

SERVICES 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 34 of 1997.

["SARS"]

And

_____, **Registration Number:** _____, a private company with limited liability incorporated in accordance with the Laws of South Africa.

['_____']

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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 and the Annexures hereto;
- 1.2.2 **"Authorised Representative"** mean signatories authorised by SARS and _____ to sign the Agreement;
- 1.2.3 **"Business Day"** means any day other than a Saturday, Sunday or public holiday in South Africa;
- 1.2.4 **"Commencement Date"** means the _____ notwithstanding the date of the signing of this Agreement;
- 1.2.5 **"_____"** means a company with limited liability incorporated in accordance with the Laws of South Africa with registration number _____;
- 1.2.6 **"Parties"** means SARS and _____ and "party" as the context requires, is a reference to any one of them;
- 1.2.7 **"SARS"** means the South African Revenue Service, an organ of state established in terms of the South African Revenue Service Act 34 of 1997;
- 1.2.8 **"Services"** means the provision of managed maintenance services with additional services for the SARS vehicle fleet as set out in RFP _____ and _____'s proposal attached hereto and marked **Annexure "A"**;
- 1.2.9 **"Termination Date"** means the _____; and
- 1.2.10 **"VAT"** means Value-Added Tax levied in terms of the Value-Added Tax Act 89 of 1991.
- 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;
- 1.3.2 **"Law"** shall 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; and

- 1.3.3 a "**Person**" refers to any Person, firm, company, corporation, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the foregoing;
- 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 gender;

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 expiration or 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 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.
- 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 SARS hereby appoints _____ to render the Services as more fully described in **Annexure A**, which appointment _____ accepts.
- 2.2 The performance of the Services shall be subject to the terms and conditions of this Agreement.
- 2.3 _____ will at all times perform the Services in accordance with any service levels prescribed in this Agreement.
- 2.4 _____ represents that it has, and warrants that throughout the duration of this Agreement it shall have the resources, skills, qualifications and experience necessary to provide the Services.

3. DURATION

- 3.1 This Agreement commences on the Commencement Date and continues in full force and effect until the Termination Date [Agreement Term].

- 3.2 The Agreement may be extended for a further period of _____ as may be agreed upon by the Parties, provided that:
- 3.2.1 The requisite SARS' internal approval for the extension has been granted;
- 3.2.2 The intention to further extend is communicated to _____ in writing at least three (3) months prior to the expiry of the term of this Agreement, or such other extended term; and
- 3.2.3 Both Parties agree to such extension in writing.

4. FEES AND INVOICING

- 4.1. SARS shall pay _____ in accordance with the Pricing Schedule which forms part of **Annexure A**.
- 4.2. _____ shall invoice SARS for Services performed pursuant to this Agreement on a monthly basis in arrears on or before the seven (7th) Business Day of the month.
- 4.3. Each invoice shall contain or have attached such information, and be in such form and on such media as SARS may reasonably request and, at the minimum shall contain:
- 4.3.1. a statement of the total amount due based on the listed items as per the Pricing Schedule; and,
- 4.3.2. a valid SARS issued number.
- 4.4. _____ shall deliver all invoices to the SARS's department designated by SARS from time to time with copies to other SARS's contacts as designated by SARS from time to time
- 4.5. _____ shall maintain complete and accurate records of, and supporting documentation for, the amounts invoiced to and payments made by SARS hereunder.
- 4.6. Within ten (10) days after SARS's request, _____ shall provide SARS with any other documentation or information reasonably required by SARS in order to verify the accuracy of the amounts due on an invoice and _____'s compliance with the requirements of this Agreement.
- 4.7. _____ shall verify that each invoice is complete and accurate and that it conforms to the requirements of this Agreement (including by carrying out detailed checks of each invoice) before issuing the invoice to SARS.
- 4.8. SARS shall not be obliged to pay any amounts that are invoiced more than one hundred and twenty (120) days after the first (1st) day of the month in which _____ was obliged to deliver such invoice.

5. PAYMENT

SARS shall pay _____ undisputed amounts of an invoice within thirty (30) days after SARS receives such invoice provided the invoice is accurate and meets the requirements of this Agreement.

