Reference: RFP 07/2012

SERVICE AGREEMENT

Between

THE SOUTH AFRICAN REVENUE SERVICE
("SARS")

And

<.....>
(the "Service Provider")

TABLE OF CONTENTS

1. Appointment 1
2. Interpretation 1
3. Duration 8
4. Services 8
5. Service Provider's Obligations 8
6. Warranties 10
7. Health, Safety and Security Procedures and Guidelines 11
8. Confidentiality 12
9. Indemnities and Insurance 13
10. Limitation of Liability 13
11. Security Vetting of Service Provider Personnel 14
12. Ethical Business Practices 15
13. Breach 15
14. Termination 17
15. Force Majeure 17
16. Step-In-Rights 18
17. Relationship between the Parties 19
18. Dispute Resolution 19
19. Non-Exclusivity 20
20. Addresses 20
21. General 22
22. Sale or Change of Control of Service Provider 23
23. Transfer of Personnel 23
24. Treatment of Employees on Disengagement 26
25. Challenges 29
26. Public Disclosures 31
27. Governing Law 31
28. Costs 31

1. APPOINTMENT

1.1 SARSissued a Tender for the provision of canteen, vending and catering services (defined in this Agreement as "Services") under Tender number RFP 07/2012 (the "Tender"), and accepted the bid of the Service Provider, following its procurement process for such Services.

1.2 SARS therefore appoints the Service Provider, on a non-exclusive basis, for the provisioning of canteen, vending andcatering services for SARS Alberton Campus, as set out more fully in the Tender Documents and Service Provider's Proposal, annexed hereto and marked as Annexure "A" and "B". The Service Provider accepts the appointment to render the Services subject to the terms and conditions of this Agreement.

2. INTERPRETATION

3.

2.1 The head notes to the Clauses of this Agreement are for reference purposes only and will not govern or affect the interpretation of nor modify nor amplify the terms of this Agreement.

2.2 Unless inconsistent with the context, the words and expressions have the following meanings and similar expressions will have corresponding meanings:

2.2.1 **"Affected Personnel"** means any of the employees of the Previous Service Provider, who immediately prior to the Commencement Date are engaged in providing services to SARS which are the same or materially similar to, the Services or any material part thereof;

2.2.2 **"Applicable Law"** means any of the following, to the extent that it applies to a Party, or the Services, as applicable and relevant:

(a) any statute, regulation, policy, by-law, ordinance orsubordinatelegislation;

(b) South African common law;

(c) any binding court order, judgment or decree;

(d) any applicable industry code, policy or standard enforceable by-law; and

(e) any applicable direction, policy or order that is given by director

(other than SARS's directions given as a customer of the Services);

2.2.3 "**the/this Agreement**" means the Agreement set out in this document, together with all appendices hereto and any agreed amendments thereto;

2.2.4 "**Authorised representative**" means signatories authorised by SARS and the Service Provider respectively to sign the Agreement on their behalf;

2.2.5 "**Business Day**" means any day other than a Saturday, Sunday or public holiday in South Africa;

2.2.6 "**Commencement Date**" means <.....>notwithstanding the date when the last signature is affixed to this Agreement;

2.2.7 **"Commercially Reasonable Efforts"** means taking such steps and performing in such a manner as a well managed entity would undertake where such entity was acting in a determined, prudent and reasonable manner to achieve the particular result for its own benefit provided always that such steps are within the reasonable control of the Party.

2.2.8 **"Confidential Information"** means any proprietary and confidential information or data of any nature, tangible or intangible, oral or in writing and in any format or medium, which (i) is received by the Receiving Party from the Disclosing Party; (ii) is received by the Receiving Party from a Third Party acting on behalf of the Disclosing Party; or (iii) comes to the knowledge of the Receiving Party by any other means. Confidential Information includes such information whether marked as 'Confidential' or with a similar legend or not;

2.2.8.1 Without limitation, the Confidential Information of SARS will include the following:

(i) this Agreement;

(ii) any other non-public information, regardless of whether such information is marked 'Confidential' or with another similar designation, including: SARS Data; SARS's financial information, information regarding taxpayers; information regarding employees,

independent contractors and suppliers of SARS and governmental entities; processes and plans of SARS and governmental entities; projections, manuals, forecasts, and analysis of SARS and governmental entities; SARS's intellectual property or intellectual property licensed to SARS or a governmental entity, and any other information of SARS and governmental entities which would be deemed by a reasonable person to be confidential or proprietary in nature;

2.2.8.2 'Confidential Information' will not include information that: (i) is in or enters the public domain without breach of this Agreement; (ii) the Receiving Party receives from a Third Party without restriction on disclosure and without breach of a non-disclosure obligation; or (iii) the Receiving Party knew prior to receiving such information from the Disclosing Party or develops independently without reference to the Disclosing Party's Confidential Information (as established by documentary evidence). The onus will at times rest on the Receiving Party to establish that such information falls within any such exclusion. Confidential Information will not be deemed to be within one of the foregoing exclusions merely because such information is embraced by more general information that is in the public domain or was already in the Disclosing Party's possession;

2.2.8.3 The determination of whether information is Confidential Information will not be affected by whether or not such information is subject to, or protected by, common law or statute related to copyright, patent, trademarks or otherwise;

2.2.9 **"Disclosing Party"** means the Party who furnishes or otherwise makes available such Party's Confidential Information to the other Party (including such other Party's personnel or Third Party suppliers, as applicable) or on whose behalf such Party's Confidential Information is furnished or otherwise made available to the other Party (including such other Party's personnel or Third Party suppliers, as applicable);

2.2.10 **"Losses"** means all losses, liabilities, costs, expenses, fines, penalties, damages and claims, and all related costs and expenses as determined in law;

2.2.11 "**Parties**" means SARS and the Service Provider and "Party" as the context requires is a reference to any one of them;

2.2.12 **"Potential Costs"** means all severance benefits, losses, damages, compensation, fines, penalties, costs, awards, liabilities, expenses, claims and all related costs to be paid to employees that are retrenched.

