        | Service Hours                    | Response Times   | Impact  |
| <b>Critical</b>  | 24 Hours a day, 7 days a week    | From receipt of Service Call – 2 hours plus travel time from specified centre based on 80km/hr | <ul style="list-style-type: none"> <li>➤ Failures that seriously affect the SARS’s operational effectiveness.</li> <li>➤ Failures that constitute a danger to personnel or equipment or a health hazard.</li> </ul> |
| <b>Urgent</b>    | 07h00 to 17h00, Monday to Friday | From receipt of Service Call – 4 hours plus travel time from specified centre based on 80km/hr | Failures that are not causing immediate danger or a health hazard but affect operational effectiveness.   |
| <b>Important</b> | 7h00 to 17h00, Monday to         | From receipt of Service Call – 4   | Failures that affect operations, but do not seriously affect  |

|       |   |  |   |
|-------|---|--|---|
| 5.3.5 | T | Friday<br><br>hours plus travel<br>time from specified<br>centre based on<br>80km/hr | occupation of SARS's buildings<br>or SARS's operational<br>effectiveness. |
|-------|---|--|---|

h  
e Service Provider guarantees a compliance rate of 97.50% (ninety seven point five zero percent) with the Response Times Targets set out in Table 1 measured over a thirty (30) day calendar month period per Generator site (“Service Level Target”) in respect of Fault and/or Problem Management (“Service Level”) .

5.4 Break and Fix repairs

5.4.1 This service includes fault detection and problem resolution of Generator sets (i.e. units consisting of an electric generator driven by an engine) in the event of mechanical breakdowns, start failure and/or stalling of a Generator set.

5.4.2 The Service Provider shall provide this service as part of the Maintenance Plan.

5.4.3 The Service Provider guarantees a compliance rate of 97.50% (ninety seven point five zero percent) with the Response Times Targets set out in Table 2 measured over a thirty (30) day calendar month period per Generator site (“Service Level Target”) in respect of Break and Fix Repairs (“Service Level”).

6. **GENERATOR AVAILABILITY**

6.1 Availability of a Generator

6.1.1 The Service Provider guarantees strict adherence to the Preventative Maintenance Schedule (**Annexure D**) which will eliminate incidents of Generator unavailability.

6.1.2 The Service Provider guarantees Generator availability per Generator of ninety seven point five zero percent (97.50%) percent measured over a thirty

(30) day calendar month period (“Service Level Target”).

6.1.3 Failure to meet the above metric shall be regarded as a Generator Service Level Failure against the relevant Generator.

## 6.2 Generator Availability measurement

### 6.2.1 General

The unavailability of a generator is measured on an individual basis. The cumulative amount of time that a generator is unavailable during the Service Hours of the relevant calendar month is taken into account.

### 6.2.2 Definition and calculation

6.2.2.1 For the purpose of this Clause, generator “unavailability” means the Generator is not operational:

6.2.2.1.1 in accordance with all of its manufacturer’s specifications, and/or

6.2.2.1.2 in that such generator functions below the designed, configured, authorised or enabled capacity level.

6.2.2.2 A downtime that is either approved in advance by SARS or is otherwise permitted shall not be regarded as time that the generator is unavailable.

## 7. **SERVICE LEVEL FAILURES**

7.1 Failure to adhere to any of the Service Levels mentioned in **Clauses 5 and 6** will be regarded as a Service Level Failure and will result in SARS levying a financial penalty set out in the Table below.

7.2 A financial penalty is not a substitute for any other claims that SARS may have against the Service Provider in respect of breach of this Agreement.

7.3 For any given calendar month, the following financial penalties will apply to any Service Level Failure-

| <b>Number of incidents</b>               | <b>Percentage of Penalty</b>  |
|--|---|
| First incident of Service Level Failure  | 20% of Amount at Risk based on the total monthly invoice.   |
| Second incident of Service Level Failure | 40% of Amount at Risk based on the total monthly invoice.   |
| Third incident of Service Level Failure  | 60% of Amount at Risk based on the total monthly invoice.   |
| Fourth incident of Service Level Failure | 80% of Amount at Risk based on the total monthly invoice.   |
| Fifth incident of Service Level Failure  | 100% of Amount at Risk based on the total monthly invoice; alternatively SARS reserves the right to cancel the Agreement. |

7.4 The following instances shall be excluded from being regarded as a failure to adhere to the agreed Services Levels-

7.4.1 Where the Service Call is suspended in agreement with SARS;

7.4.2 Where the Service Call has been referred back to SARS for further clarification; or

7.4.3 Where planned pre-approved access to the relevant generator is delayed by SARS.

## **8. SERVICE CHARGES AND PAYMENT TERMS**

- 8.1 In respect of the Services supplied to SARS in terms of this Agreement from time to time, SARS undertakes to pay to the Service Provider the service charges calculated in accordance with the agreed charges within thirty (30) days of receipt of an accurate, complete invoice.
- 8.2 All fees, charges and disbursements are quoted inclusive of VAT.
- 8.3 The Service Provider shall on the last day of the month, in which the Services were rendered, issue SARS with an invoice for the relevant month, which is accurate and contains all relevant information as required by law.
- 8.4 All invoices shall be accompanied by a service report, signed off by the local SARS Facilities Management Representative, detailing the Services that were rendered.
- 8.5 All payments in terms of or arising out of this Agreement:-
- 8.5.1 shall be made free of administration costs, bank exchange, commission or any other deduction to the Party thereto; and
  - 8.5.2 subject to **Clause 8.7**, neither Party shall have the right to defer, adjust or withhold any payment due to the other in terms of or arising out of this Agreement or to obtain deferment of judgment for such amounts or any execution of such judgment by reason of any set-off or counterclaim of whatsoever nature or howsoever arising.
- 8.6 SARS may on written request reimburse the Service Provider for special or unusual expenses incurred at the South African Revenue Service's specific request and approved in terms of its internal procurement policy.
- 8.7 SARS may withhold payment of fees, charges and disbursements that SARS disputes in good faith or, if the disputed fees have already been paid, SARS may withhold an equal amount from a later payment, including disputes in respect of an error on an invoice or an amount paid.

