**SERVICES AGREEMENT**

Entered into by and between

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

**[“SARS”]**

and

**…………………………………………………………………..**,

a company incorporated in accordance with the laws of South Africa and with

registration number ……………………………………………………

**[“THE SERVICE PROVIDER”]**

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1. **INTERPRETATION**
   1. The head notes to the Clauses of this Agreement are for reference purposes only and will not govern or affect the interpretation of nor modify nor amplify the terms of this Agreement.
   2. Unless inconsistent with the context, the words and expressions have the following meanings and similar expressions will have corresponding meanings:
      1. **“Agreement”** means the terms and conditions as contained in this Agreement; SARS’s Bid Requirements Specifications under RFP 17/2023 and the Service Provider’s proposal, which are incorporated herein by reference, including all annexures and/or schedules to this Agreement;
      2. **“Amount at Risk”** means twenty per cent (20%) of the total monthly amount invoiced to SARS which may be at risk in respect of Service Credits due to SARS resulting from any Service Level Failures;
      3. **“Applicable Law”** means any of the following to the extent applicable to the Service Provider and where applicable, to SARS or the Services-
2. Any statute, regulation, policy, by-law, ordinance or subordinate legislation;
3. The common law;
4. Any binding court order, judgment or decree;
5. Any applicable industry code of conduct, policy or standard enforceable by law; or
6. Any applicable direction, policy or order that is given by a regulatory authority;
   * 1. **“Authorised Representatives”** mean those signatories authorised by SARS and the Service Provider respectively to sign this Agreement;
     2. **“Business Day”** means any day other than a Saturday, Sunday or public holiday in South Africa;
     3. **“Commencement Date”** means ……………………………………….. 2024, notwithstanding the date of signing of this Agreement;
     4. **“Commercially Reasonable Efforts”** means taking such steps and performing in such a manner as a well-managed company would undertake where such company was acting in a prudent and reasonable manner to achieve the particular result for its own benefit, provided always that such steps are within the reasonable control of the Party;
     5. **“Confidential Information”** means, without limitation–
7. the details of the Services contemplated in this Agreement;
8. all confidential material of either Party;
9. pricing information relating to the Services contemplated in this Agreement;
10. the terms of this Agreement;
11. information or material proprietary to, or deemed proprietary to a Party;
12. information designated as confidential by the Parties after consultation;
13. information acquired by the other Party solely by virtue of the provision of the Services contemplated in this Agreement;
14. the trade secrets of the Parties;
15. information or technology in which either Party has Intellectual Property rights;
16. all medical information relating to a SARS employee or any family/household member of an employee, who is entitled to benefit from the employee assistance programme in terms of this Agreement; and
17. SARS confidential information and taxpayer information as defined in the Tax Administration Act, 2011 (Act No. 28 of 2011), as well as any other information considered confidential in terms of any other tax Act administered by the Commissioner for SARS.
    * 1. **“EVP”** means Employee Value Proposition;
      2. **“Intellectual Property”** means all computer programs, software, source code, object code, programme interfaces, specifications, operating instructions, compilations, lists, databases, systems, operations, processes, methodologies, technologies, algorithms, techniques, methods, designs, circuit layouts, plans, reports, data, works protected under the Copyright Act, 1978 (Act No. 98 of 1978), works of authorship, video recordings, audio recordings, photographs, models, samples, substances, trade secrets, formulae, know-how, show-how, database rights, user interface designs, benchmark data, architecture, utility models, Confidential Information, concepts and ideas of any nature (including of a technical, scientific, engineering, commercial, strategic, financial, marketing or organizational nature), inventions, discoveries, drawings, notes, research and research outcomes, manuals, documentation, training materials, job aids, trademarks, service marks, logos, slogans, corporate, business and trade names, domain names, trade dress, brand names and other indicia of origin, regardless of whether Intellectual Property rights actually exist in any such items, and any other tangible or intangible items in which Intellectual Property rights may exist, as may occur anywhere in the world, and any applications for registration of such intellectual property, and includes all Intellectual Property rights in any of the foregoing;
      3. **"Key Account Manager"** means an employee of the Service Provider who has been nominated and dedicated to administer and manage the performance of the Services. The Key Account Manager shall be deemed to be material and integral to the provision of the Services;
      4. **“Key Personnel”** means those members of staff of the Service Provider who have been dedicated to the provision of the Services to SARS, and on the strength of whose expertise the Service Provider warrants the ability to provide the Services;
      5. **“Parties”** means SARS and the Service Provider and “Party” as the context requires, is a reference to any one of them;
      6. **“Penalty Schedule”** means the Schedule attached hereto as **Annexure “B”**;
      7. **“Performance Schedule”** means **Annexure “A”** annexed hereto and titled “Scope of Services and Performance Standards”;
      8. **“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 personal information processed by the Service Provider relating to SARS employees, as contemplated in this Agreement. In this regard, the Service Provider is required to sign the attached Personal Information Processing Addendum attached hereto as **Annexure “D”** to this Agreement;
      9. **“RFP 17/2023”** is, subject to any contrary indication, a reference to SARS’s invitation to prospective bidders to tender for the Services specified in RFP 17/2023 dated …………………………………., which is incorporated herein by reference thereto;
      10. **“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**;
      11. **“SARS Designated Representative”** means the SARS employee designated / appointed in terms of this Agreement, or his/her appointed delegate, as the Person who will interface with the Service Provider on all matters relating to the general administration of this Agreement, who will manage the overall performance of the Service Provider over the contract term and to whom all communications regarding this Agreement must be addressed;
      12. **“Service Credit”** means a penalty payable by the Service Provider to SARS in respect of a Service Level Failure calculated as set out in **Clause 10.4.2** and **Annexure “B”**;
      13. **“Service Level”** means a qualitative standard of performance of the Services that the Service Provider is required to satisfy in its performance of the Services, as are detailed in thePerformance Schedule;
      14. **“Service Level Failure”** means the Service Provider’s failure to meet any of the prescribed Service Levels;
      15. **“Service Provider”** means …………………………………………., a company incorporated in accordance with the Laws of South Africa and with registration number ………………………………………….;
      16. **“Services”** means the provision of an employee assistance programme by the Service Provider, as more fully set out in RFP 17/2023 and in this Agreement, including functions or responsibilities not specifically mentioned herein but which are reasonably and necessarily required for the proper performance and provision of the Services;
      17. **“Termination Date”** means ………………………………..; and
      18. **“VAT”** means Value-Added Tax levied in terms of the Value-Added Tax Act, 1991 (Act No. 89 of 1991).
    1. Any reference in this Agreement to-
       1. a **“Clause”** shall, subject to any contrary indication, be construed as a reference to a clause hereof; and
       2. a **“Person”** refers to any Person, firm, company, corporation, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the foregoing.
    2. 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 in writing;
       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.
    3. Unless inconsistent with the context, an expression which denotes:
       1. any one gender includes the other gender; and
       2. the singular includes the plural and *vice versa*;
    4. 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.
    5. 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.
    6. 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.
    7. Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.

* 1. 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. **APPOINTMENT**
   1. SARS issued RFP 17/2023 inviting service providers to submit proposals for the provision of an employee concierge programme.
   2. The Service Provider has submitted a proposal to SARS in order to render the Services. SARS accepted the proposal in terms of Category A and hereby appoints the Service Provider to provide the Services, which appointment the Service Provider accepts.
   3. The Service Provider will at all times perform the Services in accordance with this Agreement.
   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.
2. **SCOPE OF THE SERVICES**

3.1 To assist employees with various lifestyle responsibilities and tasks, the scope of services is to provide a national, customised service to our employees within a turnaround time of between 24 and 48 hours. This includes, but are not limited to:

* + 1. Personal Shopping: The goal of these personal shopping services is to simplify the shopping process, save time, and help employees make well-informed purchasing decisions either online or in physical stores. These services cater to various shopping needs and preferences and provide employees with discount offerings:
    2. Grocery and Household Shopping: Creating grocery lists, purchasing groceries and household essentials, and arranging for same-day delivery or pickup.
    3. Technology and Electronics: Recommending and purchasing electronics, gadgets, or tech accessories based on specific needs and preferences.
    4. Clothing and Fashion: Assisting with shopping for clothing, accessories, and footwear, including selecting outfits for specific occasions or seasons within the timeline and budgetary requirements.
    5. Gift Shopping: Finding and selecting thoughtful gifts for birthdays, holidays, anniversaries, or special occasions, and handling gift wrapping and delivery within a 24-hour turnaround time.
    6. Meal Delivery: Assisting with information on nutritious meal delivery services tailored to dietary needs and preferences within a 24-hour turnaround time.
    7. Personal Shopping Research: Conducting research on specific products or services to provide recommendations, price comparisons, and reviews.
    8. Returns and Exchanges: Handling returns, exchanges, or refunds for items that may not meet expectations.
    9. Online Shopping Assistance: Helping individuals navigate online shopping platforms, compare products, and make secure online purchases. Offer special discount rates for SARS employees at major supermarket chains.
    10. Childcare: These services are designed to support working parents by taking care of various aspects of childcare; allowing them to focus on their professional responsibilities with peace of mind. The services should include:

1. All employees who are parents of school going children (Grades R to 12) will have access to a homework helpline that assists all pupils with assignments in all major South African languages.
2. After-School Care: help find service providers that can assist employees with Au pair services that will provide after-school care, transportation from school to activities or home, and supervision until parents are available at a reduced rate for SARS employees.
3. Parent-Teacher Meeting Support: Coordinating schedules and reminders for parent-teacher meetings and helping parents prepare for these meetings.
4. Birthday Party Planning: help find party venues, party supplies and event coordinators to assist working parents to organize and plan birthday parties or special events for children, at reduced rates.
5. Childcare Resource Referrals: Providing information on local childcare providers, daycare centres, and babysitting resources for parents within 24 hours.
6. School Enrolment Assistance: Assisting parents in the enrolment process when enrolling their child in a new school or program.
   * 1. Senior care options: Helping employees manage the well-being and care of elderly family members. These services aim to provide support, convenience, and peace of mind to employees who are responsible for the care of seniors in their families. The response time for assisting employees with information about service providers, within a budget range and specific location, is expected within 24 hours of request. The services include:
7. Finding reliable elder care providers assisting with daycare arrangements or helping with senior care options.
8. Assisted Living Placement: Assisting employees in finding suitable assisted living facilities or nursing homes for their elderly relatives, considering factors like location, amenities, and affordability.
9. Home Care Services: assisting employees in finding information on service providers related to in-home caregivers who can help with daily activities, medication management, and companionship for seniors who prefer to stay in their homes.
10. Meal Delivery: Finding nutritious meal delivery services tailored to dietary needs and preferences.
    * 1. Travel and Event Planning: Concierge services to assist with planning vacations, booking flights and accommodation, and organizing events or special occasions, such as birthdays or anniversaries. Employees can speak to dedicated travel agents who can not only negotiate exceptional deals on accommodation and transport, but can also schedule visa meetings, provide inoculation information, and arrange activities for the holiday. Basically, employees only have to phone, say where they want to go (nationally or internationally), and pack their bags. The request for information is within 24 hours and for booking/confirmation of services such as flights, hotels, transportation, and events with a turnaround time of 24-48 hours.
      2. Pet Services: Assisting employees with pet care, such as finding pet sitters, grooming services, or arranging veterinary appointments. The objective is to support by making it easier to care for their pets while managing their work and personal lives. The response time for a request for information is within 24 hours. The pet services include:
11. Pet Sitting: Assist employees in finding experienced pet sitters to care for pets when employees are away from home, including feeding, exercise, and companionship.
12. Dog Walking: Scheduling regular dog walking services to ensure dogs get the exercise and outdoor time they need to keep them physically and mentally stimulated.
13. Pet Boarding: Finding and booking reputable pet boarding facilities for employees' pets when they need to travel.
14. Pet Transportation: Arranging transportation for pets to and from the veterinarian, grooming appointments, or other destinations.
15. Grooming Services: Booking grooming appointments for pets and arranging for groomers to come to the employee's home if available.
16. Veterinary Appointments: Coordinating and scheduling vet visits for regular check-ups or medical concerns.
17. Pet Supplies: Assisting in purchasing pet food, supplies, and medications, and delivering them to the employee's home.
18. Pet Training: Finding and scheduling pet training sessions or classes to address behaviour issues or improve obedience.
19. Emergency Pet Care: Providing access to emergency pet care services in case of illness or injury.
20. Pet Adoption Assistance: Offering information and resources on pet adoption, including helping employees find local animal shelters and rescue organizations.
21. Pet-Friendly Travel Planning: Assisting in providing information about pet-friendly accommodation and travel arrangements when employees wish to travel with their pets.
22. Pet Insurance Information: Providing information and recommendations on pet insurance options to help employees protect their pets' health.
23. All requests for information within a turnaround time of 24 hours and assistance with bookings within 48 hours.
    * 1. Home Services: These services include such as home repairs, cleaning services, lawn care, or finding contractors for home renovations. The nature of the service is to assist employees in obtaining relevant service providers, based on location and affordability to assist with the following:
      2. House Cleaning: Obtain information and assist with scheduling regular or once-off house cleaning services to keep the home tidy and organized.
      3. Home Repairs and Maintenance: Obtain information and assist with scheduling of home repairs, maintenance tasks, and renovations, such as plumbing, electrical work, or painting.
      4. Lawn and Garden Care: Obtain information and assist with scheduling lawn mowing, landscaping, and gardening services to maintain the exterior of the home.
      5. Appliance Repair: Arranging appliance repair or maintenance services for household appliances such as refrigerators, washing machines, or ovens.
      6. Pest Control: Obtain information and assist with scheduling pest control services to address infestations or prevent pest problems.
      7. Home Security: Obtain information and assist with scheduling of appointments for setting up and maintaining home security systems, including alarm monitoring and surveillance cameras.
      8. Home Organization: Obtain information and assist with scheduling appointments with resources to assist with decluttering, organizing, and optimizing living spaces for better functionality.
      9. Moving Services: Coordinating professional movers and packing services when employees are relocating.
      10. Real Estate Services: Assisting in finding realtors and property listings. Arranging for home inspections when buying or selling a property.
      11. Interior Design and Decor: Offering guidance and resources for interior design, furniture selection, and home decor.
      12. Smart Home Setup: Setting up and configuring smart home devices and automation systems for convenience and security.
      13. Emergency Services: Providing access to emergency home repair or locksmith services for urgent situations with an expected turnaround time of two hours.
      14. Requesting information regarding home services like repairs or cleaning is expected within 24 hours, and if assistance is needed to set up appointments, it is expected to be within 48 hours. The service providers will be paid for services delivered by the employees.
      15. Events Tickets: Acquiring tickets for concerts, shows, or sporting events be done within 24 – 48 hours of the requests.
      16. Reservations: Assistance with restaurant reservations or movies to be done on the same day, depending on availability. Offer special discounts on movie tickets and refreshments.
      17. Online Shopping: Assisting employees with online purchases, including selecting products, making secure payments, and arranging for delivery. These services aim to streamline financial transactions, reduce the administrative burden, and enhance financial security for online transactions.

* 1. SARS will monitor and review the Service Provider’s performance in terms of this Agreement. SARS, however, reserves the right, at its exclusive discretion, to appoint a third party to monitor and review the Service Provider’s performance in terms of this Agreement.
  2. Service Provider Performance Monthly Reporting.

Monthly, quarterly and annual performance reporting will include:

* + 1. Programme utilisation per service, location (region/office), service channel (website or mobile app), collection, and drop off;
    2. Average service turnaround time per type of service;
    3. Employee satisfaction rate; and
    4. Benefit to employee: time and cost savings
    5. Recommendations to customise service based on employee profile and utilisation rate; and
    6. Other performance elements based on business requirements.

1. **DURATION** 
   1. This Agreement commences on the Commencement Date and continues for a period of 36 (thirty six) months, until Termination Date, unless terminated earlier in terms of the provisions of this Agreement.
2. **PAYMENT**
   1. In consideration for the provision of the Services, SARS shall pay the Service Provider fees in accordance with **Annexure “C”** hereto, which fees are inclusive of VAT.
   2. Subject to **Clauses 6** and **7** below, SARS shall pay all undisputed invoices within thirty (30) days after SARS receives such invoice, provided the invoice is accurate and meets all legislative and other requirements in terms of this Agreement.
   3. SARS may set off any amounts due to SARS in terms of this Agreement against any amounts payable by SARS to the Service Provider.