2.2.13 **"Receiving Party"** means the Party, other than the Disclosing Party, that receives disclosure of any Confidential Information;

2.2.14 **"Relevant Statutory Costs"** means the value of all statutory leave pay, notice pay and/or all accrued benefits and payments (other than severance pay) due to the Future Relevant Personnel.

2.2.15 "**SARS**" means the South African Revenue Service, an organ of state established in terms of the South African Revenue Service Act, Act No. 34 of 1997;

2.2.16 **"SARS Data"** means all information, whether or not Confidential Information, disclosed to the Service Provider by or on behalf of SARS, and includes information derived from such information;

2.2.17 **"SARS Representative"** will be such person as may be nominated from time to time by SARS;

2.2.18 "**Service Provider**" means <.....>a Close Corporation or Company registered in accordance with the Laws of South Africa, with registration number.....;

2.2.19 "**Services**" means the provision of canteen, vending and catering services at SARS's offices, as more fully set out in Clause 4,read with Annexure "A" and "B", which relates toAlberton Campus;

2.2.20 **"Signature Date"** means the date of signature of this Agreement by the Party last signing;

2.2.21 **"Successor"** means SARS or any replacement service provider designated by SARS that replaces the Service Provider as the Service Provider to SARS of the Services or part of the Services;

2.2.22 "**Termination Date**" means <.....>;

2.2.23 **"Third Party"** means a person other than SARS or the Service Provider; and,

2.2.24 "**VAT**" means Value-Added Tax levied in terms of the Value-Added Tax Act, Act No. 89 of 1991.

2.3 Any reference in this Agreement to -

2.3.1 a **"Clause"** will, subject to any contrary indication, be construed as a reference to a Clause hereof;

2.3.2 "**Law**" will be construed as any Law (including common or customary law), or statute, constitution, decree, judgment, treaty, regulation, directive, by-law, order or any other legislative measure of any government, local government, statutory or regulatory body or court;

2.3.3 a "**Person**" is a reference to any person, company, close corporation, trust, partnership or other entity, whether or not having separate legal personality;

2.3.4 **"Previous Service Provider"** will be interpreted to mean the service provider who was responsible for rendering the Services prior to the Service Provider;

2.3.5 **"Service Provider's Proposal"** is, subject to any contrary indication, a reference to the completed Menu and Pricing Schedules, as submitted by the Service Provider in response to SARS's Request for Tender number RFP 07/2012; and

2.3.6 "**Tender Documents**" is, subject to any contrary indication, a reference to SARS's invitation to prospective service providers to tender for the services

specified in RFP 07/2012, which documents will include all Standard Bidding Documents, tender specifications and conditions.

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

2.4.1 if any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that it appears only in the definition Clause, effect will be given to it as if it was a substantive provision of this Agreement;

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

2.4.3 in the event that the day for payment of any amount due in terms of this Agreement should fall on a day which is not a Business Day, the relevant day for payment will be the subsequent Business Day;

2.4.4 in the event that the day for performance of any obligation to be performed in terms of this Agreement should fall on a day which is not a Business Day, the relevant day for performance will be the subsequent Business Day;

2.4.5 any reference in this Agreement to an enactment is to that enactment as at the Signature Date and as amended or re-enacted from time to time;

2.4.6 no provision of this Agreement constitutes a stipulation for the benefit of any person who is not a party to this Agreement; and

2.4.7 a reference to a Party includes that Party's successors-in-title and permitted assigns.

2.5 Unless inconsistent with the context, an expression which denotes -

2.5.1 any one gender includes the other genders; and

2.5.2 the singular includes the plural and *vice versa*.

2.6 The Tender Documents and Service Provider's Proposal form an integral part hereof and words and expressions defined in this Agreement will bear, unless the context otherwise requires, the same meaning in the Tender Documents and Service Provider's Proposal. To the extent that there is any conflict between the Tender Documents, Service Provider's Proposal and the provisions of this Agreement, the provisions of this Agreement will prevail.

2.7 Where any term is defined within the context of any particular Clause in this Agreement, the term so defined, unless it is clear from the Clause in question that the term so defined has limited application to the relevant Clause, will bear the same meaning as ascribed to it for all purposes in terms of this Agreement, notwithstanding that the term has not been defined in that Clause.

2.8 The termination of this Agreement will not affect any of the provisions of this Agreement which operates after any such termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the Clauses themselves do not expressly provide for this.

2.9 This Agreement is binding on the executors, administrators, trustees, permitted assigns or liquidators of the Parties as fully and effectually as if they had signed this Agreement in the first instance and reference to any Party is deemed to include such Party's estate, heirs, executors, administrators, trustees, permitted assigns or liquidators, as the case may be.

