**SERVICES AGREEMENT**

entered into by and between

**THE SOUTH AFRICAN REVENUE SERVICE**

**[“SARS”]**

**and**

**…………………………………**

**Registration Number:**

**[the “Service Provider”]**

**FOR THE PROVISION OF OCCUPATIONAL HEALTH SERVICES**

**SERVICES AGREEMENT**

**PREAMBLE**

**WHEREAS** the Service Provider has been appointed by SARS to provide Occupational Health Services in the following regions –

* ………………..
* ………………..

pursuant to Request for Proposal (RFP) No. 22/2017 and the Service Provider has accepted such appointment;

**NOW THEREFORE** each Party agrees to bind itself to the terms and conditions contained in this Agreement.

1. **DEFINITIONS**
   1. **“Agreement”** means the terms and conditions as contained in this Agreement, the Request for Proposal issued by SARS as well as the Proposal submitted by the Service Provider in response to RFP 22/2017, the Service Provider’s Pricing Schedule, together with all Schedules and Annexures which may be added to the Agreement from time to time;
   2. **“Business Day”** means any day other than a Saturday, Sunday or public holiday in South Africa;
   3. **“Commencement Date”** means …………………………….. notwithstanding the date of signing of this Agreement;
   4. **“Confidential Information”** means SARS confidential information and taxpayer information as defined in the Tax Administration Act, 2011 (Act No. 28 of 2011), as well as information considered confidential in terms of any tax act administered by the Commissioner for SARS and shall include, but not be limited to SARS’s business- and financial data, methods and techniques, strategies, know-how, operating procedures, internal policies, manuals, computer infrastructure, hardware, software, operating costs and/or any reports;
   5. **“HPCSA”** means the Health Professions Council of South Africa;
   6. **“Immunisations Schedule”** means the Schedule attached hereto as **Annexure B**;
   7. **“Intellectual Property”** means any know-how not in the public domain, invention (whether or not patented), design, trade mark (whether or not registered), or material in which copyright subsists, processes, process methodology and all other identical or similar intellectual property as may exist anywhere in the world, together with any applications for registration of such intellectual property;
   8. **“Losses”** means all losses, liabilities, costs, expenses, fines, penalties, damages and claims and all related costs and expenses as determined in law;
   9. **“Medical Surveillance”** means a programme consisting of the systematic collection of health data essential for the purpose of medical evaluation, as well as medical screenings by an Occupational Health Practitioner, or in prescribed cases by an Occupational Medical Practitioner, the purpose of which is to monitor individuals who may have been exposed to occupational hazards for early symptoms of occupational disease;
   10. **“Medical Surveillance Headcount Breakdown”** means the breakdown attached hereto as **Annexure A**;
   11. **“Occupational Health Practitioner” (OHP)** means an Occupational Health Practitioner as defined in Section 1 of the Occupational Health and Safety Act, 1993 (Act No. 85 of 1993);
   12. **“Occupational Medical Practitioner”** **(OMP)** means an Occupational Medical Practitioner as defined in Section 1 of the Occupational Health and Safety Act, 1993 (Act No. 85 of 1993);
   13. **“Parties”** means SARS and the Service Provider and “Party” as the context requires, is a reference to any one of them;
   14. **“Personal Information”** shall have the same meaning ascribed thereto as in the Protection of Personal Information Act, 2013 (Act No. 4 of 2013) and shall thus include all medical information processed by the Service Provider relating to SARS employees;
   15. **“Pricing Schedule”** means the Service Provider’s Schedule of applicable rates and fees submitted in response to RFP 22/2017 attached hereto as **Annexure D**;
   16. **“Process”** shall have the same meaning ascribed thereto as in the Protection of Personal Information Act, 2013 (Act No. 4 of 2013);
   17. **“SANC”** means the South African Nursing Council;
   18. **“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;
   19. **“Services”** means the Occupational Health Services to be provided to SARS by the Service Provider, as more fully set out in **Annexure C**;
   20. **“Service Levels”** 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 E**;
   21. **“Service Level Failure”** means the Service Provider’s failure to meet any of the prescribed Service Levels;
   22. **“Service Provider”** means………………., a company with limited liability incorporated in accordance with the Laws of South Africa and with registration number ………….…….;
   23. **“Termination Date”** means …………………………………….;
   24. **“VAT”** means Value-Added Tax levied in terms of the Value-Added Tax Act, 1991 (Act No. 89 of 1991).
2. **INTERPRETATION**

Any reference in this Agreement to:

* 1. a **“Clause”** shall, subject to any contrary indication, be construed as a reference to a Clause hereof;
  2. **“Law”** shall be construed as any law (including common or customary law), or statute, constitution, decree, judgment, treaty, regulation, directive, by-law, order or any other legislative measure of any government, local government, statutory or regulatory body or court;
  3. 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;

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

* 1. if any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that it appears only in the Interpretation Clause, effect shall be given to it as if it were a substantive provision of this Agreement;
  2. when any number of days is prescribed in this Agreement, same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a day which is not a Business Day, in which case the last day shall be the next succeeding Business Day;
  3. in the event that the day for payment of any amount due in terms of this Agreement should fall on a day which is not a Business Day, the relevant day for payment shall be the subsequent Business Day;
  4. in the event that the day for performance of any obligation to be performed in terms of this Agreement should fall on a day which is not a Business Day, the relevant day for performance shall be the subsequent Business Day;
  5. any reference in this Agreement to an enactment is to that enactment as at the signature date and as amended or re-enacted from time to time;
  6. any reference in this Agreement to this Agreement or any other Agreement or document shall be construed as a reference to this Agreement or, as the case may be, such other Agreement or document as same may have been, or may from time to time be, amended, varied, negotiated or supplemented;
  7. no provision of this Agreement constitutes a stipulation for the benefit of any Person who is not a Party to this Agreement;
  8. references to day/s, month/s or year/s shall be construed as calendar day/s, month/s or year/s; and
  9. a reference to a Party includes that Party’s successors-in-title and permitted assigns.
  10. Unless inconsistent with the context, an expression which denotes -
      1. any one gender includes the other gender;
      2. the singular includes the plural and vice versa;
  11. 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.
  12. 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.
  13. 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.
  14. Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.
  15. 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.

1. **DURATION**

This Agreement will commence on the Commencement Date and endure for a period of 24 (twenty four) months until the Termination Date.

1. **SCOPE OF THE SERVICES**

The scope of the Services to be provided to SARS by the Service Provider includes –

* 1. Medical Surveillance Services;
  2. Immunisation Services; and
  3. Customer Services

The Service Provider acknowledges the headcount figures reflected in Annexures A and B attached hereto are estimates. SARS does not guarantee any volumes. The Service Provider may only charge for the actual numbers of employees at each SARS site who receives Medical Surveillance Services or Immunization Services. The nature and scope of the Services, together with the Service Provider’s obligations are more fully set out in **Annexure C** attached hereto.

1. **MANAGEMENT OF THE SERVICES**

The Service Provider must appoint a Contract Manager who will be responsible for the overall management, supervision and control of the Services provided by the Service Provider in terms of this Agreement. The Contract Manager is obliged to furnish SARS with the Service Provider’s complaints procedure within 10 (ten) days of the signing of this agreement, which procedure and proposed resolution times must be acceptable to SARS. A substitute must be appointed if the Contract Manager is not available and the SARS representative must be informed accordingly. All queries received from SARS must be attended to promptly and instructions executed swiftly.

1. **SERVICE LEVELS**

The service levels applicable to this Agreement are set out in **Annexure E** hereto. 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.

1. **SUB-CONTRACTING**

The Service Provider will have the right to appoint sub-contractors, subject to obtaining prior written approval from SARS, in which event the Service Provider will at all times remain responsible to SARS for fulfilment of all its obligations under this Agreement.

1. **FEES AND PAYMENT**

SARS shall pay the Service Provider in accordance with the Service Provider’s Pricing Schedule attached hereto as **Annexure D**, which amounts will include VAT. SARS will not be liable for payment of any invoices submitted by the Service Provider in respect of rates and fees not indicated in the Service Provider’s Pricing Schedule. SARS shall pay all undisputed invoices within thirty (30) days after SARS receives such invoice, provided the invoice is accurate and meets all relevant legislative requirements. The Service Provider shall maintain complete and accurate records of, and supporting documentation for the amounts invoiced to and payments made by SARS hereunder. The Service Provider must 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. 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. If SARS withholds any such amount, SARS shall promptly notify the Service Provider that it is disputing such amount and the basis therefor, which dispute the Parties shall promptly address. Any dispute which remains unresolved after a period of 10 (ten) days will be dealt with in terms of the dispute resolution procedures set out in this Agreement. SARS may set off any amounts due to SARS in terms of this Agreement against any amounts payable by SARS to the Service Provider.

1. **CONFIDENTIALITY OBLIGATIONS**

The Service Provider shall from the Commencement Date of this Agreement keep Confidential Information which SARS may from time to time communicate or supply to the Service Provider, as well as all Personal Information which the Service Provider acquires as a result of the Services rendered to SARS strictly confidential. The Service Provider shall safeguard Confidential Information that comes into its possession using at least the same degree of care as the Service Provider will use to protect its own confidential information and further treat all Personal Information as required in terms of applicable law. The Service Provider will ensure that it implements and maintains appropriate information security safeguards which comply with international standards.

