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**MASTER TURNKEY SOLUTION AND SERVICES AGREEMENT**

**FOR THE PROVISION OF A FISCAL MARK AND A TRACK AND TRACE SOLUTION OF CIGARETTE PRODUCTS**

entered into between

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (PROPRIETARY) LIMITED**

(Registration No. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_)

and

**SOUTH AFRICAN REVENUE SERVICE**

**TERMS AND CONDITIONS**

This Master Turnkey Services Agreement (the ‘**MSA**’), effective as of the Effective Date (*shall be updated upon appointment),* is entered into between the **South African Revenue Service**, an organ of the State (within public administration but outside public service) established in terms of the South African Revenue Service Act 34 of 1997, with its registered address located at Pretoria Head Office, 299 Bronkhorst Street, Nieuw Muckleneuk 0181, South Africa (‘**SARS’**) and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, with registration number \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a company incorporated under the laws of the Republic of South Africa, with its registered address located at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, South Africa (‘**Service Provider**’).

**Capitalised terms have the meanings given to them in Annexure A (Glossary).**

**[Note to Bidder:**

This Agreement shall form the basis upon which SARS shall conclude a comprehensive agreement for the provision of the Solution and/or Services with the successful bidder. **This MSA does not constitute a final agreement between the Parties.** SARS reserves the right to amend this MSA at its sole discretion, at any time prior to the date on which the tender (RFP 01/2019) closes. Notwithstanding the aforementioned, and given the nature of the Bespoke Services required herein, SARS further reserves the right to amend this MSA after the aforementioned tender has closed but prior to signature thereof**.**

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1. BACKGROUND AND OBJECTIVES
   1. **Background**
      1. SARS’ primary mandate is to collect all revenue that is due to the State; ensure maximum compliance with the South African Revenue Services Act 34 of 1997 and all other Tax Laws; and provide a customs service that shall maximise revenue collection, protect South Africa’s borders and facilitate trade. SARS’s vision is to become an innovative revenue and customs agency that enhances economic growth and social development, and supports South Africa’s intergration into the global economy in a way that benefits all South African citizens, thereby increasing South Africa’s share of global trade.
      2. The Parties agree that these are the Terms and Conditions in respect of which the Service Provider agrees overall, to deliver a track and trace Solution for Cigarette Products including the design and delivery of a Fiscal Mark; Bespoke Services; provision of enforcement automated Devices that are able to track and trace in near-real time the events related to the production, importation, exportation and distribution of Cigarette Products; a Data Management system; Support and Maintenance Services (including a Monitoring Centre); Implementation Services, Disengagement Assistance Services; Training Services, and ancillary services thereto.
      3. SARS seeks to appoint a Service Provider for all of the above mentioned Services as empowered by the Customs and Excise Act, No. 91 of 1964, and has thus issued the RFP 01/2019 (the tender). SARS is interested in a proposed Solution, therefore in the event that there are additional requirements not catered for in this MSA, this MSA shall be amended to cater for such additional requirements.
      4. **The provisions and the general terms and conditions of the RFP (including the summary, guidelines, conditions and instructions of the RFP) and BRS (Bid Requirement Specifications) are herein incorporated by reference, and shall be read as if specifically incorporated in this MSA.**
   2. **Objectives**
      1. The overall objective of this transaction, in addition to SARS’s mandate as indicated in paragraph 1.1.1 above, is to use the Cigarette track and trace Solution as an Integrated and Secure solution to obtain, through automated technologies, accurate, detailed and validated information, in real or near-real time, the supply chain process of Cigarettes Products (i.e. the entire cycle from production, importation, exportation and distribution).
      2. The Solution should significantly improve SARS’s capacity to effectively identify and eliminate tax evasion and other forms of fiscal fraud, illicit trade, production, distribution, importation and exportation of smuggled tobacco products; protect consumers against risks associated with the use of illicit excisable products; to prevent distribution of dangerous sub-standard quality products; and to ensure payment of excise duties and taxes.
      3. Throughout the Term of this MSA, the Services must be rendered in such a manner so that SARS receives "value for money” as defined in SARS’ generally applicable procurement guidelines, policies, legislation and Best Industry Practice.
      4. The Service Provider has reviewed the objectives for the transaction as set out in the RFP document and this Agreement; has warranted to SARS that it is an established and capable Solution Provider and of related Services. The Service Provider further acknowledges and agrees that it understands such objectives; and has the capital; skills, experience, knowledge, capacity and resources reasonably required to provide the Solution and related Services; and shall in good faith negotiate, draft, deliver the required Bespoke Services, and generally all Services referred to in this MSA.
   3. **Construction**
      1. In this Agreement, a reference to:
         1. a statutory provision, includes a reference to the statutory provision as modified or re-enacted from time to time (whether before or after the Effective Date); and any subordinate legislation and Rules made under the statutory provision (whether before or after the Effective Date);
         2. a person or entity, includes a reference to a natural person, any body corporate, unincorporated association, trust, partnership or other entity or organization; or that person’s or entity’s successors or assigns;
         3. a clause that does not include a reference to another document that is part of the MSA shall be considered to be a reference to a clause of the document in which the reference is made;
         4. an Annexure or Exhibit unless the context otherwise requires, is a reference to an annexure or exhibit to this Agreement;
         5. a ‘**Party**’ means either SARS or Service Provider, as the context dictates, and the ‘**Parties**’ means SARS and the Service Provider; and
         6. the singular includes the plural and *vice versa*, unless the context otherwise requires.
      2. Technical terms that are not contained in the definitions set out in **Annexure A** (Glossary) hereto have the meaning determined first by reference to ITIL, if used in ITIL, then ISO, if used in ISO and not ITIL, and finally, the generally understood meaning in the information technology and business process industries, if not used in either ITIL or ISO.
      3. The expiration or termination of this MSA shall not affect the provisions of this MSA which expressly provide that they shall operate after any such expiration or 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.
      4. The headings in this MSA shall not affect the interpretation of this MSA.
      5. **This MSA is the result of arms’ length negotiations between the Parties and shall be construed to have been drafted by both Parties such that any ambiguities in this MSA shall not be construed against either Party as a result of that Party having drafted or proposed the relevant clause**. **However, to the extent that the terms and conditons of this MSA do not address a particular circumstance or are otherwise unclear or ambiguous, such terms and conditions shall be interpreted and construed as far as to give effect to SARS’s objectives at paragraph 1.2 above and as envisaged by RFP 01/2019**.
      6. Any substantive provision, conferring rights or imposing obligations on a Party and appearing in any of the definitions in Annexure A (Glossary) or elsewhere in this Agreement, shall be given effect to as if it were a substantive provision in the body of the Agreement.
      7. Words and expressions defined in any clause shall, unless the application of any such word or expression is specifically limited to that clause, bear the meaning assigned to such word or expression throughout this Agreement.
      8. Reference to "days" shall be construed as calendar days unless qualified by the word "business", in which instance a "Business Day" shall have the meaning as set out in clause 1.18 of Annexure A (Glossary).
      9. Unless specifically otherwise provided, any number of days prescribed shall be determined by excluding the first and including the last day or, where the last day falls on a day that is not a Business Day, the next succeeding Business Day.
      10. Where figures are referred to in numerals and in words, and there is any conflict between the two, the words shall prevail, unless the context indicates a contrary intention or the Party supporting the accuracy of the numerals over the words is able to prove, on a balance of probabilities, that the numerals are correct.
      11. The use of any expression in this MSA covering a process available under South African law, such as winding-up, shall, if either of the Parties to this MSA subject to the law of any other jurisdiction, be construed as including any equivalent or analogous proceedings under the law of such other jurisdiction.
      12. The words "other” and "otherwise” shall not be construed *eiusdem generis* with any preceding words where a wider construction is possible.
2. AGREEMENT STRUCTURE AND ORDER OF PRECEDENCE
   * 1. The MSA shall consist of these terms and conditions (‘Terms and Conditions’) and the Annexures. **Where required,** the Additional Services shall be provided under Work Orders executed between the Parties in the form of Annexure B (Form of Work Order).
     2. Each Work Order for Additional Services and/or Bespoke Services .shall be subject to the Terms and Conditions.
     3. Subject to clause 2.1.4, in the event of a conflict: (a) between these Terms and Conditions and any other document that is part of or executed under this Agreement, these Terms and Conditions shall prevail; and (b) between an Annexure and any other document other than the Terms and Conditions that is part of or executed under this MSA (other than the BRS, in which the BRS shall prevail- ***note to drafter:*** *review this clause (b) and 2.1.4 after contract negotiations*), such Annexure shall prevail.
     4. If a provision of the of the BRS conflicts with a provision of these Terms and Conditions, the provision of the BRS shall prevail only if such provision relates to the technical requirements of the Solution and the Fiscal Mark.
     5. Notwithstanding the generality of the foregoing, if a provision of a Work Order conflicts with a provision of these Terms and Conditions, the provision of the Work Order shall prevail if the Work Order provision: (a) references the specific provision of the Terms and Conditions with which it conflicts; (b) reasonably summarizes such provision; (c) states that a different rule applies; (d) sets forth such different rule; (e) provides the rationale for the application of the different rule; and (f) is specifically acknowledged and agreed to in writing by the relevant SARS official.
     6. The Parties specifically acknowledge and agree that the MSA and work order structure described in clause 1.4.1 is intended solely to enable the Parties to proceed in an iterative fashion.
3. APPOINTMENT
   1. SARS hereby appoints the Service Provider on a non-exclusive basis (as further contemplated in clause 4.9), to provide and deliver the Solution and related Services thereto at the Service Provider’s sole cost ( being the design and delivery of a fiscal Mark; Bespoke Services/Bespoke Services; provision of enforcement automated Devices; a Data Management system; software Support and Maintenance Services; Training Services and any Additional Services, to SARS in accordance with this MSA and the Service Provider hereby accepts such appointment.
   2. SARS requires the Service Provider to install a fully Tested, Accepted and operational track and trace system (i.e. software and hardware components/equipment to, amongst others, monitor production, enable Serial Marking, activation of the unique codes and Aggregation of Cigarette Products, creation of a ) at specified Licensed Marking Facilities **at its own cost.** The Service Provider acknowledges thatthe support and maintainance of the aforementioned equipment shall also be at the cost of the Service Provider.
   3. **Exclusions: Independence and Impartiality**
      1. The Service Provider warrants and confirms that it does not have a commercial and/or vested interest in the Tobacco Industry (i.e. it is not a Cigarrette Manufacturer or Trader or agent or entity involved in the supply chain of Cigarrette Products (i.e.importation; exportation and/or, distribution) as fully described in the RFP document at paragraph \_\_\_\_\_\_.
      2. The Service further warrants and represents that it is not a Controlled Foreign Company as envisaged by section 9D of the Income Tax Act, No 58 of 1962.
4. TERM
   1. The term of this MSA shall begin on the Effective Date and shall endure for a period of 8 years and unless extended as provided in clause 3.3 below or terminated earlier in accordance with the terms of this MSA and/or (where applicable) the expiry of the last Work Order executed in terms of this MSA (the **“Term”**).
   2. The term of each Work Order for Additional Services shall commence on the date as indicated in such Work Order and shall terminate..on the date that all Deliverables under such Work Order .and all Related Deliverables are Accepted by SARS, unless the Work Order .is terminated earlier in accordance with clause 19 or such Work Order provides otherwise (the ‘**Work Order Term**’).
   3. Upon giving notice to the Service Provider no less than sixty (60) Business Days and prior to the expiry of this MSA, SARS reserves the right to extend the Term of this MSA in respect of any one or more of the Services as determined by SARS, with the prior written approval of the Service Provider which approval the Service Provider warrants shall not be unreasonably withheld.
5. PROVISION OF THE SOLUTION AND RELATED SERVICES
   1. The scope of the Services provided by the Service Provider in terms of this MSA are set are out in clause 1.1.2 above (including the applicable schedules, appendices and annexes hereto) and as amended from time to time, for the duration of the Term. Without limiting the generality of the Service Provider’s other obligations with respect to the provision of the overall Services mentioned herein, the Service Provider has been appointed deliver the Solution and related Services thereto in accordance with the technical requirements set out in the BRS document (Annexure \_\_\_).
   2. The Service Provider shall provide the Services utilising the requisite skills and expertise highlighted in the Service Provider’s proposal, and in accordance with the acceptable worldwide Best Industry Practice. In the event of any doubt regarding what constitutes generally acceptable worldwide standards, the Parties shall request a directive from the relevant regulatory authority for the Excise track and trace industry.
   3. The Service Provider shall, at SARS’ election, perform such functions and tasks as are required to ensure compatibility of each Deliverable with SARS’ systems.
   4. During the Term, when SARS desires that the Service Provider perform Additional Services, the Service Provider shall in consultation with SARS prepare a draft Work Order (as the case may be) describing in writing the details of the work to be performed. Such description shall include the anticipated parameters and scope of the work, including the Deliverables to be provided by the Service Provider as part of the work and the timeline for the completion of the work, including the timeline for the completion of each Deliverable. SARS shall review the draft Work Order or. (as the case may be) and make any amendments it requires. For the avoidance of doubt, the Parties acknowledge that a Work Order shall only be binding if it is signed by both Parties.
   5. Without limiting the generality of the foregoing, the Service Provider specifically acknowledges and agrees that SARS may withdraw any Services from the scope of a Work Order. on thirty (30)Days’ notice to the Service Provider. The Service Provider specifically acknowledges that changes to Additional Services are likely to occur, and that SARS may require such changes from time to time. The Service Provider shall implement such changes upon SARS’ execution of a Change Order. Such changes) at no further cost to SARS.
   6. **The Service Provider’s Undertakings and Warranties**