1. **INVOICING AND RECORDS**
   1. The Service Provider shall invoice SARS for Services performed pursuant to this Agreement on a monthly basis in arrears on or before the fifth (5th) Business Day of the month following the month in which the Service Provider rendered the Services to SARS.
   2. Each invoice shall contain or have attached such information, and be in such format and on such media as SARS may reasonably request and, at the minimum contain-
      1. a statement of the total amount due to the Service Provider for the Services rendered less the amount of financial penalties credited to SARS for Service Level Failures calculated with reference to the agreed Service Levels, together with a schedule describing the Services rendered during the relevant month; and
      2. the SARS purchase order number.
   3. The Service Provider shall verify that each invoice is complete and accurate and that it conforms to the requirements of this Agreement (including by carrying out detailed checks of each invoice) before issuing the invoice to SARS.

* 1. The Service Provider shall deliver all invoices to the SARS Designated Representative and copies to other SARS departments as instructed to do so from time to time by SARS.
  2. The Service Provider shall maintain complete and accurate records of, and supporting documentation for, the amounts invoiced to and payments made by SARS hereunder.
  3. Within ten (10) days after SARS’s request, the Service Provider shall provide SARS with any documentation or information reasonably required by SARS in order to verify the Service Provider’s compliance with the requirements of this Agreement.
  4. The Service Provider shall for the duration of this Agreement and for a period of five (5) years after the termination of this Agreement, maintain a complete audit trail of the Services performed under this Agreement, sufficient to permit a complete audit thereof. The Service Provider shall provide SARS and SARS’s auditors access at reasonable times to information, records and documentation relating to the Services for the purpose of performing audits, examinations and inspections in order to verify the Service Provider’s compliance with the terms of this Agreement and/or to enable SARS to comply with the requirements of any regulatory authority and/or regulators and governmental entities having jurisdiction.
  5. All costs incurred in performing audits under this **Clause 6** will be borne by SARS unless audit findings reveal the Service Provider’s non-compliance with the terms of this Agreement and/or requirements of a regulatory authority or similar institution having jurisdiction over SARS and/or the Service Provider, in which event the Service Provider shall be liable for the audit costs.
  6. SARS shall not be obliged to pay any amounts that are invoiced more than one hundred and twenty (120) days after the first (1st) day of the month in which the Service Provider was obliged to deliver such invoice.

1. **DISPUTED CHARGES AND INVOICING ERRORS**

* 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-
     1. SARS shall promptly notify the Service Provider that it is disputing such amount, providing a reasonable explanation of the rationale therefor; and the Parties shall promptly first address such dispute in accordance with this **Clause 7**;
     2. If the dispute relates to (or equals in the case of disputed amounts that have already been paid) only a percentage of the invoiced amounts, then SARS shall pay the undisputed amount in accordance with **Clause 5.2** above; and
     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.
  2. Any dispute arising in terms of **Clause 7.1** above and which remains unresolved for five (5) Business Days after it has arisen, shall be referred by either Party to …………………………………………. And…………………………………. or persons of equivalent office or their designees for resolution.
  3. The persons mentioned in **Clause 7.2** above shall meet within five (5) Business Days of the referral of the dispute to resolve such dispute.
  4. In the event that the dispute remains unresolved after ten (10) days of its referral to the persons mentioned in **Clause 7.3**, either Party shall be entitled to refer the dispute for resolution in accordance with the provisions of **Clause** **22** below.

1. **THE SERVICE PROVIDER’S OBLIGATIONS**
   1. The Service Provider shall-
      1. nominate a Key Account Manager;
      2. render the Services to SARS in accordance with this Agreement;
      3. ensure that its Key Personnel and consultants devote such time, attention and skill in performing the Services;
      4. assign suitably qualified and skilled personnel to provide the Services. More specifically, the Service Provider undertakes to ensure that all Services are rendered by suitably qualified and registered professionals, as may be prescribed by Applicable Law;
      5. comply with all other Applicable Law;
      6. render the Services to SARS in accordance with the highest professional standards;
      7. at all times during the term of this Agreement, observe and perform its duties and tasks and render the Services with due diligence, efficiency and economy and in a professional, independent, objective, equitable and fair manner, taking into account all appropriate medical evidence and the circumstances of a particular employee, with due regard to the terms of this Agreement and any Applicable Law;
      8. take all reasonable precautions to preserve the integrity of the information obtained in the exercise of its obligations, and to prevent corruption, leakage or loss of such information in the performance of its obligations in terms of this Agreement;
      9. ensure that the medical professionals and/or other related experts selected by the Service Provider to assess the referrals, are at all relevant times duly qualified and licensed professionals and/or experts in terms of Applicable Law and will maintain approved professional standards;
      10. provide appropriate electronic data interface systems and procedures to ensure seamless electronic access by SARS to the Services, as well as to any relevant information; and
      11. attend all meetings arranged by SARS for the purpose of discussing or managing the Services.
2. **PERSONNEL AND PROJECT MANAGEMENT**
   1. The Service Provider will provide a Key Account Manager and SARS will provide a SARS Designated Representative.
   2. The Parties will inform each other in writing of the persons appointed as the Key Account Manager and SARS Designated Representative respectively, on Commencement Date. If there is a need and a new SARS Designated Representative or Key Account Manager is appointed, the Parties will inform each other, in writing, within seven (7) days of such new appointment.
   3. In the event that the Key Account Manager takes leave or is unavailable for a period of more than twenty four (24) hours, the Service Provider undertakes to furnish SARS with the name of a person who is familiar with SARS’s account to act as Key Account Manager for the time being.

* 1. In order to manage the Services provided by the Service Provider to SARS, the Parties agree that meetings will be arranged on the following basis-

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

* 1. The Service Provider may not change the Key Personnel presented in its response to RFP 17/2023, without the prior written consent of SARS, and in this regard:
     1. The Service Provider may make a request to SARS to replace a member of the Key Personnel, where such member has become incapacitated and/or unable to perform his/her duties under the Agreement: Provided that the proposed replacement has similar or better qualifications and experience.
     2. Where SARS approves the replacement of a member of the Key Personnel, the Service Provider shall, at its cost, provide a replacement acceptable to SARS within the time period then prescribed by SARS.
     3. Should SARS, in its discretion reasonably consider a member of the Key Personnel to be incompetent or unsatisfactory, the Service Provider will have to replace at its cost, that member with one having similar or better credentials and in line with the timeframes then stipulated by SARS.

1. **PRINCIPLES GOVERNING SERVICE LEVELS**
   1. **PERFORMANCE STANDARDS**

The Performance Schedule sets out the respective Service Levels that will apply to the Services.

* 1. **MONITORING, MEASURING AND REPORTING**
     1. The Service Provider shall-
        1. be responsible for monitoring, measuring, and reporting on the Service Provider’s compliance with the Service Levels;
        2. monitor its performance of the Services with respect to the Service Levels on a continuous basis and measure and provide SARS with a monthly report on such performance (a “Monthly Performance Report”);
        3. within seven (7) Business Days after the end of each month deliver to SARS the Monthly Performance Report with respect to the Service Provider’s performance during such month;
        4. provide SARS with detailed supporting documentation and/or information for each Monthly Performance Report in soft-copy format as reasonably requested by SARS;
        5. include the following information in each Monthly Performance Report with respect to any failure to achieve a Service Level during a month (a “Service Level Failure”)-
           1. the nature of the Service Level Failure;
           2. the nature of, and time and date when, each incident that led to such Service Level Failure during the month arose;
           3. the impact of the Service Level Failure on other parts of the Services;
           4. the direct and root cause of the incident or other event that gave rise to the Service Level Failure; and
           5. a summary of the steps the Service Provider has taken to determine the root cause of the Service Level Failure, the steps the Service Provider has taken to resolve the Service Level Failure and the steps the Service Provider has taken to reduce, to the extent reasonably possible, the likelihood that such Service Level Failure will recur.
     2. Any failure by the Service Provider to perform any of the functions set forth in this **Clause 10.2** during a month will constitute a Service Level Failure in itself.
  2. **REQUIRED ACTIONS IN RESPECT OF SERVICE LEVEL FAILURES**
     1. In respect of any Service Level Failure, the Service Provider shall-
        1. Investigate, assemble, and preserve pertinent information with respect to, and, as further described in **Clause 10.2** report on the causes of the Service Level Failure, including performing an appropriate direct and root cause analysis of each incident which led to the Service Level Failure;
        2. propose and execute a written corrective action plan, if requested to do so by SARS that is sufficiently robust and detailed, taking into account the nature of the Service Level Failure;
        3. advise SARS of the status of remedial efforts being undertaken with respect to such Service Level Failure/s; and
        4. take the necessary Commercially Reasonable Efforts to employ preventive measures so that the Service Level Failure does not recur, including allocating additional personnel and resources to the performance of the Services, and proposing changes to the procedures the Service Provider uses to perform the Services.
  3. **RULES GOVERNING SERVICE CREDITS**
     1. **AMOUNT AT RISK**
        1. The Service Provider shall pay any Service Credits due to SARS with respect to each Service Level Failure, as set out in the Penalty Schedule attached hereto and as further described below in **Clause** **10.4.2**.
        2. In no event shall the total, aggregated amount of Service Credits payable by the Service Provider to SARS for any one month period for all service components exceed the prescribed Amount at Risk.
     2. **CALCULATION OF SERVICE CREDITS**
        1. For each Service Level Failure the all-inclusive monthly amount payable to the Service Provider shall be reduced by the applicable Service Credits.
        2. If a single triggering event directly causes two (2) or more Service Level Failures in any month; and but for such event, none of such Service Level Failures would have occurred, then SARS shall be entitled to receive only a single Service Credit for a single Service Level Failure (which SARS may select in its sole discretion).
        3. Service Credits arising in respect of the last month of the Agreement term shall be withheld out of the final payment due.