1. **RESTRICTED USE**

The Service Provider shall use Confidential Information and Personal Information only insofar as it is necessary to execute its duties in terms of this agreement. The Service Provider shall not disclose, duplicate, transmit or otherwise disseminate in any manner Confidential Information except on a strictly “need to know” basis, neither will it Process any Personal Information except as permitted in terms of applicable law. The Service Provider confirms that all records and reports pertaining to the Services to be rendered to SARS in terms of the Agreement will remain the sole property of SARS. At the request of SARS, the Service Provider shall make available all records and reports pertaining to the Services within a reasonable period, which will not exceed seven days from date of request.

1. **UNAUTHORISED DISCLOSURE OR USE**

The Service Provider shall be liable to SARS for any Losses in the event that the Service Provider breaches its confidentiality obligations in terms of this Agreement.

1. **EXCLUSIONS**

The foregoing confidentiality obligations will not apply to any information which is lawfully in the public domain at the time of disclosure; subsequently and lawfully becomes part of the public domain by publication or otherwise; subsequently becomes available to the Service Provider from a source other than SARS - which source is lawfully entitled without any restriction on disclosure to disclose such confidential information; or is disclosed pursuant to a requirement or request by operation of law, regulation or court order, neither will the confidentiality obligations apply where a SARS employee has consented to the disclosure of his/her Personal Information.

1. **FLEXIBLE WORK HOURS**

The Service Provider is obliged to maintain flexible hours to accommodate SARS’s shift workers and operational requirements.

1. **REPORTS, REGISTERS, MEDICAL RECORDS AND CERTIFICATES**

# The Service Provider confirms that all reports, registers, medical records and certificates pertaining to the Services rendered to SARS in terms of this Agreement will remain the sole property of SARS. The Service Provider will provide the reports and certificates listed in Annexure E to SARS at the frequency rate and in the format as prescribed by SARS. The Service Provider is obliged to maintain a register of all vaccines administered to SARS employees.

1. **SECURITY AND VETTING**

SARS reserves the right at its sole and absolute discretion to do a security check on the Service Provider’s personnel, agents and/or sub-contractors involved with the performance of the Services. Where SARS finds an employee, subcontractor or agent of the Service Provider 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 equal qualification(s) and experience. The Service Provider will comply with all applicable SARS policies and procedures relating to access to SARS’ premises.

1. **INTELLECTUAL PROPERTY**

Neither Party shall acquire any rights, title or interest of any kind in any 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.

1. **WARRANTIES**

The Service Provider warrants that –

* 1. it will assign a sufficient amount of suitably qualified and skilled personnel to provide the Services in terms of this Agreement within the time frames specified by SARS from time to time;
  2. all Medical Surveillance Services will be rendered by qualified and registered Occupational Health Practitioners and/or Occupational Medical Practitioners, as may be required in terms of applicable law;
  3. it will render the Services in accordance with the highest professional standards applicable in the industry;
  4. it will ensure that at all relevant times its equipment is properly maintained and in a good working condition;
  5. it will comply with all legislation relating to registration or licensing by a regulatory authority, including the registration of personnel with the HPCSA, if applicable;
  6. it will ensure it and its personnel, agents and sub-contractors at all times comply with the Occupational Health and Safety Act, 1993 (Act No. 85 of 1993);
  7. it will comply with all legislation relating to the employment relationship between the Service Provider and its employees and warrants that it will not commit any contraventions 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 collective bargaining agreements and hereby fully indemnifies SARS against all legal consequences of any nature whatsoever which arises in connection with such non-compliance;
  8. it will take all reasonable precautions to preserve the integrity of the Confidential and Personal Information obtained in the exercise of its obligations and to prevent corruption, or loss of such information in the performance of its obligations in terms of this Agreement;
  9. it will implement and maintain appropriate information security safeguards to protect the Personal Information of SARS employees, as well as the Confidential Information of SARS;
  10. all employee files, records and reports will be complete and adhere to professional quality standards;
  11. it will render the necessary disengagement assistance to SARS upon termination of this Agreement;
  12. it will familiarise itself with all SARS’ policies and procedures relevant to the Services;
  13. its personnel, agents and sub-contractors will at all relevant times act in the utmost of good faith; and
  14. it is acting as a principal and not on behalf of an undisclosed principal in terms of this Agreement.
  15. this Agreement has been duly authorised and executed by it and constitutes a legal, valid and binding set of obligations on it; and
  16. 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.