2.10 Where figures are referred to in numerals and in words, if there is any conflict between the two, the words will prevail.

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

2.12 For all purposes under this Agreement, a reference to "written" or "in writing" will exclude any data message and "signed" or "signature" will not include an electronic or advanced electronic signature. The terms "data message", "electronic signature" and "advanced electronic signature" will have the meanings assigned to

it in terms of the Electronic Communications and Transactions Act, Act No. 25 of 2002, as amended.

3. DURATION

3.1 This Agreement commences on the Commencement Date, notwithstanding the date of signature hereof and will continue in full force and effect for a period of 36 (thirty six) months until the Termination Date, unless terminated earlier in terms of this Agreement.

4. SERVICES

4.1 The Service Provider will render the Services with effect from the commencement date in accordance with the terms and conditions of this Agreement generally and in accordance with the specifications set out in Annexure "A" specifically.

4.2 If the service provider outsources the vending machine services, such service shall be outsourced to a BEE rated company, without compromising quality and service.

4.3 The catering services provided by the service provider will be provided as and when required on a non-exclusive basis.

5. SERVICE PROVIDER'S OBLIGATIONS

5.1 The Service Provider will in pursuance of its appointment in terms hereof -

5.1.1 perform the Services as may from time to time be required by SARS which are detailed in this Agreement and/or communicated to the Service Provider by a SARS Representative from time to time;

5.1.2 exercise the utmost good faith towards SARS both in carrying out its duties hereunder and also in all its dealings with SARS;

5.1.3 report to such SARS Representative as may from time to time be reasonably necessary or desirable in connection with the Services; and

5.1.4 exercise all reasonable skill, care and diligence in the discharge of its obligations in terms of this Agreement.

5.2 During the currency of this Agreement, the Service Provider will 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.

5.3 The Service Provider will comply with and will procure that its personnel comply with all security measures imposed by SARS regarding security and access to the SARS premises.

5.4 The Service Provider undertakes to ensure that it at all times adheres to and complies with all Laws, including without limitation, any employment and or labour related legislation, and/ or bargaining council agreements to which it is a party, or is required to be a party to, as well as sectoral determinations applicable to its industry. The Service Provider will within fourteen (14) days of the Signature Date furnish SARS with proof of compliance with any bargaining council agreements to which it is a party to; proof that its employees are registered for UIF and PAYE; as well as proof that all levies and contributions imposed in terms of the Skills Development Act, Act No.9 of 1999 and the Compensation for Occupational Injuries and Disease Act, Act No. 130 of 1993 have been paid in terms of the provisions of the aforesaid acts. The Service Provider further undertakes to indemnify SARS against any claim of whatsoever nature which may arise due to the Service Provider's breach of this clause 5.4.

5.5 The Service Provider will not include the provision of any services not specifically recorded in this Agreement. Any such additional services will be provided on SARS request and on such terms and conditions, and subject to the payment of such fees, as the Parties may agree in writing at such time, provided that such additional services will be related to the scope of the Tender or this Agreement.

5.6 The Service Provider will at all times adhere to, and conduct itself in an ethical manner, which will not be in conflict with those values that constitute good corporate governance in general, or specifically communicated by SARS to the Service Provider from time to time.

5.7 The Service Provider undertakes to provide the Services in accordance with best practices, in conformance with existing industry codes and to the highest standards as established for such services in South Africa, in order to ensure a safe and clean working environment.

5.8 The Service Providershall be liable for any charges arising out of the use of gas, water and electricity in respect of the canteen premises.

6. WARRANTIES

6.1 The Service Provider hereby represents and warrants to SARS that -

6.1.1 this Agreement has been duly authorised and executed by it and constitutes alegal, valid and binding set of obligations on it;

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

6.1.3 the execution and performance of the terms and conditions of this Agreement does not constitute a violation of any statute, judgment, order, decree or regulation or rule of any court, competent authority or arbitrator or competent jurisdiction applicable or relating to it, its assets or its business, or its memorandum, articles of association or any other documents or any binding obligation, contract or agreement to which it is a party or by which it or its assets are bound;

6.1.4 it is, at the Commencement Date of this Agreement, in compliance with, and throughout the term it will remain in compliance with, all applicable laws relating to taxation in South Africa. The Service Provider further warrants to SARS that it will deliver to SARS upon the Signature Date, and on each anniversary thereof during the term of the Agreement, a valid tax clearance certificate from the Republic of South Africa issued for the then-current year. Failure to provide such a certificate will entitle SARS to withhold payment or alternatively to terminate the Agreement with immediate effect and without incurring any liability in connection with such termination.

6.1.5 it will annually, within thirty (30) days of the anniversary of the Commencement Date, provide SARS with a then current certificate

confirming its BBBEE rating. The annual rating must be done by a reputable accredited rating agency. The Service Provider further undertakes to maintain and/or improve its BBBEE rating during the contract period. Failure to provide such a certificate will entitle SARS to withhold payment or alternatively terminate the Agreement with immediate effect and without incurring any liability in connection with such termination.