The Service Provider undertakes and warrants to:

* + 1. provide SARS with a list of Key Personnel who shall be responsible for receiving any communication from SARS in respect of any aspect or all the Services and shall be be required to liaise with the SARS’s designated personnel;
    2. carry out all work timeously in accordance with the agreed technical requirements and agreed Service Levels, in a diligent manner and in good faith. In this regard the Service Provider further acknowledges that acting in bad faith may lead to SARS electing not to make further use of the Services of the Service Provider. The onus to prove that the Service Provider is not acting in bad faith shall rest with the Service Provider;
    3. for the duration of this MSA and for a period of five (5) years after the expiry or termination of this MSA, maintain a complete audit trail of the Services rendered in terms of this MSA, sufficient to permit a complete auditing process. The Service Provider shall provide SARS and SARS’s auditors access at all 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. All costs incurred in performing audits under this clause will be borne by the Service Provider unless audit findings reveal the Service Provider’s non-compliance with the provisions of this MSA are as a result of SARS’s wilful and grossly negligent actions;
    4. ensure that it performs the necessary security checks (vetting) on its Key Personnel and support staff involved with the performance of the Services, and immediately take steps to prevent any of its personnel found to be a security risk from performing the Services;
    5. ensure that it follows SARS’s applicable security policies and procedures for the duration of this MSA; and
    6. comply with all Rules and legislation applicable to the Services.
  1. **National Industrial Participation (NIP) Programme and the Equity Equivalent Programme for Multinationals**
     1. In the event that the Service Provider is an international entity, the Service Provider represents and warrants that -
        1. if required by the Department of Trade and Industry, it shall conclude an agreement with the Department of Trade and Industry in relation to its NIPP commitment (the National Industrial Participation Programme applicable to all government procurement contracts) that shall be carried out by the Service Provider. The Service Provider must furnish SARS with such agreement prior to signature of this Agreement; and
        2. as required by the Department of Trade and Industry, it shall prior to signature of this Agreement, obtain approval from the Department of Trade and Industry of its Equiity Equivalent Programme and furnish SARS with such DTI approved Programme prior to signature of this Agreement.
  2. **Resources**
     1. The Service Provider shall be solely responsible for procuring, delivering and providing all resources (e.g., hardware, software and personnel) necessary to set up at all relevant Licensed Marking Facilities of the Cigarette Products manufacturers, distributors, importers, exporters and/or agents ( necessary, appropriate or required to promptly and efficiently perform the Services in accordance with the requirements of this MSA and any applicable Work Order, and to provide, implement, and integrate any Deliverables pursuant to RFP 01/2019.
     2. The Service Provider shall use SARS resources (if any are provided) in an efficient manner. The Service Provider shall not use any SARS resources for any purpose other than providing Services to SARS.
     3. The Service Provider shall ensure that all the Service Provider personnel comply with all policies and procedures governing access to and use of SARS Facilities, which policies and procedures SARS notifies the Service Provider of, in writing from time to time.
     4. Where SARS requests that the Service Provider procure, modify, plan, design, develop and/or implement Deliverables, and SARS believes that the work or related Support and Maintenance Services or such other relevant Services are of a high priority to SARS the Service Provider shall use Commercially Reasonable Efforts to make available the additional resources required to meet SARS’ needs at no additional cost to SARS.
  3. The Service Provider shall ensure that,in respect of its provision of **Training Services,** it utilises suffient adequately skilled personnel that are appropriately trained (a) on the use or aspect the Solution and/or systems of the Service Provider; (b) to train End-Users regarding their use of the Solution; (c) in accordance with SARS’s demands from time to time.
  4. **Exclusivity and Minimums**

Subject to SARS’s procurement guidelines and policies, the Service Provider specifically acknowledges and agrees that this MSA does not establish an exclusive arrangement of all other Excisable goods except Cigarette Products. Moreover, in respect of Cigarette Products SARS shall be entitled to engage a Third Party to perform all or any of the Services subject to SARS’ procurement policies and guidelines.

* 1. **Cooperation with SARS and SARS’ Third Party Service Providers**
     1. As part of the Services (only where appropriate and reasonable to do so), and when requested by SARS to do so, the Service Provider shall work in co-ordination and co-operate with all other Third Party Service Providers to ensure that the Services are seamlessly rendered to SARS.
     2. It is, however, agreed that the relationship between the Service Provider and any Third Party will not constitute a partnership, and that neither the Service Provider nor the Third Party will be required to manage or monitor the other’s performance.
     3. The Service Provider shall immediately notify SARS if an act or omission (including perceived lack of co-operation) of an approved Third Party Service Provider may cause a delay, interruption or Deficiency in the Services.
  2. **Fiscal Marks**

The Service Provider warrants that it is able to design a Fiscal Mark that contains Covert and Overt authentication elements. Furthermore, the Fiscal Mark must contain the following features –

* + 1. At least one visible Secure Marking that enables End-Users and the public to easily and immediately verify the authenticity of the Fiscal Mark with the naked eye;
    2. At least one Secure feature to assist traders (such as importers, wholesalers, distributors and retailers) to authenticate the Fiscal Marks applied to CigaretteCigarette products in their custody through a simple and low cost device;
    3. At least one invisible Secure feature only verifiable by dedicated electronic handheld devices to assist SARS Field Enforcement inspectors;
    4. At least one forensic element to unequivocally assist laboratory analysis and legal procedures.
    5. The final fiscal mark size will be discussed with the Service Provider but must be able to cater for all the standard packet sizes for Cigarettes.
    6. The Fiscal Mark must be (i)Tamper Evident and capable of being applied to cardboard, (ii) Compatible with variable (high/med/low) speed automated label application equipment or equipment already in place on the production line that shall be determined during the design process); (iii) Protected against photocopy, digital reproduction and other forgery methods; (iv) Resistant to environmental factors such as temperature, humidity and sunlight; (v) have a shelf life of at least 5 years upon which they should not have any deformation or deterioration in normal atmospheric conditions;
    7. Cigarettes will be required to have a unique Fiscal Marker affixed to the product during the manufacturing and packaging process irrespective of country of manufacture;
    8. The Marking stamps should be Secure and have the latest standards that can be differentiated by manufacturer and brand;
  1. The Service Provider solely assumes all risks for the delivery of the Fiscal Marks to the relevant End-User that has ordered such Mark. The Service Provider’s system should be able to accurately account for all returned Marks (whether wasted or damaged); lost or stolen Marks.
  2. **Customisation: The Solution Design And Bespoke Requirements**
     1. With regards to the Bespoke Services and in consultation with SARS; the Service Provider shall perform the conception, design, development, implementation, coding, configuration, modification, enhancement, procurement, installation, integration, testing, and remediation services as are required to provide the Deliverables of such Bespoke Services to SARS and maintain them in accordance with the provisions of this MSA.
     2. The Service Provider shall design the Deliverables in such manner so that they are able, to the extent reasonably possible, to accommodate customisations, enhancements, developments, additions and/or improvements required for the tracking and tracing of Cigarette Products.
     3. Furthermore such designs, to the extent reasonably possible, must accommodate customisations, enhancements, developments, additions and/or improvements required to support the evolution of SARS’ operations over time with as little additional investment by SARS as is possible.
     4. The Solution should cater for the Fiscal Marking and track and trace Solution for high-volume automated productions lines as well as low-volume manually applied production lines. The solution should cater for a variety of products types and sizes.
     5. The Solution should have **Data Management and Interfacing** functionalities. Cigarette manufacturers; exporters, importers, distributors and any other relevant End User must be able to register with the Service Provider in order to be a part of the Excise fiscal Marking track and trace Solution. The Service Provider must therefore maintain a data base in accordance with the Data Management provisions below.
     6. The **Reporting** functionalities, as described in detail in the BRS document, must be contained in the Solution.
     7. A Cigarette manufacturer licenced with SARS in terms of the Customs and Excise Act, should be able to order, pay and receive either manually/remotely, a Fiscal Mark from the Service Provider within a reasonable period of time.
     8. **System Interface** – End - Users should be able to register or licence with SARS through the Service Provider Systems. This platform will be provided by the solution provider and must cater for an application, validation and approval process. The registration data must be made available to SARS registration systems via an interface (to be designed).
     9. **Aggregation** - Aggregation recording equipment on production lines and storage warehouses should record necessary production operations and movements to ensure the integrity of the parent-child relationships that are recorded.
  3. The Service Provider is responsible for sourcing and implementing equipment at the Cigarette Manufacturers’ Licensed Marking Facilities. The Service Provider shall further be responsible for the Serialisation, the activation of the Marks, Aggregation and data collection. Further, the Solution should include automated quality controls (such as vision systems to assess quality of UID applied to each unit), and support for business process quality controls (sampling) with an option to integrate with the manufacturer’s rejection system for unmarked or poorly marked packages.
  4. **Enforcement Devices**

The Service Provider shall deliver to SARS enforcement Devices with the following capabilities and functionalities -

* + 1. The Devices should be able authenticate genuine, compliant Cigarette Products and provide a mechanism of tracking and tracing of goods’ stage in the supply chain process;
    2. Operate with minimal disruption to existing production lines, and shall be capable of operating at equal to, or greater speeds and greater frequencies than the fastest production lines in operation internationally;
    3. Authenticate the material security and read each Fiscal Mark’s unique code at line speed;
    4. Allow manual product selection and/or can detect it automatically to identify the products being manufactured;
    5. Associate each unique code with the manufactured product and its corresponding production information;
    6. Detect non compliances such as products without Fiscal Marks, products applied with the wrong Fiscal Marks and wrong product SKU, flag for rejection and report non-compliances;
    7. Distinguish and account for production intended for domestic consumption and production intended for the export market;
    8. Report the corresponding production information to the central database on a near real-time basis. Each code shall be associated with information about the product such as and not limited to brand, manufacturing location, date and time, production line;
    9. Register and report production evidence in the form of time-stamped pictures or videos as a means to detect undeclared production;
    10. Be monitored remotely and send alarms to the central database in case of Tamper attempts;
    11. Monitor the status of the deployed equipment and Solution and report exceptions to the central database on a near real-time basis.
    12. connect to the central system whilst out in the field and enable the SARS Enforcement officers to (i)record log-in details and be Secured for authorised use only; (ii) have a usable battery life to enable - at least - a single day’s use without recharging; (iv) easy to use and navigate; (v) reasonably resist impact and damage; (vi) conform to operating standards for the country; (vii) Scan a Mark on a pack that is closed (unused) or open (used) to authenticate the legitimacy and tax duty compliance; (viii) Verify production details as defined by SARS; (ix) Record enforcement locations and events; (x) upload usage information and an audit trail of the Device itself and indicate operations undertaken; (xi) immediately authenticate the material and digital security of the Fiscal Marks, (xii) Register and report inspection data to the central database through a Secure and encrypted or higher connection; (xiii) perform audits and authenticate secure fiscal marks when offline/disconnected from the 4G or higher network and upload such data as soon as a connection is established; (xiv) store audit data locally (asynchronously) while disconnected from the 4G or higher network; (xv) capable of password protection to enable used by authorised personnel only; (xvi) equipped with GPS capabilities to automatically register and report inspectors’ location; (xv) cater for a real-time upload of information from the scanning devices to the central database. This will aid SARS in decision making related to current and future and (xvi) capable of deactivation;
    13. The Service Provider must develop a **smartphone application** for retail/consumer verification as described in detail in the BRS document. This will be based on authorisation sanctioned by SARS and will enable the retailer/consumer to (i) easily authenticate the legitimacy of a product; (ii) indicated tax compliance status; (iii) verify the goods are intended for local consumption; (iv) Be published to assist the general public, distribution chain operators and retailers to verify the authenticity of Fiscal Marks and retrieve product related information from the central database; (v) contain Android- and iOS-enabled smartphones and shall be distributed free of charge; (vi) enable the general public to report non-compliance (e.g. Fiscal Marks applied on wrong products, fake or suspicious stamps),
  1. **Monitoring Centre**
     1. (The hardware and software required to create a command centre that will enable forecasting of fiscal marks required by the manufacturer, order management and approval, oversight and monitoring of all production lines and marking centres;
  2. **Documentation**

Prior to elevating a Deliverable into the production environment (for Stage Three Testing as contemplated in **Annexure C** (Testing), the Service Provider shall provide Documentation that accurately reflects the design, structure, operations, capabilities and use of such Deliverable, and that: (a) explains the technical details of the Deliverable at a level and in a fashion necessary to enable SARS’ personnel with a reasonable level of technical experience to modify, maintain and support such Deliverables; and (b) explains the operation and use of the Deliverable at a level and in a fashion necessary to enable trained SARS’ personnel to use and operate such Deliverables.

