

SERVICES AGREEMENT

Entered into by and between

THE SOUTH AFRICAN REVENUE SERVICE, an organ of state within the public administration but outside the public service established in terms of Section 2 of the South African Revenue Service Act, 1997 (Act No. 34 of 1997)

[“SARS”]

and

.....,
a company incorporated in accordance with the laws of South Africa and with
registration number

[“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:
- 1.2.1 **“Agreement”** means the terms and conditions as contained in this Agreement, including all annexures and/or schedules to this Agreement;
- 1.2.2 **“Amount at Risk”** means twenty per cent (20%) of the total monthly amount invoiced to SARS which may be at risk in respect of Service Credits due to SARS resulting from any Service Level Failures;
- 1.2.3 **“Applicable Law”** means any of the following to the extent applicable to the Service Provider and where applicable, to SARS or the Services-
- (i) Any statute, regulation, policy, by-law, ordinance or subordinate legislation;
 - (ii) The common law;
 - (iii) Any binding court order, judgment or decree;
 - (iv) Any applicable industry code of conduct, policy or standard enforceable by law; or
 - (v) Any applicable direction, policy or order that is given by a regulatory authority;
- 1.2.4 **“Authorised Representatives”** mean those signatories authorised by SARS and the Service Provider respectively to sign this Agreement;
- 1.2.5 **“Business Day”** means any day other than a Saturday, Sunday or public holiday in South Africa;
- 1.2.6 **“Key Account Manager”** means the Person appointed by the Service Provider who shall be responsible for the day to day management and operational matters relating to the delivery of Services and the resolution of any complaints, problems and/or disputes in terms of this Agreement, except

unresolved disputes as contemplated in **Clause 7.2**, and such other duties as specified in **Annexure “A”**;

- 1.2.7 **“Commencement Date”** means 2021, notwithstanding the date of signing of this Agreement;
- 1.2.8 **“Commercially Reasonable Efforts”** means taking such steps and performing in such a manner as a well-managed company would undertake where such company was acting in a 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;
- 1.2.9 **“Confidential Information”** means, without limitation–
- (a) the details of the Services contemplated in this Agreement;
 - (b) all confidential material of either Party;
 - (c) pricing information relating to the Services contemplated in this Agreement;
 - (d) the terms of this Agreement;
 - (e) information or material proprietary to, or deemed proprietary to a Party;
 - (f) information designated as confidential by the Parties after consultation;
 - (g) information acquired by the other Party solely by virtue of the provision of the Services contemplated in this Agreement;
 - (h) the trade secrets of the Parties;
 - (i) information or technology in which either Party has Intellectual Property rights;
 - (j) all medical information relating to a SARS employee or any family/household member of an employee, who is entitled to benefit from the employee assistance programme in terms of this Agreement; and
 - (k) SARS confidential information and taxpayer information as defined in the Tax Administration Act, 2011 (Act No. 28 of 2011), as well as any other information considered confidential in terms of any other tax Act administered by the Commissioner for SARS.
- 1.2.10 **“Intellectual Property”** means all computer programs, software, source code, object code, programme interfaces, specifications, operating instructions, compilations, lists, databases, systems, operations, processes, methodologies, technologies, algorithms, techniques, methods, designs, circuit layouts, plans, reports, data, works protected under the Copyright Act,

1978 (Act No. 98 of 1978), works of authorship, video recordings, audio recordings, photographs, models, samples, substances, trade secrets, formulae, know-how, show-how, database rights, user interface designs, benchmark data, architecture, utility models, Confidential Information, concepts and ideas of any nature (including of a technical, scientific, engineering, commercial, strategic, financial, marketing or organizational nature), inventions, discoveries, drawings, notes, research and research outcomes, manuals, documentation, training materials, job aids, trademarks, service marks, logos, slogans, corporate, business and trade names, domain names, trade dress, brand names and other indicia of origin, regardless of whether Intellectual Property rights actually exist in any such items, and any other tangible or intangible items in which Intellectual Property rights may exist, as may occur anywhere in the world, and any applications for registration of such intellectual property, and includes all Intellectual Property rights in any of the foregoing;

- 1.2.11 **“Key Personnel”** means those members of staff of the Service Provider who have been dedicated to the provision of the Services to SARS, and on the strength of whose expertise the Service Provider warrants the ability to provide the Services;
- 1.2.12 **“Parties”** means SARS and the Service Provider and “Party” as the context requires, is a reference to any one of them;
- 1.2.13 **“Penalty Schedule”** means the Schedule attached hereto as **Annexure “B”**;
- 1.2.14 **“Performance Schedule”** means **Annexure “A”** annexed hereto and titled “Scope of Services and Performance Standards”;
- 1.2.15 **“RFP 14/2020”** is, subject to any contrary indication, a reference to SARS’s invitation to prospective bidders to tender for the Services specified in RFP 14/2020 dated2021, which is incorporated herein by reference thereto;
- 1.2.16 **“SARS”** means the South African Revenue Service, an organ of state established in terms of the South African Revenue Service Act, 1997 (Act No. 34 of 1997), with its principal address at **Lehae La SARS, 299 Bronkhorst Street, Nieuw Muckleneuk, PRETORIA**;

