**SERVICE LEVEL AGREEMENT**

entered into by and between

**THE SOUTH AFRICAN REVENUE SERVICE**

**[“SARS”]**

and

**… (The “Service Provider”)**

**(Registration number …)**

**Bernadette Sehapi**



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1. **PREAMBLE**
   1. The South African Revenue Service (“SARS”), through a Request for Proposals No. RFP 16/2018 invited proposals for the supply of travel management and related services to SARS.
   2. RFP 16/2018 is hereby incorporated into this Agreement by reference.
2. **APPOINTMENT**
   1. The Service Provider submitted a proposal to SARS following RFP 16/2018, and SARS hereby appoints the Service Provider to render the Services defined in this Agreement, on a non-exclusive basis, which appointment the Service Provider accepts, subject to the terms and conditions set forth herein.
   2. For the purpose of this Agreement, all third party suppliers of the Service Provider are deemed to be employees or Personnel of the Service Provider. The Service Provider is thus liable to SARS for the performance, malperformance, acts and or omissions (whether direct or indirect) of any of its third party suppliers.
   3. Except in so far as expressly stated in this Agreement, the Service Provider is not authorised or empowered, for any purpose, to act or hold itself out as agent or representative of SARS, and may not make any warranty, statement or representation to any party on behalf of SARS.
3. **DEFINITIONS AND INTERPRETATION**
   1. In this Agreement, unless the context otherwise requires, the following capitalised terms shall have the meanings assigned to them below and cognate expressions shall have corresponding meanings-
      1. **“After Working Hours”** means any time from 17.01hrs to 07.29hrs from Monday to Friday or any time on Saturday, Sunday and Public holidays.
      2. “**Agreement**” means this Service Level Agreement and all annexures hereto, which form an integral part of this Agreement. Also included are all amendments, variations, and/or substitutions to the Agreement, which have been reduced to writing and signed by Authorised Representatives.
      3. “**Amount at Risk**” means the maximum percentage, fixed at 20 % in terms of this Agreement, of the Service Provider’s total monthly invoice amount that will be at risk should any Critical Service Level Default occur during any particular month: Provided that the amount is limited to the Service Provider’s management fees.
      4. **“Applicable Laws”** means any of the following, to the extent that it applies to a Party or the Services-
         1. Any statute, regulation, policy, by-law, ordinance or subordinate legislation;
         2. Common law;
         3. Any applicable industry code, policy or standard enforceable in law; and
         4. Any applicable direction, policy or order that is given by a regulatory authority.
      5. “**Authorised Signatory**” means a signatory/signatories authorised by SARS and the Service Provider respectively to sign the Agreement, any amendments and/or addenda hereto.
      6. **“BBBEE”** means broad-based black economic empowerment.
      7. **“Business Continuity Plan”** means the plan or plans which contain detailed and specific requirements with regard to the Service Provider’s Business Continuity Services and the Service Provider’s obligations in the event of a Disaster occurring. The Service Provider’s obligations in this regard are detailed in clause 24.
      8. **“Business Continuity Services”** means the specific activities related to providing Services in accordance with the Business Continuity Plan in the event of a Disaster. The Service Provider’s obligations in this regard are detailed in clause 24.
      9. “**Business Day**” means any day other than a Saturday, Sunday or public holiday in South Africa.
      10. **“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.
      11. **“Confidential Information”** shall for purposes of this Agreement refer to, but shall not be limited to, trade secrets, know-how, technology, techniques or methods of operating employed by SARS, taxpayer information and SARS Confidential Information as defined in the Tax Administration Act, 2011 (Act No. 28 of 2011), as well as any information considered confidential in terms of any other Tax Act administered by the Commissioner for SARS, internal SARS policies and/or personnel details or Data to which the Service Provider may become privy during the term of this Agreement.

Confidential Information excludes information or data which –

* + - 1. is lawfully in the public domain at the time of disclosure thereof to the Service Provider;
      2. subsequently and lawfully becomes part of the public domain by publication or otherwise;
      3. is or becomes available to the Service Provider from a source other than SARS, which source is lawfully entitled without any restriction on disclosure, to disclose such Confidential Information to the Service Provider; or
      4. is disclosed pursuant to a requirement or request by operation of law, regulation or court order but then only to the extent so disclosed and then only in the specific instance and under the specific circumstances in which it is obliged to be disclosed; provided that-
         1. the onus shall at all times rest on the Service Provider to establish that such information fall within such exclusions.