- 8.7.1 SARS shall within five (5) days of receipt of the invoice notify the Service Provider in writing that it is disputing such amount providing a reasonable explanation of the rationale therefor; and the Parties shall promptly first address such dispute in accordance with this Clause.
- 8.7.2 If the dispute relates to only certain of the amounts included on an invoice (or equals in the case of disputed amounts that have already been paid), then SARS shall pay the undisputed amounts in accordance with **Clause 8.1**.
- 8.7.3 If an invoice is identified as incorrect, then the Service Provider shall either issue a correct invoice if the amount has not yet been paid, or make a correction on the next invoice if the amount has been paid.
- 8.8 The Parties' senior managers (one level up from the Service Provider's Project Manager and the SARS Representative) shall meet to resolve the dispute within five (5) days of SARS giving notice of the dispute. The senior managers shall endeavour to resolve the dispute within five (5) days of its referral to them.
- 8.9 The undisputed portion(s) of the invoice shall be payable on the terms defined in **Clause 8.1-8.5**;
- 8.10 Where the dispute remains unresolved after the informal procedures set out in **Clause 8.8** above the dispute shall be dealt with in terms of the dispute resolution procedures set out in **Clause 27** of this Agreement.
- 8.11 The fees and/ or charges will be fixed for a period of 12 (twelve) months.

## **9. SERVICE LEVEL MANAGEMENT**

- 9.1 In order to manage the Services provided by the Service Provider to SARS, the Parties agree that meetings between the Parties will be arranged on the following basis:

| <b>Meeting</b> | <b>Frequency</b> | <b>SARS Representative</b> | <b>Service Provider Representative</b> |
|----------------|------------------|----------------------------|--|
|----------------|------------------|----------------------------|--|



|                                    |          |  |                 |
|------------------------------------|----------|--|-----------------|
| <b>Service Relationship Review</b> | Annually | National Facilities Manager<br>and<br>National Financial Manager | Project Manager |
| <b>Service Review</b>              | Monthly  | SARS Regional Facilities Management                              | Project Manager |

9.2 During the monthly Service Review meeting the performance of the Service Provider will be discussed.

9.3 In the event that SARS is dissatisfied with the overall execution of the Services based on multiple Service Level failures, such dissatisfaction will be communicated to the Service Provider’s Project Manager at a meeting held between the Parties in terms of **Clause 9.2**. Should the Service Provider be unable to improve its performance and execute the Services at a level acceptable to SARS, during the month following such monthly Service Review meeting, SARS reserves the right to terminate the Agreement based on malperformance, as provided for in **Clause 22.2**. Service Credits will continue to accrue to SARS in respect of any Service Level Failures during such remedial period/s or during any notice period/s.

9.4 Where SARS is of the opinion that the Service Provider is failing to meet its obligations in terms of adhering to the Preventative Maintenance Schedule or prescribed Response and Resolution times, or where the Service Provider is of the opinion that SARS is not fulfilling its responsibilities in terms of **Clause 13**, such non-compliance shall be reported and escalated (if necessary) through the escalation channels as set out below.

9.4.1 The Service Provider’s escalation channels:

| Escalation      | Contact Name | Contact Number |
|-----------------|--------------|----------------|
| Helpdesk        |              |                |
| Service Manager |              |                |

9.4.2 The SARS escalation channels read with **Annexure C-**

|  | Primary Number | Alternative Number |
|--|----------------|--------------------|
|  |                |                    |

|               |                             |          |
|---------------|-----------------------------|----------|
| Escalation #1 | Regional Facilities Manager | Helpdesk |
|---------------|-----------------------------|----------|

## 10. THE SERVICE PROVIDER’S CALL LOGGING PROCEDURE

The following procedures need to be followed by SARS to report Generator related faults and/or problems. Adherence to these procedures will ensure the best possible response and turnaround times for the resolution of all faults and/or problems relating to the relevant Generator.

10.1 The SARS Regional Facilities Manager or SARS designated helpdesk support staff will contact the Service Provider’s Service Centre via the SARS Facilities Helpdesk by means of any of the following methods:

- During Service Hours: .....
- After Service Hours: .....
- Per email during Service Hours: .....@.....

10.2 The Service Provider will require the following information from SARS in order to resolve the Service Call-

- 10.2.1 Site where the fault and/or problem arose (compulsory);
- 10.2.2 Generator model number (optional);
- 10.2.3 Generator serial number (optional);
- 10.2.4 Full description of the fault and/or problem (compulsory);
- 10.2.5 First name of the Service Call logger (compulsory);
- 10.2.6 Last name of the Service Call logger (compulsory);
- 10.2.7 Land line number (compulsory);

- 10.2.8 Cell number (compulsory);
  - 10.2.9 Fax number (compulsory);
  - 10.2.10 Email address (compulsory); and
  - 10.2.11 Full physical address (optional).
- 10.3 On receipt of the Service Call the Service Provider will analyse the fault and/or problem and-
- 10.3.1 For generators that are still under warranty repair, will repair the Generator; and
  - 10.3.2 For Break and Fix repair, resolve the Service Call within the timelines set out **Clause 5.4.**
- 10.4 All communication will be sent to the email address of the Service Call logger as supplied when logging the call.
- 10.5 It should be noted that-
- 10.5.1 All faults and/or problems must be reported to the Service Provider Service Centre. Only logged calls will constitute a Service Call. Faults and/or problems communicated directly to an engineer or other service personnel will not be recognized as an official call until logged with the Service Centre.
  - 10.5.2 A reference number will be assigned when a Service Call is logged with the Service Provider Service Centre, which will assist with any further enquiries regarding the progress or status of the Service Call.
  - 10.5.3 Telephonic assistance may be provided by a qualified technician in order to attempt to rectify the fault and/or problem.