- 1.2.17 **“SARS Designated Representative”** means the SARS employee designated / appointed in terms of this Agreement, or his/her appointed delegate, as the Person who will interface with the Service Provider on all matters relating to the general administration of this Agreement, who will manage the overall performance of the Service Provider over the contract term and to whom all communications regarding this Agreement must be addressed;
- 1.2.18 **“Service Credit”** means a penalty payable by the Service Provider to SARS in respect of a Service Level Failure calculated as set out in **Clause 10.4.2** and **Annexure “B”**;
- 1.2.19 **“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, as are detailed in the Performance Schedule;
- 1.2.20 **“Service Level Failure”** means the Service Provider’s failure to meet any of the prescribed Service Levels;
- 1.2.21 **“Service Provider”** means, a company incorporated in accordance with the Laws of South Africa and with registration number
- 1.2.22 **“Services”** means the provision of an employee assistance programme by the Service Provider, as more fully set out in RFP 14/2020 and in this Agreement, including functions or responsibilities not specifically mentioned herein but which are reasonably and necessarily required for the proper performance and provision of the Services;
- 1.2.23 **“Termination Date”** means; and
- 1.2.24 **“VAT”** means Value-Added Tax levied in terms of the Value-Added Tax Act, 1991 (Act No. 89 of 1991).
- 1.3 Any reference in this Agreement to-
- 1.3.1 a **“Clause”** shall, subject to any contrary indication, be construed as a

reference to a clause hereof; and

- 1.3.2 a **“Person”** refers to any Person, firm, company, corporation, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the foregoing.
- 1.4 Unless inconsistent with the context or save where the contrary is expressly indicated-
- 1.4.1 if any provision in a definition is a substantive provision conferring rights or imposing obligations on any party, notwithstanding that it appears only in the Interpretation Clause, effect shall be given to it as if it were a substantive provision of this Agreement;
- 1.4.2 when any number of days is prescribed in this Agreement, same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a day which is not a Business Day, in which case the last day shall be the next succeeding Business Day;
- 1.4.3 in the event that the day for payment of any amount due in terms of this Agreement should fall on a day which is not a Business Day, the relevant day for payment shall be the subsequent Business Day;
- 1.4.4 in the event that the day for performance of any obligation to be performed in terms of this Agreement should fall on a day which is not a Business Day, the relevant day for performance shall be the subsequent Business Day;
- 1.4.5 any reference in this Agreement to an enactment is to that enactment as at the signature date and as amended or re-enacted from time to time;
- 1.4.6 any reference in this Agreement to this Agreement or any other agreement or document shall be construed as a reference to this Agreement or, as the case may be, such other agreement or document as same may have been, or may from time to time be, amended in writing;
- 1.4.7 no provision of this Agreement constitutes a stipulation for the benefit of any Person who is not a party to this Agreement;
- 1.4.8 references to day/s, month/s or year/s shall be construed as calendar day/s,

month/s or year/s; and

- 1.4.9 a reference to a Party includes that Party's successors-in-title and permitted assigns.
- 1.5 Unless inconsistent with the context, an expression which denotes:
- 1.5.1 any one gender includes the other gender; and
- 1.5.2 the singular includes the plural and *vice versa*;
- 1.6 Where any term is defined within the context of any particular Clause in this Agreement, the term so defined, unless it is clear from the Clause in question that the term so defined has limited application to the relevant Clause, shall bear the same meaning as ascribed to it for all purposes in terms of this Agreement, notwithstanding that that term has not been defined in such Clause.
- 1.7 The termination of this Agreement will not affect the provisions of this Agreement which operate after any such termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the Clauses themselves do not expressly provide for this.
- 1.8 This Agreement is binding on the executors, administrators, trustees, permitted assigns or liquidators of the Parties as fully and effectually as if they had signed this Agreement in the first instance and reference to any Party is deemed to include such Party's estate, heirs, executors, administrators, trustees, permitted assigns or liquidators, as the case may be.
- 1.9 Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.
- 1.10 None of the provisions hereof shall be construed against or interpreted to the disadvantage of the Party responsible for the drafting or preparation of such provision.

2. APPOINTMENT

- 2.1 SARS issued RFP 14/2020 inviting service providers to submit proposals for the provision of employee health and wellness related services to SARS either for Category A – Employee Assistance Programme or Category B – Executive Wellness Programme or for both categories.
- 2.2 The Service Provider has submitted a proposal to SARS in order to render the Services. SARS accepted the proposal in terms of Category A and hereby appoints the Service Provider to provide the Services, which appointment the Service Provider accepts.
- 2.3 The Service Provider will at all times perform the Services in accordance with 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. SCOPE OF THE SERVICES

- 3.1 The Parties acknowledge that the scope of Services is as more fully set out in the Performance Schedule (**Annexure “A”**).
- 3.2 SARS will monitor and review the Service Provider’s performance in terms of this Agreement. SARS however, reserves the right, at its exclusive discretion, to appoint a third party to monitor and review the Service Provider’s performance in terms of this Agreement.

4. DURATION

- 4.1 This Agreement commences on the Commencement Date and continues for a maximum period of forty eight (48) months, until Termination Date, unless terminated earlier in terms of the provisions of this Agreement.

5. PAYMENT

- 5.1 In consideration for the provision of the Services, SARS shall pay the Service Provider fees in accordance with **Annexure “C”** hereto, which fees are inclusive of VAT.

- 5.2 Subject to **Clauses 6** and **7** below, SARS shall pay all undisputed invoices within thirty (30) days after SARS receives such invoice, provided the invoice is accurate and meets all legislative and other requirements in terms of this Agreement.
- 5.3 SARS may set off any amounts due to SARS in terms of this Agreement against any amounts payable by SARS to the Service Provider.

6. INVOICING AND RECORDS

- 6.1 The Service Provider shall invoice SARS for Services performed pursuant to this Agreement on a monthly basis in arrears on or before the fifth (5th) Business Day of the month following the month in which the Service Provider rendered the Services to SARS.
- 6.2 Each invoice shall contain or have attached such information, and be in such format and on such media as SARS may reasonably request and, at the minimum contain-
- 6.2.1 a statement of the total amount due to the Service Provider for the Services rendered less the amount of financial penalties credited to SARS for Service Level Failures calculated with reference to the agreed Service Levels, together with a schedule describing the Services rendered during the relevant month; and
- 6.2.2 a SARS purchase order number.
- 6.3 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.
- 6.4 The Service Provider shall deliver all invoices to the SARS Workplace Wellness department and copies to other SARS departments as instructed to do so from time to time by SARS.
- 6.5 The Service Provider shall maintain complete and accurate records of, and supporting documentation for, the amounts invoiced to and payments made by SARS hereunder.