6.1.6 it will for the duration of this Agreement and a period of five (5) years after the termination of the Agreement, maintain a complete audit trail of all transactions under this Agreement, sufficient to permit a complete audit thereof. The Service Provider will provide SARS and SARS's auditors access at reasonable times to information, records and documentation relating to the Services for the purpose of performing audits, examinations and inspections of the Service Provider, in order to verify the Service Provider's compliance with all of the terms of this Agreement and to enable SARS to comply with the requirements of its regulators and governmental entities having jurisdiction.

6.1.7 it will treat as strictly confidential all information, including Confidential Information, received or obtained as a result of entering into, or performing in terms of, this Agreement.

6.1.8 throughout the duration of this Agreement it will have the resources, skills, qualifications and experience necessary to provide the Services.

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

6.3 The provisions of this clause 6 will survive the termination of this Agreement.

7. HEALTH, SAFETY AND SECURITY PROCEDURES AND GUIDELINES

7.1 The Service Provider will ensure that its personnel will at all times, whilst on SARS's premises, adhere to the standard health, safety and security procedures and guidelines applicable to SARS's personnel, as such procedures and guidelines may be changed by SARS from time to time and are available to the Service Provider

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

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

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

8. CONFIDENTIALITY

8.1 The Service Provider will execute SARS's standard Oath of Secrecy (as amended from time to time), and undertakes to ensure that all of its personnel involved in performing the Services in terms of this Agreement, or who may have access to SARS's Confidential Information, sign and are bound by SARS's standard Oath of Secrecy (as amended from time to time), prior to such personnel entering or gaining access to any of SARS's premises.

8.2 The Service Provider undertakes not to commit any act which in any manner prejudices SARS's Confidential Information, including any Third Party information which is in the custody of SARS. The Service Provider further undertakes to implement measures to ensure that its personnel who have not signed SARS's Oath of Secrecy will not have access to SARS's Confidential Information or to any of SARS's premises.

8.3 The Service Provider may with SARS's prior written consent and subject to the provisions of this clause 8 disclose only such information as may be legally required by a regulatory or other competent authority.

9. INDEMNITIES AND INSURANCE

9.1 The Service Provider will –

9.1.1 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 R2 000 000.00 (two million Rand) to cover any claims, losses and / or damages for which it is liable in terms of this Agreement;

9.1.2 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;

9.1.3 indemnify and hold SARS harmless against all Losses (including legal expenses on a full indemnity basis) of whatsoever nature arising out of this Agreement or at Law in respect of injury or death of any Person or loss of or damage to any Person or property occurring by reason of the Service Provider's wilfulness or negligence prior to, during or after its execution of the Services, including such services as provided for under Clause 5.4; and

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

10. LIMITATION OF LIABILITY

10.1 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 all losses which constitute direct and/or general damages.

10.2 Subject to clause 10.3, 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.

10.3 Notwithstanding anything to the contrary set forth in clause 10.2 above or this Agreement in general, the Parties agree that they will be liable to the other for:

10.3.1 Losses which constitute indirect, special and/or consequential damages where such damages are caused by a breach of any Confidential Information provisions contained in this Agreement;

10.3.2 all Losses which arise out of a Party's wilful misconduct, dishonesty or gross negligence regardless of whether such Losses arise out of contract or delict; and/or

10.3.3 any Third Party claims arising from or related to the damage of property, death or bodily injury of any agent, employee, customer, business invitee, or other person caused by the delictual conduct of such Party.

11. SECURITY VETTING OF SERVICE PROVIDER PERSONNEL

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

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

11.3 Where SARS establishes any of the Service Provider personnel to be a security risk, SARS will inform the Service Provider accordingly and the Service Provider will immediately replace such person with a suitably qualified and acceptable substitute.

12. ETHICAL BUSINESS PRACTICES

12.1 SARS has a policy of zero tolerance regarding corrupt activities. The Service Provider will promptly report to SARS and the relevant authorities any suspicion of corruption on the part of their personnel, as well as any behaviour by any of those persons that is likely to constitute a contravention of the Prevention and Combating of Corrupt Activities Act, Act No. 12 of 2004.

12.2 Neither Party will offer, promise or make any gift, payment, loan, reward, inducement benefit or other advantage to any of the other Party's personnel.

12.3 If the results of any audit of the Services conducted by or on behalf of SARS indicates the possibility of corrupt activities, improper or fraudulent practices or theft, SARS will, after allowing the Service Provider reasonable opportunity to investigate that possibility, have the right either by itself, or by its agents, or by requesting the police, to investigate all the relevant circumstances, to question any relevant personnel of the Service Provider or a Third Party and the Service Provider will use all reasonable efforts to facilitate any such investigation or enquiry. In the event that an act of corruption, fraud or theft is proven, SARS will be entitled, on written notice to the Service Provider, to immediately terminate this Agreement and either assume the provision of the Services itself, or appoint a Third Party to render the Services, as more fully set out in clause 16 below. The Service Provider acknowledges that it is crucial that SARS will be entitled, without penalty, to ensure continued provision of the Services if for whatever reason this Agreement is terminated pursuant to the breach thereof by the Service Provider or its personnel, as the case may be.

