

## **SERVICES AGREEMENT**

Between

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

**[“SARS”]**

And

**XXXXXXXXXXXXXXXXXX**, a private company with limited liability incorporated in accordance with the Laws of South Africa.

**[“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 this Agreement and the annexures hereto;

1.2.2 “**Authorised Representative**” means signatories authorised by SARS and The Service Provider to sign the Agreement;

1.2.3 “**Business Day**” means any day other than a Saturday, Sunday or public holiday in South Africa;

1.2.4 “**Commencement Date**” means the XXXXXXXXXXXXX notwithstanding the date of the signing of this Agreement;

1.2.5 “**Service Provider**” means XXXXXXXXXXXXX, a company with limited liability incorporated in accordance with the Laws of South Africa with registration number: XXXXXXXXXXXXXXXXXXXX;

1.2.6 “**Parties**” means SARS and XXXXXXXXXXXX, and “party” as the context requires, is a reference to any one of them;

1.2.7 “**SARS**” means the South African Revenue Service, an organ of state established in terms of the South African Revenue Service Act, 1997 (Act No. 34 of 1997);

1.2.8 “**Services**” means the provision of integrated hygiene and specialised cleaning, waste management, pest control, gardening services and other related services as set out in RFPXXXXXX attached hereto and marked **Annexure “...”**, read together with the Service Provider’s Proposal;

1.2.9 “**Service Level**” means a qualitative standard of performance of the Services that The Service Provider is required to satisfy in its performance of the services as detailed in **Annexure “...”**;

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

1.2.11 “**Service Sites**” means the offices where the Service Provider has to render the Services, as will more fully appear in **Annexure “...”**;

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

1.2.13 “**Termination Date**” means the **XXXXXXXXXXXXX**;

1.2.14 “**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;

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

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

1.3.4 “**Service Provider’s Proposal**” is, subject to any contrary indication, a reference to the proposal submitted by the Service Provider in response to SARS’s Request for Proposal number RFPXXXXXX;

1.3.5 “**Tender Documents**” is, subject to any contrary indication, a reference to SARS’s invitation to prospective Service Providers to quote for the services specified in RFPXXXXXX.

1.4 Unless inconsistent with the context or save where the contrary is expressly indicated-

1.4.1 if any provision in a definition is a substantive provision conferring rights or imposing obligations on any party, notwithstanding that it appears only in the definition Clause, effect shall be given to it as if it were a substantive provision of this Agreement;

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

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

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

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

1.4.6 any reference in this Agreement to this Agreement or any other Agreement or document shall be construed as a reference to this Agreement or, as the case may be, such other Agreement or document as same may have been, or may from time to time be, amended, varied, negotiated or supplemented;

1.4.7 no provision of this Agreement constitutes a stipulation for the benefit of any Person who is not a party to this Agreement;

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

## **2. APPOINTMENT**

- 2.1 SARS hereby appoints The Service Provider to render the Services as more fully described in **Annexures “...”**.
- 2.2 The performance of the Services shall be subject to the terms and conditions of this Agreement.
- 2.3 The Service Provider will at all times perform the Services in accordance with any Service Levels prescribed in this Agreement.
- 2.4 The Service Provider represents that it has, and warrants that throughout the duration of this Agreement it shall have the resources, skills, qualifications and experience necessary to provide the Services to the highest standards prevailing in the local integrated facilities management services industry.

## **3. DURATION**

- 3.1 This Agreement shall commence on the Commencement Date, notwithstanding the Signature Date, and continue in full force and effect until Termination Date or terminated earlier in accordance with the terms of this Agreement.
- 3.2 SARS shall be entitled to terminate this Agreement for convenience at any time in the manner provided in **Clause 17** below. The Service Provider will have the right to accept or reject a specific service request without compromising the Service Provider's position as a preferred Service Provider of SARS.

## **4. PERSONNEL**

- 4.1 The Service Provider undertakes that it has sufficient and suitable personnel in order to render the Services to SARS according to the level of service required under this agreement.

- 4.2 The Service Provider shall be solely responsible for its personnel at all times and nothing contained in this Agreement may be construed as constituting any relationship between the contracting parties other than for the Services provided.
- 4.3 For the purpose of liaising with the Service Provider from time to time regarding any of its personnel, the Service Provider shall appoint an authorised representative and provide SARS with the relevant contact details within seven (7) days after the Commencement Date.
- 4.4 Any complaints, queries, requests, notices or like information relating to any of the Service Provider's personnel which may in any way be reasonably regarded as material to the Service Provider's responsibility for its personnel shall be communicated in writing forthwith to the designated representative by SARS and the Service Provider undertakes to take appropriate action as may be required in a timely manner upon receiving such notice.

## **5. SERVICES**

During the currency of this Agreement, the Service Provider shall: -

- 5.1 Render the Services to SARS as more fully described in Annexure "...";
- 5.2 Render the Services to SARS in accordance with the service levels set out in Annexure "...";
- 5.3 ensure that its personnel and consultants devote such time, attention and skill in performing the Services as may be reasonably required for the proper discharge of its duties under this Agreement;
- 5.4 nominate a representative to facilitate the smooth and effective management of the Services. This person will be referred to as the Service Provider's Project Manager and shall be responsible for all the activities under this Agreement;
- 5.5 subject to the provisions of Clause 16, complete the Services or specific portions thereof by the dates agreed upon between the Parties from time to time; and
- 5.6 perform the Services during the Service Hours (i.e. Mondays to Fridays from 08:00 to 16:30, public holidays excluded), unless agreed otherwise in writing between the Parties.



## **6. SARS OBLIGATIONS**

### **6.1 SARS undertakes to-**

6.1.1 Nominate a representative to be referred to as the SARS Project Manager who shall liaise with the Service Provider's Project Manager for the duration of this Agreement; and

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

6.2 The SARS Facilities Management unit will be the responsible entity in SARS for the management of this Agreement.

6.3 SARS reserves the right to request the Service Provider to perform certain emergency services, alternatively to perform ad-hoc services that fall outside the scope of the Service Provider's specified mandatory tasks and deliverables, within reasonable limits.

6.4 The Service Provider and SARS will reach written agreement on the associated costs for any emergency and/or ad hoc service requests, prior to the services being rendered by the Service Provider.

6.5 SARS reserves the right to perform a review of each deliverable and to return same or request replacement thereof, if not acceptable. The Parties shall endeavour to jointly review all deliverables. The Service Provider will not be responsible for any discrepancies identified pursuant to such joint review of the deliverables, unless notified thereof by SARS in writing at that time.

6.6 SARS does not guarantee the placement of orders with the Service Provider, or that any minimum quantities will be ordered.

6.7 SARS reserves the right not to be held liable for any left-over stock held by the Service Provider for purposes of Clause 7.17 below, upon termination of the Agreement.

- 6.8 SARS is obliged in the event of damage to any equipment, as soon as such damage is brought to its attention, to notify the Service Provider accordingly. This notification must be effected via the Service Provider's national call centre: XXXXXX.

## **7 THE SERVICE PROVIDER'S OBLIGATIONS**

- 7.1 The Service Provider shall provide Services which will comprise of an all-inclusive integrated services including certain mandatory tasks to be rendered at such intervals and in accordance with the standards and norms as specified in SARS's attached scope of work detailed in **Annexure "..."**, as well as the provision and maintenance of equipment and the supply of consumables.
- 7.2 The Service Provider shall obtain written consent from the landlord where necessary with regards to any installation of fixtures. The Service Provider shall be liable to repair damages to the premises, to the extent necessary to restore the specific feature or item damaged it to its previous condition and at its own cost, where such is caused by the existing equipment supplied by SARS's previous service provider/s being removed and new equipment being installed.
- 7.3 The Service Provider shall further be liable for restoring the specific feature or item damaged to its previous condition in event of damages caused to the premises by the maintenance or, replacement of defective equipment during the contract period. SARS reserves the right to appoint a third party service provider to effect the repairs and to set-off the cost of such repairs against the Service Provider's invoice, should the Service Provider fail to effect the necessary repairs within 30 (thirty) days from date of such incident. The Service Provider acknowledges that the aforesaid are material terms of this Agreement.
- 7.4 The Service Provider shall be required to effect at times, at short notice, the replacement, maintenance and/or repair of units. In the event of maintenance, repair and/or replacement for any reason other than necessitated by normal use or wear and tear, or due to any latent defect, the Service Provider shall effect such maintenance, repair and/or replacement and may claim the costs thereof at the rate stipulated in **Annexure "..."**, provided that the Service Provider can prove that the manufacturer's warranty in respect of such equipment has lapsed or that such warranty does not cover the specific issue.

- 7.5 The Service Provider shall acknowledge receipt of purchase orders, queries and/or requests (hereinafter collectively referred to as “instructions”) transmitted or communicated by SARS during business hours to the Service Provider’s national call centre, before close of business on the same day. The Service Provider shall furthermore respond to any instruction within 48 hours of such instruction being transmitted or communicated to the Service Provider by SARS (the “Response Period”). In the event that the Service Provider fails to comply with the Response Period, SARS reserves the right to, at its discretion, make use of a third party and hold the Service Provider liable for payment of such third party’s service fee.
- 7.6 The Service Provider will submit regular service records to SARS, the frequency of which will depend on the type of service being rendered to SARS.
- 7.7 A integrated facilities management service record will be handed to SARS’ Regional Facility Managers on a monthly basis, with total quantities and date of Services indicated. Same will be updated on completion of each service.
- 7.8 The Service Provider will conduct quality checks on a monthly basis and any problems or queries arising from such quality checks will be discussed with SARS at the monthly meetings. Decisions taken as a result of such meetings will be implemented or acted upon within the agreed timelines, having regard to the nature of the decision taken.
- 7.9 Emergency and/or ad hoc services will be provided at SARS’s request and on such terms and conditions as the Parties may agree to in writing provided such services will be related to the scope of the Tender.
- 7.10 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.
- 7.11 The Service Provider undertakes to keep and maintain proper records of all Services rendered in terms of this Agreement, in particular of the quality checks which will be conducted on site on a monthly basis. The Service Provider further undertakes to discuss the outcome of such checks with the appointed SARS Representative (i.e Facilities Coordinator).

- 7.12 The Service Provider will comply with and will procure that its personnel comply will all security measures imposed by SARS regarding security and access to the SARS premises.
- 7.13 The Service Provider will have sufficient contingency measures in place to ensure the continuation of services at all times, including during strikes or other labour actions,
- 7.14 The Service provider will have the right to appoint subcontractors, in which event the Service Provider will at all times remain responsible to SARS for fulfilment of all its obligations under this Agreement.
- 7.15 The Service Provider will ensure that it all times adheres to, and complies with all laws, including without limitation, employment law legislation and bargaining council agreements to which it is a party. The Service Provider will within 14 (fourteen) days from the Signature Date of this Agreement furnish proof to SARS that its employees are registered for UIF and PAYE.
- 7.16 The Service Provider undertakes that it shall at all times comply with the following standards and norms,
- (i) OHSAS 18001 – Occupational Health & Safety Management System Certification;
  - (ii) ISO 9001- Quality Management Systems Certification; and
  - (iii) ISO 14001 – Environmental Management Systems Certification.
- 7.17 The Service Provider undertakes that it shall instruct its branch offices to carry adequate stock upon this Agreement coming into operation in order to cater for SARS's short notice order requests.
- 7.18 The Service Provider will provide training, at no additional cost, to the staff of all companies who are contracted to render cleaning services to SARS. Such training will take place immediately upon completion of new equipment installations and shall entail showing staff how to open and refill soap dispensers, seat spray dispensers, paper towel dispensers and/or any other similar related tasks.
- 7.19 It is hereby recorded that SARS will be responsible to inform the Service Provider of the stock levels, with the exception of the items indicated in **Annexure “...”** and the Service Provider will take full responsibility.

7.20 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.

## **8 FEES AND PAYMENT**

8.1 The fees payable by SARS to the Service Provider in respect of the following Services will be fixed for the XXXXXX (XXXXXX) months contract period-

8.1.1 Rental of equipment as well as the maintenance, repair and/or replacement thereof; and

8.1.2 Deep cleaning.

8.2 The Parties hereby record that no fees will be payable in respect of the installation of the equipment.

8.3 The prices of consumables will be fixed for a period of 12 (twelve) months. The prices of consumables will be subject to an escalation of the lesser of 6% (six percent) or the actual inflation rate (CPI), as applicable and with effect from the first anniversary of the Commencement Date. SARS will issue purchase orders to the Service Provider for consumables as and when required.

8.4 A Schedule of Fees is attached as Annexure “....”.

8.5 Save where provided otherwise, fees and charges referred to in this Agreement are inclusive of VAT.

8.6 All amounts due and payable by SARS to the Service Provider shall be payable within 30 (thirty) days of receipt of a valid tax invoice provided that SARS is satisfied that the invoice correctly reflects the amount/s due by SARS in respect of the Services rendered and upon SARS's Regional Facility Manager certifying within seven (7) days after receipt of an invoice, that the Service Provider complied with the mandatory tasks and deliverables as specified in the Tender Documents.

8.7 Invoice requirements:

- (i) The Service Provider will furnish SARS's Finance Department with monthly invoices.
- (ii) The invoices must be hand delivered (or otherwise as agreed from time to time) by the Service Provider to the Facilities Coordinators concerned in the regions in which it rendered Services, whilst electronic copies must simultaneously be sent to SARS's Head Office.
- (iii) Invoices must state the following:
  - a. Name of the building serviced,
  - b. The month during which the Services were provided,
  - c. Purchase Order Number; and
  - d. Proof of delivery must be attached in the case of consumables.

## **9 DISPUTED CHARGES AND INVOICING ERRORS**

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

9.1.1 SARS shall promptly notify The Service Provider that it is disputing such amount providing a reasonable explanation of the rationale thereof; and the Parties shall promptly first address such dispute in accordance with this **Clause 9** of this Agreement;

9.1.2 if the dispute relates to (or equals in the case of disputed amounts that have already been paid) only certain of the amounts included on an invoice, then SARS shall pay the undisputed amounts in accordance with **Clause 8** above; and

9.1.3 if an invoice is identified as incorrect, then The Service Provider shall either issue a correct invoice if the amount has not yet been paid, or make a correction on the next invoice if the amount has been paid.

- 9.2 SARS shall not be responsible for paying interest on undercharged amounts, if any.
- 9.3 Any dispute arising in terms of **Clause 9.1** above and which remains unresolved for five (5) Business Days after it has arisen, shall be referred to SARS's Senior Manager: Facilities Operations and the Service Provider's Chief Financial Officer or persons of equivalent office for resolution.
- 9.4 SARS's Senior Manager: Facilities Operations and the Service Provider's Chief Financial Officer or persons of equivalent office shall meet within five (5) Business Days of the referral of the dispute to resolve the dispute.
- 9.5 In the event that the dispute remains unresolved after ten (10) days of its referral to the persons mentioned in **Clause 9.3**, either Party shall be entitled to refer the dispute for resolution in accordance with the provisions of **Clause 20** below.

## **10 TAX COMPLIANCE**

- 10.1 The Service Provider represents and warrants that as of the Commencement Date of this Agreement, The Service Provider is and will remain compliant throughout the duration thereof with all applicable laws relating to tax in South Africa.
- 10.2 In addition to the above, the Service Provider shall not later than three (3) months after each anniversary of this Agreement submit to the Executive: Procurement a valid tax clearance certificate for the current year.
- 10.3 If the Service Provider fails to provide such a certificate, SARS may terminate the agreement in accordance with **Clause 16**. SARS will have no liability to The Service Provider with respect to such termination.

## **11 WARRANTIES**

- 11.1 The Service Provider hereby represents and warrants to SARS that-
- 11.1.1 this Agreement has been duly authorised and executed by it and constitutes a legal, valid and binding set of obligations on it;
- 11.1.2 it is acting as a principal and not as an agent of an undisclosed principal;

- 11.1.3 the execution and performance of the terms and conditions of this Agreement does not constitute a violation of any statute, judgment, order, decree or regulation or rule of any court, competent authority or arbitrator or competent jurisdiction applicable or relating to the Service Provider, its assets or its business, or its memorandum, articles of association or any other documents or any binding obligation, contract or Agreement to which it is a party or by which it or its assets are bound;
- 11.1.4 it is expressly agreed between the Parties that each warranty and representation given by The Service Provider in this Agreement is material to this Agreement and induced SARS to conclude this Agreement;
- 11.1.5 it has sufficient infrastructure on a regional basis for the effective execution and/or management of this Agreement;
- 11.1.6 it shall install new equipment where necessary should the offered equipment not be compatible with the equipment currently available at SARS's offices, in compliance with SARS's requirements;
- 11.1.7 it shall adjust the quantities of consumables required as and when necessary and not over or under supply to the detriment of SARS; and
- 11.1.8 It shall render Services in a professional and skilled manner so as not to cause damage to any persons or property. In the event of any damage caused to SARS's property e.g. wall tiles etc. by the Service Provider during the installation, maintenance and/or replacement of any of the equipment, such damage shall be repaired at the Service Provider's cost.

11.2 The provisions of this Clause shall survive the termination of this Agreement.

## **12 INDEMNITIES**

12.1 The Service Provider shall-

- 12.1.1 on or before the Commencement Date and for the duration of this Agreement have and maintain in force adequate insurance coverage to cover any claim, loss and or damages to which it is liable in terms of this Agreement;



- 12.1.2 deliver to SARS upon the Signature Date of this Agreement, and on each anniversary of the Commencement Date during the term of the Agreement, proof of such insurance coverage as aforementioned;
- 12.1.3 update the aforementioned as requested by SARS, including the possible increase in the amount of cover provided in such insurance policy.
- 12.1.4 indemnify and hold SARS harmless against all losses, claims, demands, proceedings, damages, costs, charges and expenses (including reasonable legal expenses) of whatsoever nature arising out of this Agreement or at Law (hereinafter referred to as "Losses") in respect of The Service Provider's negligent or intentional breach of the provisions of this Agreement or injury or death of any person or loss of or damage to any person or property occurring by reason of the Service Provider, its employees or agents' wilful conduct or negligence during or after the execution of the Services.

### **13 LIMITATION OF LIABILITY**

- 13.1 The Service Provider agrees that, in the event of a breach of any of the provisions of this Agreement by the Service Provider, the Service Provider will be liable to SARS for losses which constitute indirect, special and/or general damages.
- 13.2 Subject to Clause 13.3, 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.
- 13.3 Notwithstanding anything to the contrary set forth in Clause 13.2 above, or this Agreement in general, the Service Provider agrees that it will be liable to SARS for
  - 13.3.1 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; and

- 13.3.2 Where such Losses arise out of the Service Provider's wilful misconduct, dishonesty or gross negligence, regardless of whether such Losses arise out of contract or delict.

## **14 HEALTH, SAFETY AND SECURITY PROCEDURES AND GUIDELINES**

- 14.1 The Service Provider will ensure that its personnel will at all times, whilst on SARS's premises, adhere to standard health, safety and security procedures and guidelines applicable to SARS's personnel, as may be amended by SARS from time to time and which are available to the Service Provider on request.
- 14.2 Should SARS at any time have reason to believe that any member of the Service Provider's personnel is failing to comply with such standard health, safety and security procedures and guidelines, SARS will be entitled to deny such member of the Service Provider personnel access to any or all of SARS's premises and the Service Provider will be required to replace such member of its personnel without delay. The Service Provider will not be relieved of its obligations under this Agreement as a result of such denial of access, and SARS will have no liability to the Service Provider with regard thereto.
- 14.3 The Service Provider hereby agrees and undertakes, in terms of the Occupational Health and Safety Act, 1993 (Act No. 85 of 1993), to ensure that the Service Provider and the Service Provider's personnel comply with the aforesaid Act. The Service Provider accepts sole responsibility for all health and safety matters relating to the provision of the Services, or in connection with or arising out of such Services for the duration of this Agreement and will ensure that neither SARS's personnel, nor any third party's health and safety is endangered in any way by The Service Provider's activities or conduct in providing the Services.
- 14.4 The Service Provider hereby agrees and undertakes to maintain its 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.

## **15 BREACH**

Should a party ("the defaulting party") commit a breach of any of the provisions of this Agreement, then any other party ("the aggrieved party") shall be entitled to require the defaulting party to remedy the breach within ten (10) Business Days, or any other reasonable time mutually agreed upon, of delivery of a written notice requiring it to do so. If the defaulting party fails to remedy the breach within the period specified in such notice the aggrieved party shall be entitled to cancel the contract and claim damages, alternatively claim immediate specific performance from the defaulting party. The foregoing is without prejudice to such other rights as the aggrieved party may have in law.

## **16 TERMINATION FOR CAUSE**

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

- 16.1.1 commits a material breach of this Agreement, which breach is not cured within ten (10) days after notice of the breach from SARS to The Service Provider;
- 16.1.2 commits a material breach of this Agreement that is not capable of being cured within ten(10) days from the notice of the breach;
- 16.1.3 commits numerous breaches of this Agreement that collectively constitute a material breach, even if cured;
- 16.1.4 is placed under voluntary or compulsory liquidation (whether provisional or final) or business rescue proceedings are commenced against The Service Provider; and/or,
- 16.1.5 fails to adhere to a final judgement against The Service Provider within a period of (10) ten Business Days or more after it comes to the notice of the defaulting party; and/or, The Service Provider makes any arrangement or composition with its creditors generally or ceases to carry on business or business rescue proceedings in terms of the Companies

Act, 2008 [Act No. 71 of 2008] are commenced against The Service Provider.

16.2 SARS may terminate this Agreement, in whole or in part, in the event SARS is unable to obtain funding to procure the Services.

16.3 Without limiting the generality of the foregoing, SARS may terminate this Agreement, by giving notice to the Service Provider, if the Service Provider fails to comply with the provisions of **Clauses 10; 22 and 23**.

16.4 SARS shall have no liability to the Service Provider with respect to a termination under this **Clause 16**.

## **17 TERMINATION FOR CONVENIENCE**

SARS may terminate this Agreement in whole or in part for convenience and without cause at any time by giving the Service Provider at least 90 (ninety) days prior written notice designating the termination date. SARS will be obliged to pay the Service Provider's fees for Services rendered up to the date of the termination of this Agreement.

## **18 FORCE MAJEURE**

18.1 In the event of any act beyond the control of the Parties, strike, war, warlike operation, rebellion, riot, civil commotion, lockout, interference by trade unions, suspension of labour, fire, accident, or (without regard to the foregoing enumeration) of any circumstances arising or action taken beyond the reasonable control of the Parties hereto preventing them or any of them from the performance of any obligation hereunder (any such event hereinafter called "force majeure event") then the party affected by such force majeure event shall be relieved of its obligations hereunder during the period that such force majeure continues (excluding payment obligations for materials purchased or equipment rented).

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

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

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

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

18.4.1 The Service Provider shall serve SARS with a written notice requesting an extension of the duration of this Agreement at least seven (7) Business Days prior to the end of the duration of this Agreement; and,

18.4.2 SARS shall consider the request and revert to the Service Provider by no later than five (5) Business Days from date of receipt of the notice referred to in **Clause 18.4.1**.

## **19 RELATIONSHIP BETWEEN THE PARTIES**

19.1 The Service Provider is an independent contractor and under no circumstances will it be partner, joint venture partner, agent, or employee of SARS in the performance of its duties and responsibilities pursuant to the Agreement.

19.2 All personnel used by the Service Provider will be the Service Provider's employees, contractors, or agents, and the entire management, direction, and control of all such persons will be and remain the responsibility of The Service Provider.

## **20 DISPUTE RESOLUTION**

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

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

- 20.2 Save in respect of those provisions of this Agreement which provide for their own remedies which would be incompatible with arbitration, or in the event of either Party instituting urgent action against the other in any court of competent jurisdiction, any dispute arising from, or in connection with, this Agreement will finally be resolved by arbitration in accordance with the Rules of the Arbitration Foundation of Southern Africa (the "Foundation") or its successor, by an arbitrator or arbitrators appointed by the Foundation.
- 20.3 This **Clause 20** will be severable from the rest of the provisions of this Agreement so that it will operate and continue to operate notwithstanding any actual or alleged voidness, voidability, unenforceability, termination, cancellation, expiry, or accepted repudiation, of this Agreement.
- 20.4 Neither Party shall be entitled to withhold performance of any of their obligations in terms of this Agreement pending the settlement of, or decision in, or any dispute arising between the Parties and each party shall, in such circumstances continue to comply with their obligations in terms of this Agreement.

## **21 ADDRESSES**

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

21.2.1 **Group Executive: Procurement**  
**570 Fehrsen Street;**  
**Brooklynbridge**  
**Linton House;**  
**Brooklyn – Pretoria**

21.3 SARS's email address for communications and/or correspondences in connection with the operation of the Services: Zino Ntsele; e-mail: ZNtsele@sars.gov.za; Telephone number: 0124228660; cellular phone number: 0820703779.

21.4 The Service Provider's physical address for **service of notices and legal processes-**

21.4.1 .....  
.....  
.....  
.....

21.5 The Service Provider's email address for communications and/or correspondences in connection with the performance of the Services: e-mail: info@.....co.za; telephone number: .....; cell number: ..... (.....)

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

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

21.7.1 the change shall become effective on the tenth (10<sup>th</sup>) (Business Day after the receipt or deemed receipt of the notice by the addressee; and

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

21.8 Any notice to a Party contained in a correctly addressed envelope and sent by prepaid registered post to it at a Party's chosen address shall be deemed to have been received on the fifth (5<sup>th</sup>) Business Day after posting; or

21.9 Any notice to a Party in a correctly addressed envelope and is delivered by hand at a Party's chosen address shall be deemed to have been received on the day of delivery, unless the contrary is proved.

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

## **22 CONFIDENTIALITY**

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

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

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

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



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

## **23 BROAD-BASED BLACK ECONOMIC EMPOWERMENT**

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

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

23.4 A failure to provide a certified copy of its BEE rating status or a failure to comply with provisions of this clause will entitle SARS to terminate the Agreement by giving the Service Provider one (1) month written notice.

## **24 PRINCIPLES GOVERNING SERVICE LEVELS**

### **24.1 GENERAL**

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

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

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

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

### **24.2 MONITORING, MEASURING AND REPORTING**

24.2.1 The Service Provider shall -

24.2.1.1 Monitor its performance of the Services and its compliance with the prescribed Service Levels on a continuous basis;

24.2.1.2 Provide SARS with a monthly performance report in respect of all Services rendered to SARS during any particular month, within 7 (seven) days of the last day of the month, which report shall include the following: -

- i. the nature of, and time and date when the Service Level Failure/s occurred;
- ii. the circumstances which led to such Service Level Failure/s;
- iii. the impact, if any, of the Service Level Failure/s on the balance of the Services.

24.2.1.3 Provide SARS with any supporting documentation and/or information, as and when requested to do so, to enable SARS to verify the Service Provider's level of performance.

24.2.2 Regardless of the requirement for the Service Provider to furnish SARS with a consolidated monthly performance Report, the Service Provider shall, in respect of each and every Service Level Failure, immediately upon it coming to the Service Provider's attention:

- i. Inform SARS of its non-compliance with the prescribed Service Level;
- ii. Investigate the non-compliance and advise SARS in writing of the cause of the Service Level Failure;
- iii. Advise SARS of the corrective actions being undertaken to remedy such Service Level Failure, as well as the status of and expected resolution time for the aforesaid Service Level Failure;
- iv. Take commercially reasonable steps to prevent such Service Level Failure from recurring in the future.

### **24.3 EXCUSED NON-COMPLIANCE**

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

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

24.3.1.2 the Service Provider would have achieved such service level but for such factor;

24.3.1.3 the Service Provider used commercially reasonable efforts to perform and achieve that service level notwithstanding the presence and impact of such factor; and

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

in which instance no service level failure will be recorded against the record of the Service Provider.

## **25 THIRD PARTY SERVICE PROVIDER COOPERATION**

25.1 As part of the Services, where appropriate and when requested by SARS to do so, The Service Provider shall provide full co-operation to any third party that might be contracted by SARS on the same engagement.

25.2 It is, however, agreed that the relationship between The Service Provider and any such party will not constitute an alliance or partnership and that neither the Service Provider nor the third party will be required to perform quality checks on the work of the other party.

## **26 SECURITY VETTING OF THE SERVICE PROVIDER RESOURCE**

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

26.2 Where SARS finds a Service Provider employee or agent to be a security risk, SARS will inform the Service Provider accordingly and the Service Provider shall

replace such employee or agent with another employee or agent with equal qualification(s) and experience, without any delay.

## **27 GENERAL**

### **27.1 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.

### **27.2 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.

### **27.3 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.

### **27.4 WAIVER**

No change, waiver or discharge of the terms and conditions of this Agreement shall be valid unless in writing and signed by an Authorised Representative of the Party against which such change, waiver or discharge is sought to be enforced, and any such change, waiver or discharge will be effective only in the specific instance and for the purpose given. No failure or delay on the part of either Party hereto in exercising any right, power or privilege under this Agreement will operate as a waiver thereof, nor will any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof, or the exercise of any other right, power or privilege.

#### **27.5 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.

#### **27.6 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 signatories of the respective Parties concerned.

#### **27.7 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.

#### **27.8 APPLICABLE LAW**

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

#### **27.9 WHOLE AGREEMENT AND AMENDMENT**

This Agreement constitute the whole of the Agreement between the Parties relating to the subject matter hereof and no amendment, alteration, addition, variation or consensual cancellation will be of any force or effect unless reduced to writing and signed by the Parties hereto or their duly Authorised Representatives. Any document executed by the Parties purporting to amend, substitute or revoke this Agreement or any part hereof, shall be titled an "Addendum" to the applicable Agreement and assigned a sequential letter to be included in the title.

#### **27.10 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.

#### **27.11 ORDER OF PRECEDENCE**

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

## **28 COSTS**

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

## **29 JURISDICTION**

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

## **30 OWNERSHIP AND RISK**

30.1 Ownership in the equipment provided to SARS by the Service Provider remains at all times vested in the Service Provider. Until such time as consumables ordered by SARS are paid for in full, ownership thereof also remains vested in the Service Provider.

30.2 The Service Provider will remove its equipment upon termination or cancellation of the Agreement and will be liable for any unreasonable damages caused by such removal of its equipment.

30.3 SARS undertakes to at all times keep the equipment at the sites where it was delivered and/or installed and to exercise due and proper care thereof.

30.4 The risk in the equipment and consumables will pass to SARS at the time of delivery. The risk in the equipment will pass back to the Service Provider upon removal thereof as provided for in clause 30.2.

## **31 INTELLECTUAL PROPERTY**

The Parties acknowledge that all right, title and interest in and to the intellectual property rights of the other Party vest in such other Party and that neither Party



has any claim of any nature in and to the intellectual property rights of the other Party.

**As Representatives for South African Revenue Service**

1. ....  
**Signature:** \_\_\_\_\_  
**Date:** \_\_\_\_\_

2. ....  
**Signature:** \_\_\_\_\_  
**Date:** \_\_\_\_\_

**And for the Service Provider**

Signed at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_  
2021

**As Representative: (full names)** : \_\_\_\_\_  
**Capacity** : \_\_\_\_\_  
**Signature** : \_\_\_\_\_