- 6.6 Within ten (10) days after SARS's request, the Service Provider shall provide SARS with any documentation or information reasonably required by SARS in order to verify the Service Provider's compliance with the requirements of this Agreement.
- 6.7 The Service Provider shall for the duration of this Agreement and for a period of five (5) years after the termination of this Agreement, maintain a complete audit trail of the Services performed under this Agreement, sufficient to permit a complete audit thereof. The Service Provider shall 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 in order to verify the Service Provider's compliance with the terms of this Agreement and/or to enable SARS to comply with the requirements of any regulatory authority and/or regulators and governmental entities having jurisdiction.
- 6.8 All costs incurred in performing audits under this **Clause 6** will be borne by SARS unless audit findings reveal the Service Provider's non-compliance with the terms of this Agreement and/or requirements of a regulatory authority or similar institution having jurisdiction over SARS and/or the Service Provider, in which event the Service Provider shall be liable for the audit costs.
- 6.9 SARS shall not be obliged to pay any amounts that are invoiced more than one hundred and twenty (120) days after the first (1st) day of the month in which the Service Provider was obliged to deliver such invoice.

7. DISPUTED CHARGES AND INVOICING ERRORS

- 7.1 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-
- 7.1.1 SARS shall promptly notify the Service Provider that it is disputing such amount, providing a reasonable explanation of the rationale therefore; and the Parties shall promptly first address such dispute in accordance with this **Clause 7**;

- 7.1.2 If the dispute relates to (or equals in the case of disputed amounts that have already been paid) only a percentage of the invoiced amounts, then SARS shall pay the undisputed amount in accordance with **Clause 5.2** above; and
- 7.1.3 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 make a correction on the next invoice if the amount has been paid.
- 7.2 Any dispute arising in terms of **Clause 7.1** above and which remains unresolved for five (5) Business Days after it has arisen, shall be referred by either Party to SARS's Group Executive: Procurement and the Service Provider's Managing Director or persons of equivalent office or their designees for resolution.
- 7.3 The persons mentioned in **Clause 7.2** above shall meet within five (5) Business Days of the referral of the dispute to resolve such dispute.
- 7.4 In the event that the dispute remains unresolved after ten (10) days of its referral to the persons mentioned in **Clause 7.3**, either Party shall be entitled to refer the dispute for resolution in accordance with the provisions of **Clause 22** below.

8. THE SERVICE PROVIDER'S OBLIGATIONS

- 8.1 The Service Provider shall-
- 8.1.1 nominate a Key Account Manager;
- 8.1.2 render the Services to SARS in accordance with this Agreement;
- 8.1.3 ensure that its Key Personnel and consultants devote such time, attention and skill in performing the Services;
- 8.1.4 assign suitably qualified and skilled personnel to provide the Services. More specifically, the Service Provider undertakes to ensure that all Services are rendered by suitably qualified and registered professionals, as may be prescribed by Applicable Law;
- 8.1.5 comply with all other Applicable Law;

- 8.1.6 render the Services to SARS in accordance with the highest professional standards;
- 8.1.7 at all times during the term of this Agreement, observe and perform its duties and tasks and render the Services with due diligence, efficiency and economy and in a professional, independent, objective, equitable and fair manner, taking into account all appropriate medical evidence and the circumstances of a particular employee, with due regard to the terms of this Agreement and any Applicable Law;
- 8.1.8 take all reasonable precautions to preserve the integrity of the information obtained in the exercise of its obligations, and to prevent corruption, leakage or loss of such information in the performance of its obligations in terms of this Agreement;
- 8.1.9 ensure that the medical professionals and/or other related experts selected by the Service Provider to assess the referrals, are at all relevant times duly qualified and licensed professionals and/or experts in terms of Applicable Law and will maintain approved professional standards;
- 8.1.10 provide appropriate electronic data interface systems and procedures to ensure seamless electronic access by SARS to the Services, as well as to any relevant information; and
- 8.1.11 attend all meetings arranged by SARS for the purpose of discussing or managing the Services.

9. PERSONNEL AND PROJECT MANAGEMENT

- 9.1 The Service Provider will provide a Key Account Manager and SARS will provide a SARS Designated Representative.
- 9.2 The Parties will inform each other in writing of the persons appointed as the Key Account Manager and SARS Designated Representative respectively, on Commencement Date. If there is a need and a new SARS Designated Representative or Key Account Manager is appointed, the Parties will inform each other, in writing, within seven (7) days of such new appointment.

- 9.3 In the event that the Key Account Manager takes leave or is unavailable for a period of more than twenty four (24) hours, the Service Provider undertakes to furnish SARS with the name of a person who is familiar with SARS's account to act as Key Account Manager for the time being.
- 9.4 In order to manage the Services provided by the Service Provider to SARS, the Parties agree that meetings will be arranged on the following basis-

Type of meeting	Frequency	Purpose of the meeting
Monthly	Monthly	To discuss and review projects planned or implemented; and to present reports.
Quarterly	Quarterly	To present reports.
Service relationship review	Annually	To report on the overall performance of the Services.
<i>Ad hoc</i> meeting	On reasonable request and with adequate notice	To discuss any issues relating to the Services.