* + 1. **“Critical Service Level”** means a service level that relates to Emergency Travel.
    2. **“Critical Service Level Default”** means the failure of the Service Provider to meet the applicable Critical Service Level.
    3. **“Data”** means any data, including personal information as defined in the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002), and the Protection of Personal Information Act 2013 (Act No.4) of 2013 and any other Applicable Laws.
    4. **“Designated Account”** means SARS’s account which will be provided to the Service Provider for the restricted and sole purpose of paying SARS’s Air Travel Expenses as more fully set-out in this Agreement.
    5. **“Disaster”** means the complete or partial loss of a Service or facility where such Service or facility is unrecoverable through normal recovery processes.
    6. **“Effective Date”** means…, notwithstanding the date of signature of this Agreement.
    7. **“Emergency Travel”** means all forms of VIP travel and travel which is not capable of being planned in advance by SARS and arises due to unforeseen and unpredictable circumstances but is nevertheless required as part of SARS’s business.
    8. **“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, , 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, 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.
    9. **“Party / Parties”** means, either individually or jointly, as the context requires, the parties to this Agreement, being –
       1. **“SARS”** being 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), of 299 Bronkhorst Street, Nieuw Muckleneuk, Pretoria, 0181; and
       2. **“the Service Provider”** being…, Registration Number:.., , of…;
    10. “**Regulatory Authority”** means any organ of state, government agency or institution, International Body or Organisation which has –
        1. jurisdiction over the Services or parts thereof, or
        2. administrative or oversight responsibility pertaining to any Applicable Law.
    11. **“Service Level Credit”** means a penalty amount, which, at SARS’s election, shall be payable by the Service Provider for its failure to meet a Critical Service Level, calculated in any Measurement Period, which penalty is calculated in accordance with Annexure A as a percentage of the Amount at Risk. Service Level Credits will be calculated cumulatively on a monthly basis, but will not exceed the prescribed Amount at Risk.
    12. **“Service Levels”** means the quantitative and qualitative performance metrics for the Services contained in Annexure “A”.
    13. “**Service Level Failure**” means the Service Provider’s failure to meet any of the prescribed Service Levels;
    14. **“Services”** means travel management services and related services as contemplated in RFP16/2018 including those services, functions or responsibilities not specifically mentioned herein but which are reasonably and necessarily required for the proper performance and provision of the Services.
    15. **“Signature Date”** means the date the Party last signing affixes its signature to this Agreement.
    16. **“RFP 16/2018”** means, subject to any contrary indication, a reference to SARS’s invitation to prospective service providers to tender for the provision of travel management and related Services.
    17. **“Termination Date”** means ….
    18. **“Travel Expenses”** means travel expenses incurred in accordance with SARS’s Travel Policy for SARS’s official and authorised business.
    19. **“Travel Manager”** means one individual designated by each Party, responsible for the day to day management of the relationship between the Parties, and to whom all communications shall be addressed.
    20. **“Travel Policy”** means SARS’s travel policy, as amended from time to time.
    21. **“Weighting Factor”** means the percentage assigned in Annexure “A” to each Critical Service Level against the Amount at Risk.
    22. **“Working Hours”** means 07.30hrs to 17.00hrs from Monday to Friday.
  1. The headings in this Agreement are for reference purposes only and are not to be construed to affect the interpretation of any terms in the Agreement.
  2. Any reference in this Agreement to-
     1. A Clause shall, subject to any contrary indication, mean a reference to a Clause in this Agreement;
     2. A Person refers to any person including juristic entities.
  3. Unless inconsistent with the context or save where the contrary is expressly indicated-
     1. When any number of days is prescribed in this Agreement, the same shall be calculated exclusively of the first and inclusively of the last day unless the latter falls on a day which is not a Business Day, in which case the last day shall be the next succeeding Business Day;
     2. This Agreement shall not be construed to provide a benefit to any person who is not a party to this Agreement;
     3. References to day/s, month/s or year/s shall be construed as calendar day/s, month/s or year/s;
     4. A reference to a party includes that party’s successor-in-title and permitted assigns.
  4. If any definition in this Interpretation clause contains a substantive provision conferring rights or imposing obligations on any Party, effect shall be given to such provision as if it was a substantive provision in the body of this Agreement.
     1. Unless inconsistent with the context, an expression which denotes-
     2. Any one gender, includes the other gender;
     3. The singular, includes the plural and vice versa.
  5. The termination of this Agreement will not affect the provisions which are intended to operate after any such termination or which of necessity must continue to have effect after such termination, notwithstanding that the clauses themselves do not expressly provide for this.
  6. The Agreement is fully binding on the executors, administrators, trustees, permitted assigns or liquidators of the Parties as if they had signed this Agreement in the first instance.
  7. Where figures are referred to in numerals and in words, if there is a conflict between the two, the words shall prevail.
  8. The provisions of this Agreement shall not be construed against or interpreted to the disadvantage of the Party responsible for the drafting or preparation of such provision.