- 10.5.4 The Service Provider must record all details relating to a Service Call (defined in **Clause 5.3.1** above) in a logbook which will be kept at the relevant SARS Facilities Office for the Service Provider's technicians.
- 10.5.5 If a Service Call causes the Service Provider to start the repair of a Generator otherwise covered under Limited Warranty and the Service Provider reasonably determines that the Generator is not defective and that the fault and/or problem giving rise to the Service Call was the result of user error, hardware, electrical spikes or any other components by a party other than the Service Provider, SARS will be invoiced accordingly.
- 10.5.6 If a Service Call is subsequently determined to have arisen as a result of the Service Provider's negligence on previous break and fix repair work on a specific Generator or failure to conduct the relevant preventative maintenance on a specific Generator, SARS shall not be invoiced and the cost will be borne by the Service Provider.

## **11. UNDERTAKINGS BY THE SERVICE PROVIDER**

- 11.1 The Service Provider undertakes in pursuance of its appointment in terms hereof –
- 11.1.1 to perform the Services as may from time to time be required by SARS which are detailed in this Agreement and/or communicated to the Service Provider by a SARS Representative from time to time;
  - 11.1.2 to exercise the utmost good faith towards SARS both in carrying out its duties hereunder and also in all its dealings with SARS;
  - 11.1.3 to report to such SARS Representative as may from time to time be reasonably necessary or desirable in connection with the Services; and
  - 11.1.4 to exercise all reasonable skill, care and diligence in the discharge of its obligations in terms of this Agreement.

- 11.2 During the currency of this Agreement, the Service Provider undertakes to ensure that its

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.

- 11.3 The Service Provider undertakes to comply with and ensure that its personnel comply with all security measures imposed by SARS regarding security and access to SARS premises.
- 11.4 The Service Provider undertakes to have sufficient contingency measures in place and to at all times be responsible to SARS for fulfilment of its obligations under this Agreement. The Service Provider is allowed to subcontract its obligations to other service providers, subject to SARS's prior written consent. The Service Provider will remain the primary contractor and undertakes to at all relevant times be solely responsible for the management of the contract. No separate contracts will be entered into between SARS and any such subcontractors.
- 11.5 The Service Provider undertakes to ensure that it at all times adheres to, and complies with all Laws, including without limitation, employment laws and bargaining council agreements to which it is a party. The Service Provider undertakes to furnish proof to SARS that its employees are registered for UIF and PAYE within fourteen (14) days of the Signature Date.
- 11.6 The Service Provider undertakes to exclude the provision of any services not specifically recorded in this Agreement. Any such additional services will be provided at SARS's request and on such terms and conditions as the Parties may agree in writing at such time, provided that such additional services will be related to the scope of this Agreement.
- 11.7 The Service Provider undertakes to at all times adhere to, and conduct itself in an ethical manner, which will not be in conflict with those values that constitute good corporate governance in general or specifically communicated by SARS to the Service Provider from time to time.
- 11.8 The Service Provider undertakes to provide the Services in accordance with best practices, in conformance with existing industry codes and to the highest standards as established for such Services in the Republic of South Africa, in order to ensure a safe and healthy working environment.
- 11.9 The Service Provider undertakes to keep and maintain proper records of all Services

rendered in terms of this Agreement, including duly completed timesheets/service reports, which are to be signed off by the relevant supervisor and the SARS Representative on site on a monthly basis, as well as proof of all diesel and parts purchased in terms of this Agreement. The aforementioned documents must accompany all invoices submitted to SARS for payment.

- 11.10 The Service Provider undertakes to invoice SARS for the Services rendered in accordance with the invoicing requirements, as more fully described in Clause 8.
- 11.11 The Service Provider undertakes prior to the third (3rd) day of each month, to supply the SARS Representative of each building where the Services have been rendered, with a comprehensive monthly management report, documenting all the Services rendered and work performed and completed at such building during the preceding month.

## **12. RESPONSIBILITIES OF THE SERVICE PROVIDER**

- 12.1 The Service Provider shall provide qualified service personnel to carry out the preventative maintenance tasks listed in **Annexure D**.
- 12.2 The Service Provider shall ensure that the service personnel-
  - 12.2.1 Are conversant with the Occupational Health and Safety Act, 1993 (Act No. 85 of 1993) as amended and comply with the relevant sections of the Act;
  - 12.2.2 Are effectively supervised by the Service Provider and that the level of supervision is of a sufficient standard to comply with the preventative maintenance tasks scheduled in **Annexure D**; and
  - 12.2.3 Are physically and mentally fit to fulfil their duties.
- 12.3 The Service Provider shall at its own cost ensure that:
  - 12.3.1 The service personnel are properly and appropriately clothed at all times when on duty as prescribed in terms of the Occupational Health and Safety Act;

- 12.3.2 Its service equipment is maintained and in a fully serviceable condition so as to comply with the legal safety requirements and to enable the service personnel to meet the requirements of the RFP;
  - 12.3.3 Any change room, plant room and facilities made available to the service personnel are kept in a clean and tidy condition;
  - 12.3.4 Appropriate signage and notification pertaining to temporary closure, danger zones, inconvenience or public safety is prominently displayed whenever required; and
  - 12.3.5 The Service Provider shall present, on conclusion of each inspection, maintenance service, supply of diesel or break and fix repair, an acknowledgement of service slip in duplicate for the signature of the SARS Representative. The duplicate copy shall be retained by the SARS Representative for record purposes.
- 12.4 The Service Provider shall ensure that his personnel comply with the requirements of this Agreement at all times and in all respects.
- 12.5 The Service Provider is required to provide a level of resource necessary to fulfil his commitments at all times and to take into account sickness and holidays etc. of service personnel.
- 12.6 The Service Provider shall have sufficient infrastructure on a regional cluster basis for the effective management of this Agreement and the Service Provider shall provide all items/equipment necessary for the proper execution of the Services in terms of this Agreement.
- 12.7 The Service Provider shall set up a Service Centre, to which Service Calls will be logged, prior to the Commencement Date.
- 12.8 Disruption to Services

- 12.8.1 The operational requirements of SARS shall take precedence over any

maintenance work activity, except where the works are required due to failure of the generator sets having an adverse effect on SARS operations.

- 12.8.2 Where SARS agrees in advance, work can be carried out after hours for which after hours rates will apply in terms of this Agreement.
- 12.8.3 All work, except in cases of emergencies, shall only be undertaken after fully informing the relevant SARS Representative who will have to agree in writing to the precise timing of such operations.
- 12.8.4 SARS shall pre-approve all down time in advance prior to any need for a shutdown. No shutdown will take place without SARS's written approval.