- 9.5 The Service Provider may not change the Key Personnel presented in its response to RFP 14/2020, without the prior written consent of SARS, and in this regard:
- 9.5.1 The Service Provider may make a request to SARS to replace a member of the Key Personnel, where such member has resigned, become incapacitated and/or unable to perform his/her duties under the Agreement: Provided that the proposed replacement has similar or better qualifications and experience.
- 9.5.2 Where SARS approves the replacement of a member of the Key Personnel, the Service Provider shall, at its cost, provide a replacement acceptable to SARS within the time period then prescribed by SARS.
- 9.5.3 Should SARS, in its discretion reasonably consider a member of the Key Personnel to be incompetent or unsatisfactory, the Service Provider will have to replace at its cost, that member with one having similar or better credentials and in line with the timeframes then stipulated by SARS.

10. PRINCIPLES GOVERNING SERVICE LEVELS

10.1 PERFORMANCE STANDARDS

The Performance Schedule (**Annexure “A”**) sets out the respective Service Levels that will apply to the Services.

10.2 MONITORING, MEASURING AND REPORTING

10.2.1 The Service Provider shall-

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

10.2.1.2 monitor its performance of the Services with respect to the Service Levels on a continuous basis and measure and provide SARS with a monthly report on such performance (a “Monthly Performance Report”);

10.2.1.3 within seven (7) Business Days after the end of each month deliver to SARS the Monthly Performance Report with respect to the Service Provider’s performance during such month;

10.2.1.4 provide SARS with detailed supporting documentation and/or information for each Monthly Performance Report in soft-copy format as reasonably requested by SARS;

10.2.1.5 include the following information in each Monthly Performance Report with respect to any failure to achieve a Service Level during a month (a “Service Level Failure”)-

10.2.1.5.1 the nature of the Service Level Failure;

10.2.1.5.2 the nature of, and time and date when, each incident that led to such Service Level Failure during the month arose;

- 10.2.1.5.3 the impact of the Service Level Failure on other parts of the Services;
 - 10.2.1.5.4 the direct and root cause of the incident or other event that gave rise to the Service Level Failure; and
 - 10.2.1.5.5 a summary of the steps the Service Provider has taken to determine the root cause of the Service Level Failure, the steps the Service Provider has taken to resolve the Service Level Failure and the steps the Service Provider has taken to reduce, to the extent reasonably possible, the likelihood that such Service Level Failure will recur.
- 10.2.2 Any failure by the Service Provider to perform any of the functions set forth in this **Clause 10.2** during a month will constitute a Service Level Failure in itself.

10.3 REQUIRED ACTIONS IN RESPECT OF SERVICE LEVEL FAILURES

- 10.3.1 In respect of any Service Level Failure, the Service Provider shall-
- 10.3.1.1 Investigate, assemble, and preserve pertinent information with respect to, and, as further described in **Clause 10.2** report on the causes of the Service Level Failure, including performing an appropriate direct and root cause analysis of each incident which led to the Service Level Failure;
 - 10.3.1.2 propose and execute a written corrective action plan, if requested to do so by SARS that is sufficiently robust and detailed, taking into account the nature of the Service Level Failure;
 - 10.3.1.3 advise SARS of the status of remedial efforts being undertaken with respect to such Service Level Failure/s; and
 - 10.3.1.4 take the necessary Commercially Reasonable Efforts to employ preventive measures so that the Service Level Failure does not recur, including allocating additional personnel and resources to the performance of the Services, and proposing changes to the

procedures the Service Provider uses to perform the Services.

10.4 RULES GOVERNING SERVICE CREDITS

10.4.1 AMOUNT AT RISK

10.4.1.1 The Service Provider shall pay any Service Credits due to SARS with respect to each Service Level Failure, as set out in the Penalty Schedule attached hereto as Penalty Schedule (**Annexure “B”**) and as further described below in **Clause 10.4.2**.

10.4.1.2 In no event shall the total, aggregated amount of Service Credits payable by the Service Provider to SARS for any one month period for all service components exceed the prescribed Amount at Risk.

10.4.2 CALCULATION OF SERVICE CREDITS

10.4.2.1 For each Service Level Failure the all-inclusive monthly amount payable to the Service Provider shall be reduced by the applicable Service Credits.

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

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

10.5 EXCUSED NON-PERFORMANCE

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

10.5.1.1 the cause of its failure to achieve a Service Level was a factor outside of the reasonable control of the Service Provider (i.e. *force majeure*);

10.5.1.2 the Service Provider would have achieved such Service Level but for such factor;

10.5.1.3 the Service Provider used Commercially Reasonable Efforts to perform and achieve that Service Level notwithstanding the presence and impact of such factor; and

10.5.1.4 the Service Provider is without fault in causing such factor,

then, no Service Credit shall be assessed against the Service Provider for any resulting Service Level Failure and the Service Provider shall otherwise be excused from achieving such Service Level for as long as the circumstances relating to such factor and preventing achievement of such Service Level prevail and the Service Provider continues to use Commercially Reasonable Efforts to prevent, overcome and mitigate the adverse effects of such factor to the extent required to achieve the applicable Service Level.

10.6 STATUS OF SERVICE CREDITS

10.6.1 The following shall apply in respect of Service Credits-

10.6.1.1 Service Credits are a price adjustment for the relevant period to reflect the reduced level of Services performed by the Service Provider and is not an estimate of the loss or damage that may be suffered by SARS as a result of such Service Level Failure/s;

10.6.1.2 The payment of a Service Credit by the Service Provider is without prejudice to, and shall not limit, any right SARS may have to terminate this Agreement and/or seek damages or other non-monetary remedies at law resulting from, or otherwise arising in respect of, such Service Level Failure/s and any resulting termination; and

10.6.1.3 Notwithstanding the provisions of this **Clause 10.6**, any claim for damages resulting from such Service Level Failure/s, in respect of which a Service Credit has already been paid, shall be reduced by the amount of that Service Credit.