* 1. **EXCUSED NON-PERFORMANCE**

* + 1. Where the Service Provider can establish to the reasonable satisfaction of SARS that-
       1. the cause of its failure to achieve a Service Level was a factor outside of the reasonable control of the Service Provider (i.e. *force majeure*);
       2. the Service Provider would have achieved such Service Level but for such factor;
       3. the Service Provider used Commercially Reasonable Efforts to perform and achieve that Service Level notwithstanding the presence and impact of such factor; and
       4. the Service Provider is without fault in causing such factor,

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

* 1. **STATUS OF SERVICE CREDITS**
     1. The following shall apply in respect of Service Credits-

* + - 1. Service Credits are a price adjustment for the relevant period to reflect the reduced level of Services performed by the Service Provider and is not an estimate of the loss or damage that may be suffered by SARS as a result of such Service Level Failure/s;
      2. The payment of a Service Credit by the Service Provider is without prejudice to, and shall not limit, any right SARS may have to terminate this Agreement and/or seek damages or other non-monetary remedies at law resulting from, or otherwise arising in respect of, such Service Level Failure/s and any resulting termination; and
      3. Notwithstanding the provisions of this **Clause 10.6**, any claim for damages resulting from such Service Level Failure/s, in respect of which a Service Credit has already been paid, shall be reduced by the amount of that Service Credit.

1. **SARS’s OBLIGATIONS**
   1. SARS undertakes to-
      1. nominate a SARS Designated Representative;
      2. if required by the Service Provider, promptly furnish the Service Provider with any relevant information which is necessary for the Service Provider to perform the Services in compliance with the terms and conditions of this Agreement; and
      3. comply as soon as reasonably possible with any reasonable requests made by the Service Provider in its performance of the Services under this Agreement.
   2. Subject to the Service Provider’s personnel’s compliance with SARS’s access and security policies, SARS shall provide the Service Provider’s personnel and/or subcontractors with access to the premises and facilities of SARS if necessary for the purposes of rendering the Services.
   3. SARS acknowledges that where the advice furnished and documentation prepared by the Service Provider is based on information supplied by SARS, the Service Provider will under such circumstance not be held responsible for any inaccuracies in this information. SARS shall immediately inform the Service Provider of any amendments, inaccuracies or omissions to the information which come to SARS’s attention.
2. **STEP IN RIGHTS**
   1. In addition to any other rights and remedies that it may have in terms of this Agreement or otherwise, including the right to terminate this Agreement, SARS may in its sole discretion elect to temporarily take over the Services as contemplated below, immediately upon SARS’s identification or the Service Provider’s notification of the occurrence of any event which SARS considers, in its sole discretion, to be an event which may affect the continuity of the Services.
   2. For purposes of this clause, SARS may (at its option), either itself or by the procurement of an alternate third party service provider, temporarily take over the provision of the Services until such time as SARS is able to make permanent alternate arrangements for the provision of the Services, which right shall apply for a period of no more than one hundred and eighty (180) days from the date that SARS temporarily takes over the provision of the Services. The Service Provider shall, upon the request of SARS, fully co-operate with and assist SARS during any such temporary take-over of the Services.
   3. To the extent that SARS exercises its right to assume the rendering of the Services or part thereof itself, or by a third party service provider, the Service Provider shall not be entitled to any fees and/or payment during the period for which SARS or the third party assumes the Services. SARS shall not, under any circumstances by virtue of any assumption, be obliged or deemed or required to take over or assume responsibility for the conduct of the Service Provider's business operations.
3. **SECURITY VETTING OF THE SERVICE PROVIDER’S PERSONNEL**
   1. SARS reserves the right at its sole and absolute discretion to do a security check on the Service Provider’s personnel involved with the performance of the Services, provided that SARS has obtained the prior written permission of such personnel. In the event that the Service Provider’s personnel refuse to give such written permission, the Service Provider shall immediately replace such personnel as provided for in **Clause 13.2** below.

* 1. Where SARS finds the Service Provider’s employee, subcontractor or agent to be a security risk, SARS will inform the Service Provider accordingly and the Service Provider shall replace such employee, subcontractor or agent with another employee, subcontractor or agent with suitable qualification(s) and experience. The Service Provider will not be relieved of its obligations under this Agreement while a replacement is secured, and SARS will have no liability to the Service Provider with regard thereto. The Service Provider indemnifies SARS against any claims that may be brought by any of the Service Provider’s employees, subcontractors, or agents who may be affected as a result of SARS exercising its rights under this Clause.

1. **LIABILITY OF THE PARTIES**
   1. The Service Provider shall be liable to SARS, where SARS has suffered any direct damages and/or losses as a result of the Service Provider’s failure to observe its obligations in terms of this Agreement.
   2. The Service Provider shall be liable to SARS for all indirect and consequential or special damages and/or losses suffered by SARS as a result of gross negligence, reckless acts or breach by the Service Provider or its personnel of confidentiality provisions in this Agreement, breach of Applicable Laws, infringement of third party intellectual property rights or a criminal act committed by the Service Provider, its suppliers or personnel.
2. **WARRANTIES BY THE SERVICE PROVIDER**
   1. The Service Provider hereby represents and warrants to SARS 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 Services will be rendered by qualified and where applicable, properly licensed Personnel, 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, including relating to registration or licensing by any regulatory authority;
      6. 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;
      7. 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;
      8. all documentation and records pertaining to employees and their Personal Information will be complete and adhere to professional quality standards;
      9. it will render the necessary disengagement assistance to SARS upon termination of this Agreement;
      10. it will familiarise itself with all SARS’s policies and procedures relevant to the Services;
      11. it is acting as a principal and not on behalf of an undisclosed principal in terms of this Agreement;
      12. this Agreement has been duly authorised and executed by it and constitutes a legal, valid and binding set of obligations on it;
      13. 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.
   2. 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.
   3. The provisions of this clause shall survive termination of this Agreement.

### INSURANCE

* 1. The Service Provider shall on or before the Commencement Date and for the duration of this Agreement, have and maintain in force adequate insurance cover consistent with acceptable and prudent business practices and acceptable to SARS, which shall include, without limitation, professional indemnity insurance cover against all actions, suits, claims or other expenses arising in connection with damages or loss for which it is or may be liable in terms of this Agreement.
  2. The Service Provider shall provide SARS with a certificate of insurance, evidencing that the cover and policy endorsement required under this Agreement are maintained in force, on the date of signing this Agreement and provide evidence of renewal of the insurance at least three (3) Business Days prior to expiration thereof.
  3. The Service Provider shall provide SARS at least thirty (30) days’ notice prior to any material modification, cancellation or non-renewal of the insurance policies.
  4. In the case of loss or damage or other event that requires notice or other action under the terms of any insurance coverage set out in **Clause 16.1**, the Service Provider shall be solely responsible to take such action. The Service Provider shall provide SARS with contemporaneous notice and with such other information as SARS may request regarding the event.
  5. Without limiting the generality of SARS’s rights and remedies in this Agreement, in the event of a failure by the Service Provider to take out or maintain any insurance required herein, or to provide evidence of renewal within the period indicated herein, SARS may purchase the requisite insurance and deduct or offset the costs thereof from any monies due to the Service Provider by SARS under this Agreement.