1. ACCEPTANCE OF DELIVERABLES
   1. SARS shall Accept a Deliverable only when SARS successfully completes Stage Three Testing of such Deliverable(s) in accordance with Annexure C (Testing).
   2. In the event that any Material Errors or Deficiencies are revealed during the Acceptance testing of a Deliverable, the Service Provider shall utilise all Commercially Reasonable Efforts to correct such Material Errors or Deficiencies as soon as reasonably possible, at no additional cost to SARS. When the Service Provider is satisfied that it has so corrected such Material Errors or Deficiencies, it shall reschedule acceptance tests for the failed Deliverable with SARS and shall again undertake such acceptance tests in accordance with Annexure C (Testing). The provisions of this clause 5.2 shall again apply in respect of the Acceptance tests for the failed Deliverable until such time as SARS successfully completes Stage Three Testing of such Deliverable(s) in accordance with Annexure C (Testing).
   3. Deliverables that have failed their Acceptance tests on three (3) occasions or not passed their Acceptance tests prior to the agreed delivery date shall be deemed to constitute a material breach and SARS shall be entitled to immediately terminate this MSA and to enforce its rights in terms of the provisions of the provisions in this MSA.
2. GOVERNANCE
   1. **Subcontracting**
      1. The Service Provider may not in any way (including by entering into a partnership, alliance or outsourcing arrangement for this purpose) subcontract its obligations under the MSAt without the prior written consent of SARS.
      2. The provisions of clause 6.1.1 notwithstanding, SARS will be entitled in its sole discretion to withhold approval in respect of the appointment of any Subcontractor to whom the Service Provider intends to delegate the performance of a material part of the Services, regard being had to the subcontracting provisions in the RFP document. **For purposes of clarity, an Excise goods manufacturer is not a Subcontractor as envisaged in this MSA**.
      3. Where SARS has consented to the appointment of a Subcontractor as contemplated in clause 6.1.1 above, the written agreements between the Service Provider and its Subcontractors relating to the subcontracting of the Services ("Subcontract") will contain materially the same terms and conditions as this MSA to the extent tha such terms and conditions are relevant to the Services to be provided by the Subcontractor (including a restriction on the Subcontractor's right to further subcontract its obligations without SARS’s prior written consent).
      4. The Subcontract will contain a provision stating that all obligations of the Subcontractor are also expressed as obligations owing by the Subcontractor to SARS and which are as such, irrevocable stipulations in favour of SARS which are capable of being accepted by SARS at any time by written notice given to the Subcontractor, such stipulation being acceptable by SARS either collectively or individually, each being severable from the other.
      5. Prior to the conclusion and signature of any agreement between Service Provider and Subcontractor relating to the subcontracting of the Services, a comprehensive draft of the agreement is to be submitted to SARS for review and approval. The Service Provider will be obliged to accommodate all reasonable requests of SARS for amendments to the Subcontract. The draft agreement will in any event only be signed upon approval by SARS and a certified copy of the signed Subcontract (which is to be identical to the final draft approved by SARS) will be submitted to SARS within 7 (seven) Business Days of signature.
      6. The Service Provider will not terminate, alter, amend or vary in any material respect a Subcontract or novate a Subcontract that was approved by SARS under clauses 6.1.1 and 6.1.5 without obtaining prior written consent from SARS.
      7. SARS will be entitled in its sole discretion to waive compliance with the provisions of any one or more of, or of any part of, clauses 6.1.3, 6.1.4, 6.1.5 and 6.1.6, by written notice given by SARS to the Service Provider.
      8. In no event will Service Provider be relieved of its obligations under this MSA as a result of its use of any Subcontractors. The Service Provider will at all times be responsible to SARS or for the fulfilment of all of the Service Provider's obligations under this Agreement and will remain SARS's sole point of contact regarding the Servicest.
      9. The Service Provider will supervise the activities and performance of each Subcontractor and will be jointly and severally liable with each such Subcontractor for any act or failure to act by such Subcontractor which causes any harm, loss or damage to SARS for which Service Provider is not in any event liable under clause 6.1.7 above including the costs of any investigations (incurred by SARS) into the activities of such Subcontractor by relevant authorities.
      10. If SARS determines that the performance or conduct of any Subcontractor is unsatisfactory or if it can be reasonably established or determined that concerns exist regarding the Subcontractor's ability to render future performance because of changes in the ownership, management, and/or financial condition of the Subcontractor, or there have been material misrepresentations regarding the Subcontractor on the strength of which SARS’s consent was granted for the appointment of such Subcontractor, SARS may notify the Service Provider of its determination in writing, indicating the reasons therefore, in which event the Service Provider will promptly take all necessary actions to remedy the performance or conduct of such Subcontractor or, subject to the terms of this clause 6.1 replace such Subcontractor with another Subcontractor acceptable to SARS.
      11. The Service Provider will not disclose SARS’s Confidential Information to a Subcontractor unless and until such Subcontractor or prospective Subcontractor has executed an agreement including provisions at least as rigorous and restrictive as the confidentiality provisions set out in Confidentiality provisions herein
   2. **Meetings**
      1. Throughout the Term, if SARS so requires, the Parties shall meet monthly and review issues arising under MSA. In such event the Service Provider shall prepare and circulate an agenda sufficiently in advance of each such meeting to give participants an opportunity to prepare for the meeting. Service Provider shall incorporate into such agenda items that SARS desires to discuss. At SARS’ request, the Service Provider shall prepare and circulate minutes promptly after a meeting. SARS and the Service Provider agree that such minutes shall not serve to amend this MSA or the obligations of the Parties hereunder in any respect. All meetings shall take place in Pretoria, unless otherwise agreed by SARS.
      2. As reasonably requested by SARS, the Parties shall meet to review the Service Provider’s performance of the Services and Service Provider’s full compliance with the provisions of this MSA and/or Work Orders and/or any Service Levels. Without prejudice to any other rights available to SARS in terms of this MSA and/or Work Orders, to the extent that Service Provider is failing to comply with any provision of this MSA and/or Work Orders and/or any Service Level, and SARS provides the Service Provider with a reasonably detailed notice thereof at least thirty (30) Business Days prior to the meeting, the Service Provider shall prepare a detailed analysis of the failures identified by SARS and propose for SARS’ review and approval a plan for the improvement of the Services. With SARS’ approval, the Service Provider shall promptly implement such plan at its cost and expense.
      3. Without limiting the generality of the foregoing, the Parties shall meet as reasonably requested by SARS. The Service Provider shall make senior personnel with authority to make all reasonably required decisions available for such meetings at SARS’ reasonable request.
   3. **Reports**

The Service Provider shall provide all reports required by SARS in terms of the Agreement. In addition, the Service Provider shall, upon request by SARS, from time to time, provide to SARS all further reports as may be required by SARS, in the format (ncluding but not limited to corresponding production information whether brand, manufacturing location, date and time, production line, to the central database on a near real-time basis and within the timelines determined by SARS as described in detail in the BRS document

1. Ethical Business Practices
   1. SARS has a policy of zero tolerance regarding corrupt activities. The Service Provider will promptly report to SARS and the relevant authorities any suspicion of corruption on the part of its any member of its staff, Subcontractors, primary parties 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).
   2. Neither Party will offer, promise or make any gift, payment, loan, reward, inducement benefit or other advantage to any of the other Party's personnel.
   3. If the results of any audit of the Services conducted by or on behalf of SARS indicates the possibility of corrupt activities, improper or fraudulent practices or theft, SARS will, after allowing the Service Provider reasonable opportunity to investigate that possibility, have the right either by itself, or by its agents, or by requesting the relevant authority, to investigate all the relevant circumstances, to question any relevant of the staff members of the Service Provider or Service Provider Third Parties. The Service Provider will use all reasonable efforts to facilitate any such investigation or enquiry. In the event that an act of corruption, fraud or theft is proven, SARS will be entitled, on written notice to the Service Provider, to immediately terminate this MSA and/or that the contract with such Sub-contractor be terminated immediately.
   4. SARS reserves the right to withdraw an award or to cancel this MSA should it be established, at any time, that the Service Provider or its staff, its Subcontractor or the personnel of its Subcontractor has been blacklisted by National Treasury or by another government institution.
2. Support and Maintenance Services
   1. The Service Provider undertakes to maintain and support the Hardware including the operating Software in accordance with the Service Level Agreement and Annexure H, and shall include providing SARS, manufacturers and distribution chain operators (DCO) during implementation and operation of the installed components of the Solution. The Service Provider must implement, maintain and ensure uptime that is aligned with industry specifications and standards. The Service Provider must maintain all components and elements of the Solution including but not limited to all equipment installed by the Service Provider; (i.e. any Hardware and Software installed by the Service Provider)
   2. The Service Provider must ensure that maintenance turn-around time, quality standards and response to outages are aligned with industry standards and expectations.
   3. **Support Services**
      1. The Support Services provisions outlined in the BRS sets forth the general principles to be adhered to by the Service Provider when providing the Support Services.
      2. The Support Services include the establishment of the Solution Monitoring Centre which shall include provision for telephonic or onsite assistance as determined by SARS and as determined by the classification of the Incident or Problem.
      3. Furthermore in relation to
3. (Excise goods manufacturers, (i)the Service Provider must provide support to Excise goods manufacturers during implementation, by assessing each production line and developing a requirements document that outlines impact assessment and necessary preparations to be made by the such Excise goods manufacturer; (ii)support Excise goods manufacturers in complying with packaging design and line operations compatible with the traceability Solution.
4. supply chain entities, the Service Provider must (i) work with such entities choosing to configure / enhance their existing systems to electronically submit traceability events aligned with defined Aggregation specifications; and (ii) Provide entities that do not have systems capable of submitting the required information with devices and equipment capable of recording the products received, purchased, sold, stored and transported.
5. INTELLECTUAL PROPERTY
   1. **SARS Intellectual Property**

All right, title, and interest worldwide, including all Intellectual Property Rights, in or to the Fiscal Mark shall vest exclusively in SARS. To the extent that the Service Provider should, by operation of law, hold or acquire any right, title, or interest anywhere in the world, including any Intellectual Property Rights, in or to the Fiscal Mark, the Service Provider hereby irrevocably and in perpetuity transfers, makes over and assigns to SARS all such right, title and interest, including all such Intellectual Property Rights. Which transfer, making over and assignment SARS accepts.

* 1. **Intellectual Property developed during the Term of the MSA** 
     1. SARS will have all right, title and interest in all Intellectual Property developed or generated for SARS in the course of providing the Bespoke Services ("**Developed Intellectual Property**").
     2. The Service Provider hereby irrevocably assigns, transfers and conveys to SARS without further consideration all of its right, title and interest in such Developed Intellectual Property.
     3. The Service Provider agrees to execute any documents or take any other actions as may reasonably be necessary, or as SARS may reasonably request in writing, to perfect SARS's ownership of such Developed Intellectual Property, and further, hereby irrevocably grants to SARS its power of attorney in *rem suam* with the right on behalf of Service Provider to sign all such deeds and documents and to take all such actions as may be necessary for SARS to perfect its rights of ownership over such Developed Intellectual Property should Service Provider fail to comply with any such written request.
     4. Unless otherwise agreed, where Developed Intellectual Property incorporates the Service Provider’s Intellectual Property, systems, and processes that the Service Provider did not develop in the course of providing Deliverables pursuant to this MSA, the Service Provider hereby grants SARS an irrevocable, perpetual, world-wide, fully paid-up, royalty-free, non-exclusive licence to SARS and SARS’s designated personnel to perform any lawful act, including the right to use, copy, maintain, modify, enhance and create derivative works of such Service Provider’s Intellectual Property insofar as it forms part of the Developed Intellectual Property.
  2. **The Service Provider Intellectual Property**
  3. Subject the provisions of paragraph 9.2.4, the Service Provider retains all right, title and interest in and to Service Provider’s Intellectual Property that is used in connection with the Deliverables. Service Provider grants to SARS an irrevocable, perpetual, fully paid-up, royalty-free, non-exclusive licence for SARS to receive and realise the benefit of the Deliverables during the Term and during the Disengagement Assistance Period.
  4. **Third Party Intellectual Property**
  5. The Service Provider will neither, for the Term of this Agreement, incorporate any Third Party Intellectual Property into any Developed Intellectual Property nor introduce into SARS's environment any Third Party Intellectual Property without first obtaining SARS's written consent thereto. The Service Provider will be responsible for obtaining a licence on behalf of SARS, at the Service Provider’s cost and in SARS's name, to use such Third Party Intellectual Property.
  6. **Use of Third Party Intellectual Property licensed to SARS**

The Service Provider will not, without SARS's express prior written consent, use any Third Party Intellectual Property licensed to SARS whether to provide the Deliverables to SARS or for any other purpose whatsoever. Service Provider acknowledges that such unauthorised use of Third Party Intellectual Property licensed to SARS may constitute a breach of the provisions of the licence agreement/s in terms of which such Third Party Intellectual Property is licensed to SARS. Should consent be granted to Service Provider to use Third Party Intellectual Property licensed to SARS, Service Provider undertakes that it will only use such Intellectual Property strictly in accordance with the provisions of the relevant consent. Service Provider is required to perform the Deliverables in accordance with the Service Levels notwithstanding any decisions by SARS to withhold its consent.

