

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 No. 34 of
1997.

[Hereinafter referred to as "SARS"]

And

.....
Registration No

[Hereinafter referred to as the "SERVICE PROVIDER"]

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1. INTERPRETATION

- 1.1 The head notes to the Clauses of this Agreement are for reference purposes only and will not govern or affect the interpretation of nor modify nor amplify the terms of this Agreement.
- 1.2 Unless inconsistent with the context, the words and expressions have the following meanings and similar expressions will have corresponding meanings:
- 1.3 **“Agreement”** means this Agreement and the annexures hereto;
- 1.3.1 **“Authorised Representative”** means signatories authorised by SARS and the Service Provider to sign the Agreement;
- 1.3.2 **“Business Day”** means any day other than a Saturday, Sunday or public holiday in South Africa;
- 1.3.3 **“Commencement Date”** means the, notwithstanding the date of the signing of this Agreement;
- 1.3.4 **“Termination Date”** means the
- 1.3.5 **“Parties”** means SARS and the Service Provider and “party” as the context requires, is a reference to any one of them;
- 1.3.6 **“SARS”** means the South African Revenue Service, an organ of state established in terms of the South African Revenue Service Act No. 34 of 1997;
- 1.3.7 **“Service Provider”** means, a company with limited liability incorporated in accordance with the Laws of South Africa with registration number
- 1.3.8 **“Services”** means the provision of public seating (manufacturing, supply, delivery and installation) at the SARS Taxpayer Service Offices according to SARS’s technical specifications;
- 1.3.9 **“Service Level”** means a qualitative standard of performance of the Services that the Service Provider is required to satisfy in its performance of the services,

1.3.10 **“Service Level Failure”** means the Service Provider’s failure to meet any of the prescribed Service Levels;

1.3.11 **“Signature Date”** means the date on which the last signature is affixed to this agreement; and,

1.3.12 **“VAT”** means Value-Added Tax levied in terms of the Value-Added Tax Act No. 89 of 1991.

1.4 Any reference in this Agreement to:

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

1.4.2 **“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;

1.4.3 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;

1.4.4 **“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 number 29/2016 and which is attached as **Annexure “A”**;

1.4.5 **“Tender Documents”** is, subject to any contrary indication, a reference to SARS’s invitation to prospective service providers to quote for the services specified in RFP 29/2016.

1.5 Unless inconsistent with the context or save where the contrary is expressly indicated:

1.5.1 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;

- 1.5.2 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;
- 1.5.3 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;
- 1.5.4 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;
- 1.5.5 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;
- 1.5.6 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;
- 1.5.7 no provision of this Agreement constitutes a stipulation for the benefit of any Person who is not a party to this Agreement;
- 1.5.8 references to day/s, month/s or year/s shall be construed as calendar day/s, month/s or year/s; and,
- 1.5.9 a reference to a party includes that party's successors-in-title and permitted assigns.
- 1.6 Unless inconsistent with the context, an expression which denotes:
 - 1.6.1 any one gender includes the other gender;
 - 1.6.2 the singular includes the plural and *vice versa*.

- 1.7 Where any term is defined within the context of any particular Clause in this Agreement, the term so defined, unless it is clear from the Clause in question that the term so defined has limited application to the relevant clause, 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.
- 1.8 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.
- 1.9 This Agreement is binding on the executors, administrators, trustees, permitted assigns or liquidators of the Parties as fully and effectually as if they had signed this Agreement in the first instance and reference to any Party is deemed to include such Party's estate, heirs, executors, administrators, trustees, permitted assigns or liquidators, as the case may be.
- 1.10 Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.
- 1.11 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 issued a tender for the provision of public seating (manufacture, supply, delivery and installation) at the SARS Taxpayer Service Offices according to SARS's technical specifications (defined in this agreement as "**Services**") under tender number RFP 29/2016.
- 2.2 The performance of the Services shall be subject to the terms and conditions of this Agreement.
- 2.3 The Service Provider will at all times perform the Services in accordance with any Service Levels prescribed in this Agreement.

- 2.4 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 Services.

3. DURATION

- 3.1 This Agreement shall commence on the Commencement Date, notwithstanding the Signature Date and continue in full force and effect for a period of twelve (12) weeks in addition to a five (5) day installation period until Termination Date, unless terminated earlier in accordance with the terms of this Agreement.

4. SERVICES

- 4.1 The Service Provider shall generally render the Services on the terms and conditions of this Agreement and, specifically, in accordance with the specifications set out in the relevant services request.
- 4.2 The Services will comprise of the manufacture, supply, delivery and installation of public seating at SARS Taxpayer Service Offices to be rendered in accordance with the standards and norms as specified in the Tender Documents.
- 4.3 The services will be rendered on any calendar day.
- 4.4 The Service Provider will implement such new technologies subject to agreement with SARS to deliver the Services to SARS in order to maintain competitiveness in the quality and scope of Services available to SARS and to take advantage of market cost efficiencies. The Service Provider will also keep the Services under this Agreement current with industry advances and leading technology standards.
- 4.5 The risk of and liability for any erroneous deliverables or any errors which may occur due to fraud or unlawful activity on the part of the Service Provider's staff shall lie with the Service Provider.

5. APPROACH IN THE PERFORMANCE OF THE SERVICES

- 5.1 This Agreement provides a framework for, and the general terms and conditions applicable to, the Services that the Service Provider will provide to SARS under this Agreement.

- 5.2 SARS will from time to time issue a written service request to the Service Provider to perform Services identified in the service request.
- 5.3 The provisions of this Agreement shall apply to each and every service request issued under this Agreement.
- 5.4 The Service Provider will provide the Services to SARS subject to the terms and conditions of this Agreement generally and in particular subject to the terms and conditions set forth in the relevant service request.
- 5.5 No service request shall constitute a binding contract between the Parties unless a SARS purchase order is issued simultaneously with the service request and such purchase order appears on the face of the service request.
- 5.6 If there is a conflict in the terms and conditions of this Agreement, and/or any service request and/or any annexures:
- 5.6.1 subject to clause 5.6.3, to the extent that the conflicting terms can reasonably be interpreted so that such terms are consistent with each other, such consistent interpretation shall prevail;
- 5.6.2 to the extent that clause 5.6.1 does not apply and subject to clause 5.6.3, any conflict between the provisions of the various clauses of the Agreement, the service request and annexures will be resolved in accordance with the following order of precedence (in descending order of priority):
- (a) the Agreement and its annexures; and
 - (b) the Service Request and any annexures thereto.
- 5.6.3 a service request may amend the terms and conditions of this Agreement only with respect to the subject matter of such service request. Insofar as any service request specifically amends the provisions of this Agreement, such amendment shall prevail in respect of that service request only. For the avoidance of doubt it is recorded that the terms of one service request shall not apply to any other service request.

5.7 Each service request shall be in writing and contain all the information set out therein including:

5.7.1 details of the Services requested from the Service Provider;

5.7.2 contain the time within which the Services must be performed;

5.7.3 the costs for the Services;

5.7.4 indicate the purchase order for the Services;

5.7.5 the name and contact details of the SARS's designated representative requesting the Services; and

5.7.6 be signed by the SARS's designated representative;

5.8 The Service Provider is required to place in an appropriate place on the items delivered, a plasticized sticker that shows the purchase order number and the Service Provider's contact details.

6. THE SERVICE PROVIDER'S OBLIGATIONS

6.1. During the currency of this Agreement, the Service Provider shall render the Services to SARS as more fully described in **Annexure "A"**:

6.1.1. The Service Provider shall nominate a Supervisor who shall be responsible for the day to day management of the delivery of Services and resolution of any disputes in terms of this Agreement.

6.1.2. The Service Provider shall render the Services to SARS in accordance with the performance standards ["Service Levels"] prescribed by SARS for a Service line item. Clause 24 below details the principles that will be applicable to Service Levels.

6.1.3. The Service Provider shall ensure that its personnel devote such time, attention and skill in performing the Services as may be reasonably required for the proper discharge of its duties under this Agreement. Any

work not in accordance with the requirements, quality and standards of SARS shall be rectified or replaced by the Service Provider as instructed by SARS at the expense of the Service Provider.

6.1.4. The Service Provider shall assign suitably qualified and skilled personnel to provide the Services in terms of this Agreement.

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

6.1.6. The Service Provider shall ensure that the service personnel:

6.1.6.1. are conversant with the Occupational Health and Safety Act No. 85 of 1993 (hereinafter referred to as OHSA), as amended, and comply with the relevant provisions of this Act;

6.1.6.2. are effectively supervised by the Service Provider and that the level of supervision is of a sufficient standard;

6.1.6.3. are physically and mentally fit to fulfil their duties; and

6.1.6.4. do not consume any alcoholic beverages or smoke any intoxicating mixture whilst on duty on the property of SARS, nor that they commence any service period if smelling of alcohol or any other intoxicating mixture.

6.1.7. The Service Provider shall at its own ensure that:

6.1.7.1. the service personnel are properly and appropriately clothed in terms of the provisions of OHSA at all times when on duty;

6.1.7.2. its tools and equipment is maintained and in a safe working condition so as to comply with the legal safety requirements and to enable the service personnel to meet the requirements of the Service Levels;

- 6.1.7.3. any facility or office made available to the service personnel are kept in a clean and tidy condition; and
- 6.1.7.4. appropriate signage and notification pertaining to temporary closure, danger zones, inconvenience or public safety is prominently displayed whenever required.
- 6.1.8. The Service Provider shall ensure that its personnel comply with the requirements of this agreement at all times and in all respects.
- 6.1.9. The Service Provider is required to provide a level of resource necessary to fulfil his commitments at all times and to take into account absence due to sickness, holidays and / or any other related matters of support personnel.
- 6.1.10. The Service Provider shall provide all items necessary for the proper execution of the works in terms of this agreement.
- 6.1.11. The Service provider shall provide SARS's Facilities Project Management with detailed programmes for the execution of work.
- 6.1.12. The Service Provider shall provide SARS's Facilities Project Management with further updated programmes for any of the services which may become necessary due to variation, instruction, alteration or change required by SARS.
- 6.1.13. The Service Provider must obtain the approval from SARS for any noisy operations.
- 6.1.14. The Service Provider is to ensure that all reasonable and practical methods carrying out the work is employed to avoid the creation of dust, debris, airborne particles, smoke and odour.
- 6.1.15. In case of an incident or accident (involving personal injury), the Service Provider shall report the incident to SARS. The Service Provider is to maintain a register of all incident and accident reporting.

- 6.1.16. The Service Provider must carry out all works in a clean and tidy manner, conducive of the normal operation of the building in which the works are carried out. Rubbish must be cleared and removed by the Service Provider on a daily basis including all redundant equipment, lubricants and the like at the Service Provider's costs, whenever such is required.
- 6.1.17. All parts replaced under warranty or under quoted repairs must match the existing specifications in full and all workmanship done must be of the highest quality. Parts that are replaced must be genuine and in accordance with manufacturer's specifications.
- 6.1.18. The Service Provider shall be responsible for any subcontractor employed by it in connection with the Services rendered. The subcontractor shall be bound by the obligations and restrictions imposed on the contractor as set out in this agreement. The Service Provider shall be liable to ensure the subcontractor complies to the terms of this agreement and shall be held responsible for the subcontractor's non-compliance.
- 6.1.19. The Service Provider may not issue any work to a subcontractor that exceeds 20% of all work received.
- 6.1.20. The Service Provider shall comply with all legislation regulating the manufacturing industry including legislation relating to registration or licensing by a regulatory authority if any.
- 6.1.21. The Service Provider shall comply with all legislation relating to the protection of personal information.

7. SARS'S OBLIGATIONS

7.1. SARS undertakes to:-

- 7.1.1. nominate a representative who shall liaise with the Service Provider's nominated representative in respect of the management of the Services;

7.1.2. if required by the Service Provider, furnish the Service Provider with any relevant information, which is necessary for the Service Provider to perform the Services in compliance with the terms and conditions of this Agreement; and,

7.1.3. provide the Service Provider with approved specifications for the required public seating.

8. FEES AND PAYMENT

8.1 The fees payable by SARS to the Service Provider in respect of the Services will be as per **Annexure "A"**.

8.2 The Service Provider's invoice shall include a narration of the type of Services performed and the fees payable, inclusive of VAT, in respect of those Services rendered.

8.3 Each invoice shall contain or have attached such information, and be in such form and on such medium as SARS may reasonably request and, at the minimum, shall contain:

8.3.1 a statement of the total amount due based on the number of total requests and proof of Services rendered;

8.3.2 a delivery note which indicates receipt of the items by a SARS official, must be dated and signed, and delivered to SARS in accordance with clause 8.4 below;

8.3.3 the month during which the Services were provided; and

8.3.4 a valid SARS purchase order number.

8.4 The Service Provider 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.

- 8.5 The Service Provider shall maintain complete and accurate records of, and supporting documentation for, the amounts invoiced to and payments made by the SARS hereunder.
- 8.6 Within ten (10) days after SARS's request, the Service Provider 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 the Service Provider's compliance with the requirements of this Agreement.
- 8.7 The Service Provider 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.
- 8.8 SARS shall pay the Service Provider 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.
- 8.9 SARS may set off any amounts due to SARS in terms of this Agreement against any amounts payable by SARS to the Service Provider.

9. DISPUTED CHARGES AND INVOICING ERRORS

- 9.1 SARS may withhold payment of fees that SARS disputes in good faith or, if the disputed fees have already been paid, SARS may withhold an equal amount from a later payment, including disputes in respect of an error in an invoice or an amount paid. If SARS withholds any such amount:
- 9.1.1 SARS shall promptly notify the Service Provider that it is disputing such amount providing a reasonable explanation of the rationale thereof as well as documentary proof thereof; and the Parties shall promptly first address such dispute in accordance with clause 9 of this Agreement, if applicable or necessary;
- 9.1.2 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 8 above; and

- 9.1.3 If an invoice is identified as incorrect, then the Service Provider shall either issue a correct invoice if the amount has not yet been paid, or issue a credit note if the amount has been paid.
- 9.2 SARS shall not be responsible for paying interest on undercharged amounts, if any.
- 9.3 Any dispute arising in terms of clause 9.1 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 Officers or persons of equivalent office for resolution.
- 9.4 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.
- 9.5 In the event that the dispute remains unresolved after ten (10) days of its referral to the persons mentioned in clause 9.3, either Party shall be entitled to refer the dispute for resolution in accordance with the provisions of clause 20 below.

10. TAX COMPLIANCE

- 10.1. The Service Provider represents and warrants that as of the Commencement Date of this Agreement, the Service Provider is and will remain compliant throughout the duration thereof with all applicable laws relating to tax in South Africa.
- 10.2. In addition to the above, the Service Provider shall not later than three (3) months after each anniversary of this Agreement submit to the Executive: Procurement of SARS a valid tax clearance certificate for the current year.
- 10.3. If the Service Provider fails to provide such a certificate, SARS may terminate the agreement in accordance with clause 17, and SARS will have no liability to the Service Provider with respect to such termination.

11. WARRANTIES

- 11.1. The Service Provider hereby represents and warrants to SARS that-

- 11.1.1. this Agreement has been duly authorised and executed by it and constitutes a legal, valid and binding set of obligations on it;
- 11.1.2. it is acting as a principal and not as an agent of an undisclosed principal;
- 11.1.3. the execution and performance of the terms and conditions of this Agreement does not constitute a violation of any statute, judgment, order, decree or regulation or rule of any court, competent authority or arbitrator or competent jurisdiction applicable or relating to the Service Provider, its assets or its business, or its memorandum, 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;
- 11.1.4. 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; and
- 11.1.5. it will deliver to SARS upon the Signature Date of this Agreement a five (five) year warranty on manufacturing defects;

11.2. The provisions of clause 11.1 shall survive the termination of this Agreement.

12. INDEMNITIES AND INSURANCE

12.1. The Service Provider will –

- 12.1.1. on or before the Commencement Date and for the duration of this Agreement have and maintain in force insurance coverage for public liability insurance to the value of to cover any claims, losses and / or damages for which it is liable in terms of this Agreement;
- 12.1.2. deliver to SARS upon the Signature Date of this Agreement, and on each anniversary thereof during the term of the Agreement, proof of such insurance coverage as aforementioned;

12.1.3. report all incidents affecting, or which may affect, any of the terms and conditions of any insurance policy, including any of SARS's insurance policies becoming void or voidable, or whereby the insurance premiums for such insurance may be increased, immediately upon becoming aware of their occurrence; and.

12.1.4. 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 the Service Provider's breach of the provisions of this Agreement or injury or death of any person or loss of or damage to any person or property occurring by reason of the Service Provider, its employees or agents' wilful conduct or negligence during or after the execution of the Services.

13. 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.

14. NON-EXCLUSIVITY

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

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

15. HEALTH, SAFETY AND SECURITY PROCEDURES AND GUIDELINES

15.1. The Service Provider hereby agrees and undertakes, in terms of the Occupational Health and Safety Act No. 85 of 1993, to ensure that the Service Provider and the Service Provider's personnel comply with the provisions of the

aforesaid Act. The Service Provider accepts sole responsibility for all health and safety matters relating to the provision of the Services, or in connection with or arising out of such Services for the duration of this Agreement and will ensure that neither SARS's personnel, nor any third party's health and safety is endangered in any way by the Service Provider's activities or conduct in providing the Services.

- 15.2. Should SARS at any time have reason to believe that any member of the Service Provider's personnel is failing to comply with such standard health, safety and security procedures and guidelines, SARS will be entitled to deny such member of the Service Provider personnel access to any or all of SARS's premises and the Service Provider will be required to replace such member of its personnel without delay. The Service Provider will not be relieved of its obligations under this Agreement as a result of such denial of access, and SARS will have no liability to the Service Provider with regard thereto.

16. 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.

17. TERMINATION FOR CAUSE

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

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

17.1.2 commits a material breach of this Agreement that is not capable of being remedied within ten (10) days from the notice of the breach;

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

17.1.4 the Service Provider is placed under voluntary or compulsory liquidation (whether provisional or final) or business rescue proceedings are commenced against the Service Provider; and/or,

17.1.5 a final judgement against the Service Provider remains unsatisfied for a period of (10) ten Business Days or more after it comes to the notice of the defaulting party; and/or, the Service Provider makes any arrangement or composition with its creditors generally or ceases to carry on business or business rescue proceedings in terms of the Companies Act, No. 71 of 2008 are commenced against the Service Provider.

17.2. Without limiting the generality of the foregoing, SARS may terminate this Agreement, by giving notice to the Service Provider, if the Service Provider fails to comply with the provisions of clauses 10, 22 and/or 23.

17.3. SARS shall have no liability to the Service Provider with respect to a termination under this clause 17.

18. FORCE MAJEURE

18.1 In the event of any act beyond the control of the Parties, strike, war, warlike 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).

18.2 The affected Party's relief is only to the extent so prevented and such Party shall not be liable for any delay or failure in the performance of any obligations

hereunder or loss or damage which the other party may suffer due to or resulting from the force majeure event, provided always that a written notice shall be promptly given of any such inability by the affected party.

- 18.3 Any Party invoking force majeure shall upon termination of such force majeure give prompt written notice thereof to the other Party. Should a force majeure event continue for a period of more than thirty (30) days, then either Party has the right to cancel this Agreement.
- 18.4 In the event that the Service Provider is for any reason other than as provided for in this Clause unable to provide the Services for the full duration of this Agreement-
 - 18.4.1 the Service Provider shall serve SARS with a written notice requesting an extension of the duration of this Agreement at least seven (7) Business Days prior to the end of the duration of this Agreement; and,
 - 18.4.2 SARS shall consider the request and revert to the Service Provider by no later than five (5) Business Days from date of receipt of the notice referred to in clause 18.4.1

19. RELATIONSHIP BETWEEN THE PARTIES

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

20. DISPUTE RESOLUTION

- 20.1 If a dispute between the Parties arises out of or is related to this Agreement, the Parties shall meet and negotiate in good faith to attempt to resolve the dispute. If, after twenty (20) Business Days from the date upon which the dispute was

declared by a party by written notice, the dispute is not resolved, the matter shall be determined in accordance with the provisions set out below.

- 20.2 Save in respect of those provisions of this Agreement which provide for their own remedies which would be incompatible with arbitration, or in the event of either Party instituting urgent action against the other in any court of competent jurisdiction, any dispute arising from, or in connection with, this Agreement will finally be resolved by arbitration in accordance with the Rules of the Arbitration Foundation of Southern Africa (the "AFSA") or its successor, by an arbitrator or arbitrators appointed by the AFSA.
- 20.3 This clause 200 will be severable from the rest of the provisions of this Agreement so that it will operate and continue to operate notwithstanding any actual or alleged voidness, voidability, unenforceability, termination, cancellation, expiry, or accepted repudiation, of this Agreement.
- 20.4 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 nor shall each party in such circumstances continue to comply with their obligations in terms of this Agreement.

21. ADDRESSES

- 21.1 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.
- 21.2 SARS's physical address for **service of notices and legal processes-**

**The Executive: Procurement;
570 Fehrsen Street;
Brooklyn Bridge
Linton House;
Brooklyn – Pretoria.**

- 21.3 SARS's email address for communications and/or correspondences in connection with the operation of the Services:; e-mail:Telephone number: (012) 422;
- 21.4 SARS's email address for communications and/or correspondences in connection with the performance and contract management of the Services: Zinogazi Ntsele; e-mail: zntsele@sars.gov.za; Telephone number: 012 422 8660;
- 21.5 The Service Provider's physical address for service of notices and legal processes-**
- 21.6 The Service Provider's email address for communications and/or correspondences in connection with the performance of the Services:
Email:
Tel:
- 21.7 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*.
- 21.8 Any Party may by written notice to the other Parties, change its chosen address to another address, provided that-
- 21.8.1 the change shall become effective on the tenth (10th) Business Day after the receipt or deemed receipt of the notice by the addressee, and;
- 21.8.2 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*.
- 21.9 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,

21.10 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.

21.11 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.

22. CONFIDENTIALITY

22.1 The Service Provider undertakes that for the duration of this Agreement and after the expiration or earlier termination of this Agreement for any reason, it will keep confidential all proprietary information, including any trade secrets and/or all information of a confidential nature which SARS from time to time communicates to the Service Provider, agents and/or its employees. This includes the knowledge acquired by the Service Provider, agents and/or its employees as a result of the work to be performed by the Service Provider in terms of this Agreement and which by its nature, is intended to be kept confidential.

22.2 If the Service Provider is uncertain about whether information is to be treated as confidential in terms of this clause 22, it shall be obliged to treat it as such until clearance is obtained, in writing, from SARS.

22.3 the Service Provider shall ensure that prior to commencing the performance of the Services all its personnel involved in the rendering of such Services shall sign the **SARS Oath of Secrecy** and submit the original thereof to SARS for record keeping purposes.

22.4 For purposes of this Agreement, the expression "proprietary information 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 the Service Provider may become privy during the contract term.

- 22.5 The Parties agree that all trade and professional secrets and other secrets or confidential information or methods of work supplied by the one Party to the other shall not be disclosed to any third party without first obtaining the written consent of the other Party.
- 22.6 Where a Party is threatened with legal action to disclose the confidential information of the other Party, such Party shall give the other Party written notice of such legal action within (2) two days of receipt of the threatened legal action. The Party shall together with the notice referred to above, deliver to the other Party all documentation received or submitted in connection with the threatened legal action.
- 22.7 The Service Provider specifically acknowledges that all information relating to the Services, including and not limited to, literary works produced thereunder are of a sensitive nature and secret. The Service Provider undertakes not to disclose such information without first obtaining the written consent of SARS, which shall not unreasonably be withheld.
- 22.8 The Service Provider shall not remove from SARS's premises any documents nor materials relating to the Services or SARS's business without first obtaining the written consent of SARS, which shall not unreasonably be withheld.
- 22.9 The provisions of this clause shall survive the termination or cancellation of this Agreement for any reason whatsoever.

23. BROAD-BASED BLACK ECONOMIC EMPOWERMENT

- 23.1 The Service Provider commits and warrants to comply with the requirements of the Broad-Based Black Economic Empowerment Act No. 53 of 2003 (hereinafter referred to as the *BBBEE Act*) as will be amended from time to time, and the *Codes of Good Practice* issued in terms of the *BBBEE Act*.
- 23.2 Upon the Signature Date of this Agreement and one (1) calendar month after the expiry of a current certificate for a particular year, the Service Provider shall provide SARS with a certified copy of its rating status from an agency accredited by the South African National Accreditation System.

23.3 During the currency of this agreement (including any extension or renewal hereof which may apply), the Service Provider shall use reasonable endeavours to maintain its current BEE rating.

23.4 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) month written notice.

24. PRINCIPLES GOVERNING SERVICE LEVELS

24.1 GENERAL

24.1.1 **Annexure “B”** contains a list of the Service Levels that will be applicable to the performance of the Services. The Parties may from time to time add new Service Levels, or make changes to existing Service Levels, by mutual agreement and in writing. The Service Provider shall comply with the Service Levels as of the Commencement Date.

24.1.2 The purpose of such Service Levels is to provide a framework against which the quality of the Services rendered to SARS can be measured.

24.1.3 Service level targets are set which targets must be achieved by the Service Provider in order to avoid termination on the basis of mal-performance.

24.1.4 Thresholds are set in the form of percentages, which will be used to determine whether or not a transgression of a Service Level has taken place.

25.1 MONITORING, MEASURING AND REPORTING

25.1.1 The Service Provider shall monitor its own performance of the Services provided to SARS under this tender. The Service Provider shall prepare a comprehensive report for SARS within 7 (seven) calendar days of being requested to do so by SARS, paying specific attention to reporting on but not limited to:

25.1.1.1 the quality of goods manufactured and their adherence to SARS's minimum specifications;

- 25.1.1.2 any items rejected by SARS officials when delivered to site and the reasons given by SARS;
 - 25.1.1.3 the late delivery of chairs; and
 - 25.1.1.4 the circumstances which lead to any of the above issues including what steps will be put in place by the Service Provider to prevent a similar re-occurrence.
- 25.1.2 This report will be utilised by SARS to highlight areas in which the Service Provider must improve their quality of services to SARS, or risk having their contract terminated.
- 25.1.3 Regardless of the requirement for the Service Provider to furnish SARS with a consolidated monthly performance Report, the Service Provider shall, in respect of each and every Service Level Failure, immediately upon it coming to the Service Provider's attention:
 - 25.1.3.1 Inform SARS of its non-compliance with the prescribed Service Level;
 - 25.1.3.2 Investigate the non-compliance and advise SARS in writing of the cause of the Service Level Failure;
 - 25.1.3.3 Advise SARS of the corrective actions being undertaken to remedy such Service Level Failure, as well as the status of and expected resolution time for the aforesaid Service Level Failure;
 - 25.1.3.4 Take commercially reasonable steps to prevent such Service Level Failure from recurring in the future.

25.2 EXCUSED NON-COMPLIANCE

- 25.2.1 Where the Service Provider can establish to the reasonable satisfaction of SARS that:

- 25.2.1.1 The cause of its failure to achieve a certain Service Level was due to a factor outside of the reasonable control of the Service Provider (i.e. force majeure);
- 25.2.1.2 The service provider would have achieved such service level but for such factor;
- 25.2.1.3 The service provider used commercially reasonable efforts to perform and achieve that service level notwithstanding the presence and impact of such factor; and
- 25.2.1.4 The Service Provider is without fault in causing such factor, in which instance no service level failure will be recorded against the record of the Service Provider.

26. THIRD PARTY SERVICE PROVIDER COOPERATION

- 26.1 As part of the Services, where appropriate and when requested by SARS to do so, the Service Provider shall provide full co-operation to a third party that might be contracted by SARS on the same engagement.
- 26.2 It is, however, agreed that the relationship between the Service Provider and any such party will not constitute an alliance or partnership and that neither the Service Provider nor the third party will be required to perform quality checks on the work of the other party.

27. SALE OR CHANGE OF CONTROL OF SERVICE PROVIDER

- 27.1 In the event of a sale or other change of control of the Service Provider, SARS may terminate this Agreement with immediate effect on written notice to the Service Provider, without SARS incurring any liability whatsoever as a result of such termination.
- 27.2 The Service Provider will notify SARS immediately upon becoming aware of any anticipated sale or change of control.

- 27.3 No sale or change of control of the Service Provider will be effective and legally binding on SARS, unless the prior written consent of SARS has been obtained.

28. INTELLECTUAL PROPERTY RIGHTS

Provided that SARS paid all amounts due under this Agreement, the copyright in the copyrighted work produced by the Service Provider pursuant to this Agreement shall vest in SARS and no rights under the copyright of such copyrighted work shall vest in the Service Provider save as may specifically be granted by SARS.

29. SECURITY VETTING OF THE SERVICE PROVIDER'S RESOURCES

- 29.1 SARS reserves the right at its sole and absolute discretion to perform a security check (vetting) on the Service Provider personnel involved with the performance of the Services.
- 29.2 Where SARS finds the Service Provider employee or agent to be a security risk, SARS will inform the Service Provider accordingly and the Service Provider shall replace such employee or agent with another employee or agent with equal qualification(s) and experience, without any delay.

30. GENERAL

30.1 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.

30.2 SEVERABILITY

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

30.3 ADVERTISING AND MARKETING

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

30.4 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.

30.5 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.

30.6 AUTHORISED SIGNATORIES

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

30.7 COUNTERPARTS

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same Agreement as 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.

30.8 APPLICABLE LAW

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

30.9 WHOLE AGREEMENT AND AMENDMENT

This Agreement 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 Agreement and assigned a sequential letter to be included in the title.

30.10 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.

30.11 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.

31. COSTS

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

32. 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.

SIGNED AT _____ ON THIS _____ DAY OF _____ 2017

As representatives for the South African Revenue Service:

1. _____

Dan Zulu

Group Executive: Branch

Date of signature:

2. _____

Johnstone Makhubu

Executive: Procurement

Date of signature

As representative for the Service Provider:

SIGNED AT _____ ON THIS _____ DAY OF _____ 2017

SIGNATURE: _____

FULL NAMES AND SURNAME: _____

CAPACITY: _____

Annexure B

Governing Service Levels

A. Administration

Actions	Service Level Target	Threshold
Acknowledgement of receipt of SARS's Purchase Order (PO)	Same business day	98 %
Original invoice and proof of Delivery (POD) sent to SARS Head Office	Within 24 hours	98%
Invoice data correct and complete	Each invoice	100%
Delivery note / duplicate invoice furnished	Every order	98%
Monthly Statement sent to SARS's Finance Department	Within 7 days of the end of the month	100%

B. Communication

Actions	Service Level Target	Threshold
Acknowledgement of written queries and / or requests from SARS	Same business day	98 %
Return of Phone calls received from SARS officials	Same business day	98%
Notification to SARS of problems experienced to procure certain equipment and / or consumables	Within 48 hours after receipt of PO	98%
Written updates to SARS on progress made to procure problem equipment and / or consumables	Every 3 days	98%
Notification to SARS of delays in delivery of equipment and / or consumables	A.s.a.p. but no later than 48 hours after receipt of PO	100%
Progress updates on delays in delivery of equipment and / or consumables	Every 24 hours	100%
Acknowledgement of notice from SARS listing incorrect consumables and / or defective equipment	Same business day	98%

that need to be exchanged or replaced by the Service Provider		
Change of Service Provider's details (i.e. contact numbers, contact persons, physical and postal addresses or bank details)	Within 48 hours of the change taking effect	98%

C. Response Times

Actions	Service Level Target	Threshold
Resolution of written queries and / or requests	Within 48 hours	98 %
Delivery of equipment and / or consumables	Within 48 hours after receipt of PO	98%
Replacement of defective equipment	Within 24 hours	98%
Replacement of incorrect and / substandard consumables	Within 24 hours	98%
Ad hoc service requests	Within 4 hours	100%
Emergency service requests	Every 24 hours	100%

D. Quality of Goods and Services

Actions	Service Level Target	Threshold
Public Seating supplied and delivered at SARS office	100%	100%
Public Seating installed at the SARS office	100%	100%
Damage caused by the movement of chairs has been repaired to the satisfaction of SARS	Within 24 hours	24 hours
Chairs supplied is of a good quality	100%	98%
Correct quantities of furniture has been delivered	100%	98%
Chairs has been substituted (where necessary) with SARS' consent	100%	100%

E. Service Provider's Performance Reviews

Review Parameters	Service Level Target	Threshol	NON-
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		d	ADHERENCE
Performance monitoring by Service Provider	Every order	100%	Possible termination
Performance reports by the Service Provider	Weekly	100%	Possible termination
Records Keeping	Records kept on-site and maintained after each visit	100%	Possible termination
Attendance of meetings with SARS	As and when required	100%	Possible termination
Attendance of contract reviews by SARS	As and when required	100%	Possible termination

F. Problem Management

Classification of problems	Level	Response Time	NON-ADHERENCE
Critical	1	Within 8 hours	Possible termination
Serious	2	Within 24 hours	Possible termination
Moderate	3	Within 72 hours	Warning
Minor	4	Within 5 days	Warning

PROBLEM TYPE	DETERMINED BY IMPACT
Critical	Business critical financial-or operational impact and / or reputational risk

Serious	Serious financial –or operational impact and / or reputational risk
Moderate	Moderate financial- operational impact and/ or reputational risk
Minor	Minor operational impact, no financial impact or reputational risk

G. Service Provider's Escalation Channels

Position & Problem Level	NAME	EMAIL	CONTACT NUMBER

H. SARS Escalation Channels

Position & Problem Level	NAME	EMAIL	CONTACT NUMBER
Commodity Leader	Zinogazi Ntsele	ZNtsele@sars.gov.za	012 422 8660