

**AGREEMENT FOR THE APPOINTMENT OF A HEALTH RISK MANAGER TO
PROVIDE SERVICES RELATING TO INCAPACITY LEAVE AND ILL-HEALTH
RETIREMENT**

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 company with limited liability registered as such in terms of the Company Laws of South Africa, with registration number, and with its principal place of business as

(“Service Provider”)

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1. Interpretation

1.1 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.

1.2 Unless inconsistent with the context, the words and expressions have the following meanings and similar expressions will have corresponding meanings-

1.2.1 **“Agreement”** means this Agreement, including all Service Requests relating to incapacity referrals for specialist medical/therapist opinion, second general practitioner medical opinion or for retirement due to ill-health and any annexures hereto, read together with the Service Provider’s proposal, which proposal is incorporated herein by reference;

1.2.2 **“Amount at Risk”** means the maximum percentage of the Service Provider’s total applicable invoice, fixed at 20% in terms of this Agreement, which may be at risk in respect of Service Credits due to SARS resulting from any Service Level Failures: Provided that such amount is limited to fees due to the Service Provider and shall not be applied to fees payable by the Service Provider to third party service providers;

1.2.3 **“Applicable Law(s)”** means any statute, regulation, notice, policy, directive, ruling or subordinate legislation; the common law; any binding court order, judgment or ruling; any applicable industry code, policy or standard enforceable by law; or any applicable direction, policy or order that is given by any regulator, competent authority or organ of state or industry body in respect of the Services;

1.2.4 **“Business Day”** means any day other than a Saturday, Sunday or public holiday in South Africa;

- 1.2.5 **"Commencement Date"** means, irrespective of date of signature hereof;
- 1.2.6 **"Deliverable"** means any information, document or material provided by the Service Provider to SARS as part of the Services, pursuant to this Agreement;
- 1.2.7 **"Designated Representative"** means a person nominated by each of the Party from time to time, to whom all communications regarding this Agreement must be addressed;
- 1.2.8 **"Intellectual Property"** means, all computer programs, software, source code, object code, program interfaces, specifications, operating instructions, compilations, lists, databases, systems, operations, processes, methodologies, technologies, algorithms, techniques, methods, designs, circuit layouts, plans, reports, data, works protected under the Copyright Act, 1978 (Act No. 98 of 1978), works of authorship, video recordings, audio recordings, photographs, models, samples, substances, trade secrets, formulae, know-how, show-how, Confidential Information, concepts and ideas of any nature (including of a technical, scientific, engineering, commercial, strategic, financial, marketing or organisational nature), inventions, discoveries, drawings, notes, manuals, documentation, training materials, job aids, trademarks, service marks, logos, slogans, corporate, business and trade names, domain names, trade dress, brand names and other indicia of origin, regardless of whether Intellectual Property Rights actually inhere in any such items, and any other tangible or intangible items in which Intellectual Property rights may inhere, as may exist anywhere in the world and any applications for registration of such intellectual property, and includes all Intellectual Property rights in any of the foregoing;
- 1.2.9 **"Key Account Manager"** means an employee of the Service Provider who has been nominated and dedicated to administer and manage the performance of the Services. The Key Account Manager shall be deemed to be material and integral to the provision of the Services;

1.2.10 **“Parties”** means SARS and the Service Provider and “party” as the context requires, is a reference to any one of them;

1.2.11 **“Personal Information”** shall have the same meaning ascribed thereto as in the Protection of Personal Information Act, 2013 (Act No. 4 of 2013) and shall thus include all medical information processed by the Service Provider relating to SARS employees, as contemplated in this Agreement;

1.2.12 **“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;

1.2.13 **“Services”** means the services to be provided by the Service Provider in terms of this Agreement, including those services, functions or responsibilities not specifically described herein but which are reasonably and necessarily required for the proper performance and provision of the Services;

1.2.14 **“Service Request”** means a specific written instruction issued by the SARS Designated Representative to the Service Provider requesting the Service Provider to perform the Services in terms of this Agreement; and

1.2.15 **“Service Provider”** means,
.....