1. Data Management - Confidentiality and Safeguarding Of Data
   1. The Service Provider warrants that
      1. if it has no reason to believe that the legislation applicable to it prevents it from fulfilling its obligations under this MSA and that in the event of a change in that legislation which is likely to have a substantial adverse effect on the warrantees provided pursuant to this MSA, it will promptly notify the change to the Data Exporter in writing, within 5 (five) days, in which case the Data Exporter is entitled to suspend the transfer of Personal Information and/or terminate this MSA, upon written notice;
      2. it is compliant, or will be compliant, with the technical and organisational security measures, as agreed to between the Parties, and is able to process the Personal Information in accordance with SARS’s mandatory Data protection principles;
      3. to process TaxPayer Information in accordance with the universally accepted mandatory Data protection principles in accordance with the applicable Data protection laws;
   2. **Confidentiality**
      1. SARS and the Service Provider acknowledge the great importance of the Confidential Information and recognise that the owner of such Confidential Information may suffer irreparable harm or loss in the event of such information being disclosed or used other than in accordance with the terms of this Agreement.
      2. Each Party undertakes:
         1. except as permitted by this MSA, that it shall neither disclose nor publish any Confidential Information of the other Party in any manner, for any reason or purpose whatsoever, without the prior written consent of such other Party;
         2. except as permitted by this MSA, that it shall neither utilise, employ, exploit nor in any other manner whatsoever use the Confidential Information of the other Party for any purpose whatsoever, without the prior written consent of such other Party; and
         3. to take all practical steps, both before and after disclosure, to impress upon its personnel who are given access to Confidential Information the secret and confidential nature thereof.
      3. Each Party shall maintain the confidentiality of the other Party’s Confidential Information, using at least the same efforts as it uses to maintain the confidentiality of its own Confidential Information, and as otherwise required under Applicable Law, the terms of this Agreement, and, in relation to the Confidential Information of SARS, the SARS Oath of Secrecy/Solemn Declaration.
      4. Save to the extent expressly provided to the contrary, SARS and the Service Provider each acknowledge that nothing in thisMSA confers any rights or license to Confidential Information.
      5. In the event of any unauthorised access to, disclosure or loss of, or inability to account for, any Confidential Information, the Party responsible for protecting such Confidential Information shall promptly, at its own expense:
         1. notify the other Party in writing;
         2. describe in detail any materials in respect of which there has been unauthorised access;
         3. take such actions as may be necessary or reasonably requested by the other Party to minimise the violation; and
         4. cooperate in all reasonable respects with the other Party to minimise the violation and any damage resulting from it, including return any copied or removed materials.
      6. Without limiting the generality of the other provisions of this clause 10, the Service Provider shall: (i) restrict the dissemination of SARS’ Confidential Information to only those of the Service Provider personnel who are actively involved in activities for which use of Confidential Information is authorised and then only on a ‘need to know’ basis; and (ii) initiate, maintain and monitor internal security procedures acceptable to SARS to prevent unauthorised disclosure by the Service Provider personnel.
      7. Without limiting the generality of the other provisions of this clause 9, upon the termination or expiry of thisMSA forMSA any reason whatsoever or on demand by SARS, the Service Provider shall immediately but by no later than expiry of five (5) Business Days from the effective date of the termination or expiration of thisMSA orMSA the demand by SARS, as the case may be return to SARS, or destroy, any Confidential Information of SARS in the Service Provider’s possession or under its control. In addition, upon SARS’ written request, the Service Provider shall promptly furnish to SARS a written certification to the effect that upon the return or destruction of the Confidential Information, no such Information is in its possession or under its control, either directly or indirectly.
      8. The Parties acknowledge that damages alone may not necessarily be an adequate remedy for breach of the undertakings under this clause 10, and accordingly, without prejudice to any other rights and remedies available to the Parties, the Parties agree that interdict or specific performance may be an appropriate and necessary remedy for breach of the undertakings given under this clause 10.
   3. **Disclosure of Confidential Information to Service Provider Personnel and Third Parties**
      1. The Service Provider shall procure that all of its shareholders, directors, employees, agents, contractors and Service Provider Personnel sign the SARS Oath of Secrecy/Solemn Declaration. In addition, the Service Provider shall not give the Service Provider personnel access to any SARS’ Confidential Information unless all of the aforegoing have first executed SARS Oath of Secrecy/Solemn Declaration. A copy of SARS Oath of Secrecy/Solemn Declaration as of the Effective Date is set forth in **Annexure D**(Oath of Secrecy/Solemn Declaration) as aforesaid.
      2. SARS shall be entitled to deny the Service Provider personnel access to SARS Facilities or prevent such personnel from conducting any work in relation to the Services (including at SARS Facilities), should SARS not be in receipt of a signed SARS Oath of Secrecy/Solemn Declaration from such personnel.
      3. The Service Provider’s failure to provide the undertaking referred to in clause 10.3.1 shall in no way detract from the Service Provider’s obligations in terms of this Agreement.
      4. The Service Provider shall fully comply with and shall procure that all the Service Provider personnel fully comply with all security measures imposed by SARS regarding logistical and physical security and access to the SARS Facilities, to the extent that same are of general application to members of SARS’ staff undertaking functions similar to the Services.
      5. Notwithstanding the foregoing, the Service Provider may disclose SARS’ Confidential Information to a Subcontractor, and such Subcontractor may disclose such Information to its personnel, where:
         1. such Subcontractor is performing Services under the terms of this Agreement;
         2. such disclosure is necessary or otherwise naturally occurs in the scope of such Subcontractor’s responsibility and the responsibility of its personnel; and
         3. prior to performing any Services or receiving or accessing any SARS’ Confidential Information, the Subcontractor provides to SARS: (i) executed SARS Oaths of Secrecy/Solemn Declarations from each of its personnel on the SARS’ account; and (ii) a writtenMSA bysuch Subcontractor to fully comply with the provisions of clause 9 and this clause 10.
      6. Notwithstanding the foregoing, SARS may disclose Confidential Information to its Third Party service provider where, prior to such disclosure, the Third Party provides Service Provider a writtenMSA substantially in accord with **Annexure E** (Confidentiality and Non-Use Agreement) which shall create a direct obligation on the part of such Third Party to Service Provider.
      7. Notwithstanding the foregoing, either Party may disclose the Confidential Information of the other to the Arbitration Foundation of Southern Africa or the arbitrators hearing a dispute under clause 18 to the extent required to exercise its rights under this Agreement. Notwithstanding the foregoing, SARS may disclose Confidential Information of the Service Provider, and the Service Provider may disclose Confidential Information of SARS (other than information relating to Taxpayers and Traders) to its attorneys or auditors, provided that such disclosure is reasonably required to enable the disclosing Party to conduct its business activities.
      8. In the event that a Party is required to disclose the Confidential Information owned by the other Party or a Third Party in terms of a requirement or request by operation of law, regulation or court order, the Party required to make such disclosure shall:
         1. advise the other Party thereof prior to disclosure, if permitted by the Applicable Law, regulation or court order;
         2. take such steps to limit the extent of the disclosure to the extent that it lawfully and reasonably practically can;
         3. afford the other Party a reasonable opportunity, if possible, to intervene in the proceedings; and
         4. fully comply with the other Party’s requests as to the manner and terms of any such disclosure if permitted by the Applicable Law, regulation or court order.
2. PERFOMANCE BOND
   1. Where applicable, in accordance with the provisions of RFP 01/2019, the Service Provider will post on the Effective Date, a performance bond by a financial institution approved by SARS and in the form prescribed by SARS or, if SARS does not prescribe a form, in a form proposed by the Service Provider and approved by SARS in its sole discretion ("**Performance Bond**"). Notwithstanding the generality of the above, such Performance Bond will secure the Service Provider’s obligations in terms of this Agreement.
   2. The Service Provider will not be absolved of any of its obligations and liabilities under this MSA by virtue of it having obtained the Performance Bond required in terms of this clause 11.
   3. SARS will be entitled to encash the Performance Bond if:
      1. an event occurs in respect of which this MSA permits SARS to recover a penalty from the Service Provider and the Service Provider fails to pay such penalty when it is due in terms of this MSA or otherwise upon demand by SARS; or
      2. the Service Provider materially breaches this MSA and such breach is reasonably considered by SARS to be irremediable; or
      3. the Service Provider materially breaches this MSA, and such breach is reasonably capable of being remedied but the Service Provider fails to remedy such breach when called upon by SARS to do so.
      4. If SARS encashes the Performance Bond in terms of clause 11.3, SARS will be entitled to recover from the proceeds of the Performance Bond all of (i) SARS's Losses occasioned by the Service Provider; (ii) all amounts for which the Service Provider is liable in terms of any indemnities given by it to SARS; (iii) all penalties which SARS is entitled to impose upon Service Provider; (iv) all legal costs which SARS is entitled to recover from the Service Provider in asserting SARS's rights under this Agreement and the Performance Bond; and (v) any other amounts which may be owing by the Service Provider to SARS, of whatever nature and however arising; provided always that the provisions of this clause 11.3.4 will never be construed as in any way limiting SARS's right of recovery to the full value of the Performance Bond.
      5. In the event of SARS:
         1. cancelling this Agreement pursuant to any matter referred to in clause 11.3, after SARS has recovered all amounts which may be owing to SARS by the Service Provider in terms of clause 11.3.4, SARS will pay the balance, if any, to Service Provider;
         2. not cancelling the Agreement pursuant to any matter referred to in clause 11.3, the Service Provider will, at the election of SARS:
            1. pay to SARS an amount equal to that which SARS is entitled to recover from Service Provider in connection with such matters and in accordance with the provisions of clause 11.3.4, so that SARS holds in trust (either itself or in escrow with its attorneys) an amount equal to that which was represented by the Performance Bond prior to SARS recovering the amounts owing to it in accordance with clause 11.3.4; or
            2. deliver to SARS a new Performance Bond for the same value as that of the original Performance Bond (and for which purpose clause 11.1 will again apply, *mutatis mutandis*) against delivery of which SARS will pay to the Service Provider the balance, if any, of the amounts remaining from the previous Performance Bond following SARS's recovery of the amounts owing to it in terms of clause 11.3.4.
      6. Upon SARS receiving a replacement Performance Bond in terms of clause 11.3.5.2.2, the provisions of this clause 11 will apply in respect of such new Perfomance Bond.
3. CHARGES

Provision of the Solution and related Services pursuant to this MSA shall be rendered in accordance with the provisions of the Pricing Schedule (which document is part of the RFP documents) annexed hereto as Annexure \_\_\_\_[*update*].