#### 12.9 Time Schedules for Performance of Activities

- 12.9.1 The Service Provider shall provide the SARS Facilities Management with detailed programmes for the preventative maintenance services to be performed (hereinafter referred to as "Preventative Maintenance Schedules") specified in **Annexure D** within fourteen (14) days of the commencement of this contract.
- 12.9.2 Programmes shall be fully coordinated and shall show the start and completion dates of each item of maintenance, repair or other work and shall meet the operational requirements of SARS.
- 12.9.3 The Service Provider shall provide SARS Facilities Management with further updated programmes for any of the Services which may become necessary due to variation, instruction, alteration or change required by SARS.

#### 12.10 Full Load Tests

Full load generator tests are excluded from this Agreement. Should full load tests be required for whatever reason, written approval for this requirement shall only be given to the Service Provider after consultation with SARS's National Facilities Manager.



12.11 Noise Control

The Service Provider must obtain the written approval of SARS, which will not unreasonably be withheld, prior to any noisy operations that it may plan to conduct.

12.12 Workmanship and Materials

12.12.1 The Service Provider is required to provide the Services in accordance with the highest professional standards and to carry out the maintenance work as defined in this Agreement. Such work shall be executed to the satisfaction of SARS. Any work not executed in accordance with the requirements for preventative maintenance or break and fix repairs as defined in the RFP (**Annexure A**), the Service Provider shall rectify or replace as instructed by SARS and at its own expense.

12.12.2 Supervisory staff must have technical knowledge to be able to instruct the operations under their control, in addition to the necessary management and supervisory skills and expertise to efficiently organise and control the work.

12.12.3 Replacement of parts and any installation work shall fully comply with all relevant standards, codes of practice and manufacturers' maintenance recommendations and shall be of the same standard or higher than the original part replaced and be compatible with the existing installation.

12.12.4 The Service Provider must ensure that sufficient replacement parts are held within the Republic of South Africa at all times.

12.12.5 The Service Provider must cover all replacement parts with a limited warranty of three years in respect of any defect or poor workmanship.

12.13 Materials supplied by the Service Provider shall be subject to the following requirements:

12.13.1 The Service Provider shall, if required, submit to SARS names of manufacturing suppliers and samples of equipment, parts and/or materials.

- 12.13.2 In all cases where equipment, parts and/or materials are specified that it must be of an “approved” type or quality, the written approval of SARS must be obtained before such equipment, parts and/or materials are ordered or manufactured.
- 12.13.3 The Service Provider may be required to show that compliance with the prescribed standards has been demonstrated in tests performed by a recognised testing house in respect of any such equipment or parts.
- 12.13.4 The Service Provider will procure for SARS the right to at any time inspect and examine any aspect of the Preventative Maintenance Schedule (**Annexure D**) and to test any materials, parts or equipment intended to be used, either at the building or at any factory or workshop where such equipment, parts or materials are being manufactured, or repaired from any relevant third party, if necessary.

12.14 Discomfort to building occupants

- 12.14.1 The Service Provider is to ensure that all reasonable and practical methods of carrying out the work are employed to avoid the creation of dust, debris, airborne particles, smoke and odour.
- 12.14.2 Except in cases of emergencies and instances where creation of smoke, fumes etc. is unavoidable the Service Provider is required to-
- 12.14.2.1 Inform SARS in advance that such an operation is taking place; and
- 12.14.2.2 Carry out the works in such a manner as to ensure that the creation of the smoke, fumes etc. is minimised/localised. This will include all necessary protection, sealing and all cleaning operations, that maybe required.

12.15 First Aid and Accident Reporting

In case of an incident or accident (involving personal injury), the Service Provider shall

report the incident or accident to the relevant SARS Representative. The Service Provider is to maintain a register of all incident and accident reporting, and to ensure that it registers with the Compensation Commissioner as required by the provisions of the Occupational Health and Safety Act, 1993 (Act No. 85 of 1993).

#### 12.16 Cleanliness

The Service Provider must carry out all works in a clean and tidy manner, conducive to the normal operation of the building in which the Services are carried out. Rubbish must be cleared and removed by the Service Provider after each Generator site attendance including all redundant equipment, lubricants and the like at the Service Provider's costs.

#### 12.17 Subcontractors

12.17.1 The Service Provider shall be responsible for any subcontractor employed by it in connection with the Services. The obligations and restrictions imposed on the Service Provider as set out in this Agreement, including the prescribed Preventative Maintenance Schedule shall apply to the subcontractor and its employees.

12.17.2 The Service Provider shall be liable to ensure the subcontractor's compliance with all its obligations and shall be held responsible for any non-compliance on the part of such subcontractor.

### 13. **RESPONSIBILITIES OF SARS**

#### 13.1 SARS undertakes to-

13.1.1 Nominate representatives who will be the Regional Managers of the clusters (refer to **Annexure C**) and responsible for managing the delivery of the Services by the Service Provider, including but not limited to:

13.1.1.1 Authorising the Service Provider to start with the Services;

13.1.1.2 Approval of invoices submitted by the Service Provider; and,

13.1.1.3 Monitoring of standards of the Services.

13.1.2 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.

13.2 SARS will provide the Service Provider with access to the sites where the Generators are installed on an "as and when required" basis, subject to the terms and conditions set out in this Agreement.

## **14. PERSONNEL**

14.1 The Service Provider undertakes to make available from time to time personnel as may be required for the purpose of rendering the Services to SARS according to the levels of service required in terms of this Agreement.

14.2 The Service Provider shall be solely responsible for their personnel at all times and nothing contained in this Agreement may be construed as constituting any relationship between the contracting Parties other than for the Services provided.

14.3 For the purpose of liaising from time to time with the Service Provider regarding any of their personnel, the Service Provider shall appoint a Project Manager and provide SARS with their relevant contact details within seven (7) days after the Commencement Date. Any complaints, queries, requests, notices or like information relating to any of the Service Provider's personnel which may in any way be reasonably regarded as material to the Service Provider's responsibility for their personnel shall be communicated by SARS in writing to the Service Provider's Project Manager. The Service Provider undertakes to take such action as may be appropriate in a timely manner upon receiving such notice.