1.3 Any reference in this Agreement to-

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

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

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

1.4.1 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 shall be given to it as if it were a substantive provision of this Agreement;

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

1.4.3 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 shall be the subsequent Business Day;

1.4.4 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 shall be the subsequent Business Day;

1.4.5 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;

1.4.6 any reference in this Agreement to this Agreement or any other Agreement or document shall be construed as a reference to this Agreement or, as the case may be, such other Agreement or document as same may have been, or may from time to time be, amended, varied, negotiated or supplemented;

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

1.4.8 references to day/s, month/s or year/s shall be construed as calendar day/s, month/s or year/s; and,

- 1.4.9 a reference to a party includes that party's successors-in-title and permitted assigns.
- 1.5 Unless inconsistent with the context, an expression which denotes-
- 1.5.1 any one gender includes the other genders; and,
- 1.5.2 the singular includes the plural and *vice versa*.
- 1.6 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.
- 1.7 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 do not expressly provide for this.
- 1.8 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 any reference to a Party is deemed to include such Party's estate, heirs, executors, administrators, trustees, permitted assigns or liquidators, as the case may be.
- 1.9 Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.
- 1.10 None of the provisions hereof shall be construed against or interpreted to the disadvantage of the Party responsible for the drafting or preparation of such provision.

2. Appointment

- 2.1 The Service Provider has submitted a proposal to SARS to render the Services. SARS accepted the Service Provider's proposal and hereby appoints the Service Provider to render the Services.
- 2.2 The Service Provider represents that the Service Provider has, and warrants that throughout the duration of this Agreement the Service Provider shall have the resources, skills, qualifications and experience necessary to provide the Services to the highest standards.
- 2.3 In reliance on these statements and representations, SARS has appointed the Service Provider to render the Services, on an *ad hoc* basis.
- 2.4 The Service Provider will be utilised on an *ad hoc* basis, as and when required by SARS. SARS does not guarantee that the Service Provider will receive Service Requests during the term of this Agreement.
- 2.5 The Service Provider will render the Services to SARS on a non-exclusive basis.

3. Duration

- 3.1. This Agreement shall commence on the Commencement Date and endure for a period of 36 (thirty six) months ("**Initial Period**") unless extended as provided in **Clause 3.2** or terminated earlier in accordance with the terms of this Agreement.
- 3.2. SARS shall have the option, to be exercised in SARS's sole discretion, and provided such extension has been approved in terms of SARS's internal procurement procedures, to extend this Agreement beyond the Initial Period by 2 successive periods of 12 (twelve) months each, by serving written notice to that effect on the Service Provider not less than 60 (sixty) days prior to expiry of the Initial Period.

4. Services

- 4.1 The specific responsibilities of the Service Provider are outlined in **Annexure A** of this Agreement.
- 4.2 The Service Provider shall generally render the Services subject to the terms and conditions of this Agreement and, specifically, in accordance with the specifications set out in the relevant Service Request.

5. Approach to the Services

- 5.1 This Agreement provides a framework for, and the general terms and conditions applicable to the Services that the Service Provider will provide to SARS under this Agreement.
- 5.2 The provisions of this Agreement shall apply to each and every Service Request issued under this Agreement.
- 5.3 The Service Provider will provide the Services to SARS, subject to the general terms and conditions contained in this Agreement, as well as subject to the specific terms and conditions set forth in the relevant Service Request.
- 5.4 No Service Request shall constitute a binding document between the Parties unless signed by both Parties and a SARS purchase order is issued in relation to the Service Request.
- 5.5 In the event of a conflict between the terms contained in this Agreement and a Service Request,
- 5.5.1 subject to **Clause 5.5.2** to the extent the conflicting terms can reasonably be interpreted so that such terms are consistent with each other, such consistent interpretation shall prevail;
- 5.5.2 to the extent **Clause 5.5.1** does not apply, any conflict between the provisions of the various clauses of the Agreement, the Service Request and annexures will be resolved in accordance with the following order of precedence (in descending order of priority)-
- (a) the Agreement and its annexures; and,

(b) the Service Request and any annexures thereto.