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

1. **BREACH**
   1. If a Party (the “Defaulting Party”) is in default or breach of any obligation which arises in terms of this Agreement and that Defaulting Party fails to remedy such default or breach within ten (10) Business Days after receipt of a written notice given by the other Party (the “Aggrieved Party”) calling upon the Defaulting Party to remedy such default or breach, then the Aggrieved Party may, without prejudice to any other rights which it may have in terms hereof or at law-

* + 1. claim specific performance;
    2. cancel this Agreement, such cancellation to be effective immediately on receipt by the Defaulting Party of a written notice to that effect; or
    3. claim any money due and payable in terms of this Agreement and claim damages from the Defaulting Party.
  1. The Service Provider acknowledges that it is a material term of this Agreement that the Service Levels prescribed in the Performance Schedule must be maintained throughout the duration of this Agreement. The Parties agree that multiple Service Level Failures will constitute sufficient proof of persistent non-compliance by the Service Provider with SARS’s prescribed Service Levels and that such persistent non-compliance will constitute a material breach of this Agreement.
  2. The remedies set out in this Clause shall not be construed to be exhaustive of any other remedies available to the Parties.

1. **TERMINATION OF THE AGREEMENT**

* 1. **Termination for Cause**

* + 1. SARS may, by giving written notice to the Service Provider, terminate this Agreement, in whole or in part, as of a date set out in the notice of termination, in the event that the Service Provider-
       1. commits a material breach of this Agreement, which breach is not cured within ten (10) Business Days after notice of breach from SARS to the Service Provider;
       2. commits a material breach of this Agreement that is not capable of being cured within ten (10) Business Days;
       3. fails to meet the same Service Level for three (3) consecutive months, or if the Service Provider fails to meet the same Service Level for four (4) months, not necessarily consecutive, out of any consecutive twelve (12) month period; and
       4. commits numerous breaches of this Agreement that collectively constitute a material breach, even if cured.
    2. SARS may, upon written notice to the Service Provider, terminate this Agreement immediately if-
       1. the Service Provider commits an act of insolvency as contemplated in the Insolvency Act, 1936 (Act No. 24 of 1936);
       2. the Service Provider is placed in liquidation, whether provisionally or finally;
       3. the Service Provider is placed under business rescue as contemplated in Chapter 6 of the Companies Act, 2008 (Act No. 71 of 2008);
       4. the Service Provider makes any arrangement or compromise with its creditors generally or ceases to carry on business;

* + - 1. a final and unappealable judgment against the Service Provider remains unsatisfied for a period of ten (10) Business Days or more after it comes to the notice of the Service Provider;
      2. the Service Provider is convicted of any offence which comprises an element of fraud or dishonesty; or
      3. the Service Provider undergoes a change of Control, “Control” meaning, with regard to any entity, the right or power to dictate the management of or to otherwise control such entity by-
         1. holding directly or indirectly the majority of the issued share capital or stock (or other ownership interest if not a corporation) of such entity ordinarily having voting rights;
         2. controlling the majority of the voting rights in such entity; or
         3. having the right to appoint or remove directors holding a majority of the voting rights at meetings of the board of directors of such entity.
  1. **Required Actions on Termination**
     1. Where this Agreement has been terminated–
        1. each Party shall return to the other immediately upon demand, or within such reasonable period as the Parties may agree upon all information, documentation, records, reports, software or other property that belong to the other Party, as well as all Confidential Information disclosed to it;
        2. the Service Provider shall render the necessary Disengagement Assistance to SARS, as more fully set out in **Clause 30**;
        3. in the event of this Agreement being terminated, the Service Provider shall not be entitled to withhold any information, records or reports, or any assistance as set out in the Clauses below that will be crucial to effect the immediate and seamless transition of the Services, and the Service Provider will retain only certain electronic records which it is legally required to retain;
        4. the information and documentation to be transferred to the new service provider will exclude proprietary software, which shall remain the sole and exclusive property of the Service Provider, but shall include all Confidential Information and Intellectual Property of SARS;
        5. SARS will ensure that all fees due and payable to the Service Provider by SARS as at the Termination Date, shall be paid to the Service Provider by no later than thirty (30) days following the Termination Date; and
        6. the Service Provider shall immediately cease to provide the Services, subject to **Clause 30**.
     2. Any termination of this Agreement pursuant to the provisions of this **Clause 19** shall be without prejudice to any claim which either Party may have in respect of any prior breach of the terms and conditions of this Agreement by the other Party; and
     3. No SARS employee shall have any claim against the Service Provider because of the termination of the Services.

1. **FORCE MAJEURE**
   1. In the event of any act beyond the control of the Parties, strike, war, warlike operation, rebellion, riot, civil commotion, lockout, interference by trade unions, suspension of labour, fire, accident, or (without regard to the foregoing enumeration) of any circumstances arising or action taken beyond the reasonable control of the Parties hereto preventing them or any of them from the performance of any obligation hereunder (any such event hereinafter called a “*Force Majeure* Event”) then the Party affected by such *Force Majeure* Event shall be relieved of its obligations hereunder during the period that such *Force Majeure* Event continues.
   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.
   3. Any Party invoking *force majeure* shall upon termination of such *Force Majeure* Event give prompt written notice thereof to the other Party. Should a *Force Majeure* Event continue for a period of more than thirty (30) days, and then either Party has the right to cancel this Agreement.
2. **RELATIONSHIP BETWEEN THE PARTIES**
   1. The Service Provider is an independent contractor and under no circumstances will it be partner, joint venture partner, agent, or employee of SARS in the performance of its duties and responsibilities pursuant to this Agreement.
   2. All personnel used by the Service Provider will be the Service Provider’s employees, subcontractors, or agents, and the entire management, direction, and control of all such persons will be and remain the responsibility of the Service Provider.
   3. Neither Party may under any circumstances, represent that it acts on behalf of the other Party, nor may it bind the other Party in any manner.

1. **DISPUTE RESOLUTION**
   1. In the event of any dispute arising out of or in connection with this Agreement, the Parties shall try to resolve the dispute by negotiation. This entails that the one Party invites the other in writing to a meeting and attempts to resolve the dispute within seven (7) days from date of the written invitation. If the dispute has not been resolved by such negotiation, the Parties shall submit the dispute to the Arbitration Foundation of Southern Africa (“AFSA”) administered mediation, failing which the dispute shall be determined as below.
   2. Save in respect of those provisions of this Agreement which provide for their own remedies which would be incompatible with arbitration, any dispute arising from, or in connection with, this Agreement will finally be resolved by arbitration in accordance with the Rules of AFSA or its successor, by an arbitrator or arbitrators appointed by AFSA.
   3. Neither Party shall be precluded from obtaining interim relief on an urgent basis or other conservatory relief from a court of competent jurisdiction pending the decision of the arbitrator.
   4. This **Clause 22** will be severable from the rest of the provisions of this Agreement so that it will operate and continue to operate notwithstanding any actual or alleged voidness, voidability, unenforceability, termination, cancellation, expiry, or accepted repudiation, of this Agreement.
   5. Save for **Clause 7**, neither Party shall be entitled to withhold performance of any of their obligations in terms of this Agreement pending the settlement of, or decision in, any dispute arising between the Parties and each Party shall, in such circumstances continue to comply with their obligations in terms of this Agreement.
2. **CONFIDENTIAL INFORMATION** 
   1. Neither Party may, unless otherwise provided in this Agreement, disclose the other Party’s Confidential Information.
   2. Confidential Information shall not include any information which is generally available to the public or becomes known to a Party on a non-confidential basis, or to the extent that the information may be required to be disclosed in terms of any law.

* 1. The Service Provider agrees that SARS’s Confidential Information will be used solely for the purpose of providing the Services, and that all of it will be kept secure by applying the same security measures thereto as those which the Service Provider uses to protect its own Confidential Information, provided that: the Confidential Information or any part of it may be disclosed to the Service Provider’s employees, subcontractors, agents and advisors on a “need to know” basis for the purpose of providing any aspect of the Services, it being understood that those employees, subcontractors, agents and advisors shall be informed by the Service Provider of the confidential nature of all such Confidential Information and shall be directed by the Service Provider to treat it confidentially.
  2. The Parties agree that all Confidential Information supplied by the one Party to the other shall not be disclosed to any third party without first obtaining the written consent of the other Party.
  3. Where a Party is threatened with legal action to disclose the Confidential Information of the other Party, such Party shall give the other Party written notice of such legal action within five (5) days of receipt of the threatened legal action. The Party shall together with the notice referred to above, deliver to the other Party all documentation received or submitted in connection with the threatened legal action.
  4. The provisions of this Clause shall survive the termination or cancellation of this Agreement for any reason whatsoever.