## **15. CHANGES TO THE SERVICE LEVEL AGREEMENT**

### **15.1 Amendment to Agreement**

Any amendment to the terms and conditions of this Agreement must be approved by

both the Service Provider and SARS. The amendment of this Agreement will take place in the form of an addendum which will be recorded as an Appendix to this Agreement and which must be duly signed by both Parties' Authorised Representatives.

## 15.2 New Services to Agreement

The Parties will agree in writing to the addition of new Services during the term of this Agreement, where after such new Services will be incorporated into the definition of Services as defined. The Service Provider will be responsible for initiating and ensuring completion of the new Services. These Services will further be incorporated into the scope of work to be carried out by the Service Provider. Changes to the Services may be reviewed on a regular basis upon written request made by either Party. Such changes will be effected by following the process described in **Clause 15.1** above.

## 16. **WARRANTIES**

16.1 The Service Provider hereby represents and warrants to SARS that –

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

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

16.1.3 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 it, its assets or its business, or its memorandum, 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;

16.1.4 it is, at the Commencement Date of this Agreement, in compliance with, and throughout the term it will remain in compliance with, all applicable Laws relating to taxation in the Republic of South Africa. The Service Provider further warrants to SARS that it will deliver to SARS upon the Signature Date,

and on each anniversary thereof during the term of the Agreement, a valid tax clearance certificate issued for the then current year. Failure to provide such a certificate will entitle SARS to withhold payment or alternatively to terminate the Agreement with immediate effect and without incurring any liability in connection with such termination.

- 16.1.5 it will 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 BBBEE Act) as will be amended from time to time, and the Codes of Good Practice issued in terms of the BBBEE Act. Upon signature of this Agreement and one (1) calendar month after the expiry of a current certificate for a particular year, the Service Provider shall provide SARS with a certified copy of its BEE Certificate and rating status from an agency accredited by the South African National Accreditation System. During the currency of this Agreement (including any extension or renewal hereof which may apply), the Service Provider shall use reasonable endeavours to maintain and/or improve its current BEE rating status. A failure to provide a certified copy of its BEE Certificate and rating status or a failure to comply with the provisions of this Clause will entitle SARS to terminate the Agreement by giving the Service Provider one (1) month's written notice.
- 16.1.6 it will for the duration of this Agreement maintain a complete audit trail of all transactions under this Agreement, sufficient to permit a complete audit thereof. The Service Provider will provide SARS and SARS's auditors access at reasonable times to information, records and documentation relating to the Services for the purpose of performing audits, examinations and inspections of the Service Provider, in order to verify the Service Provider's compliance with all the terms of this Agreement and to enable SARS to comply with the requirements of its regulators and governmental entities having jurisdiction.
- 16.1.7 it will treat as strictly confidential all information, including Confidential Information, received or obtained as a result of entering into, or performing in terms of, this Agreement.
- 16.1.8 throughout the duration of this Agreement it will have the resources, skills,

qualifications and experience necessary to provide the Services.

16.2 It is expressly agreed between the Parties that each warranty and representation given by the Service Provider in this Agreement is material, goes to the root of this Agreement and have induced SARS to conclude this Agreement.

16.3 The provisions of this **Clause 16** will survive the termination of this Agreement.

## **17. HEALTH, SAFETY AND SECURITY PROCEDURES AND GUIDELINES**

17.1 The Service Provider will ensure that its personnel will at all times, whilst on SARS's premises, adhere to the standard health, safety and security procedures and guidelines applicable to SARS's personnel, as such procedures and guidelines may be changed by SARS from time to time and are available to the Service Provider on request. Should SARS at any time have reason to believe that any member of the Service Provider's personnel is failing to comply with such standard health, safety and security procedures and guidelines, SARS will be entitled to deny such member of the Service Provider's personnel access to any or all of SARS's premises and require the Service Provider to replace such member of its personnel without delay. The Service Provider will not be relieved of its obligations under this Agreement as a result of such denial of access, and SARS will have no liability to the Service Provider with regard thereto.

17.2 The Service Provider hereby agrees and undertakes, in terms of the Occupational Health and Safety Act, 1993 (Act No. 85 of 1993), to ensure that the Service Provider and the Service Provider's personnel comply with the aforesaid Act and accept sole responsibility for all health and safety matters relating to the provision of the Services, or in connection with or arising out of such Services, for the duration of this Agreement, including with regard to the Service Provider personnel and ensuring that neither SARS's personnel nor any Third Party's health and safety is endangered in any way by the Service Provider's activities or conduct in providing the Services.

17.3 The Service Provider hereby agrees and undertakes to maintain its equipment in good order, so as to comply with SARS's occupational health and safety policies, procedures and standards, as amended from time to time.

## 18. INDEMNITIES AND INSURANCE

### 18.1 The Service Provider will –

- 18.1.1 on or before the Commencement Date and for the duration of this Agreement have and maintain in force public liability insurance in the amount of two million rand (R2 million) in respect of all the regional clusters to cover any claims, Losses and/or damages for which it is liable in terms of this Agreement;
- 18.1.2 deliver to SARS upon the Signature Date of this Agreement, and on each anniversary thereof during the term of the Agreement, proof of such insurance coverage as aforementioned.
- 18.1.3 indemnify and hold SARS harmless against all Losses (including legal expenses on a full indemnity basis) of whatsoever nature arising out of this Agreement or at Law in respect of injury or death of any Person or loss of or damage to any Person or property occurring by reason of the Service Provider's wilfulness or negligence prior to, during or after its execution of the Services, including such Services as provided for under **Clause 11.6**; and
- 18.1.4 report all incidents affecting, or which may affect, any of the terms and conditions of any insurance policy, including any of SARS's insurance policies becoming void or voidable, or whereby the insurance premiums for such insurance may be increased, immediately upon becoming aware of their occurrence.