13. BREACH

13.1 Should a Party ("the defaulting party") commit a breach of any of the provisions of this Agreement, then the other Party ("the aggrieved party") will be entitled to require the defaulting party to remedy the breach within ten (10) Business Days, or such other reasonable time as agreed to in

writing by the aggrieved party, of delivery of a written notice requiring it to do so. If the defaulting party fails to remedy the breach within the period specified in such notice, the aggrieved party will be entitled to claim immediate payment and/or performance by the defaulting party of all of the defaulting party's obligations due in terms of this Agreement, in either event, without prejudice to the aggrieved party's right to claim damages. The aforegoing is without prejudice to such other rights as the aggrieved party may have at Law: Provided always that the aggrieved party will not be entitled to cancel this Agreement for any breach by the defaulting party, unless such breach is a material breach going to the root of this Agreement and is incapable of being remedied by a payment of money or, if it is capable of being remedied by a payment of money, the defaulting party fails to pay the amount concerned within ten (10) Business Days after such amount has been determined.

13.2 Notwithstanding the provisions of Clause 13.1 above, SARS may immediately terminate this Agreement at any time by giving written notice of such termination to the Service Provider if:

13.2.1 the Service Provider is, other than for the purposes of amalgamation, placed under voluntary or compulsory liquidation (whether provisional or final) or under judicial management or under curatorship or under the equivalent of any of the aforegoing; and/or

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

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

13.2.4 the Service Provider breaches any of the warranties as set out in Clause 6 above.

13.3 Any term of this Agreement pursuant to the provisions of this clause 13 will be without SARS incurring any liability in connection with such term, or prejudice to any claim which SARS may have in respect of any

prior breach of the terms and conditions of this Agreement by the Service Provider.

14. TERMINATION

14.1 The Agreement will automatically terminate on<.....>.

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

15. FORCE MAJEURE

15.1 In the event of any act beyond the reasonable control of the Parties, including war, warlike operation, rebellion, riot, civil commotion, lockout, fire or (without regard to the foregoing enumeration) any other circumstances arising or action taken beyond the reasonable control of the Parties hereto, preventing them or any of them from the performance of any obligation hereunder (any such event hereinafter called "force majeure"), then the Party affected by such force majeure will be relieved of its obligations hereunder during the period that such force majeure continues.

15.2 The Party's relief is only to the extent so prevented and such Party will not be liable for any delay or failure in the performance of any obligations hereunder or loss or damage which the other Party may suffer due to or resulting from the force majeure, provided always that a written notice will be promptly given of any such inability by the affected Party.

15.3 Any Party invoking force majeure will upon termination of such force majeure 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 by giving written notice to such other Party to that effect.

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

16. STEP IN RIGHTS

16.1 In addition to any other rights and remedies that it may have in terms of this Agreement or otherwise, including the right to terminate this Agreement, SARS may in its sole discretion elect to (i) call for an urgent senior level meeting with the Service Provider; and/or (ii) launch an audit investigation into the Service Provider's operations in accordance with the audit provisions detailed in Clause 6; and/or (iii) temporarily take over the Services as contemplated in Clause 16.2 below, immediately upon SARS's identification or the Service Provider's notification of the occurrence of any event which SARS considers, in its sole discretion, to be an event which may affect the continuity of the Services.

16.2 For purposes of this Clause 16 SARS may (at its option), either itself or by the procurement of an alternate Third Party service provider, temporarily take over the provision of the Services until such time as SARS is able to make permanent alternate arrangements for the provision of the Services, which right will apply for a period of no more than 180 (one hundred and eighty) days from the date that SARS temporarily takes over the provision of the Services. The Service Provider will, upon the request of SARS, fully co-operate with and assist SARS in the performance of the Services during any such temporary take-over of the Services by SARS.

16.3 To the extent that SARS exercises its rights to assume the rendering of the Services or part thereof itself, or procures that a Third Party service provider renders some or all of the Services pursuant to the provisions of Clause 16.2 above, the Service Provider will not be entitled to any fees during the period for which SARS or the Third Party assumes the Services. SARS will be obliged to also assume, for that period, any direct

costs and expenses solely attributed to any such temporary rendering of part or all of the Services, incurred by SARS in accordance with this Clause, including the salary costs for Service Provider personnel that SARS may require to assist it in so rendering the Services or part thereof. SARS will not under any circumstances by virtue of such assumption, be obliged or deemed or required to also take over or assume responsibility for the conduct of the Service Provider's business operations or the employment of any Service Provider personnel, in terms of this clause.

17. RELATIONSHIP BETWEEN THE PARTIES

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

17.2 Should any dispute arise between the Service Provider and its personnel, such dispute is to be resolved by the Service Provider and it undertakes that any such dispute will not in any manner affect the provision of the Services to SARS in terms of this Agreement.

18. DISPUTE RESOLUTION

18.1 If a dispute between the Parties arises out of or is related to this Agreement, the Parties will meet and negotiate in good faith to attempt to resolve the dispute. If, after 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 will be determined in accordance with the provisions set out below.

18.2 Save in respect of those provisions of this Agreement which provide for their own remedies which would be incompatible with arbitration, or in the event of either Party instituting urgent action against the other in any court of competent jurisdiction, any dispute arising from or in connection

with this Agreement will be finally resolved by arbitration in accordance with the Rules of the Arbitration Foundation of Southern Africa or its successor, by an arbitrator or arbitrators appointed by the Foundation.

18.3 Clause 18 will be severable from the rest of the provisions of this Agreement so that it will operate and continue to operate notwithstanding any actual or alleged voidness, voidability, unenforceability, termination, cancellation, expiry, or accepted repudiation, of this Agreement.