1. AUDITS
   1. **SARS Audit Rights**
      1. The Service Provider and its Subcontractors will maintain a complete audit trail of financial and non-financial transactions resulting from this MSA. The Service Provider will provide to SARS, its internal or external auditors, inspectors and regulators access at all reasonable times to any facility or part of a facility at which either Service Provider or any of its Subcontractors is providing the Deliverables, to the Service Provider personnel, and to equipment, Software, personnel, data, records and documentation, including agreements between the Service Provider and its Subcontractors, relating to the Deliverables for the purpose of performing audits and inspections of either the Service Provider or its Subcontractors to: (i) verify the accuracy of the Service Provider’s charges and invoices; (ii) verify the accuracy of payments by or credits from the Service Provider; (iii) verify the accuracy of price changes to the extent such changes are determined by reference to the Service Provider’s costs or changes thereto; (iv) verify the integrity of, and examine the systems that process, store, support and transmit SARS data; (v) examine the Service Provider’s performance of the Deliverables, including verifying compliance with the Performance Standards; (vi) verify compliance with the terms of this MSA; (vii) satisfy the requirements of any legislative, judicial or regulatory authority having jurisdiction; (viii) to the extent applicable to the Deliverables performed by the Service Provider and/or any charges therefore, examining: (a) practices and procedures, (b) systems, (c) general controls, and (d) the efficiency of the Service Provider’s operation; and (ix) any other audit reasonably required by SARS.
      2. SARS reserves the right to appoint a third party to perform an audit under this clause 12.
      3. The Service Provider will provide to the auditors, inspectors and regulators such assistance as they may require, including installing and operating audit Software. In the case of audits other than audits conducted by or on behalf of legislative, judicial or regulatory authorities, SARS's audits will not unreasonably interfere with the Service Provider’s normal course of business and will comply with the Service Provider's reasonable confidentiality requirements.
      4. Unless SARS has a good faith suspicion of fraud, SARS will provide the Service Provider with reasonable notice for audits other than security audits and audits conducted by or on behalf of legislative, judicial or regulatory authorities. Audits will take place during Business Hours, provided that security audits and audits conducted by or on behalf of legislative, judicial or regulatory authorities may take place outside normal business hours at SARS's sole discretion.
      5. All costs incurred by SARS in performing audits of the Service Provider will be borne by SARS unless any such audit reveals a material inadequacy or material deficiency in respect of the scope of the audit exercise conducted, in which event the cost of such audit will be borne by the Service Provider.
      6. All Subcontractors will be obliged to comply with the provisions of this 12. If the Service Provider seeks to hire a Subcontractor, and such prospective Subcontractor does not grant SARS the audit rights described in this 12, The Service Provider will: (i) notify SARS of the prospective Subcontractor's refusal to grant such rights; (ii) identify the audit rights the prospective Subcontractor is willing to grant; and (iii) obtain SARS's review and approval of such subcontract. SARS reserves the right to withhold its approval of any subcontract at its sole discretion, and the Service Provider will be obliged to continue providing the Deliverables in accordance with the performance standards, notwithstanding SARS's decision to withhold such approval.
      7. **Audit Follow-Up**
         1. Following an audit or examination, SARS or its external auditors will meet with the Service Provider to obtain factual concurrence with issues identified in the audit or examination.
         2. Within 10 (ten) Business Days following the provision to the Service Provider of the findings of an audit, whether by way of a meeting or the delivery of the audit report by the auditors, or an audit report by the Service Provider’s auditors, the Service Provider will provide SARS with a plan (**"Audit Response Plan")** to address shortcomings or deficiencies raised in such audit findings attributable to the Service Provider. The Audit Response Plan will identify the steps that the Service Provider will take to remedy such shortcomings and deficiencies and include a completion date for such steps detailed in the Audit Response Plan. With SARS approval, the Service Provider will implement such Audit Response Plan at Service Provider’s cost and expense. The Service Provider will report monthly to SARS on the status of the implementation of any Audit Response Plan. Failure to complete the Audit Response Plan on or before the completion date included in such Audit Response Plan will be deemed to be a material breach of this MSA
         3. The Service Provider will promptly make available to SARS the results of any reviews or audits conducted by the Service Provider, its Affiliates or their Subcontractors, agents or representatives (including internal and external auditors) to the extent such findings reflect conditions and events relating to the Deliverables.
         4. Promptly after the issuance of any audit report or findings issued under Clause 12.1.7.3, the Parties will meet to review such report or findings and to agree on how to respond to the suggested changes.
2. REPRESENTATIONS AND WARRANTIES
   1. **NIPP (National Industrial Participation Programme and EEIP**

The Service provider represents and warrants that it shall conclude an agreement with the Departement of Trade and Industry with regards to the NIPP Commitment to be carried out by the Service Provider in accordance with the Departement of Trade and Industry

* 1. **Deliverables**

The Service Provider represents and warrants that for a period of 12 (twelve) months following Acceptance (the ‘**Warranty Period**’), each Deliverable shall operate in accordance with the SARS Business Requirements Document, the functional specifications for such Deliverables and the technical specifications for such Deliverable without Material Errors or Deficiencies. The terms of this clause 13.1 shall survive the expiry of any termination of this Agreement.

* 1. **Work Standards**

The Service Provider represents and warrants that it shall perform its obligations under thisMSA with promptness and in accordance with the Best Industry Practice. Without limiting the generality of the foregoing, the Service Provider represents and warrants that it has and shall assign to perform the Services resources having the skills, experience and expertise, capacity and knowledge reasonably required to perform the Services.

* 1. **No actual, pending or threatened litigation**

The Service Provider represents and warrants that there is no actual, pending or threatened litigation against or affecting Service Provider before any court or administrative body or arbitral tribunal that might affect the ability of Service Provider to meet and carry out its obligations under this Agreement.

* 1. **Protecting the Parties Reputations**

The Service Provider warrants and represents that it shall not intentionally or negligently do, nor omit to do, anything which would adversely impact on, or prejudice, SARS’s reputation in any way whatsoever.

* 1. **Authorisation**
     1. Service Provider represents and warrants to SARS that:
        1. it has the requisite corporate power and authority to enter into this MSA and to carry out the transactions contemplated by this Agreement; and
        2. the execution, delivery and performance of thisMSA the consummation of the transactions contemplated by thisMSA have been duly authorised and approved by the requisite corporate action on the part of the Service Provider.

* 1. **Inducements**

Each Party represents and warrants to the other that it has not violated any Applicable Laws or policies of the other of which it has been given notice, regarding the offering of unlawful inducements in connection with this Agreement.

* 1. **Viruses**

The Service Provider shall ensure that no Viruses, Bugs or similar items are coded or introduced into any of the components of the Solution, systems, networks, software or computer hardware of the Service Provider or SARS Data contained therein, during the performance of any the Services by the Service Provider personnel. If, notwithstanding the aforegoing, Viruses or Bugs are coded or introduced or coded by the Service Provider Personnel, the Service Provider shall at no additional charge, remove the Virus or Bug and reduce the effects of the Virus or Bug and do all such things as SARS may request in relation to the Virus or Bug and, if the Virus or Bug causes a loss of operational efficiency or loss of data, to mitigate and restore such losses.

* 1. **Tax Compliance**
  2. The Service Provider warrants that as of the Effective Date it is in full compliance with, and throughout the term of this MSA (including any Renewal Period) shall remain in full compliance with all applicable laws relating to taxation in the Republic of South Africa.
  3. If SARS becomes aware of any non-compliance by the Service Provider and such non-compliance is not remedied within sixty (60) days after SARS has given notice to this effect, such non-compliance shall be deemed to constitute a material breach of this MSA by the Service Provider and SARS shall be entitled to terminate thIS MSA forthwith.
  4. The Service Provider further warrants that it shall deliver to SARS on the Effective Date and each anniversary thereof during the term of this Agreement, a valid tax clearance certificate issued for the then-current year in respect of the Service Provider. Should the Service Provider fail to provide such certificate within twenty one (21) days of the contract anniversary date, SARS may terminate this MSA on 30 (thirty) days' notice. SARS shall have no liability to the Service Provider with respect to a termination under this clause.

1. BBBEE COMPLIANCE AND SHAREHOLDING
   1. **Compliance**
      1. The Service Provider warrants that as at the date of last signature of this Agreement, its level of BBBEE contributor status as contemplated in the BEE Codes (as read with the BEE Act) (the "**BBBEE Rating**”) is compliant with the BBBEE requirements as indicated in the RFP documents
      2. Without limiting the Service Provider’s obligations in terms of this clause 14, the Service Provider:
         1. warrants that for the duration of thisMSA itMSA shall retain and/or improve its BBBEE Rating;
         2. warrants that for the duration of this MSA itMSA shall use Commercially Reasonable Efforts to attain a BBBEE Rating which is acceptable in terms of the current BEE Codes (as read with the BEE Act) and other applicable BBBEE legislation and charters from time to time;
         3. warrants that it is in full compliance with, and throughout the Term it shall remain in full compliance with, all Applicable Laws governing BBBEE, including in particular the procurement rules and policies of SARS relating to BBBEE as communicated by SARS to the Service Provider from time to time (provided that full compliance with the aforesaid procurement rules and policies shall only be required to the extent that such rules and policies are applied by SARS to all service providers providing similar services and are not specific to Service Provider);
         4. shall within ninety (90) days after the date of last signature of this MSA within thirty (30) days of each anniversary of the Effective Date provide to SARS a certified copy of a verification certificate confirming its BBBEE Rating issued by an agency accredited to operate as such by the South African National Accreditation System (SANAS**);**
         5. shall advise SARS of any likely changes to its BBBEE Rating within a period of 2 (two) weeks from the date on which the event giving rise to the change occurs.
   2. **Shareholding**
      1. The Service Provider warrants to SARS that as at the date of last signature of this Agreement its BBBEE shareholding is such that "Black People" (as defined in the BEE Codes) hold (directly or indirectly) at least \_\_\_ (\_\_\_ percent) of the shares in Service Provider (measured using the flow-through principle contemplated in the BEE Codes).
      2. The Service Provider warrants that upon request by SARS it shall provide SARS with full details in respect of the names and percentage shareholding of all direct and indirect, current and new, registered and beneficial shareholders of the Service Provider.
      3. If at any time during the Term, SARS has reason to believe that due to a change in Applicable Laws the requirements in this clause 14 must be adjusted, SARS shall propose such adjustments for the Service Provider’s review and approval. The Service Provider shall not unreasonably delay or withhold its approval. The Service Provider shall have nine (9) months from the date of a change to this clause 14 to fully comply with such change, provided the Service Provider uses Commercially Reasonable Efforts to fully comply sooner if possible.
      4. Without derogating from SARS’ rights in clause 12, SARS may, at SARS’ cost and in SARS sole discretion, audit all information provided by Service Provider in terms of this clause 14using internal and/or external auditors. Copies of any written report by such auditors shall be made available to Service Provider.
2. INSURANCE AND RISK OF LOSS
   1. **Insurance**

The Service Provider will, at its own cost and expense, during the Term have and maintain in force, to the reasonable satisfaction of SARS, sufficient short-term insurance cover to cover all of its obligations and liabilities under this MSA for which it is appointed, as stated in the Tender, consistent with acceptable and prudent business practices including run-off cover identical for a period of two (2) years, subsequent to termination or expiration of the term of this Agreement.

* 1. **Risk of Loss**

The Service Provider shall be responsible for risk of loss of, and damage to, any hardware or other asset of the other in its possession or under its control. Any hardware in the possession or control of the Service Provider’s Subcontractors or agents (including couriers, freight companies and the like) shall be deemed to be under the control of the Service Provider.

* 1. **SARS Right to Acquire Insurance in Certain Circumstances**

Without limiting the generality of SARS’s rights and remedies hereunder, in the event of a failure by Supplier the Service Provider to maintain any insurance required hereunder, or to provide evidence of renewal at least 3 (three) Business Days prior to expiration of the applicable insurance cover, on 3 (three) Business Days’ notice to the Service Provider, SARS may purchase the requisite insurance and deduct the costs thereof from any amounts owed tothe Service Provider is entitled to under this Agreement.

1. INDEMNITY
   1. **Indemnity by Service Provider**

The Service Provider hereby indemnifies, holds harmless and agrees to defend SARS, SARS Beneficiaries, and all of their officers, employees, agents, successors and assigns, from any and all Losses arising from or in connection with any of the following (for the purposes of the foregoing, this clause 16 constitutes an irrevocable *stipulatio alteri* for the benefit of each of the aforesaid Persons who are not Parties, the benefits of which may be accepted by them at any time (whether before or after the Losses arise) on written notice to Service Provider):

* + 1. Third Party claims attributable to any breach of any provisions of the MSA (including any warranties) by Service Provider;
    2. Third Party claims arising from Service Provider’s breach of an MSA between the Service Provider and a Subcontractor or supplier (including claims by the Subcontractor or supplier);
    3. Third Party claims attributable to theft, fraud or other unlawful activity or any negligent, wilful or fraudulent conduct by the Service Provider or the Service Provider personnel, and claims attributable to errors or omissions, but not claims by Taxpayers with respect to their tax affairs including clearance certificates, refunds, interest, penalties and the like;
    4. Third Party claims of infringement or misappropriation of any Intellectual Property or other proprietary rights, based on SARS or a SARS Beneficiary's use of any items of the Solution or components thereof;
    5. Third Party claims arising from or related to the death or bodily injury of any agent, employee, business invitee, or business visitor or other person caused by the negligent or intentional conduct of the Service Provider or the Service Provider personnel;
    6. Third Party claims arising from damage to property owned or leased by SARS or a Third Party caused by the negligent or intentional acts or omissions of the Service Provider; and
    7. Third Party claims, demands, charges, actions causes of action, or other proceedings asserted against SARS but resulting from a negligent or intentional act or omission of Service Provider in its capacity as an employer of a person.