### 18.2 SARS's right to Acquire Insurance in Certain Circumstances

Without limiting the generality of the SARS's rights and remedies hereunder, in the event of a failure by the Service Provider to maintain the insurance referred to in Clause 18.1.1, or to provide evidence of renewal at least 3 (three) business days prior to expiration of the applicable insurance cover, on 3 (three) business days' notice to Service Provider, SARS



may purchase the requisite insurance and deduct the costs thereof from any amounts owed to the Service Provider under this Agreement.

**18.3 Risk and Loss**

The Service Provider shall be responsible for risk of loss of, and damage to, any assets, equipment and/or tools in its possession or under its control. Any such items in the possession or control of the Service Provider's Sub-contractors or agents shall be deemed to be under the control of the Service Provider.

**19. LIMITATION OF LIABILITY**

The Parties agree that, in the event of a breach of any of the provisions of the Agreement, any party so breaching this Agreement shall be liable to the other for any losses which constitute direct and / or general damages. The Service Provider will not be responsible for any losses save that arising out of gross negligence, breach of warranty, wilful misconduct or breach of the confidentiality provisions by the Service Provider or its Staff.

**20. SECURITY VETTING OF THE SERVICE PROVIDER'S PERSONNEL**

20.1 SARS reserves the right in its sole and absolute discretion to do a security check (vetting) on the Service Provider's personnel involved with the performance of the Services.

20.2 The Service Provider will procure from its personnel such documentation as may be reasonably requested by SARS, to enable SARS to conduct such security checks as aforementioned.

20.3 Where SARS finds any of the Service Provider's personnel to be a security risk, SARS will inform the Service Provider accordingly and the Service Provider will immediately replace such person with a suitably qualified substitute.

**21. ETHICAL BUSINESS PRACTICES**

21.1 SARS has a policy of zero tolerance regarding corrupt activities. The Service Provider will promptly report to SARS and the relevant authorities any suspicion of corruption on the part

of their personnel, as well as any behaviour by any of those Persons that is likely to constitute a contravention of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004).

- 21.2 Neither Party will offer, promise or make any gift, payment, loan, reward, inducement benefit or other advantage to any of the other Party's personnel.
- 21.3 If the results of any audit of the Services conducted by or on behalf of SARS indicates the possibility of corrupt activities, improper or fraudulent practices or theft, SARS will, after allowing the Service Provider a reasonable opportunity to investigate that possibility, have the right either by itself, or by its agents, or by requesting the police, to investigate all the relevant circumstances, to question any relevant personnel of the Service Provider or a Third Party and the Service Provider will use all reasonable efforts to facilitate any such investigation or enquiry. In the event that an act of corruption, fraud or theft is proven, SARS will be entitled, on written notice to the Service Provider, to immediately terminate this Agreement and either assume the provision of the Services itself, or appoint a Third Party to render the Services, as more fully set out in **Clause 25** below. The Service Provider acknowledges that it is crucial that SARS be entitled, without penalty, to ensure continued provision of the Services if for whatever reason this Agreement is terminated pursuant to the breach thereof by the Service Provider or its personnel, as the case may be.

## **22. BREACH**

- 22.1 Should a Party ("the defaulting party") commit a breach of any of the provisions of this Agreement, then the other Party ("the aggrieved party") will be entitled to require the defaulting party to remedy the breach within ten (10) Business Days, or such other reasonable time as agreed to in writing by the Parties, of delivery of a written notice requiring it to do so. If the defaulting party fails to remedy the breach within the period specified in such notice, the aggrieved party will be entitled to claim immediate payment and/or performance by the defaulting party of all of the defaulting party's obligations due in terms of this Agreement, in either event, without prejudice to the aggrieved party's right to claim damages. The foregoing is without prejudice to such other rights as the aggrieved party may have at Law, provided always that the aggrieved party will not be entitled to cancel this Agreement for any breach by the defaulting party, unless such breach is a

material breach going to the root of this Agreement and is incapable of being remedied by payment of money or, if it is capable of being remedied by payment of money, the defaulting party fails to pay the amount concerned within ten (10) Business Days after such amount has been determined.

22.2 It is specifically recorded that multiple Service Level Failures affecting any of the regional clusters will collectively constitute a material breach. SARS will however, in its sole and absolute discretion, be entitled to cancel either this entire Agreement based on such material breach, or such part/s of this Agreement relating to the particular affected regional cluster/s.

22.3 Notwithstanding the provisions of **Clause 22.1** above, SARS may immediately terminate this Agreement at any time by giving written notice of such termination to the Service Provider if-

22.3.1 the Service Provider is, other than for the purposes of amalgamation, placed under voluntary or compulsory liquidation (whether provisional or final) or under business rescue proceedings or under curatorship or under the equivalent of any of the foregoing;

22.3.2 a final and unappeasable judgment against the Service Provider remains unsatisfied for a period of ten (10) Business Days or more after it comes to the notice of the Service Provider;

22.3.3 the Service Provider makes any arrangement or composition with its creditors generally or ceases to carry on business; and/or

22.3.4 the Service Provider breaches any of the warranties as set out in **Clause 16** above.

22.4 Any termination of this Agreement pursuant to the provisions of this **Clause 22** will be without SARS incurring any liability in connection with such termination, or prejudice to any claim which SARS may have in respect of any prior breach of the terms and conditions of this Agreement by the Service Provider.

## **23. TERMINATION**

23.1 The Agreement will automatically terminate on xxx.

### 23.2 Termination by SARS

23.2.1 Notwithstanding anything to the contrary set forth in this Agreement, SARS reserves the right to terminate this Agreement or temporarily defer the provision of the Services, or any part thereof, at any stage with immediate effect on written notice to the Service Provider, should SARS in its sole and absolute discretion, decide not to proceed with the Services.

23.2.2 SARS shall not be liable for any damage or loss to the Service Provider resulting from termination under this Clause.

23.2.3 In the event that SARS terminates this Agreement in terms of this **Clause 23**, the Service Provider will be remunerated for Services rendered to date of such termination, provided that the Service Provider furnishes SARS with a valid tax invoice in respect of such Services, such invoice is accurate and meets SARS's invoicing requirements. Save for the aforementioned, SARS will have no liability to the Service Provider with respect to such termination.