6. DISPUTED CHARGES AND INVOICING ERRORS

6.1. SARS may withhold payment of invoices that SARS disputes in good faith or, if the disputed invoices have already been paid, SARS may withhold an equal amount from a later payment, including disputes in respect of an error in an invoice or an amount paid. If SARS withholds any such amount:

6.1.1. SARS shall promptly notify _____ in writing that it is disputing such amount providing a reasonable explanation of the rationale therefore; and the Parties shall promptly first address such dispute in accordance with this **Clause 6** of this Agreement;

6.1.2. If the dispute relates to (or equals in the case of disputed amounts that have already been paid) only certain of the amounts included on an invoice, then SARS shall pay the undisputed amounts in accordance with **Clause 5** above.

6.1.3. If an invoice is identified as incorrect, then _____ 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.

6.2. SARS shall not be responsible for paying interest on undercharged amounts, if any.

6.3. Any dispute arising in terms of **Clause 6.1** above and which remains unresolved for five (5) Business Days after it has arisen, shall be referred by either Party to their relevant Chief Financial Officer or persons of equivalent office for resolution.

6.4. The Chief Financial Officers or persons of equivalent office shall meet within five (5) Business Days of the referral of the dispute to resolve the dispute.

6.5. In the event that the dispute remains unresolved after ten (10) days of its referral to the persons mentioned **Clause 6.3**, either Party shall be entitled to refer the dispute for resolution in accordance with the provisions of **Clause 18** below.

7. _____'S OBLIGATIONS

7.1. During the currency of this Agreement, _____ shall-

7.1.1 Nominate a representative who shall be referred to as an on-site fleet consultant and shall be responsible for the day to day

management of the delivery of Services and resolution of any disputes in terms of this Agreement;

- 7.1.2 Render the Services to SARS in accordance with the performance standards ["Service Levels"] prescribed by SARS for a Service line item. **Clause 8** below details the principles that will be applicable to Service Levels;
- 7.1.3 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 its duties under this Agreement;
- 7.1.4 Assign suitably qualified and skilled personnel to provide the Services in terms of this Agreement;
- 7.1.5 Comply with all legislation regulating the insurance industry including legislation relating to registration or licensing by a regulatory authority;
- 7.1.6 Comply with all legislation relating to the protection of personal information; and
- 7.1.7 _____ undertakes to forward to SARS copies of all Annexures attached hereto, in order to enable SARS to acquaint itself with the terms and conditions of same.

8. PRINCIPLES GOVERNING SERVICE LEVELS

8.1. SERVICE LEVEL LIST

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

8.2. MONITORING, MEASURING, AND REPORTING

8.2.1. _____ shall-

- 8.2.1.1. Be responsible for monitoring, measuring, and reporting on _____'s compliance with the Service Levels.
- 8.2.1.2. Monitor its performance of the Services with respect to the Service Levels on a continuous basis and measure and provide SARS with a monthly report on such performance (the 'Monthly Performance Report').
- 8.2.1.3. Within six (6) Business Days after the end of each month deliver to SARS the Monthly Performance Report with respect to _____'s performance during such month.

- 8.2.2. _____ shall provide SARS with detailed supporting information for each Report in soft-copy as reasonably requested by SARS.
- 8.2.3. _____ shall include the following information in each Monthly Performance Report with respect to any failure to achieve a Service Level during a month (each, a 'Service Level Failure'):
- 8.2.3.1. the nature of the Service Level Failure;
 - 8.2.3.2. the nature of, and time and date when, each incident that led to such Service Level Failure during the month arose;
 - 8.2.3.3. the time and date when _____ logged the incident, commenced resolution of the Incident and when such incident was resolved;
 - 8.2.3.4. the impact of the Service Level Failure on other parts of the Services;
 - 8.2.3.5. the direct and root cause of the incident or other event that gave rise to the Service Level Failure; and,
 - 8.2.3.6. a summary of the steps the Supplier has taken to determine the root cause of the Service Level Failure, the steps _____ has taken to resolve the Incident, and the steps _____ has taken to reduce, to the extent reasonably possible, the likelihood that such Service Level Failure shall be repeated.
- 8.2.4. Any failure by _____ to perform any of the functions set forth in this **Clause 8.2** during a month will be deemed to be a failure of the underlying Service Level for such month.