11. SARS's OBLIGATIONS

11.1 SARS undertakes to-

11.1.1 nominate a SARS Designated Representative;

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

11.1.3 provide written approvals to the Service Provider in respect of marketing and promotional materials for the Services;

11.1.4 provide written approvals to the Service Provider in respect of proposals for Health Calendar Days events;

11.1.5 subject to Applicable Laws and necessary consents, deliver to the Service Provider all prescribed and other relevant documentation received from an employee, including, all medical reports, medical certificates and sick leave records, in a coherent and legible form; and

11.1.6 comply as soon as reasonably possible with any reasonable requests made by the Service Provider in its performance of the Services under this Agreement.

11.2 Subject to the Service Provider's personnel's compliance with SARS's access and security policies, SARS shall provide the Service Provider's personnel with access to the premises and facilities of SARS if necessary for the purposes of rendering the Services, for example to conduct wellness interventions to SARS employees and/or attend meetings with SARS. No telephone, email and/or internet facilities will be provided to the Service Provider.

11.3 SARS acknowledges that where the advice furnished and documentation prepared by the Service Provider is based on information supplied by SARS, the Service Provider will under such circumstance not be held responsible for any inaccuracies in this information. SARS shall immediately inform the Service Provider of any amendments, inaccuracies or omissions to the information which come to SARS's attention.

12. STEP IN RIGHTS

- 12.1 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 temporarily take over the Services as contemplated 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.
- 12.2 For purposes of this clause, 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 shall apply for a period of no more than one hundred and eighty (180) days from the date that SARS temporarily takes over the provision of the Services. The Service Provider shall, upon the request of SARS, fully co-operate with and assist SARS during any such temporary take-over of the Services.
- 12.3 To the extent that SARS exercises its right to assume the rendering of the Services or part thereof itself, or by a third party service provider, the Service Provider shall not be entitled to any fees and/or payment during the period for which SARS or the third party assumes the Services. SARS shall not, under any circumstances by virtue of any assumption, be obliged or deemed or required to take over or assume responsibility for the conduct of the Service Provider's business operations.

13. SECURITY VETTING OF THE SERVICE PROVIDER'S PERSONNEL

- 13.1 SARS reserves the right at its sole and absolute discretion to do a security check on the Service Provider's personnel involved with the performance of the Services, provided that SARS has obtained the prior written permission of such personnel. In the event that the Service Provider's personnel refuse to give such written permission, the Service Provider shall immediately replace such personnel as provided for in **Clause 13.2** below.
- 13.2 Where SARS finds the Service Provider's employee, subcontractor or agent to be a security risk, SARS will inform the Service Provider accordingly and the Service Provider shall replace such employee, subcontractor or agent with another employee, subcontractor or agent with suitable qualification(s) and experience. The Service Provider will not be relieved of its obligations under this Agreement while a replacement

is secured, and SARS will have no liability to the Service Provider with regard thereto. The Service Provider indemnifies SARS against any claims that may be brought by any of the Service Provider's employees, subcontractors, or agents who may be affected as a result of SARS exercising its rights under this Clause.

14. LIABILITY OF THE PARTIES

- 14.1 The Service Provider shall be liable to SARS, where SARS has suffered any direct damages and/or losses as a result of the Service Provider's failure to observe its obligations in terms of this Agreement.
- 14.2 The Service Provider shall be liable to SARS for all indirect and consequential or special damages and/or losses suffered by SARS as a result of gross negligence, reckless acts or breach by the Service Provider or its personnel of confidentiality provisions in this Agreement, breach of Applicable Laws, infringement of third party intellectual property rights or a criminal act committed by the Service Provider, its suppliers or personnel.

15. WARRANTIES BY THE SERVICE PROVIDER

- 15.1 The Service Provider hereby represents and warrants to SARS that-
- 15.1.1 this Agreement has been duly authorised and executed by it and constitutes a legal, valid and binding set of obligations on it;
- 15.1.2 it is acting as a principal and not as an agent of an undisclosed principal;
- 15.1.3 the execution and performance of the terms and conditions of this Agreement do 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 business, or its memorandum of incorporation or any other documents or any binding obligation, contract or agreement to which it is a party or by which it or its assets are bound;
- 15.1.4 it shall comply with all legislation relating to the employment relationship between the Service Provider and its employees, more specifically, it warrants that it will not commit any contravention(s) of the Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997) or the Labour Relations Act, 1995

(Act No. 66 of 1965), any other labour legislation or any collective bargaining agreements and hereby fully indemnifies SARS against all legal consequences of any nature whatsoever which arises in connection with such non-compliance;

- 15.1.5 it has the requisite insurance to cover any form of claim that may be instituted against it as a result of it executing this Agreement;
 - 15.1.6 it has the necessary resources, skills, capacity and experience to render the Services to SARS; and
 - 15.1.7 no facts or circumstances exist that may materially affect its capacity to perform its obligations under this Agreement.
- 15.2 It is expressly agreed between the Parties that each warranty and representation given by the Service Provider in this Agreement is material and induced SARS to conclude this Agreement.
- 15.3 The provisions of this Clause shall survive the termination of this Agreement.

16. INSURANCE

- 16.1 The Service Provider shall on or before the Commencement Date and for the duration of this Agreement, have and maintain in force adequate insurance cover consistent with acceptable and prudent business practices and acceptable to SARS, which shall include, without limitation, professional indemnity insurance cover against all actions, suits, claims or other expenses arising in connection with damages or loss for which it is or may be liable in terms of this Agreement.
- 16.2 The Service Provider shall provide SARS with a certificate of insurance, evidencing that the cover and policy endorsement required under this Agreement are maintained in force, on the date of signing this Agreement and provide evidence of renewal of the insurance at least three (3) Business Days prior to expiration thereof.
- 16.3 The Service Provider shall provide SARS at least thirty (30) days' notice prior to any material modification, cancellation or non-renewal of the insurance policies.