1. **COMMENCEMENT AND DURATION**
   1. This Agreement shall commence on the Effective Date and shall endure for a period of 60 (sixty) months, until Termination Date, unless terminated earlier by either Party in accordance with this Agreement.
2. **SERVICES**
   1. The Service Provider must –
      1. Provide the Services in terms of this Agreement.
      2. Monitor the implementation of the Services against set targets, costs, and time frames.
3. **DUTIES AND OBLIGATIONS OF THE SERVICE PROVIDER**

* 1. The Service Provider will have a call centre which is accessible at all times to cater for the needs of SARS and should be able to provide After Working Hours Services.
  2. The Service Provider may only make a booking upon receipt of an electronic workflow order from SARS. In emergency situations, the Service Provider may accept a verbal instruction from the SARS Travel Manager, which instruction must be followed by confirmation from SARS in writing. If a member of SARS personnel requests Emergency Travel, the Service Provider shall first obtain approval for such travel from SARS’s Travel Manager.
  3. The Service Provider must maintain the staff compliment required by SARS and provided in the Service Provider’s bid proposal to RFP 16/2018.
  4. The Service Provider will, where applicable, and as envisaged in RFP 16/2018, provide SARS with 3 (three) quotes from suppliers relating to a booking request made by SARS.
  5. The Service Provider shall provide SARS with strategic advice on the travel industry, and on an on-going basis advise SARS on how to reduce its travel expenditure and improve its travel policies and procedures. The Service Provider shall review and monitor deals offered by third party suppliers, and keep SARS apprised thereof.
  6. The Service Provider shall provide Disaster recovery services and maintain a Disaster recovery environment, in accordance with the Business Continuity Plan.
  7. The Service Provider shall attend all meetings scheduled by the Parties, and in particular will attend strategic meetings and the monthly management meetings.
  8. The Service Provider will give SARS reasonable access to all Data in the Service Provider’s possession relating to this Agreement.

1. **SERVICE PROVIDER UNDERTAKINGS**

The Service Provider undertakes to-

* 1. Provide the Services in accordance with the highest professional standards;
  2. Devote the necessary time, attention and skill to the Services and not engage in any business that will prevent the Service Provider from properly rendering the Services to SARS;
  3. Ensure that it has suitable personnel and sufficient resources at all times in order to properly render the Services;
  4. At all times act in an ethical manner and refrain from any corrupt business practices;
  5. Perform the Services during the Working Hours except where specifically instructed otherwise, as well as perform the Services on an emergency basis, if and when required by SARS;
  6. Ensure that it has sufficient contingency plans in place and agree that it shall at all times be responsible to SARS for the fulfilment of its obligations under this Agreement;
  7. Exercise reasonable care and diligence in the discharge of its obligations in terms of this Agreement;
  8. Invoice SARS for Services rendered in the required format and in a timely fashion;
  9. Observe and adhere to all the applicable Service Levels;
  10. Use Commercially Reasonable Efforts to minimise Travel Expenses;
  11. Appoint a Travel Manager and not change or replace the person, except with the prior written consent of SARS, (which may not be unreasonably withheld), in which event the replacement shall be at the cost of the Service Provider and should be with a person who has similar or better qualifications, skills and experience; and
  12. Ensure continuity of the Services to SARS.

1. **SARS UNDERTAKINGS**

SARS undertakes to:

* 1. Pay the Service Provider for the Services, subject to the provisions set out in clause 12 below.
  2. Give the Service Provider access to SARS’s premises where necessary.
  3. Cooperate with the Service Provider at all times for purposes of facilitating the timeous and efficient delivery of the Services;
  4. Appoint a Travel Manager;
  5. Approve the Business Continuity Plan within ten Business Days of submission by the Service Provider.
  6. 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.