1. LIABILITY
   1. 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 a breach of the Confidentiality provisions above, infringement of Third Party intellectual property rights, or any criminal act committed by the Service Provider or its employees.
   2. The Service Provider shall be liable for any negligent or wrongful acts relating to the Services, including fraud or unlawful activity, committed by any of its personnel.
   3. In relation to the Data Importer acting as a processor of Personal Information:
      1. In the event that the Personal Information, the Importer intentionally or negligently violates the provisions relating to the safeguarding of Data and the Person who has suffered damage as a result of this violation is entitled to receive compensation from the Data Importer for the damage suffered and the Data Exporter is thus indemnified in this regard
      2. The Data Importer agrees to comply with all applicable laws that require the notification of individuals in the event of unauthorized release of Personal Information or other event requiring notification. In the event of a breach of any of the Data Importer’s security obligations or other event requiring notification under applicable law, the Data Importer agrees to assume responsibility for informing all such individuals in accordance with applicable law and to indemnify, hold harmless and defend the Data Exporter and its trustees, officers, and employees from and against any claims, damages, or other harm related to such an event requiring notification
   4. **General Intent**

Each Party shall be liable to the other Party for any actual damages incurred by such Party as a result of the other Party’s failure to perform its obligations in the manner required by this Agreement.

1. DISPUTE RESOLUTION
   1. **Generally**

Any dispute between the Parties arising out of or relating to this Agreement, including with respect to the interpretation of any provision of this MSA and with respect to the performance by Service Provider or SARS, shall be finally settled as provided in this clause 18.

* 1. **Informal Dispute Resolution**
     1. Prior to the initiation of formal dispute resolution procedures, the Parties shall first attempt to resolve their dispute informally in accordance with the procedure set forth in this clause 18.2.
     2. Upon the written request of a Party, any dispute, which arises between the Parties, shall be referred to a joint committee of the - and a senior representative of the Service Provider nominated by the Service Provider. The joint committee shall meet as often as the Parties reasonably deem necessary in order to gather and furnish to the other all information with respect to the matter in issue that the Parties believe to be appropriate and germane in connection with its resolution.
     3. The SARS designated representative - and the Senior Representative of the Service Provider contemplated in clause 18.2.2 shall discuss the problem and attempt to resolve the dispute without the necessity of any formal proceeding. During the course of discussion, all reasonable requests made by one Party to another for non-privileged information, reasonably related to this Agreement, shall be honoured in order that each of the Parties may be fully advised of the other Party’s position. The specific format for the discussions shall be left to the discretion of the joint committee.
     4. Subject to clause 18.4, formal proceedings for the resolution of a dispute may not be commenced until the earlier of: (i) the - or the Senior Representative of Service Provider contemplated in clause 18.2.2 conclude in good faith that amicable resolution through continued negotiation of the matter does not appear likely; or (ii) ten (10) Business Days after the initial written request to inform the other party’s joint committee member pursuant to clause 18.2.2 (this period shall be deemed to run notwithstanding any claim that the process described in this clause 18.2 was not followed or completed).
  2. **Formal Dispute Resolution**
     1. Subject to clause 18.4, any dispute of whatsoever nature which arises 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 MSA as to the Parties’ rights and/or obligations in terms of this MSA in connection with any documents furnished by the Parties in terms of this Agreement, which is not resolved in the manner referred to in clause 18.2, shall be submitted to binding arbitration before a single arbitrator in terms of this clause 18.3 and, except as otherwise provided herein, the rules for the time being as stipulated by the Arbitration Foundation of Southern Africa.
     2. This clause18.3 shall not preclude either Party from obtaining urgent or interim relief from the High Court of South Africa or any other competent organs of state created for the specific purpose of regulating the business or industry activities in which the Parties are engaged. Given the nature of the Services provided to SARS in terms of this Agreement, Service Provider hereby recognises that any dispute between the Parties may have an adverse effect on the collection of national revenue. Service Provider therefore agrees that any interim relief sought by SARS relating to the Services would of necessity be urgent in nature.
     3. The arbitrator shall, if the dispute is:
        1. primarily an accounting matter, be an independent practising accountant of not less than ten (10) years’ standing as such;
        2. primarily a technical matter, be an independent technical expert with at least ten (10) years’ experience in technology; or
        3. primarily a legal matter, be an attorney of not less than ten (10) years’ standing as such or a practising senior counsel.
     4. Such arbitrator shall be agreed upon in writing by the Parties; provided that if the Parties do not, within three (3) Business Days after the date on which the arbitration is demanded, agree in writing as to the nature of the dispute and the identity of the arbitrator, the arbitrator shall, irrespective of the nature of the dispute, be appointed by the Chairman of the Arbitration Foundation of Southern Africa or its successor-in-title upon request by either Party to make such appointment after expiry of such three (3) Business Days.
     5. The arbitration shall be held as quickly as possible after it is demanded with a view to it being completed within 60 (sixty) Business Days after it has been so demanded.
     6. Promptly after the arbitrator has been appointed, either Party shall be entitled to call upon the arbitrator to fix a date when and where the arbitration proceedings shall be held and to settle the procedure and manner in which the arbitration proceedings shall be held. The arbitration proceedings shall be held in Johannesburg, Republic of South Africa.
     7. The Parties shall direct the arbitrator to allocate the costs of the arbitration in the manner the arbitrator deems appropriate.
     8. Any order or award that may be made by the arbitrator:
        1. absent manifest error, shall be final and binding subject to either Party’s right of appeal in terms of clause 18.3.9 (right of appeal to 3 person tribunal) below;
        2. shall be carried into effect; and
        3. may be made an order of any competent court (including the High Court of South Africa).
     9. There shall be a right of appeal against any award of the arbitrator provided that –
        1. the appeal is noted within 10 (ten) days of the arbitrator’s award;
        2. the appellant delivers the record to the respondent within five (5) days of the record becoming available to the appellant. The relevant provisions of this arbitration clause shall apply *mutatis mutandis* in regard to the appeal;
        3. the appeal shall be heard before a panel of three (3) arbitrators and shall be appointed in terms of the provisions of clause 18.3.4 above;
        4. the appellant shall provide security for the costs of the appeal within ten (10) days of a Pro-Forma Bill of Costs being determined by the Taxing Master of the South Gauteng High Court.
     10. This clause 18.3 is severable from the rest of the MSA constitutes an irrevocable consent by the Parties to any proceedings in terms hereof, which consent to arbitration shall survive the MSA regardless of whether the MSA terminated for any reason whatsoever.
     11. The arbitrator (or arbitrators in the case of an appeal) shall have the power to give default judgment if any party fails to make submissions on due date and/or fails to appear at the arbitration (or appeal).
     12. To the extent that under the terms of this clause 18.3, a Party is entitled to resort to the High Court of South Africa, each of the Parties hereby irrevocably submits to the jurisdiction of the South Gauteng High Court of South Africa for the institution and hearing of any legal proceedings permitted under this clause 18.3.
  3. **Urgent Relief**

Neither clauses 18.2, 18.3 or anything else contained in this MSA shall preclude either Party from obtaining relief on an urgent basis from a court of competent jurisdiction.

1. TERMINATION
   1. **Termination by SARS for Cause**
      1. SARS may, by giving notice to the Service Provider, terminate this MSA in whole or in part, as of a date set out in the notice of termination, in the event that the Service Provider commits a material breach of this MSA or:
      2. is placed under voluntary or compulsory liquidation (whether provisional or final) or business rescue proceedings are commenced against the Service Provider; and/or
      3. commits any of the acts of insolvency set out in section 8 of the Insolvency Act, 1936 (Act No. 24 of 1936).
   2. **Termination for Convenience**
      1. SARS may terminate this MSA in whole or in part for convenience and without cause at any time by giving the Service Provider at least 30 (thirty) days prior written notice. SARS may pay the Service Provider’s professional fees for Services rendered up to the date of the termination of this Agreement.
   3. **Termination upon Sale, Acquisition, Merger or Change of Control**
      1. In the event of a sale, acquisition, merger, or other change of Control of the Service Provider where such Control is acquired, directly or indirectly, in a single transaction or series of related transactions, or in the event of a sale of all or substantially all of the assets of the Service Provider in a single or series of related transactions, then SARS may terminate this MSA by giving the Service Provider at least 90 (ninety) days prior notice and designating a date upon which such termination will be effective. SARS will have no liability towards the Service Provider with respect to such termination
   4. Disengagement Assistance

The Service Provider will, during the Disengagement Assistance Period provide to SARS, or at SARS’s request to a Successor (where SARS is not the Successor) without interruption or degradation of the Services (i) such termination/expiration assistance as SARS may request to facilitate the Transition of the Services to SARS or a Successor; and (ii) to the extent applicable, hardware and Software, ("Disengagement Assistance").

1. GENERAL
   1. **Binding Nature and Assignment**

This MSA shall be binding on the Parties hereto and their respective successors and assigns. Notwithstanding the foregoing, neither Party shall be entitled to cede, delegate or assign all or any of its rights or obligations in terms of this MSA without the prior written consent of the other, except that SARS shall be entitled to assign its rights and obligations under this MSA without the approval of the Service Provider to another Governmental Entity.

* 1. **Non-Solicitation**

Neither Party shall, for the duration of this MSA and for a further period of 12 (twelve) months after the expiration thereof, directly solicit or encourage or attempt to solicit or encourage any employee or subcontractor of the other Party to leave the employment of such Party, unless prior consent is obtained from such Party, which may be given or withheld in such Party’s sole discretion. It shall not be a violation of this provision for a Party to advertise its openings in the generally available media and to hire the other Party’s personnel that may contact it as a consequence of such advertising.

* 1. **Entire Agreement; Amendment**
     1. No change, waiver, or discharge hereof shall be valid unless in writing and signed by an authorised representative of the Party against which such change, waiver, or discharge is sought to be enforced.
  2. **Compliance with Applicable Laws**
     1. Governing Law. This MSA in all respects (including its existence, validity, interpretation, implementation, termination and enforcement) be governed by the laws of the Republic of South Africa which is applicable to agreements executed and wholly performed within the Republic of South Africa.
     2. General Obligation. The Service Provider shall (i) take such steps as are required for the Services and Deliverables to fully comply with all Applicable Laws; (ii) perform its obligations in a manner that fully complies with all Applicable Laws; (iii) identify and procure the required licenses, permits, certificates, approvals and inspections required for it to perform the Services including for the purchase, sale, importation, modification, improvement, development, installation and integration of the Deliverables; and (iv) use Commercially Reasonable Efforts to identify any licenses and permits required for SARS to use the Deliverables.
     3. SARS’ Rules and Regulations. The Service Provider shall perform its obligations in a manner that fully complies with SARS’ safety, security, environmental and health rules and regulations as from time to time identified by SARS to the Service Provider.
     4. Licenses and Permits. Except as otherwise expressly set forth in this Agreement, the Service Provider shall be responsible for obtaining all applicable licenses, authorizations, approvals, certifications, registrations, and permits required in connection with the performance of the Services and to otherwise carry out its obligations hereunder, and shall have financial responsibility for, and shall bear and pay, all fees and taxes associated with such licenses, authorizations and permits.
     5. Monitoring and Changes to Law
        1. The Service Provider shall monitor Applicable Laws that apply to Third Party service providers of goods and services generally, companies in South Africa generally, providers of technology services and software generally and identify any proposed changes to Applicable Law.
     6. Non-Compliance
        1. If either Party is charged with non-compliance of any Applicable Laws, the Party charged with such non-compliance shall promptly notify the other Party of such charges in writing.
        2. The Service Provider shall be solely responsible for any fines and penalties imposed on Service Provider and/or SARS resulting from Service Provider’s failure to fully comply with the provisions of thisclause 20.4.
  3. **Notices**
     1. Each Party chooses as its *domicilium citandi et executandi* for all purposes of this Agreement, including for purposes of serving any court process or other documents, giving any notice or making any other communications the following:

In the case of SARS : **Office of the Commissioner**

Block A

299 Bronkhorst Street

Nieuw Muckleneuk

Pretoria

0181

(marked for the urgent attention of the Executive: Corporate Legal Services)

Facsimile: Office of the Commissioner

(012) 422 5250 (marked for the urgent attention of the Executive: Corporate Legal Services)

with a copy to : **Chief Officer, Enforcement (marked for urgent attention)**

Block A

299 Bronkhorst Street

Nieuw Muckleneuk

Pretoria

0181

In the case of

Service Provider : **The Chief Executive Officer**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,