5.6 Each Service Request shall be in writing, and contain the following minimum information-

5.6.1 Details of the Services required of the Service Provider;

5.6.2 Timelines (subject to Annexure A) for the provision of the Services;

5.6.3 The name and contact details of the SARS Designated Representative requesting the Services; and,

5.6.4 Signature of the SARS's Designated Representative.

6 Service Provider's Obligations

6.1 The Service Provider undertakes to-

6.1.1 Provide SARS with a one page curriculum vitae (CV) of the Key Account Manager;

6.1.2 Render the Services to SARS in accordance with the highest professional standards;

6.1.3 Render the Services to SARS in accordance with the performance standards ["Service Levels"] stipulated in the Service Request;

6.1.4 Ensure that its personnel and consultants devote such time, attention and skill in performing the Services as may be reasonably required for the proper discharge of the Service Provider's duties under this Agreement;

6.1.5 Assign suitably qualified and skilled personnel to provide the Services;

6.1.6 Not change or replace the Key Account Manager for the duration of this Agreement, except with the prior written consent of SARS, in which event the replacement shall have similar or better qualifications, skills and experience; and

- 6.1.7 Comply with all legislation regulating the provision of the Services including legislation relating to registration or licensing by a regulatory authority.

7 Acceptance And Review

- 7.1 SARS shall have the right to review and accept or reject all and any components of such Deliverables to be provided by the Service Provider to SARS under this Agreement, pursuant to the methodology set forth in this clause unless otherwise agreed in the relevant Service Request.
- 7.2 The Service Provider will be available to liaise with SARS regarding any queries arising with regard to a Deliverable and will assist SARS with its evaluation of the Deliverable.
- 7.3 Should SARS not accept the Deliverable, SARS will provide the Service Provider with written notice of its non-acceptance, as well as detailed reasons for it not being acceptable. The Service Provider will correct any Deficiencies within 5 (five) Business Days of receiving SARS's notice, whereafter the Deliverable will be resubmitted to SARS for review and evaluation in accordance with this clause.
- 7.4 If the Service Provider is still unable to correct the deficiency within this period, then SARS may in its sole discretion elect to –
 - 7.4.1 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
 - 7.4.2 terminate this Agreement and/or any Service Request for cause under **Clause 17** or to claim damages and terminate the applicable Service Request without liability by providing written notice to the Service Provider, in which case the Service Provider shall, if applicable, refund to SARS all amounts paid by SARS to the Service Provider in respect of that Deliverable. Such refund shall be made within 14 (fourteen) days of receiving SARS' notice.

8 Service Levels And Penalties

8.1 Service Levels List

Annexure A lists Service Levels that will apply to the performance of the Services. The Parties may from time to time add new Service Levels by mutual agreement. The Service Provider shall comply with the prescribed Service Levels as of the Commencement Date.

8.2 Monitoring, Measuring and Reporting

8.1.1 The Service Provider shall-

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

8.1.1.2 in the event that the Service Provider fails to achieve a Service Level during any particular assignment ("**Service Level Failure**"), report such failure to SARS and include the following minimum information in such report: -

8.1.1.2.1 the nature and date of the Service Level Failure;

8.1.1.2.2 the cause of the Service Level Failure; and

8.1.1.2.3 a summary of the steps the Service Provider has taken to resolve the Service Level Failure and reduce, to the extent reasonably possible, the likelihood that such Service Level Failure will be repeated.

8.2 Rules Governing Service Credits

8.2.1 General

A Service Credit is a late or improper performance fee, and applies irrespective of the fact that the Service Provider ultimately renders performance in terms of this Agreement. SARS will not be entitled to any apply a Service Credit in the event of a delayed performance if reasons for the delay are solely attributable to it.

8.2.2 Status of Service Credits

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

8.2.2.2 A price adjustment by means of a Service Credit due to SARS is without prejudice to and shall not limit any right SARS may have to terminate this Agreement and/or seek damages or other non-monetary remedies at Law resulting from, or otherwise arising in respect of, such Service Level Failure and any resulting termination.

8.2.2.3 Notwithstanding the provisions of **Clauses 8.2.2.1** and **8.3.2.2** above, any claim for damages resulting from such Service Level Failure, in respect of which a Service Credit has already been effected, shall be reduced by the amount of that Service Credit.

8.2.3 Calculation of Service Credits

8.2.3.1 For each Service Level Failure, the Service Provider shall award to SARS any Service Credit/s due as provided for in **Annexure A**.

8.2.3.2 If a single triggering event directly causes two (2) or more Service Level Failures and but for such event, none of such Service Level Failures would have occurred, then SARS shall be entitled to receive only a single Service Credit for a single Service Level Failure (which SARS may select in its sole discretion).

9 SARS' Obligations

9.1 SARS undertakes to-

9.1.1 Nominate a Designated Representative who will be responsible for managing the delivery of the Services by the Service Provider, including but not limited to-

9.1.1.1 Co-operating fully with the Service Provider to enable the Service Provider to perform the Services effectively; and

9.1.1.2 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.