1. **MANAGEMENT OF SERVICE LEVELS**
   1. The Service Levels are illustrated in Annexure “A”. The Service Provider’s performance of the Services is to be measured in a Measurement Period contemplated in Annexure “A”, and it is recorded that while all Service Levels are to be measured, only Critical Service Levels shall be included in the calculation of any Service Level Credit as provided for in clause 9.3 below.
   2. The Service Provider recognises that its failure to meet Critical Service Levels may have a material adverse impact on the business and operations of SARS and that the damage from the Service Provider’s failure to meet any Critical Service Level is not susceptible to precise determination. Accordingly, in the event that the Service Provider fails to meet a Critical Service Level, then in addition to all other remedies available to SARS in law, SARS may recover the applicable Service Level Credit from the Service Provider.
   3. In any one Measurement Period, the total Service Level Credit in respect of this Agreement shall be the sum of all the individual Service Level Credits, each of which is calculated as being the product of the Amount at Risk, the Weighting Factor of the Critical Service Level Default and the penalty percentage as per the metrics in Annexure “A”.
   4. The Service Provider shall be excused from failing to comply with the Service Levels to the extent that non-performance or delayed performance is solely and directly attributable to –
      1. an act or omission of SARS or SARS’s personnel; or
      2. circumstances of force majeure as referred to in this Agreement.
   5. In the event that SARS is entitled to a Service Level Credit under this Agreement, the amount of such Service Level Credit shall be set forth as a deduction on the Service Provider’s next invoice to SARS. If there is no further invoice to be issued for the Services in terms of this Agreement, then the Service Provider shall refund the amount of the Service Level Credit to SARS.
   6. If the Service Provider fails to meet any Service Level, the Service Provider shall, promptly and timeously investigate and report to SARS on the following –
      1. the nature and date of the Service Level Failure;
      2. root causes of the Service Level Failure;
      3. a summary of the steps the Service Provider has taken to resolve the Service Level Failure and mitigate the recurrence of such Service Level Failure.
   7. The Service Provider shall be responsible for monitoring, measuring and reporting on its performance of the Services against the Service Levels. Failure to measure performance with respect to a particular Service Level for any Measurement Period shall be deemed to be a failure to meet such Service Level for such Measurement Period.
2. **REPORTING**
   1. The Service Provider shall prepare and submit to SARS all reports outlined in RFP 16/2018, on a timely basis and in line with the Service Levels.
   2. The Service Provider shall submit any other reports that may be requested by SARS upon reasonable notice being given.
   3. The Service Provider shall prepare and present to SARS quarterly and annual reviews of SARS’s travel activities.
3. **THIRD PARTY TRAVEL EXPENSES AND COMMISSION**
   1. With the exception of air travel, the Service Provider shall incur Travel Expenses on SARS’s behalf and the Service Provider shall pay third party suppliers directly, and recover such expenses from SARS.
   2. The Service Provider shall book all air travel using SARS’s Designated Account, unless advised otherwise by SARS.
   3. The Service Provider shall arrange to receive third party service provider’s invoices for each Travel Expense. Promptly following the receipt of an invoice, the Service Provider shall review such invoice and determine which charges are valid and proper and which are not. Such process shall include a reconciliation of all credit notes and refunds received for cancelled bookings. The Service Provider shall then, on a monthly basis, provide SARS with such invoice and credit notes together with a statement identifying the charges that are, and are not, proper and valid.
   4. Together with the monthly statement of Travel Expenses, the Service Provider shall provide SARS with a reconciliation of the Designated Account transactions.
   5. As the Service Provider is entitled to the fees for the Services as set forth in clause 12 below, the Service Provider shall not be entitled to charge any margin, mark-up, commission or administration fee on the Travel Expenses. If any commission is earned by the Service Provider, or refunds, specials or other rewards (which might not necessarily be of a monetary value) are granted to the Service Provider owing to its performance of the Services, the Service Provider shall delegate or pass such commissions, specials or rewards to SARS as they are earned and become available and shall pay or pass such commissions, specials or rewards to SARS on a quarterly basis in arrears.
4. **PAYMENT AND SERVICE CHARGES**

* 1. The fees and charges applicable to the Services are set out in Annexure “B” of this Agreement.
  2. The amounts set forth in Annexure “B” are all inclusive, including Value Added Tax, and payable in South African Rand (ZAR). The Service Provider shall not be entitled to any additional fees or charges, including expenses, of whatsoever nature.
  3. All payments required to be made by SARS to the Service Provider for travel outside of the Republic of South Africa, Lesotho, Namibia and Swaziland shall be subject to exchange control approval by the South African Reserve Bank.
  4. The Service Provider shall invoice SARS for the Service fee monthly in arrears.
  5. SARS will pay undisputed amounts of the Service Provider’s invoices within 30 (thirty) days of receipt thereof by the SARS’s Travel Manager: Provided that such invoice is accurate and meets SARS’s invoicing requirements and standards as communicated to the Service Provider from time to time.
  6. The Service Provider shall maintain complete and accurate records of all amounts billed to and payments made by SARS under this Agreement (including Travel Expenses) in accordance with generally accepted accounting principles. The Service Provider agrees to provide SARS with any information in respect of each invoice, as may be requested by SARS to verify accuracy and compliance with the provisions of this Agreement.
  7. SARS may withhold any amounts that it disputes in good faith, including disputes in respect of an error on an invoice or an amount paid or, if the disputed fees have already been paid, SARS may withhold an equal amount from a later payment.
  8. Where SARS disputes the Service Provider’s invoice, SARS will notify the Service Provider of the dispute as well as the nature of the dispute within a period of seven (7) days of receipt of the invoice. The Parties shall promptly first address such dispute in accordance with this Clause.
  9. 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.
  10. The Parties senior representatives (one level up from the Travel Managers), shall meet to resolve the dispute within five (5) days of SARS giving notice of the dispute. The senior representatives shall endeavour to resolve the dispute within five (5) days of its referral to them.
  11. Should the Parties fail to resolve the dispute, the matter shall automatically be referred to dispute resolution in terms of clause 34 below.
  12. Until such time as the dispute is resolved, any disputed amount or portion of an invoice owing to the Service Provider by SARS shall not be deemed to be overdue.
  13. All amounts not subject to dispute shall be paid by SARS to the Service Provider in the manner contemplated in clause 12.5 above.