- 16.4 In the case of loss or damage or other event that requires notice or other action under the terms of any insurance coverage set out in **Clause 16.1**, the Service Provider shall be solely responsible to take such action. The Service Provider shall provide SARS with contemporaneous notice and with such other information as SARS may request regarding the event.
- 16.5 Without limiting the generality of SARS's rights and remedies in this Agreement, in the event of a failure by the Service Provider to take out or maintain any insurance required herein, or to provide evidence of renewal within the period indicated herein, SARS may purchase the requisite insurance and deduct or offset the costs thereof from any monies due to the Service Provider by SARS under this Agreement.

17. INDEMNITIES

- 17.1 The Service Provider hereby indemnifies, holds harmless and agrees to defend SARS and its officers, employees, agents, successors and assigns, against all claims or losses arising from or in connection with, any of the following-
- 17.1.1 Third party claims attributable to any breach of the provisions of this Agreement by the Service Provider;
- 17.1.2 Third party claims attributable to theft, fraud or other unlawful activity or any negligent, wilful or fraudulent conduct by the Service Provider or its personnel and claims attributable to errors and/or omissions;
- 17.1.3 Third party claims arising from or related to the death or bodily injury of any agent, employee, customer, business invitee, business visitor or other person caused by the delictual conduct of the Service Provider or its personnel; or
- 17.1.4 Claims arising from damage to property owned or leased by SARS or belonging to a third party caused by the acts or omissions of the Service Provider or its personnel.

18. BREACH

- 18.1 If a Party (the "Defaulting Party") is in default or breach of any obligation which arises in terms of this Agreement and that Defaulting Party fails to remedy such default or breach within ten (10) Business Days after receipt of a written notice given by the other

Party (the “Aggrieved Party”) calling upon the Defaulting Party to remedy such default or breach, then the Aggrieved Party may, without prejudice to any other rights which it may have in terms hereof or at law-

18.1.1 claim specific performance;

18.1.2 cancel this Agreement, such cancellation to be effective immediately on receipt by the Defaulting Party of a written notice to that effect; or

18.1.3 claim any money due and payable in terms of this Agreement and claim damages from the Defaulting Party.

18.2 The Service Provider acknowledges that it is a material term of this Agreement that the Service Levels prescribed in the Performance Schedule (**Annexure “A”**) must be maintained throughout the duration of this Agreement. The Parties agree that multiple Service Level Failures will constitute sufficient proof of persistent non-compliance by the Service Provider with SARS’s prescribed Service Levels and that such persistent non-compliance will constitute a material breach of this Agreement.

18.3 The remedies set out in this Clause shall not be construed to be exhaustive of any other remedies available to the Parties.

19. TERMINATION OF THE AGREEMENT

19.1 Termination for Cause

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

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

19.1.1.2 commits a material breach of this Agreement that is not capable of being cured within ten (10) Business Days;

19.1.1.3 fails to meet the same Service Level for three (3) consecutive months, or if the Service Provider fails to meet the same Service

Level for four (4) months, not necessarily consecutive, out of any consecutive twelve (12) month period; and

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

19.1.2 SARS may, upon written notice to the Service Provider, terminate this Agreement immediately if-

19.1.2.1 the Service Provider commits an act of insolvency as contemplated in the Insolvency Act, 1936 (Act No. 24 of 1936);

19.1.2.2 the Service Provider is placed in liquidation, whether provisionally or finally;

19.1.2.3 the Service Provider is placed under business rescue as contemplated in Chapter 6 of the Companies Act, 2008 (Act No. 71 of 2008);

19.1.2.4 the Service Provider makes any arrangement or compromise with its creditors generally or ceases to carry on business;

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

19.1.2.6 the Service Provider is convicted of any offence which comprises an element of fraud or dishonesty; or

19.1.2.7 the Service Provider undergoes a change of Control, "Control" meaning, with regard to any entity, the right or power to dictate the management of or to otherwise control such entity by-

19.1.2.7.1 holding directly or indirectly the majority of the issued share capital or stock (or other ownership interest if not a corporation) of such entity ordinarily having voting rights;

19.1.2.7.2 controlling the majority of the voting rights in such entity;
or

19.1.2.7.3 having the right to appoint or remove directors holding a majority of the voting rights at meetings of the board of directors of such entity.

19.2 Required Actions on Termination

19.2.1 Where this Agreement has been terminated–

19.2.1.1 each Party shall return to the other immediately upon demand, or within such reasonable period as the Parties may agree upon all information, documentation, records, reports, software or other property that belong to the other Party, as well as all Confidential Information disclosed to it;

19.2.1.2 the Service Provider shall render the necessary Disengagement Assistance to SARS, as more fully set out in **Clause 30**;

19.2.1.3 the Service Provider shall transfer the toll-free helpline number (0800 777 770) used for the provision of the Services to the incoming service provider appointed by SARS;

19.2.1.4 in the event of this Agreement being terminated, the Service Provider shall not be entitled to withhold any information, records or reports, or any assistance as set out in the Clauses below that will be crucial to effect the immediate and seamless transition of the Services, and the Service Provider will retain only certain electronic records which it is legally required to retain;

19.2.1.5 the information and documentation to be transferred to the new service provider will exclude proprietary software, which shall remain the sole and exclusive property of the Service Provider, but shall include all Confidential Information and Intellectual Property of SARS;

19.2.1.6 SARS will ensure that all fees due and payable to the Service Provider by SARS as at the Termination Date, shall be paid to the Service Provider by no later than thirty (30) days following the Termination Date; and

19.2.1.7 the Service Provider shall immediately cease to provide the Services, subject to **Clause 30**.