23.2.4 In the event of a sale, acquisition, merger, or other change of control of the Service Provider (a 'Change Event') where such Change Event is achieved, directly or indirectly, in a single transaction or series of related transactions, or in the event of a sale of all or substantially all of the assets of the Service Provider in a single or series of related transactions, then, at any time within thirty (30) Business days after being notified of the Change Event by the Service Provider, SARS may terminate this Agreement by giving the Service Provider at least thirty (30) Business days' prior written notice and designating a date upon which such termination shall be effective. The Service Provider shall notify SARS if there is any Change Event within five (5) days after becoming aware of the anticipated Change Event. No sale, acquisition, merger or other change of Control shall be effective against and legally binding on SARS if the prior written consent of SARS was not obtained. SARS shall have

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

23.2.4.1 "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 either:

23.2.4.1.1 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;

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

23.2.4.1.3 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.

### 23.3 Termination by the Service Provider

23.3.1 The Service Provider shall have no right to terminate this Agreement except where SARS has failed to make payment of an invoice in terms of this Agreement.

23.3.2 Notwithstanding the provisions of **Clause 23.3.1** above, the Service Provider shall have no right to terminate this Agreement unless it has given SARS thirty (30) days' written notice of its failure to make payment of an invoice.

## 24. **FORCE MAJEURE**

24.1 In the event of any act beyond the reasonable control of the Parties, including war, warlike operation, rebellion, riot, civil commotion, lockout, interference by trade unions, suspension of labour, fire, accident or (without regard to the foregoing enumeration) any other 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"), then the Party affected by such force majeure event will be relieved of its obligations hereunder during the period that such force majeure event continues (excluding payment obligations for materials purchased).

24.2 The affected Party's relief is only to the extent so prevented and such Party will 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 will be promptly given of any such inability by the affected Party.

24.3 Any Party invoking force majeure will upon termination of such force majeure give prompt written notice thereof to the other Party. Should such force majeure event continue for a period of more than thirty (30) days, then either Party has the right to cancel this Agreement by giving written notice to such other Party to that effect.

24.4 Notwithstanding anything to the contrary contained in this Agreement, the Service Provider will not be entitled to rely on a force majeure defence in the event that such act, circumstance or action could have been prevented by the Service Provider having proper contingency measures in place.

24.5 In the event that the Service Provider is for any reason other than as provided for in this Clause unable to provide the Services for the full duration of this Agreement-

24.5.1 the Service Provider shall serve SARS with a written notice requesting an extension of the duration of this Agreement at least seven (7) Business Days prior to the end of the duration of this Agreement; and,

24.5.2 SARS shall consider the request and revert to the Service Provider by no later than five (5) Business Days from date of receipt of the notice referred to in **Clause 24.5.1.**

## **25. STEP IN RIGHTS**

25.1 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 (i) call for an urgent senior level meeting with the Service Provider; and/or (ii) launch an audit investigation into the Service Provider's operations in accordance with the audit provisions detailed in **Clause 16.1.6**; and/or (iii) temporarily take over the Services as contemplated in **Clause 25.2** 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.

25.2 For purposes of this **Clause 25** 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 will 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 will, upon the request of SARS, fully cooperate with and assist SARS in the performance of the Services during any such temporary takeover of the Services by SARS.

25.3 To the extent that SARS exercises its rights to assume the rendering of the Services or part thereof itself, or procures that a Third Party service provider renders some or all of the Services pursuant to the provisions of **Clause 25.2** above, the Service Provider will not be entitled to any fees during the period for which SARS or the Third Party assumes the Services. SARS will be obliged to also assume, for that period, any direct costs and expenses solely attributed to any such temporary rendering of part or all of the Services, incurred by SARS in accordance with this Clause, including the salary costs for the Service Provider personnel that SARS may require to assist it in so rendering the Services or part thereof. SARS will not under any circumstances by virtue of such assumption, be obliged or deemed or required to also take over or assume responsibility for the conduct of the Service Provider's business operations or the employment of any of the Service Provider's personnel, in terms of this Clause.

## **26. RELATIONSHIP BETWEEN THE PARTIES**

26.1 The Service Provider is an independent contractor, and under no circumstances will it be a partner, joint venture partner, agent or employee of SARS in the performance of its duties and responsibilities pursuant to this Agreement.

- 26.2 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.

## **27. DISPUTE RESOLUTION**

- 27.1 If a dispute between the Parties arises out of or is related to this Agreement, the Parties will meet and negotiate in good faith to attempt to resolve the dispute. If, after ten (10) Business Days from the date upon which the dispute was declared by a Party by written notice, the dispute is not resolved, the matter will be determined in accordance with the provisions set out below.
- 27.2 Save in respect of those provisions of this Agreement which provide for their own remedies which would be incompatible with arbitration, or in the event of either Party instituting urgent action against the other in any court of competent jurisdiction, any dispute arising from or in connection with this Agreement will be finally resolved by arbitration in accordance with the Rules of the Arbitration Foundation of Southern Africa or its successor, by an arbitrator or arbitrators appointed by the Foundation.
- 27.3 This **Clause 27** 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.
- 27.4 Unless specifically otherwise provided for in this Agreement, neither Party will 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 will in such circumstances continue to comply with their obligations in terms of this Agreement.

## **28. NON-EXCLUSIVITY**

- 28.1 The Service Provider is appointed to provide the Services to SARS on a non-exclusive basis and SARS will not be precluded from obtaining Services that may be similar or identical to the Services from any other service provider.



28.2 Nothing contained herein will in any way be construed or constitute a guarantee in favour of the Service Provider that the Service Provider will receive any work or contract from SARS for Services in the future, whether under this Agreement or otherwise.

**29. ADDRESSES**

29.1 Each Party chooses the addresses set out opposite its name 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:

29.1.1 **SARS:**                    **Acting Group Executive: Corporate Legal Services**  
**271 Bronkhorst Street**  
**Khanyisa Building**  
**Brooklyn**  
**PRETORIA**

29.1.2 **Service Provider:**    .....

.....

.....