1. **CONFLICT OF INTERESTS**
   1. The Service Provider will avoid any material conflict between its own interests and those of SARS and in particular –
      1. not derive any economic benefit to which it is not entitled by reason of its appointment to SARS, or from any other person in circumstances where that benefit is obtained in conflict with the interests of SARS; and
      2. notify SARS, at the earliest opportunity practical in the circumstances, of the nature and extent of any direct or indirect material interests which it may have in conflict with SARS’.
2. **LOYALTY AND REWARD PROGRAMS**
   1. The Service Provider shall ensure that all points, credits and rewards offered under loyalty and rewards programs are credited to SARS.
3. **ETHICAL BUSINESS PRACTICE**
   1. SARS has a policy of zero tolerance regarding corrupt activities. The Service Provider shall promptly report to SARS and the relevant authorities any suspicion of corruption on the part of their personnel, as well as any behaviour by any of those persons that is likely to constitute a contravention of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004).
4. **TAX COMPLIANCE**
   1. The Service Provider warrants that as of the Effective Date, it is in full compliance with, and throughout the term of this Agreement, shall remain in full compliance with all the Applicable Laws relating to taxation in the Republic of South Africa.
   2. It will be a material breach and a ground for termination, where the Service Provider fails to remain tax compliant throughout the term of the Agreement. Termination resulting from such an eventuality will result in SARS having no liability whatsoever towards the Service Provider.
5. **BROAD BASED BLACK ECONOMIC EMPOWERMENT**
   1. The Service Provider commits and warrants compliance in all respects with the requirements of the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003) [hereinafter referred to as the “BBBEE Act”], as amended from time to time and the Codes of Good Practice issued in terms of the BBBEE Act.
   2. On the Effective Date and one (1) calendar month after the expiry of a current certificate for a particular year, the Service Provider shall provide SARS with a certified copy of its BBBEE rating status from an agency accredited by the South African National Accreditation System or a certificate from the Companies and Intellectual Property Commission or a sworn affidavit, confirming annual turnover and level of black ownership in the case of an Exempted Micro Enterprise and Qualifying Small Enterprise
   3. The Service Provider shall, for the duration of this Agreement, remain BBBEE compliant and maintain the minimum BBBEE status level prescribed in RFP 16/2018. Failure to comply with the aforegoing shall constitute a material breach and will entitle SARS to terminate this Agreement.
6. **COMPLIANCE WITH SARS POLICIES**
   1. The Service Provider shall comply with all the relevant policies of SARS, including those on, travel, data security, procurement, security and access to SARS’s premises, as well as Travel Policies or instruction notes issued by the South African National Treasury.
   2. Where, in a specific situation, the Service Provider finds it impractical to comply with the SARS Travel Policy, it shall immediately notify the SARS Travel Manager, who will issue a written directive regarding the matter. Fees or charges emanating from travel arrangements made by the Service Provider which do not conform to the Travel Policy or written directives of the SARS Travel Manager shall be for the account of the Service Provider.
   3. Where a specific member of the SARS personnel has utilised Emergency Travel (subject to clause 18.2 above) at least four times in one month, same must be flagged and communicated immediately by the Service Provider to SARS’s Travel Manager.
7. **SERVICE PROVIDER’S PERSONNEL**
   1. The Service Provider shall ensure that the Service Provider’s personnel shall at all times, whilst on SARS’s premises, adhere to Applicable Laws and all health, safety and security procedures and guidelines applicable to SARS’s personnel. Should SARS at any time have reason to believe that any member of the Service Provider’s personnel is failing to comply with such Applicable Laws, health, safety and security procedures and guidelines, SARS shall be entitled to deny such personnel-member access to any or all of SARS’s premises and require the Service Provider to replace such personnel-member without delay.
   2. The Service Provider shall promptly remove from SARS’s account any Service Provider personnel whose presence or involvement in SARS’s account is determined by SARS and/or Service Provider to be detrimental to the Services or to SARS’s work environment.
   3. The Service Provider indemnifies SARS against any claims that may be brought by any of the Service Provider’s personnel who may be affected as a result of SARS exercising its rights under this clause.
8. **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.
   2. Where SARS finds the Service Provider’s personnel or agent to be a security risk, SARS will inform the Service Provider accordingly and the Service Provider shall forthwith replace such personnel, or agent with another personnel, or agent with equal skill and experience.
   3. The Service Provider indemnifies SARS against any claims that may be brought by any Service Provider personnel who may be affected as a result of SARS exercising its rights under this clause.
9. **AUDIT**
   1. The Service Provider shall provide SARS and SARS’s auditors access at all reasonable times, and subject to reasonable written notice, 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. All costs incurred in performing audits under this clause 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 such costs will be borne by the Service Provider.
   2. Promptly after the issuance of an audit report or findings issued under clause 21.1 above, the Parties shall meet to review such audit report or findings and to mutually agree upon the appropriate manner, if any, in which to respond to the audit report or findings.
   3. For the duration of this Agreement and for a period of five (5) years after the termination of this Agreement, the Service Provider will maintain a record of the Services performed under this Agreement for audit purposes.
10. **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 in clause 22.2 below, immediately upon SARS’s identification or the Service Provider's notification to SARS of the occurrence of any event which SARS considers, in its sole discretion, to be an event which may affect continuity of the Services.
    2. For purposes of this clause 22 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 180 (one hundred and eighty) 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, pursuant to the provisions of clause 22.2 above, 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.
11. **SECURITY OF SYSTEMS AND COMPLIANCE**
    1. The Service Provider shall ensure that-
       1. Data is correctly and lawfully processed;
       2. appropriate Data security measures are put in place, in order to preserve the confidentiality and integrity of all Data processed, stored or transferred via the Service Provider’s infrastructure; and
       3. the available fares and bookings made by SARS are accurately and correctly recorded on the IT systems used to render the Services.
12. **DISASTER AND BUSINESS CONTINUITY SERVICES**
    1. The Service Provider shall develop a Business Continuity Plan and submit to SARS for approval within 10 days from Effective Date.
    2. The Service Provider shall comply with the provisions of the approved Business Continuity Plan and may not vary the plan without the prior written approval of SARS.
    3. The Service Provider warrants that should a Disaster occur, it shall carry out the Business Continuity Services seamlessly and without disruption to the Services.
13. **BENCHMARKING**