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

1. **OWNERSHIP AND USE OF INFORMATION**
   1. The Service Provider confirms that all records and reports pertaining to the Services to be rendered to SARS in terms of this Agreement will remain the sole property of SARS.
   2. At the request of SARS, and subject to Applicable Law, the Service Provider shall make available all records and reports pertaining to the Services within a reasonable period, but not exceeding seven (7) days from date of request, unless otherwise specified.
2. **TAX COMPLIANCE**
   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.
   2. If the Service Provider fails to remain compliant as contemplated in **Clause 26.1**, SARS may terminate this Agreement immediately. SARS will have no liability to the Service Provider with respect to such termination.
3. **BROAD-BASED BLACK ECONOMIC EMPOWERMENT**
   1. The Service Provider acknowledges that Broad-Based Black Economic Empowerment is a business and social imperative in order to achieve a non-racial, non-sexist, and equitable society in South Africa.

* 1. In pursuance of this objective the Service Provider commits and warrants to comply in all respects with the requirements of the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003) (hereafter referred to as the B-BBEE Act) as amended from time to time, and the Codes of Good Practice issued in terms of the B-BBEE Act.
  2. Upon signature of this Agreement and one (1) month after the expiry of a current certificate for a particular year, the Service Provider shall provide SARS with a certified copy of its B-BBEE rating status from an agency accredited by the South African National Accreditation System.
  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/or improve its current B-BBEE rating status.
  4. A failure to provide a certified copy of its B-BBEE rating status or a failure to comply with provisions of this Clause will entitle SARS to terminate this Agreement by giving the Service Provider one (1) month’s written notice.

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

# The Head: Corporate Legal Services

# LeHae la SARS

# 299 Bronkhorst Street

# Nieuw Muckleneuk

# Pretoria

# 0181

* 1. SARS’s email address for communications and/or correspondences in connection with the performance of the Services: ………………………………. And ………………………….
  2. The Service Provider’s physical address for *service of formal notices and legal processes-*

# ………………………………..

# ………………………………..

# ………………………………..

# ………………………………..

* 1. 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*.*
  2. Any Party may by written notice to the other Parties, change its chosen address to another address, provided that-
     1. the change shall only become effective on the tenth (10th) Business Day after the receipt or deemed receipt of the notice by the addressee; and

* + 1. 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.*
  1. 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.
  2. 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.
  3. 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. **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.

* 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. **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.

* 1. **WAIVER**

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

* 1. **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.

* 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 Representatives of both Parties.

* 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. **APPLICABLE LAW**

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

* 1. **WHOLE AGREEMENT AND AMENDMENT**

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

* 1. **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.

* 1. **COSTS**

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

* 1. **JURISDICTION**

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

* 1. **SUBCONTRACTING**
     1. Subject to Applicable Law, the Service Provider shall not without the prior written consent of SARS, which consent shall not be unreasonably withheld, subcontract any of the Services required in terms of this Agreement to any third party. It is expressly recorded that SARS will not approve a proposed subcontracting if, in the exclusive judgment of SARS, the subcontracting will result in prejudice or potential prejudice to other service providers.
     2. Whenever the Service Provider wishes to subcontract any part of the Services in terms hereof, the Service Provider shall submit, together with its request as set out in **Clause 29.13.1** above,a complete written proposal for SARS’s approval containing-
        1. Full details and business references of the subcontractor;
        2. A full description of the part of the Services it proposes for subcontracting;
        3. The value of the contract proposed to be subcontracted, expressed as a percentage;
        4. The B-BBEE status and certificate of the subcontractor; and
        5. Confirmation of tax compliance of the subcontractor.
     3. Notwithstanding the provisions of this **Clause 29.13**, the Service Provider shall remain the only Party wholly responsible for the due performance of its obligations in terms of this Agreement and compliance with the terms and conditions thereof.
     4. Subject to the provisions of **Clause** **29.13.1** above, the Service Provider shall ensure that a subcontracting agreement entered into between the Service Provider and the subcontractor binds the subcontractor to the terms and conditions of this Agreement.
     5. Nothing contained herein shall create a contractual relationship between SARS and the subcontractor.

1. **DISENGAGEMENT ASSISTANCE**
   1. The Parties hereby acknowledge that, notwithstanding the termination of this Agreement for any reason whatsoever, the immediate and seamless transition of the Services to an incoming service provider is imperative. To this extent and without any derogation to any claims sounding in money that the Service Provider may have or allege against SARS, the Service Provider shall not be entitled to withhold any information, records or reports, or any assistance as set out in the Clauses below that will be crucial to effect the immediate and seamless transition of the Services.
   2. For a period of twenty (20) Business Days after the expiry or termination of this Agreement for whatsoever reason or such earlier period as the Parties may agree, whichever is applicable and at SARS’s request, the Service Provider will provide SARS or SARS’s newly designated service provider such assistance as SARS may reasonably require to facilitate the immediate transition of the Services in as seamless a manner as possible (“Disengagement Assistance”).
   3. Without limiting the generality of the foregoing, the Service Provider shall deliver to SARS at no additional cost such information and documentation relating to the Services as SARS may reasonably request on a date specified by SARS, including all employee files and records for which employees’ consent have been obtained, alternatively in respect of which no confidentiality obligations exist.
   4. The Service Provider undertakes to use its best endeavours to obtain the necessary consent from SARS’s employees in respect of the transfer of their files and records to SARS or any incoming service provider.
   5. The Service Provider warrants that all employee files, records and reports will be complete and adhere to professional quality standards, failing which SARS reserves the right to demand that the Service Provider bring the files, records and reports up to standard.
   6. SARS or its newly designated service provider shall have the option or discretion, exercisable on a contract by contract basis to assume contracts for any Services provided by third parties to the Service Provider and used exclusively by the Service Provider to provide the Services to SARS.
   7. In the case of third party service providers used by the Service Provider to provide Services to SARS, the Service Provider shall use Commercially Reasonable Efforts to arrange for the provision of the Services by the third party to SARS under terms at least as favourable as those in the third party services contract.

**SIGNED AT PRETORIA**

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| **As representatives for the South African Revenue Service:**  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  |
| **As representative for the Service Provider:**  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Name:  Capacity:  Date of signature: |