**Telefax No:**                    **+27.....**

29.2 Any notice or communication required or permitted to be given to a Party pursuant to the provisions of this Agreement will be valid and effective only if in writing and sent to a Party’s chosen address or telefax number, provided that documents in legal proceedings in connection with this Agreement may only be served at a Party’s *domicilium*.

29.3 Any Party may by written notice to the other Party, change its chosen address or telefax number to another address or telefax number provided that:-

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

- 29.3.2 any change in a Party's *domicilium* will only be to an address in the Republic of South Africa, which is not a post office box or a *poste restante*.
- 29.4 Any notice to a Party contained in a correctly addressed envelope and sent by prepaid registered post to it at its chosen address or delivered by hand to a responsible Person during ordinary business hours at its chosen address:
- 29.4.1 will be deemed to have been received in the case of prepaid registered post on the fifth (5<sup>th</sup>) Business Day after posting and in the case of delivery by hand, on the day of such delivery unless the contrary is proved.
- 29.5 Any notice by telefax to a Party at its telefax number will be deemed, unless the contrary is proved, to have been received on the first (1<sup>st</sup>) Business Day after the date of transmission.
- 29.6 The Parties record that whilst they may correspond via e-mail 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 e-mail.

## **30. CONFIDENTIALITY**

- 30.1 The Service Provider will execute SARS's standard Oath of Secrecy (as amended from time to time), and undertakes to ensure that all of its personnel involved in performing the Services in terms of this Agreement, or who may have access to SARS's Confidential Information, sign and are bound by SARS's standard Oath of Secrecy (as amended from time to time), prior to such personnel entering or gaining access to any of SARS's premises.
- 30.2 The Service Provider undertakes not to commit any act which in any manner prejudices SARS's Confidential Information, including any Third Party information which is in the custody of SARS. The Service Provider further undertakes to implement measures to ensure that its personnel who have not signed SARS's Oath of Secrecy will not have access to SARS's Confidential Information or any of SARS's premises.

30.3 The Service Provider may with SARS's prior written consent and subject to the provisions of this **Clause 30** disclose only such information as may be legally required by a regulatory or other competent authority.

30.4 Each Party hereby undertakes for the continuance of this Agreement and for a period of five (5) years from the termination of this Agreement to the other to:-

30.4.1 keep confidential all information (written, including information contained in electronic format or oral) concerning the business affairs of the other that it shall have obtained or received from the other Party ("the information"); and

30.4.2 not, without the other's written consent, disclose the information in whole or in part to any other Person save to its employees involved in the implementation of this Agreement, and then only on a "need-to-know" basis.

## **31. MISCELLANEOUS**

31.1 This document contains the entire Agreement between the Parties in regard to the subject matter hereof.

31.2 No Party will be bound by or have any claim or right of action arising from any express or implied term, undertaking, representation, warranty, promise or the like not included or recorded in this Agreement whether it induced the contract and/or whether it was negligent or not.

31.3 No variation, amendment or consensual cancellation of this Agreement or any provision or term hereof and no settlement of any disputes arising under this Agreement and no extension of time, waiver or relaxation or suspension of any of the provisions or terms of this Agreement will be binding or have any force and effect unless reduced to writing and signed by or on behalf of the Parties. Any such extension, waiver or relaxation or suspension which is so given or made will be construed as relating strictly to the matter in respect whereof it was made or given.

31.4 No failure by any Party to enforce any provision of this Agreement will constitute a waiver of such provision or affect in any way such Party's right to require the performance of such provision at any time in the future, nor will a waiver of a subsequent breach nullify the

effectiveness of the provision itself.

- 31.5 Except as provided for under this Agreement, neither Party will cede nor assign any of its rights or obligations under this Agreement without the prior written consent of the other Party.
- 31.6 If any Clause or term of this Agreement becomes invalid, unenforceable, defective or illegal for any reason whatsoever, then the Parties will negotiate in good faith to replace such Clause with a Clause which is valid, enforceable and legal but maintaining the essential provisions of that Clause to the extent possible, provided that if the Parties should fail to reach Agreement on such replacement Clause, then the remaining terms and provisions of this Agreement will be deemed to be severable there from and will continue in full force and effect unless such invalidity, unenforceability, defect or illegality goes to the root of this Agreement.
- 31.7 The rule of construction that an agreement will be interpreted against the Party responsible for the drafting of the Agreement will not apply.

## **32. PUBLIC DISCLOSURES**

- 32.1 No advertising or publicity matter of either Party having or containing any reference to the other Party, or in which the name of the other Party is mentioned (except announcements intended solely for internal distribution or to meet legal or regulatory requirements beyond the reasonable control of the disclosing Party), will be made by or for a Party without first obtaining written approval from the other Party.
- 32.2 The Parties may not use each other's logos, or any other service marks or trademarks which are intellectual property of the other Party.

## **33. GOVERNING LAW AND JURISDICTION**

- 33.1 The provisions of this Agreement will be governed by and construed in accordance with the Laws of the Republic of South Africa.
- 33.2 The Parties hereby irrevocably and unconditionally consent to the non-exclusive jurisdiction

of the North Gauteng High Court of South Africa in regard to all matters arising from this Agreement.

### 34. COSTS

Save as may be otherwise provided herein, each Party will bear and pay its own legal costs and expenses of and incidental to the negotiation, drafting, preparation and implementation of this Agreement.

**Signed at Pretoria by and on behalf of SARS-**

1. **Salim Bwanali** **Acting Group Executive: Facilities**

**Signature** \_\_\_\_\_

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

2. **Basil Buthelezi** **Acting Executive: Procurement**

**Signature** \_\_\_\_\_

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

Signed by and on behalf of ..... at \_\_\_\_\_ on this the \_\_\_\_\_  
day of \_\_\_\_\_ 2015

**Signature of the Authorised Representative  
of the Service Provider:**

\_\_\_\_\_

**Full Name and Capacity:  
Who warrants his authority thereto**

\_\_\_\_\_

**Witnesses**

**Date signed**

1. \_\_\_\_\_

\_\_\_\_\_

2. \_\_\_\_\_

\_\_\_\_\_