18.4 Unless specifically otherwise provided for in this Agreement, neither Party will be entitled to withhold performance of any of their obligations in terms of this Agreement pending the settlement of, or decision in, any dispute arising between the Parties and each Party will in such circumstances continue to comply with their obligations in terms of this Agreement.

19. NON-EXCLUSIVITY

19.1 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.

19.2 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.

20. ADDRESSES

20.1 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 *domiciliumcitandi et executandi ("domicilium")* at which all documents in legal proceedings in connection with this Agreement must be served:

SARS: *Domicilium:* Le Hae la SARS

299 Bronkhorst Street
NieuwMuckleneuk
Pretoria
Marked for the Attention of: The Executive: Corporate Legal Services

Telefax No: + 27 12 422 4963

Service Provider: *Domicilium*:

Telefax No:

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

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

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

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

20.4 Any notice to a Party contained in a correctly addressed envelope; and sent by prepaid registered post to it at its chosen address; or delivered by hand to a responsible person during ordinary business hours at its chosen address:

20.4.1 will be deemed to have been received in the case of prepaid registered post on the 5th (fifth) Business Day after posting (unless the contrary is proved) and, in case of delivery by hand, on the day

of such delivery.

20.4.2 Any notice by telefax to a Party at its telefax number will be deemed, unless the contrary is proved, to have been received on the 1st (first) Business Day after the date of transmission.

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

21. GENERAL

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

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

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

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

21.5 Except as provided for under this Agreement, neither Party will cede nor assign any of its rights or obligations under this Agreement without the prior written consent of the other Party.

21.6 If any Clause or term of this Agreement becomes invalid, unenforceable, defective or illegal for any reason whatsoever, then the Parties will negotiate in good faith to replace such Clause with a clause which is valid, enforceable and legal but maintaining the essential provisions of that Clause to the extent possible, provided that if the Parties should fail to reach Agreement on such replacement clause, then the remaining terms and provisions of this Agreement will be deemed to be severable there from and will continue in full force and effect unless such invalidity, unenforceability, defect or illegality goes to the root of this Agreement.

21.7 The rule of construction that an agreement will be interpreted against the Party responsible for the drafting of the agreement will not apply.

22. SALE OR CHANGE OF CONTROL OF SERVICE PROVIDER

22.1 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.

22.2 The Service Provider will notify SARS immediately upon becoming aware of any anticipated sale or change of control.

22.3 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, which consent will not be withheld unreasonably.

23. TRANSFER OF PERSONNEL

23.1 Though it is understood between the Parties that there are no Affected Personnel to be transferred from the Previous Service Provider to the Service Provider, the following provisions will apply should it later be established that such Affected Personnel do exist.

23.2 The Parties acknowledge that, as the Commencement Date, the provisions of section 197 of the Labour Relations Act, Act. No 66 of 1995 ("LRA") are applicable.

23.3 Subject to the provisions of clause 23.2 above, should the provisions of section 197 of the LRA be applicable to the Affected Personnel, the Parties agree that, it will be effective from the Commencement Date:

23.3.1 in respect of all contracts of employment between the Affected Personneland the Previous Service Provider, SARS and the Previous Service Provider in existence at the Commencement Date, the Service Provider will be automatically substituted as the employer of the Affected Personnel;

23.3.2 all the rights and obligations between the Previous Service Provider and the Affected Personnel as at the applicable Commencement Date will be considered to have continued in force as if they had been rights and obligations between the Service Provider and the Affected Personnel;

23.3.3 anything done before the applicable Commencement Date by or in relation to the Previous Service Provider, including the dismissal of any employee or the commission of an unfair labour practices or act of an unfair discrimination, is considered to have been done by or in relation to the Service Provider; and

23.3.4 the transfer will not interrupt the continuity of employment of the affected Personnel and each contract of employment shall be considered to have continued with the Service Provider as with the Previous Service Provider.

23.4 Transfer of their employment to the Service Provider will be deemed to

have taken place on the Commencement Date.

23.5 The Service Provider warrants that any payments which will have accrued to the Affected Personnel but which will not have been paid to them by the Previous Service Provider; will be paid by the Service Provider.

23.6 For the purposes of section 197(7)(a) of the LRA, SARS and the Service Provider acknowledge that insufficient information is available to calculate the valuations of any payments which may be due to the Affected Personnel. The Parties will procure that a valuation thereof will be undertaken within fourteen (14) days of the Commencement Date.

23.7 SARS and the Service Provider hereby agree, for the purposes of section 197(7)(b) of the LRA, that, to the extent that any amounts will be payable to any member of the Affected Personnel, the Service Provider is responsible for paying all such amounts. It is specifically recorded that there will be no apportionment of liability between the Previous Service Provider (including SARS) and the Service Provider, and that the Service Provider will be solely responsible for and will pay these amounts in full.

23.8 SARS hereby undertakes to disclose the terms agreed with the Service Provider in clause 23.7 to the Affected Personnel in compliance with the provisions of section 197(7)(c) of the LRA within seven (7) days of the Commencement Date.

23.9 The Service Provider hereby irrevocably and unconditionally acknowledges that this clause 23 and the arrangements contemplated in terms hereof constitute compliance by SARS with the provisions of section 197 of the LRA. In the event that SARS suffers any claim, damage, loss or expense in relation to and/or arising from the transfer of the Affected Personnel to Service Provider on the basis described in this clause 23, and/or from the operation of section 197 of the LRA (collectively "Labour Claims"), notwithstanding such compliance by SARS, the Service Provider hereby indemnifies and holds SARS harmless in respect of and/or against all and any such Labour Claims.