**ANNEXURE A: PERFORMANCE SCHEDULE**

|  |  |  |  |
| --- | --- | --- | --- |
| **1.** | **2.** | **3.** | **4.** |
| **No** | **Service delivery components** | **Requirement** | **Service Level Target** |
| **TECHNOLOGICAL PLATFORM** | | | |
| 1 | Multi-channel Access / Mobile Application | SARS Employee Concierge Services Website and Mobile application activated within 30 days of contract commencement | 100% |
| Website and Mobile applications are always accessible and functional:   * General services: Mondays to Fridays from 7 am to 7 pm and Saturdays from 8 am to 1 pm. * Emergency services e.g., Emergency Services: Providing access to emergency home repair or locksmith services for urgent situations with an expected turnaround time of two hours: Available 24/7. * Critical downtimes (maintenance) must be communicated upfront and where/when services might not be available. | 99% |
| Content reviewed and updated regularly as per the agreed programme plan | Monthly |
| Auto response of emails sent to Dedicated email address | 4 hours |
| SARS requires the Service Provider to provide details of how the Web Services are secured in terms of regular (annually) security assessments, (Penetration testing and Code reviews) as well as Threat and Vulnerability (T&VA) tests performed on a weekly basis.  SARS requires that these security services (Penetration testing, Code reviews, and T&VA) be conducted throughout the duration of the contract. SARS requires the Service Provider to provide SARS with regular security reporting (Monthly) that would include any risks identified as part of the security services defined above and as it relates to the Services. Any critical risks identified will be communicated immediately and not just as part of the monthly report. | Monthly |
| The Mobile Application must be available for both Android and iOS platforms and downloadable from the relevant Google / Apple Application Stores to ensure a safe and trusted application marketplace. | 100% |
| Data security | The Service Provider will not possess or assert any lien or other right against or to SARS Data. No SARS Data and/or personal information as defined in POPIA of any SARS employee/s, or any part thereof, will be sold, assigned, leased, or otherwise disposed of to Third Parties by the Service Provider or commercially exploited by or on behalf of the Service Provider, its employees or agents. | 100% |
| **MARKETING AND AWARENESS** | | | |
| 2 | Services available through the concierge programme | The services provided through the programme will be within 24-hour turnaround time. Services listed on the exceptional services will have a response time of 48 hours. The exception list is to be verified with SARS. | Monthly |
| Promotional material submitted to SARS for approval | 10 (ten) days before the date of utilisation thereof | 100% |
| **PROGRAMME MANAGEMENT** | | | |
| 3 | Implementation plan | A detailed proposal of the Bidder's envisaged project management plan that describes how the Bidder intends to execute the implementation of the technological platform within 30 days of approval of the contract.:   * Technology upload:   Online platform  Mobile application  Security Penetration Assessment   * Onboarding of SARS employees * Introducing / Launching the Employee Concierge Service within SARS * Monthly performance review meetings | 30 days |
| Service complaints procedure | All service delivery complaints will be escalated to the dedicated Service Provider Account Manager. Detailed monthly complaints register with the resolution and outcome to be submitted to the SARS Programme Manager to monitor complaints resolution and feedback to SARS Employees. | 100% |
| Substitution of staff procedure | The Service Provider will be required to provide details of the Service Provider’s screening and vetting processes of the Service Provider personnel and will ensure that all Service Provider personnel complete the SARS Oath / Affirmation of Secrecy. After terminating the employment of any Service Provider Personnel or transferring such personnel from the SARS account to other work, the Service Provider will eliminate any risk from the Services by, amongst other actions, denying such personnel access to any part of the environment from which the Services are provided to SARS and to inform SARS of such. Service Provider will ensure that the Service Provider Personnel are suitably trained and certified to be able to comply with all information security standards, procedures, and best practices set out in the service agreement between SARS and the Service provider. | 100% |
| Performance monitoring | On-going | 100% |
| Attendance of ad hoc meetings | Attendance –with adequate notice | 100% |
| Attendance of monthly performance review meetings | Scheduled monthly on the first Tuesday of the month, reporting on the previous month and YTD performance. | 100% |
| Performance Reporting requirements | 100% submission of required reports per agreed monthly timeframes (submitted to SARS 5 working days before scheduled performance review meetings | 100% |
| Performance Reporting format | As per the prescribed format with specific  key project measurements reported monthly with YTD summaries:  \* Web and mobile application availability  \* Web and Mobile Application security reporting and risk identification with mitigating actions  \* Programme utilisation per service, location (region/office), service channel (website or mobile app), collection, and drop off  \* Average service turnaround time per type of service and region  \* Employee satisfaction rate  \* Benefit to employee: time and cost savings  \* Complaints management and escalations with corrective actions | 100% |

**ANNEXURE B: PENALTY SCHEDULE**

Failure to adhere to the Service Level Targets set out in this Penalty Schedule, read together with **Annexure A** (the Performance Schedule) in respect of any component of the service, shall entitle SARS to a Service Credit where such non-compliance constitutes a Service Level Failure. Service Credits are indicated as a percentage of the total Amount at Risk (AAR).

The approach in the application of this Penalty Schedule will consider the classification of the problem, service failure and overall impact on the employer and employees of SARS. In instances where the Services Level is determined by a turn-around time, penalties will only become payable where there are 3 or more service failure incidents of a similar nature in any month.

|  |  |  |  |
| --- | --- | --- | --- |
| **Problem Type** | **Level** | **Determined by impact** | **Non-adherence** |
| Critical | 1 | Business critical financial or operational impact and /or reputational risk | Possible termination |
| Serious | 2 | Serious financial –or operational impact and /or reputational risk | Possible termination |
| Moderate | 3 | Moderate financial - or operational impact and /or reputational risk | Warning |
| Minor | 4 | Minor operational impact, no financial impact or reputational risk | Warning |

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **1.** | **2.** | **3.** | **4.** | **5.** | **6.** | **7.** | **8.** |
| **No** | **Service delivery components** | **Requirement** | **Problem Classification** | **Service Level Target** | **Service Level Failure** | **% of Service level failures per month** | **Comments** |
| 1 | Multi-channel Access / Mobile Application | SARS Employee Concierge Services Website and Mobile application activated within 30 days of contract commencement | Critical | 100% | <100% | 100% compliance | Generic EAP Portal |
| Website and Mobile applications are always accessible and functional:   * General services: Mondays to Fridays from 7 am to 7 pm and Saturdays from 8 am to 1 pm. * Emergency services e.g., Emergency Services: Providing access to emergency home repair or locksmith services for urgent situations with an expected turnaround time of two hours: Available 24/7. * Critical downtimes (maintenance) must be communicated upfront and where/when services might not be available. | Serious | 99% | <99% | 60% |  |
| Content reviewed and updated regularly | Moderate | Monthly | <Monthly | 60% |  |
| SARS requires the Service Provider to provide details of how the Web Services are secured in terms of regular (annually) security assessments, (Penetration testing and Code reviews) as well as Threat and Vulnerability (T&VA) tests performed on a weekly basis.  SARS requires that these security services (Penetration testing, Code reviews, and T&VA) be conducted throughout the duration of the contract. SARS requires the Service Provider to provide SARS with regular security reporting (Monthly) that would include any risks identified as part of the security services defined above and as it relates to the Services. Any critical risks identified will be communicated immediately and not just as part of the monthly report. | Critical | 100% | <100% | 100% compliance |  |
| The Mobile Application must be available for both Android and iOS platforms and downloadable from the relevant Google / Apple Application Stores to ensure a safe and trusted application marketplace. | Critical | 100% | <100% | 100% compliance |  |
|  | Data security | The Service Provider will not possess or assert any lien or other right against or to SARS Data. No SARS Data and/or personal information as defined in POPIA of any SARS employee/s, or any part thereof, will be sold, assigned, leased, or otherwise disposed of to Third Parties by the Service Provider or commercially exploited by or on behalf of the Service Provider, its employees or agents. | Critical | 100% | <100% | 100% compliance |  |
| 2 | **Marketing and Awareness Campaigns Programmes** | | | | |  | |
| Services available through the concierge programme | Per month as per the agreed schedule | Critical | Monthly | < 1 campaign per month | 80% |  |
| Promotional material submitted to SARS for approval | 10 (ten) days before the date of utilisation thereof | Moderate | 100% | <100% | 60% |  |
| 3 | **Programme Management and Coordination** | | | | |  | |
| Implementation plan | As per the Performance Schedule | Critical | 30 days | <30 days | 80% |  |
| Service complaints procedure | All service delivery complaints will be escalated to the dedicated Service Provider Account Manager. Detailed monthly complaints register with the resolution and outcome to be submitted to the SARS Programme Manager to monitor complaints resolution and feedback to SARS Employees. | Moderate | 100% | <100% | 60% |  |
| Substitution of staff procedure | As per the Performance Schedule | Moderate | 100% | <100% | 60% |  |
| Performance monitoring | On-going | Critical | 100% | <100% | 80% |  |
| Attendance of scheduled Meetings | As per the Performance Schedule | Critical | 100% | <100% | 80% |  |
| Attendance of ad hoc meetings | Attendance –with adequate notice | Moderate | 100% | <80% | 60% |  |
| Attendance of performance reviews by SARS | As per the Performance Schedule | Critical | 100% | <100% | 80% |  |
| Performance Reporting requirements | 100% submission of required Reports per agreed timeframes | Critical | 100% | <100% | 80% |  |
| Performance Reporting format | As per the Performance Schedule | Moderate | 100% | <90% | 60% |  |

Service Provider’s Escalation Channels

|  |  |  |  |
| --- | --- | --- | --- |
| **POSITION & PROBLEM LEVEL** | **NAME** | **EMAIL ADDRESS** | **CONTACT NUMBER** |
| 1. Technological platform |  |  |  |
| Escalation Point |  |  |  |
| 2. Marketing and Awareness |  |  |  |
| Escalation Point |  |  |  |
| 3. Programme Management |  |  |  |
| Escalation Point |  |  |  |