10 Fees, Invoicing and Payment

10.1 The Service Provider must charge fees according to the Service Provider's Pricing Schedule attached hereto as **Annexure B**.

10.2 The invoice must include a detailed description of the Services rendered and the relevant Purchase Order Number.

10.3 The Service Provider must verify that each invoice is complete and accurate and that it conforms to the requirements of this Agreement before issuing the invoice to SARS.

10.4 The Service Provider shall maintain complete and accurate records of, and supporting documentation for, the amounts invoiced to and payments made by SARS hereunder.

10.5 SARS will pay an invoiced amount, less applicable Service Credits, if any, within thirty (30) days of the receipt of such invoice, unless SARS disputes any item in the invoice.

10.6 In the event that SARS disputes an item in the invoice, SARS will do so by giving written notice to the Service Provider within ten (10) days of receipt of the invoice. The notice shall set out the disputed items in the invoice and the reasons therefor. The Parties' designated senior officials, shall meet to resolve the dispute within ten (10) days of SARS giving notice of the dispute.

The senior managers shall resolve the dispute within ten (10) days of its referral to them.

10.7 Where the dispute remains unresolved after the informal procedures set out in **Clause 10.6** above, the dispute shall be dealt with in terms of the dispute resolution procedures set out in **Clause 20** of this Agreement.

11 **Intellectual Property Rights**

11.1 Subject to **Clause 11.3** below, all right, title and interest, including all intellectual property rights in and to literary works which may be created, written and/or presented by the Service Provider and or its agents and employees and which relate to the Services which are to be performed by the Service Provider in terms of this Agreement will vest exclusively in SARS. To this end, the Service Provider irrevocably and in perpetuity transfers, makes over and assigns to SARS all intellectual property rights which may come into existence, which transfer, make over and assignment is accepted by SARS.

11.2 In addition to the provisions of **Clause 11.1** above, the Service Provider waives the moral rights conferred upon the Service Provider as author by Section 20(1) of the Copyright Act, 1978 (Act No. 98 of 1978).

11.3 The Service Provider shall retain all right, title and interest, including intellectual property rights in and to all processes, designs, drawings, specifications, formulae, databases, algorithms, models, methods, know-how, techniques concepts, ideas or other similar tools employed in rendering of the Services.

12 **Confidentiality**

12.1 The Parties undertake that for the duration of this Agreement and after the expiration or earlier termination of this Agreement for any reason, the Parties will keep confidential all “Proprietary Information and “Confidential Information”, which either Party exchanges from time to time during the Agreement or communicates to the other Party, agents and/or its employees.

- 12.2 If the receiving Party is uncertain about whether information is to be treated as confidential or proprietary in terms of this **Clause 12**, the receiving Party shall be obliged to treat the information as Confidential Proprietary Information until clearance is obtained, in writing, from the other Party.
- 12.3 The Service Provider shall ensure that prior to commencing the performance of the Services all its personnel involved in the rendering of such Services shall sign the **SARS Oath of Secrecy** and submit the original thereof to SARS for record keeping purposes.
- 12.4 For purposes of this Agreement, the expression “Proprietary Information and Confidential Information of a Party shall include, but shall not be limited to, any trade secrets and all information of a confidential nature, any knowledge by a Party or Party’s agents and/or employees as a result of work to be performed in terms of this Agreement; the terms and conditions of this Agreement, “SARS confidential information” and “taxpayer information” as defined in the Tax Administration Act, 2011 (Act No 28 of 2011), and any information that is confidential in terms of any other tax Act administered by the Commissioner, and the technical detail, programme content, techniques, know-how, methods of operating, costs, training courses, taxpayer information and names of clients and/or potential clients with whom SARS has not yet contracted but intends contracting for purposes of establishing business relationships to which the Service Provider may become privy during the contract term.
- 12.5 The Parties agree that all trade and professional secrets and other secrets or confidential information or methods of work supplied by the one Party to the other shall not be disclosed to any third party without first obtaining the written consent of the other Party.
- 12.6 Where a Party is threatened with legal action to disclose the confidential information of the other Party, such Party shall give the other Party written notice of such legal action within (2) two days of receipt of the threatened legal action. The Party shall, together with the notice referred to above, deliver to the other Party all documentation received or submitted in connection with the threatened legal action.