1. **MISREPRESENTATION**

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

1. **FORCE MAJEURE**

In the event of any act beyond the control of the Parties or of any circumstances arising beyond the reasonable control of the Parties hereto, preventing them from the performance of any obligation hereunder, then the Party affected by such *force majeure* shall be relieved of its obligations hereunder during the period that such *force majeure* continues. 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*, provided always that a written notice shall be promptly given of any such inability by the affected Party. Any Party invoking *force majeure* shall upon termination of such *force majeure* give prompt written notice thereof to the other Party. Should the *force majeure* continue for a period of more than thirty (30) calendar days then either Party has the right to cancel this Agreement.

1. **LIMITATION OF LIABILITY**

The Service Provider shall be liable to SARS for any direct damages incurred by SARS as a result of the breach of the terms and conditions contained in this Agreement. The Service Provider shall also be liable to SARS for all Losses suffered as a result of a breach of Confidential Information, the unlawful processing of Personal Information, the infringement of a third Party’s intellectual property rights and/or any fraudulent acts committed by the Service Provider or any of its employees, subcontractors or agents, whether such Losses constitute direct, indirect, consequential or special damages.

1. **INDEMNITY AND INSURANCE**

The Service Provider shall indemnify and hold SARS harmless against all Losses (including reasonable legal expenses on a full indemnity basis) of whatsoever nature arising out of this Agreement or at law in respect of injury or death of any person or loss of or damage to any property occurring by reason of the Service Provider’s wilfulness or gross negligence during or after the execution of the Services. The Service Provider will for the duration of this Agreement have and maintain sufficient public liability insurance as well as professional indemnity insurance, to cover any Losses for which it may be liable in terms of this Agreement. The Service Provider will at any time during the contract term, upon SARS’ request, provide proof of insurance coverage. SARS reserves the right to demand that the Service Provider increases the amount of cover provided for in terms of the insurance policies it holds.

1. **TAX COMPLIANCE**

The Service Provider represents and warrants that as of the Commencement Date of this Agreement it is and will remain compliant with all applicable tax laws in South Africa for the duration of this Agreement. Non-compliance will constitute a material breach which will entitle SARS to terminate this Agreement summarily. SARS will have no liability to the Service Provider with respect to such termination. The Service Provider shall not later than one (1) calendar month after each anniversary of this Agreement submit to the Executive: Procurement a valid tax clearance certificate for the current year. If the Service Provider fails to provide such a certificate, SARS may terminate the Agreement in accordance with this clause. The Service Provider will ensure that any sub-contractors appointed to execute a portion of this Agreement are and also remain tax compliant for the entire contract term, failing which SARS may instruct the Service Provider to cancel its agreement with the non-compliant sub-contractor. The Service Provider will ensure that it procures the necessary consent from its sub-contractors to enable SARS to verify such sub-contractors’ tax compliance status during the contract term.

1. **BROAD-BASED BLACK ECONOMIC EMPOWERMENT**

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 “BBBEE Act”) as amended from time to time, and the Codes of Good Practice issued in terms of the BBBEE Act. Upon signature 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 BEE rating status from an agency accredited by the South African National Accreditation System (SANAS) or the Independent Regulatory Board for Auditors (IRBA).

1. **DISPUTE RESOLUTION**

If a dispute between the Parties arises out of or is related to this Agreement, the Parties shall meet and negotiate in good faith to attempt to resolve the dispute. If after 20 (twenty) Business Days from the date upon which the dispute was declared by a Party by written notice the dispute is not resolved, the dispute will finally be resolved through 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, save in the event of either Party instituting urgent action against the other in any court of competent jurisdiction.

1. **BREACH**

The Service Provider accepts that it is a material term of this Agreement that the Service Levels prescribed in **Annexure E** be maintained for the entire duration of the Agreement. The Parties agree that multiple Service Level Failures (i.e. more than three) will be sufficient proof of persistent non-compliance by the Service Provider and will constitute a material breach which may result in the immediate termination of this Agreement on the basis of mal-performance. Should a defaulting Party commit a breach other than a material breach, then the aggrieved Party shall be entitled to require the defaulting Party to remedy the breach within 10 (ten) Business Days of delivery of a written notice requiring it to do so, or any other reasonable time agreed upon between the Parties. If the defaulting Party fails to remedy such breach within the period specified in the breach notice, or in the event of a material breach, the aggrieved Party shall be entitled to cancel the contract and claim damages, alternatively to claim immediate specific performance of the defaulting Party’s obligations. The foregoing is without prejudice to such other rights as the aggrieved Party may have in law.