SARS shall be entitled at any time during the duration of this Agreement, but no more than once in each period of 12 (twelve) months following the Effective Date, to engage a benchmarking service, at SARS’s expense, to measure the extent to which SARS is receiving the Services competitively. Such benchmarking exercise shall include measuring the quality of the Services and whether such Services are being provided at a market related price, both internationally and locally. At the end of each such benchmarking exercise, the independent third party benchmarking the service shall make recommendations as to the required improvements and acceptable time scales for implementation thereof and the Service Provider shall, at SARS’s discretion, be obliged to implement such recommendations in accordance with those time scales. It is specifically recorded that SARS shall not be under any obligation to share the benchmarking results with the Service Provider, should SARS elect not to enforce such results.

1. **INTELLECTUAL PROPERTY RIGHTS**
   1. The Parties will each retain ownership of all of their pre-existing Intellectual Property rights.
   2. All right, title and interest in and to documentation directly relating to the Services which may be created, written and/or presented by the Service Provider and or its agents and personnel and which relate to the Services will vest exclusively in SARS. To this end, the Service Provider irrevocably makes over and assigns to SARS all Intellectual Property rights which may come into existence, which transfer, make over and assignment is accepted by SARS.
   3. The Service Provider may not use any of SARS’s Intellectual Property without the prior written consent of SARS, which SARS in its sole discretion may withhold.
   4. The Service Provider warrants to SARS that it holds the right, title and interest to the Intellectual Property it will be utilizing to render the Services, alternatively it has procured the necessary rights from the relevant third party and indemnifies SARS against any claim of intellectual property right infringement, which any third party may make or bring against SARS as a result of this Agreement.
2. **CONFIDENTIALITY**
   1. The Service Provider shall not, during the term of this Agreement and after its expiration, disclose Confidential Information to any third party without the prior written consent of SARS.
   2. Where the Service Provider is not certain about the confidentiality or otherwise of information, it shall treat the information as confidential until otherwise advised by SARS.
   3. Where the Service Provider is called upon to disclose Confidential Information due to legal process, the Service Provider shall within 2 (two) days of being so called upon notify SARS of such an event.
   4. The Service Provider specifically acknowledges that all information relating to the Services, including and not limited to, literary works produced thereunder are of a sensitive nature and must be kept secure and confidential. The Service Provider undertakes not to disclose such information without first obtaining the written consent of SARS.
   5. The Service Provider shall ensure that its personnel involved with the rendering of the Services sign SARS’s Oath of Secrecy, and file such signed Oath with the SARS Travel Manager. SARS shall be entitled to deny the Service Provider’s personnel access to SARS’s facilities or prevent the Service Provider’s personnel from conducting any work in relation to the Services should SARS not be in receipt of the Oath of Secrecy.
   6. The Service Provider may not utilise, employ, exploit or in any other manner whatsoever use Confidential Information for any purpose other than as contemplated in this Agreement.
   7. SARS may at any time on written request to the Service Provider, require that the Service Provider immediately return to SARS any Confidential Information and may, in addition, require that the Service Provider furnish a written statement to the effect that upon such return, it has not retained in its possession or under its control, either directly or indirectly, any such Confidential Information or material. Alternatively, the Service Provider shall as and when required by SARS on written request, destroy all such Confidential Information and material and furnish SARS with a written statement to the effect that the same has been destroyed. The Service Provider shall comply with any request in terms of this clause 27.7 within 7 (seven) days of receipt of such request.
   8. The Service Provider will protect the interests of SARS and its Confidential Information by-
      1. making available such Confidential Information only to those of its personnel who are actively involved in the execution of its obligations under this Agreement (including relevant support staff) and then only on a “need to know” basis;
      2. putting in place internal security procedures reasonably acceptable to SARS to prevent unauthorised disclosure and taking all practical steps to impress upon those personnel who need to be given access to Confidential Information, the secret and confidential nature thereof;
      3. not using any Confidential Information, or disclosing directly or indirectly any Confidential Information to third parties, whether during the subsistence of this Agreement or thereafter; and
      4. ensuring that all Confidential Information which has or will come into the possession of the Service Provider and its personnel, will at all times remain the sole and absolute property of SARS.
3. **WARRANTIES**
   1. The Service Provider hereby represents and warrants that:
      1. It is acting as the Principal and not an agent of an undisclosed principal;
      2. It has the necessary skills, expertise, experience and resources that are required for the rendering of the Services in terms of this Agreement;
      3. The execution and performance of the terms and conditions of this Agreement is legal and binding and does not constitute a violation of any law, judgment, its founding documents or binding agreements to which it is party or by which it or its assets are bound;
      4. It has all the necessary licences, certificates, authorisations and consents required under the laws of the Republic of South Africa or under any other applicable jurisdiction for the provision of the Services and that it shall comply with the same.
      5. It will not infringe on any Intellectual Property or other proprietary rights of any third party whilst rendering the Services.
      6. It shall for the duration of this Agreement, be fully cognisant of and comply with Applicable Laws.
      7. It has the requisite insurance contemplated in clause 33.
      8. It shall at all times strictly comply with SARS’s Data security policies and procedures (including encryption standards).

* + 1. It will provide the Services in a cost efficient manner, thereby ensuring that no unnecessary or extraordinary costs are incurred and passed onto SARS.

* + 1. It shall regularly ensure that an up-to-date back-up copy of all Data provided by SARS and/or SARS’s personnel is undertaken and maintained.
  1. It is expressly agreed between the Parties that each warranty and representation given by the Service Provider in this Agreement is material to this Agreement and induced SARS to conclude this Agreement.

1. **INDEMNITIES**
   1. The Service Provider indemnifies and holds SARS harmless against all claims or Losses, arising out of this Agreement or at Law, in respect of the Service Provider’s breach of the provisions of this Agreement, any injury or death of any person, or loss of or damage to property occurring by reason of the negligence or misconduct of the Service Provider’s agents or personnel.
   2. The Service Provider further indemnifies SARS and assumes, in respect of its employees or personnel, whether on SARS premises or otherwise, all risks of personal injury, damage to property, breach of statutory duty, or any other risk associated with performance of its obligations under this Agreement.
   3. The provisions of this Clause shall survive the termination of this Agreement.
2. **LIABILITY OF 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 further be liable to SARS for all indirect and consequential or special damages and/or Losses suffered by SARS as a result of gross negligence, wilfulness, reckless acts or breach by the Service Provider or its personnel of confidentiality provisions in this Agreement, breach of Applicable Law, infringement of third party intellectual property rights or a criminal act committed by the Service Provider or personnel of the Service Provider.
3. **BREACH**
   1. Where a Party (the “Defaulting Party”) breaches any of the provisions herein, the other Party (the “Aggrieved Party”) may give notice to the Defaulting Party and request it to remedy the breach within a period of 7 (seven) days.
   2. If the Defaulting Party fails to remedy the breach within the specified time, then the Aggrieved Party may claim specific performance, or terminate this Agreement forthwith and claim damages from the Defaulting Party.
   3. Notwithstanding clause 31.2 above, the Aggrieved Party shall be entitled to any other remedies at law, as may be applicable.
   4. Except where otherwise provided in the Agreement, the Aggrieved Party will not, however, be entitled to terminate this Agreement for any breach by the Defaulting Party, unless such breach is a material breach.
   5. The Service Provider acknowledges that it is a material term of this Agreement that the Service Levels prescribed in Annexure “A”, must be maintained throughout the duration of this Agreement. The parties agree that multiple Service Level Failures will constitute sufficient proof of persistent non-compliance by the Service Provider with SARS’s prescribed Service Levels, and that such persistent non-compliance will constitute a material breach of this Agreement.
      1. Multiple Service Level Failures will be deemed to have occurred where the Service Provider fails to meet any of the Service Levels or Critical Service Levels on 3 (three) or more occasions during the same month, or if the Service Provider fails to meet the same Service Level or Critical Service Level on four different occasions during any consecutive 2 (two) month period.
      2. SARS may, by giving notice to the Service Provider, terminate the Agreement should the Service Provider commit multiple Service Level Failures as contemplated in clause 31.5.1 above.
4. **FORCE MAJEUERE**
   1. In the event of any act beyond the control of the Parties, strike, war, rebellion, riot, civil commotion, lockout, fire, accident, or (without regard to the foregoing enumeration) of any circumstances arising or action taken beyond the reasonable control of the Parties hereto preventing them or any of them from the performance of any obligation hereunder (any such event hereinafter called “*force majeure* event”) then the Party affected by such *force majeure* event shall be relieved of its obligations hereunder during the period that such *force majeure* continues .
   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* give prompt written notice thereof to the other Party. Should a *force majeure* event continue for a period of more than thirty (30) days, then either Party has the right to cancel this Agreement.
5. **INSURANCE AND RISK OF LOSS**
   1. The Service Provider shall for the duration of this Agreement have and maintain in force a requisite insurance in the amount not less than the total value of this Agreement to cover its risks, obligations and liabilities in respect of this Agreement. The Service Provider shall, on request provide a copy of such insurance policy to SARS.
6. **DISPUTE RESOLUTION**
   1. In the event of a dispute of whatsoever nature arising out of or in connection with this Agreement, including any dispute as to the validity, existence, enforceability, interpretation, application, implementation, breach, termination or cancellation of this Agreement or as to the Parties’ rights and/or obligations in terms of this Agreement or in connection with any documents furnished by the Parties in terms of this Agreement, the Parties shall meet and negotiate in good faith to attempt to resolve the dispute. 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, or in the event of either Party instituting urgent action against the other in any court of competent jurisdiction, any dispute arising from, or in connection with, this Agreement will finally be resolved by arbitration in accordance with the Rules of the Arbitration Foundation of Southern Africa (the “Foundation”) or its successor, by an arbitrator or arbitrators appointed by the Foundation.
   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.
7. **TERMINATION**
   1. Subject to other clauses in the Agreement providing for early termination, this Agreement will terminate on Termination Date.
   2. In the event that the Service Provider is unable to pay its debts or has an administrator, judicial manager, liquidator or similar person or officer appointed, or where it becomes the subject of business rescue proceedings, compromises generally with its creditors, is unable to pay any judgment granted against it within 10 (ten) days, cease for any reason to carry on business, or in the reasonable opinion of SARS, any of these events appear likely, SARS may terminate this Agreement without liability to the Service Provider.
   3. SARS may, by giving notice to the Service Provider, terminate the Agreement, in respect of the Services (in whole or in part), as of a date specified in the notice of termination in the event that the Service Provider, without SARS’s prior written consent –
      1. sells all or substantially all of its assets; or
      2. undergoes a Change of Ownership/Management. For this purpose, a Change of Ownership/Management shall be deemed to have occurred in circumstances where any natural or legal person acquires the ability, by virtue of ownership, rights of appointment, voting rights, management agreement, or agreement of any kind, to control or direct, directly or indirectly, the board or executive body or decision making process or management of the Service Provider.
8. **RELATIONSHIP BETWEEN PARTIES**