19.2.2 Any termination of this Agreement pursuant to the provisions of this **Clause 19** shall be without prejudice to any claim which either Party may have in respect of any prior breach of the terms and conditions of this Agreement by the other Party; and

19.2.3 No SARS employee shall have any claim against the Service Provider because of the termination of the Services.

20. FORCE MAJEURE

20.1 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 a "*Force Majeure* Event") then the Party affected by such *Force Majeure* Event shall be relieved of its obligations hereunder during the period that such *Force Majeure* Event continues.

20.2 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.

20.3 Any Party invoking *force majeure* shall upon termination of such *Force Majeure* Event give prompt written notice thereof to the other Party. Should a *Force Majeure* Event continue for a period of more than thirty (30) days, and then either Party has the right to cancel this Agreement.

21. RELATIONSHIP BETWEEN THE PARTIES

- 21.1 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 this Agreement.
- 21.2 All personnel used by the Service Provider will be the Service Provider's employees, subcontractors, or agents, and the entire management, direction, and control of all such persons will be and remain the responsibility of the Service Provider.
- 21.3 Neither Party may under any circumstances, represent that it acts on behalf of the other Party, nor may it bind the other Party in any manner.

22. DISPUTE RESOLUTION

- 22.1 In the event of any dispute arising out of or in connection with this Agreement, the Parties shall try to resolve the dispute by negotiation. This entails that the one Party invites the other in writing to a meeting and attempts to resolve the dispute within seven (7) days from date of the written invitation. If the dispute has not been resolved by such negotiation, the Parties shall submit the dispute to the Arbitration Foundation of Southern Africa ("AFSA") administered mediation, failing which the dispute shall be determined as below.
- 22.2 Save in respect of those provisions of this Agreement which provide for their own remedies which would be incompatible with arbitration, any dispute arising from, or in connection with, this Agreement will finally be resolved by arbitration in accordance with the Rules of AFSA or its successor, by an arbitrator or arbitrators appointed by AFSA.
- 22.3 Neither Party shall be precluded from obtaining interim relief on an urgent basis or other conservatory relief from a court of competent jurisdiction pending the decision of the arbitrator.
- 22.4 This **Clause 22** 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.

22.5 Save for **Clause 7**, neither Party shall be entitled to withhold performance of any of their obligations in terms of this Agreement pending the settlement of, or decision in, any dispute arising between the Parties and each Party shall, in such circumstances continue to comply with their obligations in terms of this Agreement.

23. CONFIDENTIAL INFORMATION

23.1 Neither Party may, unless otherwise provided in this Agreement, disclose the other Party's Confidential Information.

23.2 Confidential Information shall not include any information which is generally available to the public or becomes known to a Party on a non-confidential basis, or to the extent that the information may be required to be disclosed in terms of any law.

23.3 The Service Provider agrees that SARS's Confidential Information will be used solely for the purpose of providing the Services, and that all of it will be kept secure by applying the same security measures thereto as those which the Service Provider uses to protect its own Confidential Information, provided that: the Confidential Information or any part of it may be disclosed to the Service Provider's employees, subcontractors, agents and advisors on a "need to know" basis for the purpose of providing any aspect of the Services, it being understood that those employees, subcontractors, agents and advisors shall be informed by the Service Provider of the confidential nature of all such Confidential Information and shall be directed by the Service Provider to treat it confidentially.

23.4 The Parties agree that all Confidential Information 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.

23.5 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 five (5) 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.

23.6 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.

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

24. INTELLECTUAL PROPERTY

24.1 Neither Party shall acquire any rights, title or interest of any kind in any pre-existing Intellectual Property owned by the other Party. All Intellectual Property owned by a Party and all modifications made by it to that Intellectual Property, shall at all times remain the sole property of that Party. Unless specifically authorised in this Agreement or in writing by a Party and then only to the extent so authorised, the other Party shall have no right to use the first mentioned Party's Intellectual Property in any manner, save for **Clause 25** below.

25. OWNERSHIP AND USE OF INFORMATION

25.1 The Service Provider confirms that all records and reports pertaining to the Services to be rendered to SARS in terms of this Agreement will remain the sole property of SARS.

25.2 At the request of SARS, and subject to Applicable Law, the Service Provider shall make available all records and reports pertaining to the Services within a reasonable period, but not exceeding seven (7) days from date of request, unless otherwise specified.

26. TAX COMPLIANCE

26.1 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.

26.2 If the Service Provider fails to remain compliant as contemplated in **Clause 26.1**, SARS may terminate this Agreement immediately. SARS will have no liability to the Service Provider with respect to such termination.

27. BROAD-BASED BLACK ECONOMIC EMPOWERMENT

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

- 27.2 In pursuance of this objective the Service Provider commits and warrants to comply in all respects with the requirements of the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003) (hereafter referred to as the B-BBEE Act) as amended from time to time, and the Codes of Good Practice issued in terms of the B-BBEE Act.
- 27.3 Upon signature of this Agreement and one (1) month after the expiry of a current certificate for a particular year, the Service Provider shall provide SARS with a certified copy of its B-BBEE rating status from an agency accredited by the South African National Accreditation System.
- 27.4 During the currency of this Agreement (including any extension or renewal hereof which may apply), the Service Provider shall use reasonable endeavours to maintain and/or improve its current B-BBEE rating status.
- 27.5 A failure to provide a certified copy of its B-BBEE rating status or a failure to comply with provisions of this Clause will entitle SARS to terminate this Agreement by giving the Service Provider one (1) month's written notice.