1. **TERMINATION**

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 commits a breach of this Agreement which is either material or which the Service Provider has failed to remedy within the specified period; if the Service Provider is placed under voluntary or compulsory liquidation (whether provisional or final), if business rescue proceedings are commenced against the Service Provider; if a final judgement 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; if it makes any arrangement or composition with its creditors generally or ceases to carry on business; or if for the sake of convenience SARS wishes to terminate the Agreement. Upon termination of this Agreement for any reason the Service Provider must promptly return to SARS all Confidential Information, Personal Information, documentation, records, reports and registers in its possession or control, including electronically stored information.

1. **DISENGAGEMENT ASSISTANCE**

The Service Provider hereby acknowledges 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, documentation, records or reports, or any necessary assistance to SARS that will be crucial to effect the immediate and seamless transition of the Services. The Service Provider will ensure that the disengagement process is completed within 30 (thirty) days of termination of this Agreement.

1. **SALE, ACQUISITION, MERGER OR CHANGE OF CONTROL**

SARS may terminate this Agreement by giving the Service Provider written notice designating a date upon which such termination shall become effective in the event of a sale, acquisition, merger, or other change of control of the Service Provider (a “Change Event”) where such Change Event is achieved, directly or indirectly, in a single transaction or series of related transactions, or in the event of a sale of all or substantially all of the assets of the Service Provider in a single or series of related transactions.  The Service Provider must notify SARS of any Change Event within five (5) Business days after becoming aware thereof, upon which SARS may within 1 (one) calendar month of such notification opt to terminate the Agreement. No sale, acquisition, merger or other change of control shall be effective against and legally binding on SARS, where the prior written consent of SARS was not obtained.

1. **DOMICILIUM**

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

# SARS’s physical address for service of notices and legal Processes is -

# *The Group Executive: Procurement*

*570 Ferhsen Street*

*Brooklyn Bridge*

*Linton House*

*Brooklyn*

*Pretoria*

# The Service Provider’s physical address for service of notices and legal Processes is -

*The Chief Executive Officer*

*……………………………….*

*……………………………….*

*……………………………….*

*……………………………….*

# 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;

# Any Party may by written notice to the other Party change its chosen address to another address, provided that the change shall only become effective on the seventh (7th) Business Day after the receipt or deemed receipt of the notice by the addressee and 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;

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

# 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.

1. **GENERAL**
   1. **Governing Law and Jurisdiction**

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. 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.

* 1. **Severability**

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

* 1. **Whole Agreement and Amendments**

This Agreement constitutes the whole of the Agreement between the Parties relating to the subject matter hereof and no amendment or variation will be of any force or effect unless reduced to writing and signed by the Parties hereto.

* 1. **Waiver**

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

* 1. **Survival**

Any provision of this Agreement which requires compliance with or adherence to subsequent to the Termination Date shall survive termination of this Agreement and will continue in full force and effect.

* 1. **Assignment and Cession**

Neither Party shall be entitled to assign, cede, 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.

* 1. **Relationship between the Parties**

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

* 1. **Legislative Compliance**

The Service Provider shall ensure that in the execution of its duties under this Agreement the Service Provider shall at all times comply with any applicable legislation, including but not limited to legislation regulating tax compliance, the protection of personal information and labour related matters.

* 1. **Order of Precedence**

In the event of a conflict between the documents comprising this Agreement such conflict shall be resolved in accordance with the order of precedence (in descending order of priority) as follows (i) this Agreement (ii) any Annexures and/or Schedules to this Agreement and (iii) the Service Provider’s Proposal.

* 1. **Consents**

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, except where expressly provided as being in the sole discretion of a Party. An approval, acceptance, consent or similar action by a Party under this Agreement 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.

* 1. **Counterparts**

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same Agreement as at the date of signature of the Party last signing one of the counterparts. The Parties undertake to take whatever steps may be necessary to ensure that each counterpart is duly signed by each of them without delay.

* 1. **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. The Service Provider may under no circumstances use SARS’ logo or trademarks for any purpose whatsoever.

* 1. **Costs**

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

* 1. **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 SARS.

**SIGNED BY SARS ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ 2018 at PRETORIA**

**Group Executive: Employee Relations**

**Date:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Acting Group Executive: Procurement**

**Date:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**SIGNED BY THE SERVICE PROVIDER ON THIS \_\_\_ DAY OF \_\_\_\_\_\_\_\_\_\_\_\_\_ 2018 at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**FULL NAMES:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**CAPACITY:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**DATE:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**WITNESSES:**

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

**FULL NAMES:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**DATE:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

**FULL NAMES:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**DATE:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_