23.10 The Service Provider hereby indemnifies SARS against any losses, damages, compensation, fines, penalties, costs, awards, liabilities, expenses, claims and the like which the SARS may suffer or incur in relation to the Affected Personnel which arose as a result of the conduct of the Previous Service Provider.

24. TREATMENT OF EMPLOYEES ON DISENGAGEMENT

24.1 The Parties' rights and obligations with respect to Service Provider Personnel performing Services for SARS immediately prior to expiration or, if applicable, termination of the Agreement will be determined in terms of the Applicable Law (which includes the LRA and more specifically S 197 of the LRA or any successor thereto).

24.2 If at the time of expiration, or, if applicable, termination, either Party is reasonably of the view that the provisions of this Agreement do not accurately reflect the state of Applicable Laws, the Parties will, acting in good faith, meet to reach agreement on any amendments to be made to the Agreement. The Parties undertake to reach agreement as contemplated in this clause 24.2 within a period of ten (10) days. Should the Parties be unable to reach agreement, the matter will be referred to an attorney appointed by SARS for final determination. The appointed attorney will determine the applicable legal position and corresponding amendments to be made to the Agreement and will act as expert and not as arbitrator in making such determination, with such determination (in the absence of manifest error) being final and binding on the Parties.

24.3 Upon the expiration, or, if applicable termination of the Agreement, the Agreement will be treated as a transfer of a going concern to the Successor, in terms of S197 of the LRA, unless otherwise agreed between the Service Provider and Successor, in terms of S 197 (6) of the LRA.

24.4 Upon the expiration, or if applicable termination of the Agreement and subject to the decision exercised in clause 24.3 above, the Service Provider Personnel primarily engaged on working on the SARS account ("**Future Relevant Personnel**") will transition to Successor as part of a going concern; provided, however, that SARS will identify Service

Provider Personnel and activities that it does not wish to transfer to the Successor and Service Provider will use "Commercially Reasonable Efforts" to redeploy such Service Provider Personnel prior to the expiration or termination of the Agreement. The Service Provider, acting in good faith, will provide SARS with a list of the Future Relevant Personnel at least seven (7) months prior to the effective date of expiration, or, if applicable, termination of the Agreement. The Parties will agree on the list of the Future Relevant Personnel who may be transferred to the Successor. Should the Parties be unable to reach agreement within a period of ten (10) days prior to the Termination Date, or so soon thereafter as is reasonably possible, the matter will be referred to an external auditor agreed to by the Parties provided that the external auditor will be appointed from any of the following audit firms: (i) Deloitte and Touche; (ii) PriceWaterhouseCoopers; (iii) KPMG; (iv) Ernst and Young; and (v) SizweNtsaluba, for final determination. The appointed auditor will determine the relevant values and act as expert and not as arbitrator in making such determination, with such determination (in the absence of manifest error) being final and binding on the Parties. Should the Parties be unable to reach agreement as to the external auditor to be appointed as contemplated in this clause 24.4 the external auditor will be appointed by the South African Institute of Chartered Accountants ("SAICA").

24.5 The Service Provider will conclude an agreement with the appropriate persons or bodies referred to in section 189(1) of the LRA, including the Future Relevant Personnel agreed on by the Parties pursuant to clause 24.4 above, in terms of which Service Provider and each of the appropriate persons, bodies and Future Relevant Personnel agree, amongst others, as follows:

24.5.1 that the Future Relevant Personnel member(s) will transfer to the Successor on the Termination Date or remain in the employ of the Service Provider on the Termination Date; and

24.6 That the Person waives any and all claims against SARS as a result of such Person's election in terms of clause 24.5.1 above. Should the termination or expiry of the Agreement constitute a transfer in accordance

with section 197 or any other provision of the LRA the Parties confirm that they will, acting in good faith, reach agreement on the Relevant Statutory Costs due to the Future Relevant Personnel and severance pay (which the Future Relevant Personnel would have received had they been dismissed by Service Provider for a reason related to Service Provider's operational requirements as contemplated in section 189 of the LRA) subject to any other payments as contemplated in section 197(7)(a)(iii) of the LRA, applicable as at the Termination Date.

24.7 The Parties undertake to reach agreement as contemplated in clause 24.7 within a period of ten (10) days prior to the Termination Date, or so soon thereafter as is reasonably possible, provided that should the Parties be unable to reach agreement, the matter will be referred to an external auditor agreed to by the Parties provided that the external auditor will be appointed from any of the audit firms referred to in clause 24.4 above for final determination. The appointed auditor will determine the relevant values and act as expert and not as arbitrator in making such determination, with such determination (in the absence of manifest error) being final and binding on the Parties. Should the Parties be unable to reach agreement as to the external auditor to be appointed, the external auditor will be appointed by SAICA.

24.8 The Parties hereby undertake to disclose the terms of the agreement referred to in clause 24.6 above to the Future Relevant Personnel, in compliance with the provisions of section 197(7)(c) of the LRA, by no later than 20 (twenty) days after the Parties have reached agreement as contemplated in clause 24.6 above.