8.3. **SERVICE LEVEL FAILURES AND SERVICE CREDITS**

- 8.3.1 _____ shall be afforded a three (3) month phase-in period from the Commencement Date, before any Service Credits could be levied for any Service Level Failures by _____ during this period, in terms of this agreement and its Annexures.
- 8.3.2 During the three (3) month phase-in period referred to in clause 8.3.1 above, _____ shall implement the provisions set out above in clause 8.2.3, in an attempt for the parties to determine and agree on the Service Credits to be applied in regard to any Service Level Failures, and shall deliver a Monthly Performance Report to SARS pertaining to same. Both parties shall, two (2) weeks prior to the termination of the three (3) month phase-in period, meet after SARS has reviewed and considered the Monthly Performance Report and reach consensus on the Service Credits to be imposed.

8.3.2.1 Each of the Service Levels constitutes a single Service Level.

8.3.3 The parties record that Service Credits in respect of Service Level Failures which may occur during the three (3) month phase-in period will at no time become due, owing and payable notwithstanding the provisions contained in Clause 8.4, subject to the provisions of Clause 8.3.2.

8.3.1. In respect of any Service Level Failure, _____ shall:

8.3.3 Investigate, assemble, and preserve pertinent information with respect to, and, as further described **Clause 8.2** report on the causes of the Service Level failure, including performing an appropriate direct and root cause analysis of each Incident which led to the Service Level failure;

8.3.4 propose and execute a written corrective action plan that is sufficiently robust and detailed, taking into account the nature of the Service Level Failure;

8.3.5 advise SARS of the status of remedial efforts being undertaken with respect to such Service Level Failure;

8.3.6 take the necessary commercially reasonable efforts to employ preventive measures so that the Service Level failure does not recur, including allocating additional personnel and resources to the performance of the Services, and proposing changes to the procedures _____ uses to perform the Services.

8.4 RULES GOVERNING SERVICE CREDITS (ANNEXURE B)

8.4.1 General

8.4.1.1 The provisions of Clause 8.4 are subject to that which is set out in Clause 8.3, i.e. the provisions of Clause 8.4 only come into effect after the three (3) month phase-in period.

8.4.1.2 As further described in this **Clause 8.4**, _____ shall credit and pay the value of the percentage of the Amount at Risk ("Service Credit") as set out in **Annexure B** with respect to each Service Level Failure.

8.4.1 Amount at Risk in terms of Service Credits

8.4.2.1 The 'Amount at Risk' with respect to Service Level Failures for a month shall be a maximum of twenty percent (20%) of the management fee invoiced to SARS in respect to such month deducted from the management fee.

8.4.2.2 In no event shall the total aggregated amount of service credits payable by Supplier for a month exceed the Amount at Risk for such month.

8.4.2 Calculation of Service Credits

8.4.2.1 For each Service Level Failure the management fees payable to _____ shall be reduced by the applicable service credits in the following month.

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

8.4.2.3 Service Credits arising in respect of the last month of the Agreement Term shall be withheld out of the final payment due.

8.5 EXCUSED PERFORMANCE

8.5.1 Where _____ can establish to the reasonable satisfaction of SARS that:

8.5.1.1 the cause of its failure to achieve a Service Level was a factor outside of the reasonable control of _____;

8.5.1.2 _____ would have achieved such Service Level but for such factor;

8.5.1.3 _____ use commercially reasonable efforts to perform and achieve that Service Level notwithstanding the presence and impact of such factor; and

8.5.1.4 _____ is without fault in causing such factor:-

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

8.6 STATUS OF SERVICE CREDITS

8.6.1 The following shall apply in respect of Service Credits:

8.6.1.1 The Service Credits are a price adjustment for the relevant period to reflect the reduced level of Service

performed by Supplier and are not an estimate of the loss or damage that may be suffered by SARS as a result of the Service Level failure.

8.6.1.2 The payment of a Service Credit by _____ 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.

8.6.2 Notwithstanding the provisions of **Clauses 8.6.1.1. and 8.6.1.2**, any claim for damages resulting from such Service Level failure, in respect of which a service credit has already been paid, shall be reduced by the amount of that service credit.

9 SARS OBLIGATIONS

9.1 SARS undertakes to:-

9.1.1 Nominate a representative who shall liaise with _____'s account executive in respect of the day-to-day management of the Services.

9.1.2 If required by _____, furnish _____ with any relevant information, which is necessary for _____ to perform the Services in compliance with the terms and conditions of this Agreement.

9.1.3 SARS undertakes to issue _____ with a single unique issued number, which will be allocated to _____ to be used on all _____'s invoices to SARS.

9.1.4 SARS undertakes to acquaint itself with the Annexures attached hereto and to abide by its terms and conditions, upon signature of this Agreement.

10 SECURITY VETTING OF _____ RESOURCES

10.1 SARS reserves the right at its sole and absolute discretion to do a security check (vetting) on _____ personnel involved with the performance of the Services.

10.2 Where SARS finds a _____ employee or agent to be a security risk, SARS will inform _____ accordingly and _____ shall replace such employee or agent with another employee or agent with equal qualification(s) and experience.

11 LIABILITY OF THE PARTIES

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.

12 WARRANTIES

- 12.1 Both parties warrant that this Agreement has been duly authorised and executed by them and constitutes a legal, valid and binding set of obligations on them;
- 12.2 _____ warrants that it is acting as a principal and not as an agent of an undisclosed principal;
- 12.3 _____ warrants that 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 _____, 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; and,
- 12.4 Both parties warrant that it is expressly agreed between the Parties that each warranty and representation given by each party in this Agreement is material to this Agreement.
- 12.5 The provisions of this Clause shall survive the termination of this Agreement.

13 LIMITATION OF LIABILITY

- 13.1 _____ shall-
- 13.1.1 On or before the Commencement Date and for the duration of this Agreement have and maintain in force adequate professional insurance coverage to cover any claims, loss and or damages to which it is liable in terms of this Agreement;
- 13.1.2 At SARS's request and within two (2) of such request, provide it with a copy of the aforementioned insurance policy.
- 13.1.3 Update and/or the aforementioned as requested by SARS, including the increasing amount of cover provided in such insurance policy.
- 13.1.4 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 _____'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 _____, its employees or agents' wilful conduct or gross negligence during or after the execution of the Services.

14 BREACH

Should a party ("the defaulting party") commit a breach of any of the provisions of this Agreement, then any other party ("the aggrieved party") shall be entitled to require the defaulting party to remedy the breach within ten (10) Business Days, or any other reasonable time mutually agreed upon, 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 shall be entitled to claim immediate specific performance from the defaulting party. The foregoing is without prejudice to such other rights as the aggrieved party may have in law.

15 TERMINATION

15.1 SARS may immediately terminate this Agreement at any time by giving written notice of such termination to the other party if-

15.1.1 _____ is placed under voluntary or compulsory liquidation (whether provisional or final) or under judicial management or under curatorship or under the equivalent of any of the foregoing; and/or,

15.1.2 a final judgement exceeding the sum of R500 000,00 against _____ remains unsatisfied for a period of (10) ten Business Days or more after it comes to the notice of the defaulting party; and/or,

15.1.3 _____ makes any arrangement or composition with its creditors generally or ceases to carry on business.

15.2 Any termination of this Agreement pursuant to the provisions of **Clause 15** shall be without prejudice to any claim which either party may have in respect of any prior breach of the terms and conditions of this Agreement by the other party.

16 FORCE MAJEURE

16.1 In the event of any act beyond the control of the Parties, strike, war, warlike operation, rebellion, riot, civil commotion, lockout, interference by trade unions, suspension of labour, fire, accident, or (without regard to the foregoing enumeration) of any circumstances arising or action taken beyond the reasonable control of the Parties hereto preventing them or any

of them from the performance of any obligation hereunder (any such event hereinafter called "force majeure event") then the party affected by such force majeure event shall be relieved of its obligations hereunder during the period that such force majeure continues (excluding payment obligations for materials purchased).

16.2 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.

16.3 Any Party invoking force majeure shall upon termination of such force majeure give prompt written notice thereof to the other Party. Should a 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 the other party.

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

16.4.1 _____ 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,

16.4.2 SARS shall consider the request and revert to _____ by no later than five (5) Business Days from date of receipt of the notice referred to in **Clause 16.4.1**.

17 RELATIONSHIP BETWEEN THE PARTIES

17.1 _____ 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.

17.2 All personnel under the supervisory control, subject to instruction of and used by _____ will be _____'s responsibility and the management, direction, and control of such personnel will be and remain the responsibility of _____.

18 DISPUTE RESOLUTION

18.1 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.

- 18.2 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.
- 18.3 This **Clause 18** 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.
- 18.4 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.

19 ADDRESSES

- 19.1 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.
- 19.2 SARS's physical address for **service of notices and legal processes-**
- 19.2.1 The Executive: Procurement
570 Ferhsen Street;
Brooklyn Bridge
Linton House;
Brooklyn – Pretoria.
- 19.3 SARS's email address for communications and/or correspondences in connection with the performance of the Services:(Please insert e-mail address)
- 19.4 _____'s physical address for **service of notices and legal processes-**
- 19.4.1 The Chief Executive Officer

- 19.5 _____'s email address for communications and/or correspondences in connection with the performance of the Services: _____ and _____

- 19.6 Any notice or communication required or permitted to be given to a Party pursuant to the provisions of this Agreement shall be valid and effective only if in writing and sent to a Party's chosen address, provided that documents in legal proceedings in connection with this Agreement may only be served at a Party's *physical address*.
- 19.7 Any Party may by written notice to the other Parties, change its chosen address to another address, provided that-
- 19.7.1 the change shall become effective on the tenth (10th) (Business Day after the receipt or deemed receipt of the notice by the addressee, and;
- 19.7.2 any change in a party's *domicilium* shall only be to an address in South Africa, which is not a post office box or a *poste restante*.
- 19.8 Any notice to a Party contained in a correctly addressed envelope and sent by prepaid registered post to it at a Party's chosen address shall be deemed to have been received on the fifth (5th) Business Day after posting; or
- 19.9 Any notice to a Party in a correctly addressed envelope and is delivered by hand at a Party's chosen address shall be deemed to have been received on the day of delivery, unless the contrary is proved.
- 19.10 The parties record that whilst they may correspond via email during the currency of this Agreement for operational reasons, no formal notice required in terms of this Agreement, nor any amendment or variation to this Agreement may be given or concluded via email.

20 GENERAL

20.1 CONFIDENTIALITY

- 20.1.1 Both parties undertake that for the duration of this Agreement and after the expiration or earlier termination of this Agreement for any reason, they will keep confidential any trade secrets and/or all information which the parties from time to time might communicate to each other and, or the parties employees. This includes the knowledge acquired by either party and or their employees as a consequence of the obligations of the parties in terms of this Agreement and which is stated to be, or by its nature is, intended to be kept confidential.
- 20.1.2 In the event that either party is uncertain about whether information is to be treated as confidential in terms of Clause 20.1.1, it shall be obliged to treat it as such until clearance is obtained, in writing, from the party concerned.
- 20.1.3 _____ shall ensure that prior to commencing the performance of the Services all its personnel involved in the rendering of Services sign the SARS Oath of Secrecy and submit the original to SARS's Project Manager for record keeping.

20.1.4 For purposes of this Agreement, the expression "trade secrets and confidential information of SARS" shall include, but shall not be limited to, the technical detail, programme content, techniques, know-how, methods of operating, costs, training courses, taxpayer information and names of clients and/or potential clients with whom SARS has not yet contracted but intends contracting for purposes of establishing business relationships to which _____ becomes privy during the contract term.

20.1.5 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 the other party's written consent.

20.1.6 _____ shall not remove from SARS's premises any documents or materials relating to SARS's business without the written consent of SARS.

20.1.7 The provisions of this Clause shall survive the termination or cancellation of this Agreement for any reason whatsoever.

21 NO ASSIGNMENT WITHOUT CONSENT

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.

22 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 ADVERTISING AND MARKETING

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

24 WAIVER

No change, waiver or discharge of the terms and conditions of this Agreement shall be valid unless in writing and signed by an Authorised Representative of the Party against which such change, waiver or discharge is sought to be enforced, and any such change, waiver or discharge will be effective only in the specific instance and for the purpose given. No failure or delay on the part of either Party hereto in exercising any

right, power or privilege under this Agreement will operate as a waiver thereof, nor will any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof, or the exercise of any other right, power or privilege.

25 NO WITHHOLDING OF CONSENTS

Except where expressly provided as being in the sole discretion of a Party, where agreement, approval, acceptance, consent, or similar action by either Party is required under this Agreement, such action shall not be unreasonably delayed or withheld. An approval, acceptance, consent or similar action by a Party under this Agreement (including in respect of a plan or deliverable) shall not relieve the other Party from the responsibility of complying with the requirements of this Agreement, nor shall it be construed as a waiver of any rights under this Agreement, except as and to the extent otherwise expressly provided in such approval, acceptance or consent.

26 AUTHORISED SIGNATORIES

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

27 COUNTERPARTS

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same Agreement as at the date of signature of the Party last signing one of the counterparts. The Parties undertake to take whatever steps may be necessary to ensure that each counterpart is duly signed by each of them without delay.

28 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.

29 WHOLE AGREEMENT AND AMENDMENT

This Agreements constitute 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 an "Addendum" to the applicable Service Agreement and assigned a sequential letter to be included in the title.

30 **ORDER OF PRECEDENCE**

In the event of a conflict between the documents comprising this Agreement such conflict shall be resolved in accordance with the order of precedence (in descending order of priority) as follows (i) this Agreement (ii) and any Annexures and/or schedules to this Agreement, and (iii) the RFP.

31 **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.

32 **COSTS**

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

33 **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.

34 **TAX COMPLIANCE**

34.1 _____ represents and warrants that as of the Commencement Date of this Agreement, _____ is and will remain compliant throughout the duration thereof with all applicable laws relating to tax in South Africa.

34.2 In addition to the above, _____ shall not later than three (3) months after each anniversary of this Agreement submit to the Executive: Procurement a valid tax clearance certificate for the current year.

35 **DISENGAGEMENT ASSISTANCE**

35.1 _____ will for a period of three (3) months after the expiry or termination of this Agreement for whatsoever reason or such other period as the Parties may agree, whichever is applicable, and at SARS's request provide SARS or SARS designated service provider such assistance as SARS may reasonably request to facilitate the transition of the Services to SARS in as seamless a manner as possible ('Disengagement Assistance').

35.2 Without limiting the generality of the foregoing, _____ shall deliver to SARS at no additional cost such information relating to the Services as SARS may reasonably request on the date reasonably specified by SARS.

35.3 SARS will pay _____ for the Disengagement Assistance service as if _____ was performing the Services for the Disengagement Assistance period and all the terms and condition of this Agreement shall apply during the Disengagement Assistance period.

- 35.4 SARS or its Designee shall have the option exercisable on a contract by contract basis to assume contracts for any Services provided by Third Parties to _____ and used exclusively by _____ to provide the Services to SARS.
- 35.5 In the case of third party service contracts used by _____ to provide Services to both SARS and others, at SARS's option and exercisable on a contract by contract basis, _____ shall use commercially reasonable efforts to arrange for the provision of the Services by the third party to SARS under terms at least as favourable as those in the third party service contract.

SIGNED AT PRETORIA

As representatives for the South African Revenue Service:

1. _____

Acting Executive:
Procurement
Date of signature:

2. _____

Group Executive: Properties
and Facilities Management
Date of signature:

As representative for _____:

SIGNED AT _____ ON THIS ____ DAY OF _____ 2016

SIGNATURE: _____

FULL NAMES AND SURNAME: _____

CAPACITY: _____