- 12.7 The Service Provider specifically acknowledges that all information relating to the Services, including and not limited to, literary works produced thereunder are of a sensitive nature and secret. The Service Provider undertakes not to disclose such information without first obtaining the written consent of SARS.
- 12.8 The Service Provider shall not remove from SARS's premises any documents nor materials relating to the Services or SARS's business without first obtaining the written consent of SARS.
- 12.9 The provisions of this clause shall survive the termination or cancellation of this Agreement for any reason whatsoever.

13 Security Vetting of Service Provider Resources

- 13.1 SARS reserves the right, at its sole and absolute discretion, to do a security check (vetting) on the Service Provider personnel involved with the performance of the Services.
- 13.2 Where SARS finds the Service Provider's employee or agent to be a security risk, SARS will inform the Service Provider accordingly and the Service Provider shall replace such employee or agent with another employee or agent with equal qualification(s) and experience.

14 Liability of The Parties

- 14.1 A Party shall be liable to the other Party for any actual damages incurred by such Party as a result of the other Party's failure to perform its obligations in the manner required by this Agreement.
- 14.2 Notwithstanding the provisions of **Clause 14.1** above, 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 a breach of **Clause 12** above, the unlawful processing of Personal Information, infringement of a third party's intellectual property rights, instances of gross negligence or a criminal act committed by the Service Provider, its employees, agents or subcontractors.

15 Warranties

- 15.1 The Service Provider warrants that –
- 15.1.1 it will assign a sufficient amount of suitably qualified and skilled personnel to provide the Services in terms of this Agreement within the time frames specified by SARS from time to time;
 - 15.1.2 all Services will be rendered by qualified and where applicable, properly licensed Personnel, as may be required in terms of applicable law;
 - 15.1.3 it will render the Services in accordance with the highest professional standards applicable in the industry;
 - 15.1.4 it will ensure that at all relevant times its equipment is properly maintained and in a good working condition;
 - 15.1.5 it will comply with all legislation relating to registration or licensing by any regulatory authority;
 - 15.1.6 it will take all reasonable precautions to preserve the integrity of the Confidential and Personal Information obtained in the exercise of its obligations and to prevent corruption, or loss of such information in the performance of its obligations in terms of this Agreement;
 - 15.1.7 it will implement and maintain appropriate information security safeguards to protect the Personal Information of SARS employees, as well as the Confidential Information of SARS;
 - 15.1.8 all employee files, records and reports will be complete and adhere to professional quality standards;
 - 15.1.9 it will render the necessary disengagement assistance to SARS upon termination of this Agreement;
 - 15.1.10 it will familiarise itself with all SARS's policies and procedures relevant to the Services;
 - 15.1.11 it is acting as a principal and not on behalf of an undisclosed principal in terms of this Agreement;
 - 15.1.12 this Agreement has been duly authorised and executed by it and constitutes a legal, valid and binding set of obligations on it;
 - 15.1.13 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, 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.

15.2 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.

15.3 The provisions of this **Clause 15** shall survive termination of this Agreement.

16 Indemnities

The Service Provider shall indemnify and hold SARS harmless against all losses, claims, demands, proceedings, damages, costs, charges and expenses (including reasonable legal expenses) of whatsoever nature arising out of this Agreement or at Law in respect of the Service Provider's breach of the provisions of this Agreement or injury or death of any person or loss of or damage to any person or property occurring by reason of the Service Provider, its employees or agents' wilful conduct or negligence during or after the execution of the Services.

17 Termination for Cause

17.1 SARS may, by giving notice to the Service Provider, terminate this Agreement or a Service Request in whole or in part, as of a date set out in the notice of termination, in the event that the Service Provider-

17.1.1 commits a material breach of this Agreement, which breach is not cured within ten (10) days after a notice of the breach from SARS to the Service Provider;

17.1.2 commits a material breach of this Agreement that is not capable of being cured;

17.1.3 commits numerous breaches of this Agreement that collectively constitute a material breach, even if cured;

- 17.1.4 is placed under voluntary or compulsory liquidation (whether provisional or final) or business rescue proceedings are commenced against the Service Provider; and/or,
- 17.1.5 a final judgement against the Service Provider remains unsatisfied for a period of (10) ten Business Days or more after the Service Provider becomes aware of it; and/or, the Service Provider makes any arrangement or compromise with its creditors generally or ceases to carry on business.
- 17.2 SARS may terminate this Agreement, in whole or in part, in the event SARS is unable to obtain funding to procure the Services.
- 17.3 Without limiting the generality of the foregoing, SARS may terminate this Agreement, by giving notice to the Service Provider, if the Service Provider fails to comply with **Clauses 12 and 25**.
- 17.4 SARS shall have no liability to the Service Provider with respect to a termination under this **Clause 17**.