24.9 Except as directed (in terms of clause 24.9) or approved by SARS, the Service Provider will not redeploy or reassign any Service Provider Personnel working primarily on the SARS account for any substantial period of time during the last 6 (six) months of the Term or from and after the date the Service Provider receives a notice of expiration or termination.

24.10 Allocation of the Parties' respective financial responsibility for Potential Costs required to be paid to those employees who are retrenched as a result of expiration,

or, if applicable, termination of the Agreement will be made on the basis of whether the Agreement expires in terms of its terms or SARS terminates the Agreement.

24.10.1 Expiration or any termination by SARS (other than for convenience): In the case of expiration of termination of the Agreement in whole or in part by SARS (other than a termination for convenience, the Service Provider will be responsible for all the Potential Costs. The Service Provider will reimburse SARS for, and indemnify SARS against, any Potential Costs actually incurred by SARS.

24.10.2 Termination for convenience or termination by Service Provider forcause:In the case of a termination for convenience, SARS will reimburse Service Provider for any reasonable costs actually incurred by Service Provider that are directly and solely attributable to the termination of the Agreement by SARS for convenience, but not in excess of the amount determined for each retrenched employee by taking into account only such employee's years of service at the Previous Employer prior to transfer to Service Provider (if any). SARS will pay severance pay at the rate stipulated in the Basic Conditions of Employment Act No.75 of 1997. The Service Provider will be responsible for, and will indemnify SARS against, all other Potential Costs actually incurred by SARS arising from a termination for convenience or expiration.

25. CHALLENGES

25.1 In the event that any trade union to which the Future Relevant Personnel or any employee belongs, or one or more Future Relevant Personnel members or employees or any other person or employee, challenges (i) the legality of the transfer of the Future Relevant Personnel to Successor; and/or (ii) the terms and conditions of one or more the Future Relevant Personnel member's employment with the Service Provider; and/or (iii) that an employee other than a Future Relevant Personnel member should

have been transferred to Successor under Applicable Law, Service Provider will bear the legal costs of such challenge subject to clause 25.2 below.

25.2 If the challenge referred to in clause 25.1 above is that one or more employees and/or Future Relevant Personnel members were improperly transferred to Successor or were improperly excluded from the transfer to Successor and a statutory body (having jurisdiction) orders, or the terms of any settlement of the challenge stipulate, that SARS and Successor pay monetary damages to, or on behalf of, one or more employees, Service Provider hereby indemnifies SARS and Successor and will be liable for and will reimburse to SARS and Successor:

25.2.1 the Relevant Statutory Costs agreed to by the Parties in clause 24.6 above;

25.2.2 subject to clause 25.3 below, all damages and compensation (other than severance costs) that SARS and Successor are required to pay in terms of the court order or settlement agreement; and

25.2.3 the legal fees that SARS and Successor incur to defend such challenge.

25.3 In the case of any Potential Costs (other than severance costs) that SARS and the Successor are required to pay in terms of the court order or settlement agreement in accordance with clause 25.2, Service Provider will only be liable to pay SARS such amounts.

25.3.1 If the challenge referred to in clause 25.1 above is that employees were improperly excluded from the transfer to the Successor and a statutory body (having jurisdiction) orders, or the terms of any settlement of the challenge stipulate, that such employees be transferred to the Successor, the Service Provider will indemnify SARS and the Successor against and will be liable for the payment of the Relevant Statutory Costs. The Service Provider indemnifies SARS and the Successor and will be liable for Potential Costs that SARS and the Successor are required to pay in terms of the court order or settlement agreement. The Service Provider will be liable

for the legal fees that SARS and the Successor incur to defend such challenge. In addition, the Service Provider will be obliged to pay severance costs in respect of those reinstated or transferred Future Relevant Personnel, whose employment is terminated by SARS or the Successor, as the case may be, in terms of section 189 of the LRA.

26. PUBLIC DISCLOSURES

26.1 No advertising or publicity matter of either Party having or containing any reference to the other Party, or in which the name of the other Party is mentioned (except announcements intended solely for internal distribution or to meet legal or regulatory requirements beyond the reasonable control of the disclosing Party), will be made by or for a Party without first obtaining written approval from the other Party.

26.2 The Parties may not use each other's logos, or any other service marks or trademarks which are intellectual property of the other Party.

27. GOVERNING LAW AND JURISDICTION

The provisions of this Agreement will be governed by and construed in accordance with the Laws of the Republic of South Africa. Furthermore, the Parties hereby irrevocably and unconditionally consent to the non-exclusive jurisdiction of the North Gauteng High Court of South Africa in regard to all matters arising from this Agreement.

28. COSTS

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

Signed by and on behalf of at _____ on this the _____ day of _____ 2012

AS REPRESENTATIVE: (full names) : _____

CAPACITY : _____

Who warrants his authority thereto

WITNESSES

DATE:

1. _____ _____

2. _____ _____

Signed at Pretoria by and on behalf of SARS

1. JacobusJoahnnesLouw
   Signature
   Date signed

   Chief Officer: Legal and Policy
   _____
   _____

2. MukhtarMohomed

   Signature
   Date signed

   Group Executive: Facilities and Properties
   _____
   _____

3. PrakashMangrey
   Signature
   Date signed

   Group Executive: Finance
   _____
   _____

4. Deon LouwrensStofberg
   Signature
   Date signed

   Executive: Procurement
   _____
   _____