The Service Provider is an independent contractor and shall not be construed as a partner, joint venture partner or agent, or personnel of SARS in the performance of its duties and responsibilities pursuant to this Agreement.

1. **GENERAL**
   1. **Assignment** – Subject to Applicable Laws, neither party shall be entitled to assign, cede, sub contract, or delegate any rights and/or obligations or any benefit arising from this Agreement, without obtaining the prior written consent of the other Party, which consent shall not be unreasonably withheld.
   2. **Severability** - Where any of the terms and conditions of this Agreement is found 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.
   3. **Waiver** - No change, waiver or discharge of the terms and conditions of this Agreement shall be valid unless reduced to writing and signed by the Authorised Representative of both Parties. No failure or delay on the part of either Party in exercising any right, power or privilege under this Agreement will be construed 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.
   4. **Authorised Signatories** - The Parties agree that this Agreement and any Schedules, Annexures or Addenda to this Agreement shall not be valid unless signed by all Authorised Signatories.
   5. **Counterparts** - This Agreement may be executed in one or more counterparts, each of which shall be deemed to be 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. Where applicable, the Parties undertake to take whatever steps may be necessary to ensure that each counterpart is duly signed by each of them without delay.
   6. **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.
   7. **Law Governing Contract** - This Agreement shall be governed by the laws of the Republic of South Africa, and the Parties hereby consent to the non-exclusive jurisdiction of the High Court of the Republic of South Africa (Gauteng Division, Pretoria).
   8. **Covenant in 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.
   9. **Costs** - Each Party shall bear and pay its own costs of or incidental to the drafting and preparation of this Agreement.
2. **ADDRESSES**
   1. Each Party chooses the address 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 legal processes*** shall be as follows-

**Group Executive: Corporate Legal Services**

**Khanyisa Building**

**281 Middel Street**

**Nieuw Muckleneuk**

**PRETORIA**

* 1. SARS’s physical address for ***service of notices and general communication*** shall be as follows

**The Executive –Procurement**

**570 Ferhsen Street**

**Brooklyn Bridge**

**Linton House**

**Brooklyn- Pretoria**

* 1. The Service Provider‘s physical address for ***service of notices and legal processes***shall be as follows-
     1. **Chief Executive Officer/ …**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

* 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.
  2. Any Party may by written notice to the other Party, change its chosen address to another address, provided that-
     1. the change shall become effective on the tenth (10th) Business Day after the receipt or deemed receipt of the notice by the addressee; and
     2. any change in a Party’s *domicilium* shall only be to an address in South Africa, which is not a post office box or a *poste restante.*
  3. 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.
  4. Any notice to a Party in a correctly addressed envelope and which is delivered by hand to a Party’s chosen address shall be deemed to have been received on the day of delivery, unless the contrary is proved.
  5. The Parties record that whilst they may correspond via e-mail during the currency of this Agreement for operational reasons, no formal notice required in terms of this Agreement, nor any amendment or variation to this Agreement, may be given or concluded via e-mail.

**SIGNED AT PRETORIA FOR AND BEHALF OF SARS**

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

Johnstone Makhubu

Acting Chief Officer: Finance

Place: Pretoria

Date:

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

Prakash Mangrey

Acting Group Executive: Procurement

Place: Pretoria

Date:

**FOR AND ON BEHALF OF SERVICE PROVIDER**

Full Names: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Capacity: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Place: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

**ANNEXURE A**

**SERVICE LEVELS**

**ANNEXURE B**

**FEES**