SARS’ Escalation Channels

|  |  |  |  |
| --- | --- | --- | --- |
| **POSITION & PROBLEM LEVEL** | **NAME** | **EMAIL ADDRESS** | **CONTACT NUMBER** |
| 1. Technological platform |  |  |  |
| Escalation Point |  |  |  |
| 2. Marketing and Awareness |  |  |  |
| Escalation Point |  |  |  |
| 3. Programme Management |  |  |  |
| Escalation Point |  |  |  |

**ANNEXURE C: SERVICE PROVIDER’S FEES**

**ANNEXURE D: PERSONAL INFORMATION PROCESSING ADDENDUM TO THE SERVICES AGREEMENT IN RESPECT OF THE PROVISION OF AN EMPLOYEE CONCIERGE PROGRAMME FOR SARS**

**PREAMBLE**

This Addendum –

1. serves as the written agreement between the Service Provider as Operator and SARS as Responsible Party as contemplated in section 21 of POPIA;
2. sets out the specific terms and conditions on which the Service Provider must process Personal Information relating to the Services Agreement; and
3. is an integral part of and must be read with the Services Agreement.
4. **INTERPRETATION AND DEFINITIONS**
   1. In this Addendum, unless clearly inconsistent with or otherwise indicated by the context:
      1. “**Addendum**” means this Personal Information processing addendum;
      2. “**Contractual Purposes**”means the exclusive purpose for which the Service Provider may lawfully process Personal Information furnished by SARS in terms of the Services Agreement, which is the execution by the Service Provider of the Services;
      3. “**Services Agreement**”means the Services Agreementconcluded between the Parties pursuant to SARS’ procurement process under reference RFP 17 of 2023;
      4. “**Operator**” is as defined in POPIA, and in this Addendum, specifically refers to the Service Provider;
      5. “**Personal Information Breaches**” means the accidental, unauthorised, or unlawful processing, access, copying, modification, reproduction, display or distribution of Personal Information, including the accidental or unlawful loss, destruction, alteration, disclosure and damage of or to Personal Information;
      6. “**Process**” **and/or “Processing**” is as defined and contemplated in POPIA; and
      7. “**Responsible Party**” is as defined in POPIA, and in this Addendum, specifically refers to SARS.
   2. Unless a definition is expressly amended herein, words and phrases defined in the Services Agreement shall bear the same meaning in this Addendum, and in the event of there being a conflict between the terms and conditions of the Services Agreement and those of this Addendum, the provisions of this Addendum shall prevail and take precedence, in so far as the conflict relates to matters which are the subject of this Addendum.
   3. Terms / Wording defined in POPIA and used in this Addendum bear definitions contained in POPIA, except where otherwise defined or amplified herein.
   4. The principles of interpretation stated in the Services Agreement apply to this Addendum.
5. **SERVICE PROVIDER’S OBLIGATIONS IN RELATION TO PERSONAL INFORMATION**
   1. **General Obligations**

The Service Provider must –

* + 1. process Personal Information only to the extent, and in such a manner, as is necessary for the Contractual Purposes;
    2. not process Personal Information for any other purpose or in a way that does not comply with this Addendum; the Services Agreement; POPIA or other Applicable Law;
    3. where SARS issues an instruction to the Service Provider and the Service Provider is of the view that such instruction is inconsistent with POPIA or other Applicable Law, the Service Provider must immediately notify the SARS Designated Representative, and await SARS’ written response on the pertinent issue;
    4. immediately comply with any written instructions by SARS to stop processing any Personal Information; and
    5. where required, assist SARS at no additional cost, with meeting SARS’ regulatory compliance obligations under POPIA in so far as such compliance relates to or is in connection with the Services or Personal Information provided to the Service Provider by SARS.
  1. **Obligations relating to the Service Provider’s Resources**
     1. The Service Provider must ensure that the Service Providers’ Resources –

1. are informed of the confidential and sensitive nature of Personal Information;
2. are bound by written confidentiality / information protection obligations, and have in place limitations of access or access restrictions in respect of Personal Information;
3. have undertaken training on POPIA and understand how it relates to their handling of Personal Information and how it applies to their duties; and
4. are aware of both the Service Provider’s duties and obligations, and their personal duties and obligations under POPIA and the Services Agreement.
   * 1. The Service Provider must, as necessary, conduct background checks consistent with Applicable Law and take reasonable steps to ensure the reliability, integrity and trustworthiness of the Service Provider’s Resources with access to Personal Information.
   1. **Obligations relating to Information Security Measures**
      1. The Service Provider must, as of the Effective Date, implement security measures and maintain in place, for the duration of the Services Agreement, appropriate technical and organisational measures as contemplated in section 19 of POPIA to protect Personal Information and prevent Personal Information Breaches. Such measures must provide a level of security commensurate with corresponding risks, and may, as appropriate, include –

(a) the pseudonymisation and encryption of Personal Information;

(b) the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;

(c) the ability to restore the availability and access to Personal Information in a timely manner in the event of a physical or technical incident; and

(d) processes for regularly testing, assessing and evaluating the effectiveness of the security measures.

* + 1. The Service Provider must immediately, in writing, notify the SARS Designated Representative at their provided email addresses, as well as the SARS Contracts Management office at the email address: [Proc.OPE@sars.gov.za](mailto:Proc.OPE@sars.gov.za) (Attention: Contracts Management), and the SARS Anti-Corruption Unit at the email address: [Anti-Corruption@sars.gov.za](mailto:anti-corruption@sars.gov.za), where the Service Provider or the Service Provider’s Resources have reasonable grounds to believe or suspect that there has been a Personal Information Breach in respect of any Personal Information processed or held by the Service Provider pursuant to this Agreement.
    2. Immediately following any Personal Information Breach, the Parties must meet to discuss the matter as necessary. The Service Provider must, at no additional cost, co-operate with and assist SARS in its further handling of the matter, including but not limited to:

(a) assisting with any investigation;

(b) providing SARS with physical access to any facilities and operations affected;

(c) facilitating interviews with the Service Provider’s Resources, including former employees and other parties involved in the matter;

(d) making available all relevant records, logs, files, Personal Information reporting and other material required to comply with POPIA or as otherwise reasonably required by SARS; and

(e) taking reasonable and prompt steps to mitigate the effects and to minimise any damage resulting from the Personal Information Breaches.

* 1. **SARS’ Audit Rights**
     1. The Parties recognise that compliance with POPIA is material and critical to the successful implementation of the Services Agreement. SARS will, as part of honouring its legislative obligations as Responsible Party and as a POPIA compliance risk management strategy on its part, be entitled to monitor and audit the Service Provider’s compliance with the Services Agreement, in general, and to conduct *ad hoc* audits of the Service Provider’s compliance with this Addendum, to ensure that the Service Provider as Operator is fully compliant with the necessary POPIA, and contractual imperatives set out herein.
     2. In addition to SARS’ rights contemplated in the Services Agreement, SARS will be entitled to take any other reasonable monitoring measures to satisfy itself that Personal Information, its employees, and stakeholders are not exposed to any risk of non-compliance with POPIA: Provided that any such measures will be implemented within the confines of Applicable Law, with prior notification to the Service Provider.
  2. **Data subject requests and third-party rights**
     1. The Service Provider must, at no additional cost to SARS, take such technical and organisational measures as may be appropriate, and promptly provide such information to SARS, as may reasonably be required, to enable SARS to comply with:

1. the rights of a data subject under POPIA; including, but not limited to, data subject access rights, the rights to rectify, port and erase Personal Information, object to the processing and automated processing of Personal Information, and restrict the processing of Personal Information; and
2. any notice or request from a Regulatory Authority in relation to POPIA.
   * 1. The Service Provider must promptly notify SARS in writing where it receives any complaint, notice or communication that relates directly or indirectly to the processing of Personal Information or to either Party’s compliance with POPIA.
     2. The Service Provider must notify SARS within twenty-four (24) hours where it receives a request from a data subject for access to their Personal Information or to exercise any of their other rights under POPIA.
     3. The Service Provider must further provide, at no additional cost to SARS, its full co-operation and assistance in responding to any complaint, notice, communication or data subject request.

* 1. **Indemnity**
     1. The Service Provider agrees to, at its own expense, indemnify, keep indemnified and defend SARS against all Losses incurred by SARS or for which SARS may become liable due to any failure by the Service Provider or the Service Provider’s Resources, to comply with any of the Service Provider’s obligations under this Addendum and/or POPIA.
     2. Any limitation of liability set forth in the Services Agreement will not apply to this Addendum’s indemnity or liability obligations.