18 Force Majeure

- 18.1 In the event of any act beyond the control of the Parties, strike, war, warlike operations, 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.
- 18.2 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.

18.3 Any Party invoking *force majeure* shall upon termination of such force majeure 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 cancel this Agreement.

18.4 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 -

18.4.1 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,

18.4.2 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 18.4.1**.

19 Relationship Between The Parties

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

19.2 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 and remain the responsibility of the Service Provider.

20 Dispute Resolution

20.1 If a dispute between the Parties arises out of or is related to this Agreement, the Parties shall meet and negotiate in good faith to attempt to resolve the dispute. If, after twenty (20) Business Days from the date upon which the dispute was declared by a party by written notice, the dispute is not resolved,

the matter shall be determined in accordance with the provisions set out below.

- 20.2 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 finally be resolved by arbitration in accordance with the Rules of the Arbitration Foundation of Southern Africa (the "Foundation") or its successor, by an arbitrator or arbitrators appointed by the Foundation.
- 20.3 This **Clause 20** 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.
- 20.4 Subject to the provisions of **Clause 10.5**, neither Party shall be entitled to withhold performance of any of their obligations in terms of this Agreement pending the settlement of, or decision in any dispute arising between the Parties and each party shall, in such circumstances continue to comply with their obligations in terms of this Agreement.

21 Disengagement Assistance

- 21.1 The Parties hereby acknowledge that, notwithstanding the termination of this Agreement for any reason whatsoever, the immediate and seamless transition of the Services to an incoming service provider is imperative. To this extent and without any derogation to any claims sounding in money that the Service Provider may have or allege against SARS, the Service Provider shall not be entitled to withhold any information, records or reports, or any assistance as set out in the Clauses below that will be crucial to effect the immediate and seamless transition of the Services.
- 21.2 For a period of one calendar month after the expiry or termination of this Agreement for whatever reason or such earlier period as the Parties may agree, whichever is applicable at SARS' request, the Service Provider will provide SARS or SARS' newly designated service provider such assistance as SARS may reasonably require to facilitate the immediate transition of the

Services in as seamless a manner as possible (“Disengagement Assistance”).

21.3 Without limiting the generality of the foregoing, the Service provider shall deliver to SARS at no additional cost such information and documentation relating to the Services as SARS may reasonably request on a date specified by SARS, including all employee files and records for which employees’ consent have been obtained, alternatively in respect of which no confidentiality obligations exist.

21.4 The Service provider undertakes to use its best endeavours to obtain the necessary consent from SARS’ employees in respect of the transfer of their files and records to any incoming service provider.

21.5 The Service Provider warrants that all employee files, records and reports will be complete and adhere to professional quality standards, failing which SARS reserves the right to demand that the Service Provider bring the files, records and reports up to standard.

22 Addresses

22.1 Each Party chooses the addresses set out opposite its name below as its addresses 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.

22.2 SARS’s physical address for **service of notices and legal processes** **is:**

22.2.1 The Executive: Procurement

570 Fehrsen Street

Linton House

Brooklyn

Pretoria

SARS's email address for communications and/or correspondences in connection with the performance of the Services is:
.....

22.3 The Service Provider's physical address for **service of notices and legal processes is:**

22.3.1

22.4 The Service Provider's email address for communications and/or correspondences in connection with the performance of the Services is.....

22.5 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, provided that documents in legal proceedings in connection with this Agreement may only be served at a Party's *physical address*.

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

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

22.6.2 any change in a party's *domicilium* shall only be to an address in South Africa, which is not a post office box or a *poste restante*.

22.7 Any notice to a Party contained in a correctly addressed envelope and sent by prepaid registered post to it at the Party's chosen address shall be deemed to have been received on the fifth (5th) Business Day after posting; or

22.8 Any notice to a Party in a correctly addressed envelope delivered by hand at the Party's chosen address shall be deemed to have been received on the day of delivery, unless the contrary is proved.

22.9 The Parties record that whilst they may correspond via email during the currency of this Agreement for operational reasons, no formal notice required in terms of this Agreement, nor any amendment or variation to this Agreement may be given or concluded via e-mail.