28. ADDRESSES

- 28.1 Each Party chooses the addresses set out below its name as its address to which all notices and other communications must be delivered for the purposes of this Agreement and its *domicilium citandi et executandi* ("domicilium") at which all documents in legal proceedings in connection with this Agreement must be served.
- 28.2 SARS's physical address for service of formal notices and legal processes-

The Group Executive: Procurement

LeHae la SARS

299 Bronkhorst Street

Nieuw Muckleneuk

PRETORIA

- 28.3 SARS's email address for communications and/or correspondences in connection with the performance of the Services: KSefurutsi@sars.gov.za (Ms Kagisano Sefurutsi) and SMotsamai@sars.gov.za (Ms Siphumelele Motsamai).

28.4 The Service Provider's physical address for service of formal notices and legal processes-

.....
.....
.....

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

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

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

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

28.7 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.

28.8 Any notice to a Party in a correctly addressed envelope and which 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.

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

29. GENERAL

29.1 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.

29.2 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.

29.3 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.

29.4 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/s 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.

29.5 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.

29.6 AUTHORISED SIGNATORIES

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

29.7 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.

29.8 APPLICABLE LAW

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

29.9 WHOLE AGREEMENT AND AMENDMENT

This Agreement constitutes the whole of the Agreement between the Parties relating to the subject matter hereof and no amendment, alteration, addition, variation or consensual cancellation will be of any force or effect unless reduced to writing and signed by the Parties hereto or their duly Authorised Representatives. Any document executed by the Parties purporting to amend, substitute or revoke this Agreement or

any part hereof, shall be titled an “Addendum” to the applicable Services Agreement and assigned a sequential letter to be included in the title.

29.10 COVENANT OF GOOD FAITH

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

29.11 COSTS

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

29.12 JURISDICTION

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

29.13 SUBCONTRACTING

29.13.1 Subject to Applicable Law, the Service Provider shall not without the prior written consent of SARS, which consent shall not be unreasonably withheld, subcontract any of the Services required in terms of this Agreement to any third party. It is expressly recorded that SARS will not approve a proposed subcontracting if, in the exclusive judgment of SARS, the subcontracting will result in prejudice or potential prejudice to other service providers.

29.13.2 Whenever the Service Provider wishes to subcontract any part of the Services in terms hereof, the Service Provider shall submit, together with its request as set out in **Clause 29.13.1** above, a complete written proposal for SARS’s approval containing-

29.13.2.1 Full details and business references of the subcontractor;

29.13.2.2 A full description of the part of the Services it proposes for subcontracting;

29.13.2.3 Full details of how the Service Provider will manage the performance of the Services by the subcontractor;

29.13.2.4 The value of the contract proposed to be subcontracted, expressed as a percentage;

29.13.2.5 The B-BBEE status and certificate of the subcontractor; and

29.13.2.6 Confirmation of tax compliance of the subcontractor.

29.13.3 Notwithstanding the provisions of this **Clause 29.13**, the Service Provider shall remain the only Party wholly responsible for the due performance of its obligations in terms of this Agreement and compliance with the terms and conditions thereof.

29.13.4 Subject to the provisions of **Clause 29.13.1** above, the Service Provider shall ensure that a subcontracting agreement entered into between the Service Provider and the subcontractor binds the subcontractor to the terms and conditions of this Agreement.

29.13.5 Nothing contained herein shall create a contractual relationship between SARS and the subcontractor.

30. DISENGAGEMENT ASSISTANCE

30.1 The Parties hereby acknowledge that, notwithstanding the termination of this Agreement for any reason whatsoever, the immediate and seamless transition of the Services to an incoming service provider is imperative. To this extent and without any derogation to any claims sounding in money that the Service Provider may have or allege against SARS, the Service Provider shall not be entitled to withhold any information, records or reports, or any assistance as set out in the Clauses below that will be crucial to effect the immediate and seamless transition of the Services.

30.2 For a period of twenty (20) Business Days after the expiry or termination of this Agreement for whatsoever reason or such earlier period as the Parties may agree, whichever is applicable and at SARS's request, the Service Provider will provide SARS or SARS's newly designated service provider such assistance as SARS may reasonably require to facilitate the immediate transition of the Services in as seamless

a manner as possible (“Disengagement Assistance”).

- 30.3 Without limiting the generality of the foregoing, the Service Provider shall deliver to SARS at no additional cost such information and documentation relating to the Services as SARS may reasonably request on a date specified by SARS, including all employee files and records for which employees’ consent have been obtained, alternatively in respect of which no confidentiality obligations exist.
- 30.4 The Service Provider undertakes to use its best endeavours to obtain the necessary consent from SARS’s employees in respect of the transfer of their files and records to SARS or any incoming service provider.
- 30.5 The Service Provider warrants that all employee files, records and reports will be complete and adhere to professional quality standards, failing which SARS reserves the right to demand that the Service Provider bring the files, records and reports up to standard.
- 30.6 SARS or its newly designated service provider shall have the option or discretion, exercisable on a contract by contract basis to assume contracts for any Services provided by third parties to the Service Provider and used exclusively by the Service Provider to provide the Services to SARS.
- 30.7 In the case of third party service providers used by the Service Provider to provide Services to SARS, the Service Provider shall use Commercially Reasonable Efforts to arrange for the provision of the Services by the third party to SARS under terms at least as favourable as those in the third party services contract.

SIGNED AT PRETORIA

As representatives for the South African Revenue Service:

Signature: _____

Name: Noxolo Ngubo

Executive: Professional Services, Procurement

Date of signature: _____

Signature: _____

Name: Sobantu Ndlangalavu

Head: Employee & Labour Relations

Date of signature: _____

As representative for the Service Provider:

Name:

Capacity:

Date of signature: