**DRAFT SERVICE AGREEMENT**

entered into by and between

**THE SOUTH AFRICAN REVENUE SERVICE**

**[“SARS”]**

and

**…**

**[“Service Provider”]**

**SARS / Servest Hygiene**

TABLE OF CONTENTS

[1. APPOINTMENT 4](#_Toc340077395)

[2. DEFINITIONS AND INTERPRETATION 4](#_Toc340077396)

[3. DURATION 11](#_Toc340077398)

[4. FACILITATORS 12](#_Toc340077399)

[5. TRAINING 13](#_Toc340077400)

[6. FEES AND PAYMENT 19](#_Toc340077403)

[8 SARS’S OBLIGATIONS 20](#_Toc340077404)

[9 WARRANTIES 21](#_Toc340077405)

[10 INDEMNITIES AND INSURANCE 21](#_Toc340077408)

[11 LIMITATION OF LIABILITY 22](#_Toc340077409)

[12. BREACH 22](#_Toc340077410)

[13. TERMINATION 23](#_Toc340077411)

[14. FORCE MAJEURE 24](#_Toc340077412)

[15. RELATIONSHIP BETWEEN THE PARTIES 25](#_Toc340077413)

[16. DISPUTE RESOLUTION 26](#_Toc340077414)

[17. ADDRESSES 26](#_Toc340077415)

[18. CONFIDENTIAL INFORMATION 28](#_Toc340077416)

[20 TAX CLEARANCE 30](#_Toc340077433)

[21 BROAD-BASED BLACK ECONOMIC EMPOWERMENT 30](#_Toc340077434)

[22 GENERAL 31](#_Toc340077435)

[ANNEXURE A 36](#_Toc340077436)

# APPOINTMENT

* 1. SARS requires the Service Provider to provide Lean Six Sigma Training (the “Training”) and related services to SARS in compliance with the terms and conditions contained in this Agreement.
  2. The Service Provider has submitted a proposal to SARS in response to SARS’s Request for Proposal No. RFP12/2012. SARS has accepted the aforesaid proposal and hereby appoints the Service Provider, who accepts such appointment.
  3. The Service Provider’s Proposal, as well as the Tender Documentation issued by SARS under RFP12/2012 is hereby incorporated into this Agreement by reference.
  4. The Service Provider will render the required Training to SARS on a non-exclusive basis. The Service Provider will offer Lean Six Sigma training programmes specifically for the-
     1. Lean Six Sigma Yellow Belt;
     2. Lean Six Sigma Green Belt;
     3. Lean Six Sigma Black Belt; and
     4. Lean Six Sigma Master Black Belt.
  5. The Service Provider represents that it has, and warrants that throughout the duration of this Agreement it shall have the resources, skills, qualifications and experience necessary to provide the Training to the highest professional standards.

# DEFINITIONS AND INTERPRETATION

* 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. Unless inconsistent with the context, the words and expressions have the following meanings and similar expressions will have corresponding meanings:
     1. “**Agreement**” means this Agreement and all Annexures thereto.

* + 1. “**Business Day**” means any day other than a Saturday, Sunday or public holiday in South Africa.
    2. **“Black Belt”** means the Lean Six Sigma certification programme that requires candidates to demonstrate comprehension and application of the methodology, tools and techniques of Lean Six Sigma.
    3. “**Commencement Date**” means **[Drafting note: To be confirmed]**, notwithstanding the date of signature of this Agreement.
    4. “**Confidential Information**” means any proprietary and confidential information or data of any nature, tangible or intangible, oral or in writing, in any form or on any medium. It further includes SARS Confidential Information as defined in section 68(1) of the Tax Administration Act, 2011 (Act No. 28 of 2011), as well as taxpayer information, which means any information provided by a taxpayer or obtained by SARS in respect of the taxpayer, including biometric information. Information must be regarded as confidential if, by its nature, content, or circumstances of disclosure the information is, or ought reasonably to have been identified by a Receiving Party as confidential or proprietary in nature (including by reason of such information not being generally known to, or readily ascertainable by third parties generally) and/or proprietary to the Disclosing Party, including -

1. information regarding Personnel, independent contractors and suppliers of the Disclosing Party; processes; procedures, projections, manuals, forecasts and analyses, or intellectual property owned by or licensed to the Disclosing Party;
2. information relating to the knowledge, know-how, expertise, trade secrets and activities of the Disclosing Party; and
3. any information which a Party (without creating a presumption that only so designated information is confidential), acting reasonably, may designate in writing, at the time of disclosure to the Receiving Party, as being confidential information.
   * 1. **"Data"** means any information supplied, stored, collected, collated, accessed or processed by or for the benefit of SARS.
     2. **“Facilitators”** means any of the Service Provider’s employees, agents, consultants or sub-contractors providing Training services to SARS in terms of this Agreement.
     3. **“Green Belt”** means the Lean Six Sigma certification programme that requires candidates to demonstrate a skill set which promotes the starting and completion of projects through the use of a data based approach to solving practical problems.
     4. **“Intellectual Property”** means any know-how (not in the public domain), invention (whether or not patented), design, trade mark (whether or not registered), or Copyright Material (whether or not registered), goodwill, processes, process methodology and all other identical or similar intellectual property as may exist anywhere in the world and any applications for registration of such intellectual property. For the purposes of this definition, copyright material means any material in which copyright subsists.
     5. **“Lean”** is a Toyota Production System that considers the expenditure of resources for any goal other than the creation of value for the end customer.
     6. **“Lean Six Sigma”** is a quality improvement methodology which combines the individual Lean and Six Sigma methodologies, aimed at (i) eliminating process variation (ii) creating process improvements based on the customer definition of quality and (iii) measuring process performance and process change effects.
     7. “**Losses**” means all losses, liabilities, costs, expenses, fines, penalties, damages and claims, and all related costs and expenses as determined in law.
     8. **“Master Black Belt”** means the Lean Six Sigma certification programme that requires candidates to demonstrate a skill for creating portfolios of [improvement](http://www.businessdictionary.com/definition/improvement.html), [projects](http://www.businessdictionary.com/definition/project.html) for businesses, [leading](http://www.businessdictionary.com/definition/leader.html) enterprise-wide Six Sigma implementations and [training](http://www.businessdictionary.com/definition/training.html) of other Six Sigma practitioners.
     9. “**Parties**” means SARS and the Service Provider and “Party” as the context requires, is a reference to any one of them.
     10. **“SARS“** means the South African Revenue Service, an organ of the state established in terms of the South African Revenue Service Act, 1997 (Act No.34 of 1997).
     11. “**Service Provider**” means […………………………..], a company with limited liability incorporated in accordance with the Laws of South Africa and with registration number […………………………..].
     12. “**Signature Date”** means the date on which the last signature is affixed to this Agreement.
     13. **“Six Sigma”** means a disciplined, data-driven approach and methodology for eliminating defects in any process.

* + 1. “**Student**” means the SARS delegates who are selected to attend the Training.
    2. “**Training Hours**” means Mondays to Fridays from 07h00 to 17h00, public holidays excluded.
    3. “**Training**” means the Lean Six Sigma training programmes to be provided by the Facilitators to the Students in respect of the Yellow Belt, Green Belt, Black Belt and Master Black Belt.
    4. “**Training Material/s**” means documents in relation to the Training, written or prepared by the Facilitator under this Agreement including, but not limited to, papers, files, records and other such materials, hard copy or computer disks, computer memory or other electronic or data writings, or any part of such.
    5. **Termination Date**” means **[Drafting note: To be confirmed]**.
    6. **“Toolkit”** means the Lean Six Sigma toolkit to be provided by the Service Provider to the Students, comprising of templates from the Lean Six Sigma DMAIC methodology which include the 5 Whys, Communication Plan, CTQ Chart, Dashboard Measurement Plan, Data Collection Plan, DMAIC Project Plan, DMAIC Tollgate Presentation, FMEA, Force Field Diagram, Implementation Plan – Detailed, Implementation Plan – High Level, Pilot Plan, Process Monitoring Plan, Process Value Analysis, Project Charter, Project Storyboard, Quick Win Identification, Response Plan, Sigma Calculator, SIPOC, Solutions Benefits and Implications, Solutions Prioritization Matrix, Solutions Selection Matrix, Stakeholder Identification, Stakeholder Management Plan, Stakeholder Map, Standardized Procedures, Team Meeting Agenda, Team Profile, VOC Research Plan, XY Matrix .
    7. “**VAT**” means Value-Added Tax levied in terms of the Value-Added Tax Act, 1991 (Act No. 89 of 1991).
    8. **“Yellow Belt**” means the Lean Six Sigma certification programme which focuses on problem solving techniques.
  1. Any reference in this Agreement to:
     1. “**Clause**” shall, subject to any contrary indication, be construed as a reference to a Clause hereof;
     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;
     3. “**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;
     4. “**Service Provider’s Proposal**” is, subject to any contrary indication, a reference to the proposal submitted by the Service Provider in response to SARS’s Request for Proposal under RFP12/2012; and
     5. “**Tender Documentation**” is, subject to any contrary indication, a reference to SARS’s invitation to prospective bidders to tender for the Training specified in RFP12/2012.
  2. Unless inconsistent with the context or save where the contrary is expressly indicated:
     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 Definitions clause, effect shall be given to it as if it were a substantive provision of this Agreement;
     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;
     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;
     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;
     5. any reference in this Agreement to an enactment is to that enactment as at the Commencement Date and as amended or re-enacted from time to time;
     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;
     7. no provision of this Agreement constitutes a stipulation for the benefit of any Person who is not a party to this Agreement;
     8. references to day/s, month/s or year/s shall be construed as calendar day/s, month/s or year/s; and
     9. a reference to a party includes that party’s successors-in-title and permitted assigns.
  3. Unless inconsistent with the context, an expression which denotes:

2.5.1 any one gender includes the other genders;

* + 1. the singular includes the plural and *vice versa*;
  1. The Service Provider’s Proposal forms an integral part hereof and words and expressions defined therein shall bear, unless the context otherwise requires, the same meaning in the Agreement. To the extent that there is any conflict between the Service Provider’s Proposal and the provisions of this Agreement, the provisions of this Agreement shall prevail.
  2. 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 this Clause.
  3. 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.
  4. 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.
  5. Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.
  6. The Parties hereby acknowledge that this Agreement was negotiated fairly between them at arm’s length and that the final terms thereof are the product of the Parties’ negotiations and accordingly the provisions of this Agreement shall not be construed against a Party on the grounds that such Party drafted, or was responsible for drafting any or the majority of the provisions.

# DURATION

3.1 This Agreement commences on the Commencement Date, notwithstanding the date of signature and shall endure thereafter for a period of 3 (three) years (the “Initial Period”) until the Termination Date or unless terminated earlier as set out herein below.

3.2 SARS shall have the option, to be exercised at SARS’s sole discretion, to renew this Agreement for a further period of 12 (twelve) months, on the same or additional terms and conditions to those contained in this Agreement.

3.3 SARS shall exercise the option to renew as aforesaid, by giving the Service Provider written notice of its intention to do so at least 1 (one) month prior to the expiry of the Initial Period.

# FACILITATORS

* 1. The Service Provider warrants that each Facilitator shall (i) have the relevant certification in respect of the specific Training programme which they will be providing to the Students and (ii) be registered with the relevant Lean Six Sigma accreditation body.
  2. The Service Provider will ensure that its Facilitators devote such time, attention and skill to the Training as may be reasonably required for the proper discharge of their duties under this Agreement.
  3. The Service Provider will assign suitably qualified and skilled Facilitators to provide the Training in terms of this Agreement.
  4. Should a Facilitator not be available to provide Training as scheduled, the Service Provider shall appoint a substitute Facilitator who has equal or better qualifications, skills, experience and knowledge. The Service Provider warrants that all substitute Facilitators will comply in all material aspects with the terms and conditions of this Agreement.
  5. The Service Provider shall be solely responsible for its Facilitators at all times and nothing contained in this Agreement may be construed as constituting any relationship between the contracting parties other than for the purpose of rendering the Training.
  6. For the purpose of liaising with the Service Provider from time to time regarding any of its Facilitators and/or to facilitate the smooth and effective management of the Training, the Service Provider shall appoint a designated representative (a “Contract Manager”) and provide SARS with the relevant contact details of such Contract Manager within seven (7) days after the Commencement Date.
  7. Any complaints, queries, requests, notices or like information relating to the Training or Service Provider’s Facilitators which may in any way be reasonably regarded as material to the Service Provider's responsibility for its Facilitators, shall be communicated forthwith to the Contract Manager by SARS, in writing. The Service Provider undertakes to take such appropriate action as may be required upon receiving such notice and to do so in a timely manner.

# TRAINING

# Training Requirements

# The Service Provider shall provide Training services to the Students in accordance with the terms and conditions of this Agreement as more fully set out below (and in the following sequential order):

* + 1. Lean Six Sigma Yellow Belt
       1. The Service Provider shall ensure that the scope of the Lean Six Sigma Yellow Belt training programme addresses, at a minimum, the following outcomes –
          1. The basics of Lean Six Sigma;
          2. The fundamentals of Lean Six Sigma;
          3. Selecting Lean Six Sigma Projects;
          4. The Lean Enterprise;
          5. Process Definition;
          6. Lean Six Sigma Statistics;
          7. Measurement System Analysis;
          8. Process capability;
          9. Lean Controls; and
          10. Lean Six Sigma control plans.
       2. The Service Provider must have the operational capability to provide a comprehensive Lean Six Sigma Yellow Belt training programme.
       3. The Service Provider shall provide a detailed course outline to SARS for the Lean Six Sigma Yellow Belt training programme at least 7 (seven) days prior to the commencement of any Yellow Belt Training session.
       4. The Service Provider shall ensure that the Lean Six Sigma Yellow Belt training programme is, at a minimum, aligned to the International Lean Six Sigma Process Improvement Standard (ISO 13053 ) and the International Quality Management Standard (ISO 9000), and shall provide evidence to SARS in this regard, prior to the commencement of any Training session.
       5. The Service Provider shall ensure that at the end of the Yellow Belt training programme, the Students will be able to (i) understand the Lean Six Sigma methodology, (ii) support the Yellow Belt Students to write their International Certification Examinations (iii) support them to move to the Green Belt level.
    2. Lean Six Sigma Green Belt
       1. The Service Provider shall ensure that the scope of the Green Belt training addresses, at a minimum, the following outcomes –
          1. The basics of Lean Six Sigma;
          2. The fundamentals of Lean Six Sigma;
          3. Selecting Lean Six Sigma Projects;
          4. The Lean Enterprise;
          5. Process Definition;
          6. Lean Six Sigma Statistics;
          7. Measurement System Analysis;
          8. Process capability;
          9. Patterns of variation;
          10. Inferential Statistics;
          11. Hypothesis Testing;
          12. Hypothesis Testing with Normal Data;
          13. Hypothesis Testing with Non-Normal Data;
          14. Simple Linear Regression;
          15. Multiple Regression Analysis;
          16. Lean Controls;
          17. Statistical Process Control (SPC); and
          18. Lean Six Sigma Control Plans.
       2. The Service Provider must have the operational capability to provide a comprehensive Lean Six Sigma Green Belt training programme.
       3. The Service Provider shall provide a detailed course outline to SARS for the Lean Six Sigma Green Belt training programme at least 7 (seven) days prior to the commencement of any Green Belt Training session.
       4. The Service Provider shall ensure that the Lean Six Sigma Green Belt training programme is, at a minimum, aligned to the International Lean Six Sigma Process Improvement Standard (ISO 13053 ) and the International Quality Management Standard (ISO 9000), and shall provide evidence to SARS in this regard, prior to the commencement of any Training session.
       5. The Service Provider shall provide training on the Lean Six Sigma statistical and data analysis techniques as part of the Green Belt training programme.
       6. The Service Provider shall provide a Lean Six Sigma Toolkit to each Student participating in the Green Belt training programme.
       7. The Service Provider shall ensure that at the end of the Green Belt training programme, the Students will be able to (i) understand the Lean Six Sigma methodology (ii) support the Green Belt Students to write their International Certification Examinations (iii) support the Black Belt Students on Lean Six Sigma Projects and (iv) move to the Black Belt level.
    3. Lean Six Sigma Black Belt
       1. The Service Provider shall ensure that the scope of the Black Belt training addresses, at a minimum, the following outcomes –
          1. The basics of Lean Six Sigma;
          2. The fundamentals of Lean Six Sigma;
          3. Selecting Lean Six Sigma Projects;
          4. The Lean Enterprise;
          5. Process Definition;
          6. Lean Six Sigma Statistics;
          7. Measurement System Analysis;
          8. Process capability;
          9. Patterns of variation;
          10. Inferential Statistics;
          11. Hypothesis Testing;
          12. Hypothesis Testing with Normal Data;
          13. Hypothesis Testing with Non-Normal Data;
          14. Simple Linear Regression;
          15. Multiple Regression Analysis;
          16. Lean Controls;
          17. Statistical Process Control (SPC); and
          18. Lean Six Sigma Control Plans.
       2. The Service Provider must have the operational capability to provide a comprehensive Lean Six Sigma Black Belt training programme.
       3. The Service Provider shall provide a detailed course outline to SARS for the Lean Six Sigma Black Belt training programme at least 7 (seven) days prior to the commencement of any Black Belt Training session.
       4. The Service Provider shall ensure that the Lean Six Sigma Black Belt training programme is , at a minimum, aligned to the International Lean Six Sigma Process Improvement Standard (ISO 13053 ) and the International Quality Management Standard (ISO 9000), and shall provide evidence to SARS in this regard, prior to the commencement of any Training session.
       5. The Service Provider shall provide training on the Lean Six Sigma statistical and data analysis techniques as part of the Black Belt training programme.
       6. The Service Provider shall provide a Lean Six Sigma Toolkit to each Student participating in the Black Belt training programme.
       7. The Service Provider shall ensure that at the end of the Black Belt training programme, the Students will be able to (i) understand the Lean Six Sigma methodology (ii) support the Green Belt Students to write their International Certification Examinations (iii) support the Master Black Belt Students on Lean Six Sigma Projects and (iv) move to the Master Black Belt level.
    4. Lean Six Sigma Master Black Belt
       1. The Service Provider shall ensure that the scope of the Master Black Belt training addresses, at a minimum, the following outcomes –
          1. Lean Six Sigma Essentials;
          2. Lean Six Sigma Installation;
          3. Lean Six Sigma Projects;
          4. Value Focus;
          5. Lean Practices;
          6. Quality Tools;
          7. Basic Statistics;
          8. Continuous Capability;
          9. Discrete Capability;
          10. Hypothesis Testing;
          11. Confidence Intervals;
          12. Control Methods;
          13. Parametric Methods’
          14. Survey Methods;
          15. Nonparametric Methods;
          16. Experimental Methods;
          17. DFSS Methods;
          18. Measurement Analysis; and
          19. Training Project.
       2. The Service Provider must have the operational capability to provide a comprehensive Lean Six Sigma Master Black Belt training programme.
       3. The Service Provider shall provide a detailed course outline to SARS for the Lean Six Sigma Master Black Belt training programme at least 7 (seven) days prior to the commencement of any Master Black Belt Training session.
       4. The Service Provider shall provide training on the Lean Six Sigma statistical and data analysis techniques in respect of the Master Black Belt training programme.
       5. The Service Provider shall provide a Lean Six Sigma Toolkit to each Student participating in the Master Black Belt training programme.
       6. The Service Provider shall ensure that the Lean Six Sigma Master Black Belt training programme is, at a minimum, aligned to the International Lean Six Sigma Process Improvement Standard (ISO 13053 ) and the International Quality Management Standard (ISO 9000), and shall provide evidence to SARS in this regard, prior to the commencement of any Training session.
  1. **Training Sessions**

5.2.1 The Service Provider shall provide the Lean Six Sigma Training sessions as follows -

* + - 1. in respect of the Yellow Belt training programme, to an average of 20 (twenty) Students over a period of 4 (four) consecutive days;
      2. in respect of the Green Belt training programme, to an average of 15 (fifteen) Students over a period of 10 (ten) days. The 10 (ten) days’ training session shall be divided into 2 (two), 5 (five) day blocks over a period of 2 (two) months;
      3. in respect of the Black Belt training programme, to an average of 10 (ten) Students over a period of 20 (twenty) days. The 20 (twenty) days’ training session shall be divided into 2 (two), 10 (ten) day blocks over a period of 3 (three) months; and
      4. in respect of the Master Black Belt training programme, to an average of 3 (three) Students over a period of 25 (twenty) days. The 25 (twenty) days’ training session shall be divided into 2 (two) blocks over a period of 3 (three) months.
    1. The Service Provider shall ensure that all Training sessions commence at the scheduled time.
  1. **Training Materials**

The Service Provider shall provide approved Lean Six Sigma Training Materials to the Students in respect of the Yellow Belt, Green Belt, Black Belt and Master Black Belt training programmes. Such Training Materials shall be provided by the Service Provider to each Student attending any Training session.

* 1. **Training Assessments**
     1. The Service Provider shall, on successful completion of each Training programme, prepare a competency examination to be written by the Students, which is intended to validate the proficiency level of each Student regarding the Lean Six Sigma tools and techniques.
     2. The Service Provider shall issue a certificate of competency in respect of each Training programme to each Student that has successfully completed the competency examination.
     3. The Parties agree that a Student who has attained a 70% (seventy percent) score in a competency examination shall be deemed to have successfully completed such competency examination. Further, any Student that has attained a score of at least 50% (fifty percent) shall be afforded an opportunity to write a supplementary examination, which shall be prepared by the Service Provider at no additional cost to SARS.
     4. The Service Provider shall issue a certificate of attendance in respect of each Training programme to each Student, irrespective of whether or not such Student has successfully completed the competency examination.
     5. The Service Provider shall encourage the Students to write the Lean Six Sigma International Certification exam in respect of each Training programme, and shall provide instructor support to such aspiring Students for a period of 6 (six) months from the date of successful completion of their competency examination.
  2. **Skills Transfer**

5.5.1 The Service Provider shall provide the Training to the Students in such a way that the necessary training skill set is transferred to the Students, in order that they may in future be able to conduct Lean Six Sigma Training internally.

5.5.2 The Service Provider will perform the Training during the Training Hours.

5.5.3 Should SARS so require, the Service Provider will provide the Training to SARS outside the Training Hours upon prior agreement between the Parties.

# FEES AND PAYMENT

* 1. The fees payable by SARS to the Service Provider in respect of the Training are set out in **ANNEXURE A**.
  2. Save where provided otherwise, fees and charges referred to in this Agreement are inclusive of VAT.
  3. All amounts due and payable by SARS to the Service Provider shall be payable within 30 (thirty) days of date of a valid tax invoice provided that SARS is satisfied that the invoice correctly reflects the amount/s due by SARS in respect of the Training rendered. Should any invoiced amount/s be disputed, the Parties agree to refer the dispute to the SARS Contract Manager and the Service Provider’s Contract Manager to be resolved within 5 (five) days, failing which the dispute will be dealt with in terms of **clause16**.
  4. The Service Provider agrees and accepts that SARS shall not be liable to compensate it for any accommodation and/or travel expenses.

1. **MEETINGS AND REPORTS**
   1. The Service Provider shall provide SARS with a Close-out report in respect of each Training session, within 5 (five) days of completion thereof. The Close-out report shall provide an overview of the Training session held and shall include, details relating to attendance, problem areas and suggestions of further improvements in respect of the Training sessions.
   2. Where the Service Provider has conducted any Training sessions during a particular month, the Service Provider shall provide SARS with a consolidated report in respect of all such Training sessions within 5 (days) of the last day of the month.

#### SARS may at its sole discretion schedule meetings with the Service Provider’s Contract Manager when and if necessary, who hereby undertakes that he/she shall attend all such scheduled meetings; alternatively, will send an authorised representative to attend in his/her place.

7.4 SARS shall conduct Performance Reviews on a quarterly basis.

# SARS’S OBLIGATIONS

8.1 SARS undertakes –

* + 1. to nominate a SARS official to be referred to as the SARS Contract Manager, who shall liaise with the Service Provider’s Contract Manager on all activities relating to the Training, for the duration of this Agreement;
    2. to furnish the Service Provider with any relevant information, if required, which is necessary for the Service Provider to perform the Training in compliance with the terms and conditions of this Agreement;
    3. to provide a suitable venue for the delivery of Training; and
    4. to provide all reasonably required Training equipment, as shall be agreed between the Parties prior to the commencement of the Training.

# WARRANTIES

# The Service Provider hereby represents and warrants to SARS that:

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

* + 1. it is acting as a principal and not as an agent of an undisclosed principal;
    2. 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; and
    3. 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.
  1. The provisions of this Clause shall survive the termination of this Agreement.

# INDEMNITIES AND INSURANCE

The Service Provider hereby indemnifies and holds SARS harmless against all Losses (including reasonable 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 property occurring by reason of the Service Provider’s wilfulness or gross negligence during or after the execution of the Training.

# LIMITATION OF LIABILITY

* 1. The Service Provider agrees that, in the event of a breach of any of the provisions of this Agreement by the Service Provider, the Service Provider will

be liable to SARS for Losses which constitute direct and/or general damages.

* 1. Subject to **Clause 11.3**, the Parties agree that, in the event of a breach of any of the provisions of this Agreement, the defaulting Party will not be liable to the other Party for any Losses which constitute indirect, special and/or consequential damages.
  2. Notwithstanding anything to the contrary set forth in **Clause 11.2** above or this Agreement in general, the Service Provider agrees that it will be liable to SARS for Losses which constitute indirect, special and/or consequential damages –
     1. where such Losses are caused by a breach of any Confidential Information provisions contained in this Agreement;
     2. where such Losses are caused by the infringement of a third party’s intellectual property rights; and
     3. where such Losses arise out of the Service Provider or any of its Facilitators’ wilful misconduct, dishonesty or gross negligence, regardless of whether such Losses arise out of contract or delict.

# BREACH

* 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”) shall be entitled to require the Defaulting Party to remedy the breach within 5(five) Business Days of delivery of a written notice requiring it to do so, or any further time period as may be agreed between the Parties.
  2. If the Defaulting Party fails to remedy the breach within the period specified in such notice, the Aggrieved Party shall be entitled to cancel the contract and claim damages, alternatively claim immediate specific performance of the Defaulting Party’s obligations. The foregoing is without prejudice to such other rights as the Aggrieved Party may have in law.

# TERMINATION

* 1. SARS reserves the right to terminate this Agreement for convenience or temporarily defer the provision of the Training, or any part thereof, at any stage on prior written notice of at least 7 (seven) days to the Service Provider, should SARS, in its sole and absolute discretion, decide not to proceed with the Training.
  2. In the event that SARS terminates this Agreement in terms of **Clause 13.1**, the Service Provider shall be remunerated for the Training rendered to date of such termination, provided that the Service Provider shall furnish SARS with a valid tax invoice in respect of such Training.
  3. SARS may immediately terminate this Agreement at any time by giving written notice of such termination to the other party if:
     1. the Service Provider is, other than for the purposes of reconstruction or amalgamation, placed under voluntary or compulsory liquidation (whether provisional or final),placed under curatorship, subjected to business rescue proceedings or under the equivalent of any of the foregoing; and/or
     2. a final and unappealable judgement against the Service Provider remains unsatisfied for a period of 10 (ten) Business Days or more after it comes to the notice of the defaulting party; and/or
     3. the Service Provider makes any arrangement or composition with its creditors generally or ceases to carry on business.
  4. SARS may, by giving notice to the Service Provider, terminate the Agreement, in respect of the Training (in whole or in part), as of a date specified in the notice of termination in the event that the Service Provider, without SARS’s written consent –
     1. sells all or substantially all of its assets; or
     2. undergoes a Change of Ownership/Management, but only if SARS exercises its right to terminate within 90 (ninety) days of SARS becoming aware of the occurrence of the event in **13.4.1** or **13.4.2** giving rise to such right. For this purpose a Change of Ownership/Management shall be deemed to have occurred in circumstances where any Person acquires the ability, by virtue of ownership, rights of appointment, voting rights, management agreement, or agreement of any kind, to control or direct, directly or indirectly, the board or executive body or decision making process or management of the Service Provider.
  5. Any termination of this Agreement pursuant to the provisions of **Clause 13.1** 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.

# FORCE MAJEURE

* 1. In the event of any act beyond the reasonable control of the Parties, war, warlike operation, rebellion, riot, civil commotion, 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 a "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 event continues (excluding payment obligations for items purchased).
  2. The 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.
  3. Any Party invoking force majeure shall upon termination of such force majeure event give prompt written notice thereof to the other Party. Should force majeure continue for a period of more than 30 (thirty) days, then either Party has the right to cancel this Agreement.

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

14.5 In the event that the Parties are unable to bona fide agree that a force majeure event has occurred, the Parties shall submit the dispute for resolution in accordance with **Clause 14** hereof, provided that the burden of proof as to whether an event of force majeure has occurred shall be upon the Party claiming a force majeure event.

# RELATIONSHIP BETWEEN THE PARTIES

* 1. The Service Provider is an independent contractor and under no circumstances will it be partner, joint venture partner or agent, or employee of SARS in the performance of its duties and responsibilities pursuant to this Agreement.
  2. All Facilitators used by the Service Provider will be the Service Provider’s employees, contractors, sub-contractors, or agents, and the entire management, direction, and control of all such persons will be the responsibility of the Service Provider.

# DISPUTE RESOLUTION

* 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 20 (twenty) 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.
  2. Save in respect of those provisions in 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.
  3. **Clause 16** 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.
  4. Save for clause 6.3 above, 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.

# ADDRESSES

* 1. Each Party chooses the address set out below its name as its address to which all notices and other communications must be delivered for the purposes of this Agreement and its *domicilium citandi et executandi (“domicilium”)* at which all documents in legal proceedings in connection with this Agreement must be served:

**SARS:**

*Domicilium*: 299 Bronkhorst Street

Nieuw Muckleneuk

Pretoria

Postal address: Private Bag X923

Pretoria, 0001

Telefax No: 086 2744 956

Attention: Executive: Procurement

**Service Provider: [Drafting note: To be provided.]**

*Domicilium*: …

Postal address: …

…

…

Telefax No: …

Attention: …

* 1. 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 or telefax number, provided that documents in legal proceedings in connection with this Agreement may only be served at a Party’s *domicilium*.
  2. 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:-
     1. the change shall become effective on the 10th(tenth) Business Day after the receipt or deemed receipt of the notice by the addressee, and;
     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.*
  3. Any notice to a Party -
     1. Delivered by hand during the normal Business Hours of the addressee at the addressee's *domicilium* shall be deemed to have been received by the addressee at the time of delivery;
     2. Posted by prepaid registered post in a correctly addressed envelope from an address within the RSA to the addressee at the addressee's domicilium shall be deemed to have been received by the addressee on the 7th (seventh) day after the date of posting.
  4. Any notice by telefax to a Party at its telefax number shall be deemed, unless the contrary is proved, to have been received on the first Business Day after the date of successful transmission.
  5. 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.

# CONFIDENTIAL INFORMATION

* 1. Each Party ("the Receiving Party") must treat and hold as confidential all information, which they may receive from the other Party ("the Disclosing Party"), or which becomes known to them concerning the Disclosing Party during the currency of this Agreement.
  2. Each Party will maintain the confidentiality of the other Party’s Confidential Information, using at least the same efforts as it uses to maintain the confidentiality of its own Confidential Information, and as otherwise required under applicable law or in terms of the applicable policies and procedures of SARS, or the terms of this Agreement.
  3. The Parties acknowledge that nothing in this Agreement confers any rights or licence to the other Party’s Confidential Information.
  4. The Receiving Party agrees that in order to protect the proprietary interests of the Disclosing Party in its Confidential Information:
     1. it will only make the Confidential Information available to those of its staff who are actively involved in the execution of its obligations under this Agreement and then only on a “need to know” basis;
     2. it will put in place internal security procedures reasonably acceptable to the Disclosing Party to prevent unauthorised disclosure and will take all practical steps to impress upon those staff who need to be given access to Confidential Information, the secret and confidential nature thereof;
     3. it will not at any time, whether during this Agreement or thereafter, use any Confidential Information of the Disclosing Party, or directly or indirectly disclose any Confidential Information of the Disclosing Party to third parties;
     4. all Confidential Information of the Disclosing Party which have or will come into the possession of the receiving Party and its staff, will be, and will at all times remain, the sole and absolute property of such Party.
  5. The foregoing obligations will not apply to any information which:
     1. is lawfully in the public domain at the time of disclosure;
     2. subsequently and lawfully becomes part of the public domain by publication or otherwise;
     3. subsequently becomes available to the receiving Party from a source other than the disclosing Party, which source is lawfully entitled without any restriction on disclosure to disclose such confidential information; or
     4. is disclosed pursuant to a requirement or request by operation of law, regulation or court order.

1. **INTELLECTUAL PROPERTY**
   1. The Parties retain all right, title and interest in and to their respective Intellectual Property as it existed at the Commencement Date and as either Party may acquire during the term of the Agreement.
   2. The Service Provider may not use any of SARS’s Intellectual Property (including the SARS logo or any other service marks or trademarks of SARS), without the prior written consent of SARS, which SARS in its sole discretion may withhold.
   3. The Service Provider hereby grants to SARS a use right in respect of any software programmes that it may utilize in the conducting of the said Training sessions.

# TAX CLEARANCE

* 1. The Service Provider warrants that, as of the Commencement Date, it is and will for the duration of the Agreement remain compliant with all applicable laws and regulations relating to taxation in the Republic of South Africa.
  2. The Service Provider warrants further that it will deliver to SARS, on the Signature Date and on each anniversary of the Commencement Date for the duration of the Agreement, a valid tax clearance certificate issued for the then-current year.
  3. If the Service Provider fails to provide such a certificate, SARS may terminate the Agreement in accordance with the provisions of **Clause 13** above. SARS will have no liability to the Service Provider with respect to such termination.

# BROAD-BASED BLACK ECONOMIC EMPOWERMENT

* 1. The Service Provider commits and warrants compliance in all respects with the requirements of the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003) [hereinafter referred to as the “BBBEE Act”], as amended from time to time and the Codes of Good Practice issued in terms of the BBBEE Act.
  2. Upon the Signature Date of this Agreement and 1 (one) 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 rating status from an agency accredited by the South African National Accreditation System.
  3. 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 improve its current BEE rating status.
  4. A failure to provide a certified copy of its BEE rating status or a failure to comply with provisions of this clause will entitle SARS to terminate the Agreement by giving the Service Provider 1 (one) month's written notice

# GENERAL

* 1. **ASSIGNMENTS AND CESSIONS**

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

* 1. **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.

* 1. **ADVERTISING AND MARKETING**

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

* 1. **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.

* 1. **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.

* 1. **AUTHORISED SIGNATORIES**

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

* 1. **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.

* 1. **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.

* 1. **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 an "Addendum" to the applicable Service Agreement and assigned a sequential number to be included in the title.

* 1. **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) any Annexure and/or Schedules to this Agreement; (iii) the Tender Documentation; and (iv) the Service Provider’s Proposal.

* 1. **SURVIVAL**

Any provision of this Agreement which contemplates performance or observance subsequent to the Termination Date shall survive any termination of this Agreement and will continue in full force and effect.

* 1. **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.

* 1. **COSTS**

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

* 1. **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.

**AS REPRESENTATIVES FOR THE SOUTH AFRICAN REVENUE SERVICE:**

**1. Jacobus Johannes Louw Chief Officer: Legal and Policy**

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

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

**2. Elsie Pule Chief Executive: Human Resources**

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

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

**3. Deon Louwrens Stofberg Executive: Procurement**

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

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

**4. Gesina Maria Beatrix Coetzer Chief Financial Officer**

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

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

**AND FOR THE SERVICE PROVIDER:**

Signed at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_on this the \_\_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_2013.

**REPRESENTATIVE** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**FULL NAMES AND CAPACITY** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**WITNESSES** **DATE:**

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

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

# ANNEXURE A

**SCHEDULE OF FEES**