23 GENERAL

23.1 Assignments and Cessions

Neither Party shall be entitled to assign, cede, sub-contract, delegate or in any other manner transfer any benefit, rights and/or obligations in terms of this Agreement, without the prior written consent of the other Party, which consent shall not be unreasonably withheld.

23.2 Severability

Should any of the terms and conditions of this Agreement be held to be invalid, unlawful or unenforceable, such terms and conditions shall be severable from the remaining terms and conditions which shall continue to be valid and enforceable. If any term or condition held to be invalid is capable of amendment to render it valid, the Parties agree to negotiate an amendment to remove the invalidity.

23.3 Advertising And Marketing

The Service Provider shall not make or issue any formal or informal announcement (with the exception of Stock Exchange announcements), advertisement or statement to the press in connection with this Agreement, or otherwise disclose the existence of this Agreement or the subject matter hereof to any other person without the prior written consent of SARS.

23.4 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 the Party against which such change, waiver or discharge is sought to be enforced, and any such change, waiver or discharge will be effective only in that 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.

23.5 **No Withholding of Consents**

Except where expressly provided as being in the sole discretion of a Party, where 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 any responsibility in terms of complying with the requirements of this Agreement, nor shall it be construed as a waiver of any rights under this Agreement, except as and to the extent otherwise expressly provided in such approval, acceptance or consent.

23.6 **Authorised Signatories**

The Parties agree that this Agreement and any amendment or contract document concluded in terms hereof shall not be valid unless signed by all authorised signatories of the Parties.

23.7 **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 of 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.

23.8 **Applicable Law**

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.

23.9 **Whole Agreement and Amendment**

This Agreement constitutes the whole of the Agreement between the Parties relating to the subject matter hereof and no amendment, alteration, addition, variation or consensual cancellation will be of any force or effect unless reduced to writing and signed by the Parties hereto or their duly Authorised Representatives. Any document executed by the Parties purporting to amend, substitute or revoke this Agreement or any part hereof, shall be titled "Addendum" (to this Agreement) and assigned a sequential number to be included in the title.

23.10 **Covenant of Good Faith**

Each Party agrees that, in its respective dealings with the other Party under or in connection with this Agreement, it shall act in good faith.

23.11 **Costs**

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

24 **Jurisdiction**

The Parties hereby irrevocably and unconditionally consent to the non-exclusive jurisdiction of the North Gauteng High Court, Pretoria in regard to all matters arising from this Agreement.

25 **Broad-Based Black Economic Empowerment ("BBBEE")**

25.1 The Service Provider acknowledges that Broad-Based Black Economic Empowerment is a business and social imperative in order to achieve a non-racial, non-sexist and equitable society in South-Africa.

25.2 In pursuance of this objective 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 amended from time to time, and the Codes of Good Practice issued in terms of the B-BBEE Act.

- 25.3 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 B-BEE rating status from an agency accredited by the South African National Accreditation System.
- 25.4 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 B-BBEE rating status.
- 25.5 A failure to provide a certified copy of its B-BBEE rating status or a failure to comply with provisions of this clause will entitle SARS to terminate the Agreement by giving the Service Provider one (1) month's written notice.

26 Tax Compliance

- 26.1 The Service Provider warrants that as of the Commencement Date it is in full compliance with, and throughout the term of this Agreement (including any Renewal Period) it shall remain in full compliance with all applicable laws relating to taxation in the Republic of South Africa.
- 26.2 The Service Provider further warrants that it shall deliver to SARS on Commencement Date and each anniversary thereof during the term of this Agreement, a valid tax clearance certificate issued for the then-current year in respect of the Service Provider.
- 26.3 If the Service Provider fails to provide such a tax clearance certificate, SARS may terminate the Agreement in accordance with the provisions of this **Clause 17** above. SARS will have no liability to the Service Provider with respect to such termination.

SIGNED AT PRETORIA FOR AND BEHALF OF SARS

Name:.....

Chief Officer: Human Resources

Date: _____

Name:.....

Executive: Procurement

Date: _____

FOR AND ON BEHALF OF SERVICE PROVIDER

Full Names : _____

Signature : _____

Capacity : _____

Date : _____

Place : _____

DELIVERABLES AND SERVICE LEVELS: ANNEXURE A

PRICING SCHEDULE: ANNEXURE B