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

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

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

Facsimile: (\_\_\_\_\_\_\_\_\_\_\_\_ (marked for the urgent attention of the Chief Executive Officer)

* + 1. All notices, requests, demands, and determinations under this (other than routine operational communications), shall be valid and effective only if in writing. Such notices, requests, demands and determinations under this MSA shall be deemed duly given only when delivered by hand during ordinary Business Hours or by registered mail in a properly addressed envelope to a responsible person at the addressee’s *domicilium*. Such notices, requests, demands and determinations under this MSA may also be given by facsimile to the facsimile number set out in clause 20.5.1. Notices, requests, demands and determinations sent by facsimile and received prior to 13h00 on a Business Day shall be deemed duly given on such Business Day; notices, requests, demands and determinations sent by facsimile and received at other times shall be deemed duly given on the first Business Day following the date that such facsimile is received.
    2. Either Party may by notice to other Party change its *domicilium* to another physical address in the Republic of South Africa and the change shall take effect on the seventh (7th) day after the date when the notice is duly given.
    3. The Parties record that whilst they may correspond via email during the currency of this MSA for operational reasons, no formal notice required in terms of this Agreement, nor any amendment or variation to this MSA may be given or concluded via email.
  1. **Relationship of Parties**
     1. The Service Provider, in furnishing the Services hereunder, is acting as an independent contractor. Neither Party is an agent of the other or has any authority to represent the other as to any matters, except as expressly authorised in this Agreement.
     2. Nothing contained in this MSA shall be construed as creating a company, close corporation, joint venture, partnership or association of any kind, involving SARS or its Affiliates or the Service Provider; nor is anything contained in this MSA to be construed as creating or requiring any continuing relationship or commitment on a Party’s or its Affiliates’ behalf with regard to the other Party and its Affiliates other than as specifically set out herein.
     3. Unless expressly authorised by this Agreement, neither of the Parties (nor their respective agents) shall have the authority or right, nor shall any Party hold itself out as having the authority or right, to assume, create or undertake any obligation of any kind whatsoever, express or implied, on behalf of or in the name of the other Party.
  2. **Severability**

In the event that any provision of this MSA conflicts with the law under which this MSA is subject to or if any such provision is held invalid by an arbitrator or a court with jurisdiction over the Parties, such provision shall be deemed to be restated to reflect as nearly as possible the original intentions of the Parties in terms of Applicable Laws, and, if this is not possible, the provision shall be severable from the rest of this Agreement. The remainder of this MSA shall remain unchanged and in full force and effect.

* 1. **Survival**

Any provision of this MSA which contemplates performance or observance subsequent to any termination or expiration of this MSA shall survive any termination or expiration of this MSA and continue in full force and effect.

* 1. **Public Disclosures**
     1. Neither Party shall use or issue any advertising, press release or publicity of any kind containing any reference to the other Party or in which the name of the other Party is mentioned (except announcements intended solely for internal distribution or to meet legal or regulatory requirements beyond the reasonable control of the disclosing party) without first obtaining written approval from the other Party which may be given or withheld in such Party’s sole discretion.
     2. The Service Provider may not use any SARS Intellectual Property (including the SARS logo or any other service marks or trademarks of SARS), save as expressly permitted in this MSA or with the prior written consent of SARS.
  2. **No Pledges**

The Service Provider agrees that, without SARS’ prior written consent; it shall not assign, cede, transfer, pledge, hypothecate or otherwise encumber its rights to receive payments from SARS under this MSA for any reason whatsoever.

* 1. **Good Faith**

Each Party agrees that, in its respective dealings with the other Party under or in connection with this Agreement, it shall, to the extent not otherwise specifically stated, act reasonably and act in good faith.

* 1. **Counterparts**

This MSA may be executed in several counterparts, all of which taken together shall constitute one single Agreement between the Parties hereto.

* + 1. Irrespective of whether the Separation is implemented, the Service Provider shall at all times during the currency of this Agreement, be bound by the provisions of this Agreement.

|  |  |  |
| --- | --- | --- |
|  | **SOUTH AFRICAN REVENUE SERVICE** | |
| Signature: |  |  |
|  | who warrants that he / she is duly authorised thereto | |
| Name: |  |  |
| Date: |  |  |
| Place: |  |  |

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| --- | --- | --- |
|  | **SOUTH AFRICAN REVENUE SERVICE** | |
| Signature: |  |  |
|  | who warrants that he / she is duly authorised thereto | |
| Name: |  |  |
| Date: |  |  |
| Place: |  |  |

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|  | **SOUTH AFRICAN REVENUE SERVICE** | |
| Signature: |  |  |
|  | who warrants that he / she is duly authorised thereto | |
| Name: |  |  |
| Date: |  |  |
| Place: |  |  |

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|  | **SOUTH AFRICAN REVENUE SERVICE** | |
| Signature: |  |  |
|  | who warrants that he / she is duly authorised thereto | |
| Name: |  |  |
| Date: |  |  |
| Place: |  |  |

|  |  |  |
| --- | --- | --- |
|  | **THE SERVICE PROVIDER (PROPRIETARY) LIMITED** | |
| Signature: |  |  |
|  | who warrants that he / she is duly authorised thereto | |
| Name: |  |  |
| Date: |  |  |
| Place: |  |  |
| Witness: |  |  |
| Witness: |  |  |

|  |  |  |
| --- | --- | --- |
|  | **THE SERVICE PROVIDER (PROPRIETARY) LIMITED** | |
| Signature: |  |  |
|  | who warrants that he / she is duly authorised thereto | |
| Name: |  |  |
| Date: |  |  |
| Place: |  |  |
| Witness: |  |  |
| Witness: |  |  |

1. - Glossary
2. **DEFINITIONS**

In this MSA, the following terms have the following meanings:

* 1. “**Additional Services**” means any additional services that SARS may require after signature of this MSA which Services shall be at the cost of the Service Provider;
  2. "**Acceptance**" and its derivatives (such as Accept or Accepted) means reasonable acceptance of Deliverables by SARS in accordance with clause 5 of the Terms and Conditions;
  3. “**Aggregation”** means the identification through a unique identifier that enables for excise goods to be traced to a unit level and further provides/establishes a many to one (parent –child) relationship between units and containers such as pack-to-carton, carton-to-master case, master case-to-pallet and consignment level aggregation;
  4. "**After Hours**" means all hours during a day other than Business Hours;
  5. "**Annexures**" means the annexures, schedules, exhibits and other attachments to the Terms and Conditions;
  6. "**Applicable Law**" means any statute, regulation, policy, by-law, directive, notice or subordinate legislation (including treaties, multinational conventions and the like having the force of law); the common law; any binding court order, judgment or decree; any applicable industry code, policy or standard enforceable by law; or any applicable direction, policy or order that is given by a regulator having the force of law;
  7. "**Assets**” means all corporeal and incorporeal property that is required to operate and support the component parts of the Solution;
  8. "**BBBEE**" means broad-based black economic empowerment as envisaged in, *inter alia,* the BEE Act and the BEE Codes;
  9. "**BEE Act**” means the Broad-Based Black Economic Empowerment Act, No. 53 of 2003;
  10. "**BEE Codes**” means the Broad-Based Black Economic Empowerment Codes of Good Practice issued by the Minister of Trade and Industry under section 9(1) of the BEE Act;
  11. "**BBBEE Rating**” means the rating contemplated in clause 14.1 of the Terms and Conditions;
  12. **“Bespoke” or “Bespoke Services”** means any requirements that are specific to SARS’s business objectives and requirements; and the development of any Bespoke Intellectual Property”;
  13. "**Bespoke Developed Intellect****ual Property**" means any Intellectual Property developed by the Service Provider specifically for SARS from rendering the Bespoke Services that may be concluded between the Parties;
  14. "**Best Industry Practice**” means the highest professional exercise of that degree of skill, diligence, prudence, standards and foresight which would reasonably and ordinarily be expected from time to time from a person skilled and experienced in the Excise track and trace industry seeking in good faith to fully comply with its contractual obligations including the FCTC standards;
  15. **“BRS”** means the Bid Requirement Specification document in relation to RFP 01/2019;
  16. “**Bugs**” means any error, flaw or mistake in the program of a Deliverable’s source code which in any way prevents the Deliverable from functioning correctly;
  17. "**Business Day**" means any day from Monday to Friday (inclusive), except public holidays as gazetted by the government of the Republic of South Africa from time to time;
  18. "**Business Hours**" means the hours between 08h00 and 17h00 on any Business Day. Any reference to time shall be based upon Central African Time;
  19. "**Change of Control**" has the meaning given in clause 22.2 of the Terms and Conditions;
  20. "**Change Order**" means a change order in the form of **Annexure C** (Form of Change Order) that changes the Deliverable provided under an executed Work Order;
  21. "**Charges**" means the amonts chargeable (if any) as indicated in the Pricing Template (Annexure \_\_\_);
  22. “**Cigarrette Products**” or “**Tobacco Products**” shall refer to the tobacco and/or cigarettes as contemplated by the Customs and Excise Act, No. 91 of 1964;
  23. "**Commercially Reasonable Efforts**" means taking such steps, and otherwise performing in such a manner, as a well-managed organisation would undertake where such organisation was acting in a determined, 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;
  24. "**Confidential Information**" means SARS’s confidential information and taxpayer information as defined in the Tax Administration Act, 2011 (Act No. 28 of 2011) and information considered confidential in terms of any tax act administered by the Commissioner of SARS, SARS Material and any information or data of any nature, tangible or intangible, oral or in writing and in any format or medium, which by its nature or content is or ought reasonably to be identifiable as confidential and/or proprietary to the Disclosing Party or which is provided or disclosed in confidence, and which the Disclosing Party or any person acting on behalf of the Disclosing Party may disclose or provide to the Receiving Party or which may come to the knowledge of the Receiving Party by whatsoever means. The Confidential Information of the Disclosing Party shall include information even if it is not marked as being ‘confidential’, restricted or proprietary (or any similar designation);

Confidential Information excludes information or data which-

* + 1. is lawfully in the public domain at the time of disclosure thereof to the Receiving Party; or
    2. subsequently becomes lawfully part of the public domain by publication or otherwise; or
    3. is or becomes available to the Receiving Party from a source other than the Disclosing Party which is lawfully entitled without any restriction on disclosure to disclose such Confidential Information to the Receiving Party; 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 Receiving Party to establish that such information falls within such exclusions;
       2. the information disclosed shall not be deemed to be within the foregoing exclusions merely because such information is embraced by more general information in the public domain or in a Party's possession; and
       3. any combination of features shall not be deemed to be within the foregoing exclusions merely because individual features are in the public domain or in a Party's possession, but only if the combination itself is in the public domain or in a Party's possession.

The determination of whether information is Confidential Information shall not be affected by whether or not such information is subject to, or protected by, common law or statute related to copyright, patent, trademarks or otherwise;

* 1. "**Control**" and its derivatives (such as Controlling and Controlled) means, with regard to any entity, the right or power to dictate the management of and otherwise control such entity by any of: (a) holding directly or indirectly the majority of the issued share capital (or other ownership interest if not a company) of such entity ordinarily having voting rights; (b) controlling the majority of the voting rights in such entity; or (c) 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;
  2. "**Corrections**" has the meaning given in clause 2.2 of **Annexure F** (Maintenance Services);
  3. “**Covert**” **authentication** **element** means authentication element within/on the Fiscal Mark which is hidden from the human senses until the use of a tool by an informed person reveals it to their senses or else allows automated interpretation of the element;
  4. **“Data”** means information supplied, stored, collected, collated, accessed or processed by or for the benefit of the SARS, including personal information as defined in the Protection of Personal Information Act No 4 of 2013 and Promotion of Access to Information Act 2 of 2000, and any applicable legislation in South Africa;
  5. **“Data Exporter”** means the Party who transfers Personal Information;
  6. **“Data Importer”** means the Party who agrees to receive the Personal Information from the Data Exporter, intended for processing on its behalf, after the transfer in accordance with this MSA;
  7. **“Data Management Services”** means the managed service by the Service Provider of receiving, storing, processing and reporting on the traceability data that will be generated by the track and trace Solution at various traceable stages throughout the supply chain;
  8. "**Deliverable**" means any output, outcome or result whether operational or non-operational perfomed by the Service Provider for/on behalf of SARS as part of the delivery of the Solution and Services pursuant to this Agreement;
  9. "**Disengagement Assistance Services**" has the meaning given in clause 19.4 of this MSA;
  10. "**Documentation**" means, with respect to Deliverables, equipment and Third Party Software, Project Plans, functional specifications, technical specifications, designs and templates, technical manuals, training manuals, user manuals, flow diagrams, file descriptions, installation specifications and plans, and other information that describes the function and use, or is reasonably required for the efficient use, of such Deliverables, including descriptions of the configuration of hardware required to use such Deliverables, whether written or electronic, which meet the requirements therefore set forth in clause 4.16 of the Terms and Conditions;
      1. **“Excise” or “Excisable” goods** means excisable goods as contemplated by the Customs and Excise Act, No. 91 of 1964, as amended, however for purposes of this Agreement shall refer to the Cigarette Products and/or Tobacco Products;
  11. "**Effective Date**" means \_\_\_\_\_\_\_\_\_ (*shall be updated upon appointment*);
  12. "**End User**" means any person authorized by SARS to use or receive the benefit of the system sprovided and Services rendered by the Service Provider from time to time and includes without limitation, Cigarette manufactures,exporters, importers, distributors, Taxpayers, Traders and SARS designated employees;
  13. "**Escrow Agent**" means the escrow agent as notified in writing by SARS to Service Provider, as being the Escrow Agent that has been agreed to by SARS and the Third Party licensor;
  14. **“FCTC”** or “**WHO FCTC**” means the Framework Convention on Tobacco Control being an international regulatory body that issues protocols and implement treaties on tobacco-control and eliminating trade of illicit tobacco products;
  15. "**Force Majeure Event**" means circumstances beyond a Party’s reasonable control and includes, without limitation: (i) acts of God, public enemy, fire, explosion, earthquake, perils of the sea, flood, storm or other adverse weather conditions, war declared or undeclared, civil war, revolution, civil commotion or other civil disorder, sabotage, riot, strikes, lock-outs or other labour disputes, blockade, embargo, sanctions, epidemics, act of any Government or other Authority, compliance with law, regulations or demands of any Government or Governmental agency, limitations imposed by exchange control or foreign investment or other similar regulations or any other circumstances of like or different nature beyond the reasonable control of the Party so failing;
  16. "**Furnishing Party**" means the Party who furnishes or otherwise makes available such Party's Confidential Information to the other Party (including such other Party's Affiliates, Subcontractors, Third Party service providers and agents, as applicable) or on whose behalf such Party's Confidential Information is furnished or otherwise made available to the other Party (including such other Party's Affiliates, Subcontractors, Third Party service providers and agents, as applicable);
  17. "**Governmental Entity**" means any department, agency, service or any national, provincial, or local government bodies of the Republic of South Africa or any other country, including SARS;
  18. "**High (Severity Level 1) Problem**" has the meaning given in clause 3.3.2.1.1 of **Annexure F** (Maintenance Services);
  19. "**Intellectual Property**" means means all computer programs, Software, source code, object code, programmer interfaces, specifications, operating instructions, compilations, lists, databases, systems, operations, processes, methodologies, technologies, algorithms, techniques, methods, designs, circuit layouts and mask-works, plans, reports, data, works protected under the Copyright Act 98 of 1978, works of authorship, video recordings, audio recordings, photographs, models, samples, substances, trade secrets, formulae, know-how, show-how, Confidential Information, concepts and ideas of any nature (including of a technical, scientific, engineering, commercial, strategic, financial, marketing or organisational nature), inventions, discoveries, drawings, notes, 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 inhere in any such items, and any other tangible or intangible items in which Intellectual Property Rights may inhere, as may exist anywhere in the world and any applications for registration of such intellectual property, and includes all Intellectual Property Rights in any of the foregoing;
  20. "**Intellectual Property Rights**" means all intellectual property rights of whatever nature, including (i) all patents and other patent rights, including divisional and continuation patents, utility models; (ii) rights in and to inventions, whether patentable or not; (iii) rights in trademarks, service marks, logos, slogans, corporate, business and trade names, trade dress, brand names and other *indicia* of origin; (iv) rights in designs, topography rights, rights in circuit layouts and mask-works; (v) copyright, including all copyright in and to computer programs; (vi) rights in internet domain names, reservations for internet domain names, uniform resource locators and corresponding internet sites; (vii) rights in databases and data collections; (viii) know-how, show-how, trade secrets and confidential information, in each case whether or not registered and including applications for the registration, extension, renewal and re-issuance, continuations, continuations in part or divisionals of, any of these and the right to apply for any of the aforegoing, all claims for past infringements, and all rights or forms of protection of a similar nature or having equivalent or similar effect to any of these which may subsist anywhere in the world;
  21. **“Integrate”** or **“Integration” Services** means the integration of the Service Provider’s systems (and/or components such systems with the Cigarette Manugacture’s systems and where applicable, SARS’s IT infrastructure and systems, specifically the SARS excise risk, financial management, audit and reporting systems;
  22. "**ISO**" means means International Standards Organization, specifically in the implementation of quality standards and requirements in line with ISO 9001:2008 to increase and continually improve on operational efficiency;
  23. "**ITIL**" means means the Information Technology Infrastructure Library published by the UK Office of Government Commerce, and any natural successor organisations to the OGC, from time to time together with the associated published codes of practice (including DISC PD005 and any updates and amendments thereto) and best practice guides published by the IT Service Management Forum from time to time, including any natural successor organisations to the ITSMF;.
  24. **“Key Personnel”** means the Service Provider’s designated staff as indicated in the Service Provider’s Proposal and who have been dedicated to the provision of any or all the Services to SARS, and on the strength of whose expertise the Service Provider warrants the ability to provide the Services;
  25. **“Licensed Marking Facilities”** means the Excise manufacturing (production lines) and/or storage warehouses licensed in terms of section 19 and 19A of the Customs and Excise Act No 91 of 1964 and any other applicable Law, which for purposes of this MSA refers to Cigarrette Products;
  26. "**Losses**" means all losses, liabilities, and damages arising from claims (whether actual or threatened) and all related costs and expenses (including legal fees and disbursements and costs of investigation, litigation, settlement, judgement), fines, interest and penalties;
  27. "**Low (Severity Level 3) Problem**" has the meaning given in clause 3.3.2.1.3 of Annexure F (Maintenance Services);
  28. "**Maintenance Services**" means the performance of such scheduled and/or preventative maintenance as may be required for the purpose of ensuring the- (i) continued functionality of the Products with its Documentation; (ii) continued performance of any of the Services; (iii) identification and notification of any Problems pertaining to the Products and/or Services including the provision and installation of Workarounds, patches, Bug-Fixes, Upgrades, Enhancements and New Releases and all maintenance activities described generally in this MSA and if applicable, specifically a Statement of Work and/or Service Level Agreement. For the avoidance of doubt, the provisions of this clause 1.51 will apply in respect of all Hardware and/or copies of the Software used as envisaged in this Agreement, including those used for disaster recovery purposes;
  29. "**Maintenance Windows**" means the periods during which Service Provider is entitled to take a maintained Deliverable out of service for providing Maintenance Services other than emergency maintenance. Maintenance Windows for such maintained Deliverable shall, in regard to Deliverables under Work Orders or .s executed under this Agreement, be agreed by the Parties and set forth in the Work Order or . in question and shall, in regard to all other Maintained Deliverables, be as contemplated in clause 2.2.3 of Annexure F (Maintenance Services);
  30. **“Mark” or “Fiscal Mark”** means a stamp, mark, sticker, banderol or other similar device that contain security features, as well as a unique identifier code, carried by liable goods under SARS Regulations, indicating that excise duty has been paid on the goods, and duly manufactured and supplied by the vendor, which. Fiscal Mark may include unique identifiers, security features and shall be applied directly on Cigarette Products or *via* a carrier (typically a stamp;
  31. "**Material Errors or Deficiencies**" means any error in the operation of, or deficiency in the functionality of, a Deliverable (including Viruses and Bugs) that potentially could have more than an immaterial impact on SARS and/or the End Users; resulting from any Deliverable deviating from the agreed specifications relating to such Deliverable and/or incorrect or incomplete Documentation;
  32. "**Medium (Severity Level 2) Problem**" has the meaning given in clause 3.3.2.1.2 of **Annexure F** (Maintenance Services);
  33. "**Minor Enhancement**" means development or enhancement work requested or approved by SARS that can reasonably be expected to require less than ten (10) Service Provider man-hours to complete. In determining whether the development and enhancement work requires less than ten (10) Service Provider man-hours to complete, all work, from commencement of the preparation of the specifications to Acceptance of the Deliverables, including the provision of Documentation, shall be taken into account;
  34. **“MSA” or “Agreement”** means this Master Turnkey Solution and Services Agreement concluded between the Parties pursuant to RFP 01/2019 and all Annexures hereto;
  35. “**Overt**” **authentication element** means the visible mark detectable and verifiable within/on the Fiscal Mark by one or more of the human senses without resource to a tool (other than everyday tools which correct imperfect human senses, such as spectacles or hearing aids);
  36. "**Party**" or "**Parties**" has the meaning given in the Preamble of the Terms and Conditions;
  37. "**Performance Bond**” has the meaning given to it in clause 12 of the Terms and Conditions;
  38. "**Performance Criteria**" means, individually and collectively, the quantitative and qualitative obligations and commitments contained in the SARS BRS Document and the functional and technical specifications for each Deliverable contemplated under a Work Order;
  39. "**Person**" means any natural or juristic person, including any trustee, company, close corporation, joint venture, partnership, association or Governmental Entity, or other governmental unit, agency or other body, including all public bodies and organs of State;
  40. **“Pricing Template”** means the document annexured and marked \_\_\_ that outlines the financial modelling of this transaction for acquiring the Solution and provision of related Services;
  41. "**Problems**" has the meaning given in clause 2.2 of **Annexure F** (Maintenance Services);
  42. "**Receiving Party**" means the Party receiving Confidential Information from the Furnishing Party;
  43. **“Registration”** means/referswhereby stakeholders (manufacturers, distributors, importers, exporters, agents Cigarette Products) are registered with the Service Provider to use the track and trace Solutions to enable such stakeholders to, primarily, order fiscal Marks and for the Cigarette Manufacturer to track the status of such order;
  44. "**Release Event**" means any of the occurrences specifically listed and described in clause 4 of **Annexure H** (Source Code Escrow Requirements) that require the Escrow Agent to release the Third Party Source Code Materials to SARS;
  45. "**Renewal Maintenance Term**" has the meaning given in clause 1.2.2 of **Annexure F** (Maintenance Services);
  46. **“RFP 01/2019**” and/or **“Tender”** means the request for proposals for the provision of the Solution and related Services in terms of this MSA;
  47. **“Rules”** refers to the the SARS rules, which are in the process of enactment and , as envisaged in terms of sections 35A and 54 of the Customs and Excise Act, No. 91 of 1964;
  48. "**SARS**" has the meaning given in the Preamble of the Terms and Conditions;
  49. "**SARS Beneficiaries**" means SARS' Affiliates and Third Party service providers of SARS and their Affiliates;
  50. "**SARS Business Requirements**” means the business strategy and requirements (including hardware configuration requirements) for each Deliverable to be conceived of, designed, developed, implemented, coded, configured, modified, enhanced, procured, installed, integrated, tested, and remedied under a Work Order;
  51. "**SARS Change Control Procedures**" means the procedures under the heading "SARS Change Control Procedures” set forth in **Annexure G** (Certain SARS Policies and Procedures);
  52. "**SARS Data**" means all Data that at any time during or before the Term was or is in SARS possession and that would constitute Confidential Information if it were furnished by SARS to the Service Provider;
  53. "**SARS Emergency Processes**" means the processes under the heading "SARS Emergency Processes” set forth in **Annexure G** (Certain SARS Policies and Procedures);
  54. "**SARS Facility**" means a campus, office or other physical location of SARS including SARS sites specified in the BRS;
  55. "**SARS Incident Management Procedures**" means the procedures under the heading "SARS Incident Management Procedures” set forth in **Annexure G** (Certain SARS Policies and Procedures);
  56. *"***SARS Intellectual Property**" means all Intellectual Property owned by to SARS in relation to the Fiscal Mark as of the Effective Date and in terms of this MSA and all Intellectual Property created from the Bespoke Services under the MSA;
  57. "**SARS Oath of Secrecy/Solemn Declaration**" means the oath that is current as of the Effective Date set forth in **Annexure D** (Oath of Secrecy/Solemn Declaration), and which may change from time to time;
  58. "**SARS Technology Strategy/Architecture**" means the standards under the heading "SARS Technology Strategy/Architecture” set forth in **Annexure G** (Certain SARS Policies and Procedures);
  59. “**Secure Markings”** means the security features of a Mark, whether virtual or physical that prevent the unlawful duplication and counterfeiting of excise goods (and is able to resist internal or external attacks);
  60. **“Serialisation”** or “**Serial Marking**” means the process of marking the Cigarrette Products with a unique identifier for purposes of monitoring such Products;
  61. "**Service Level**" means the quantitative standards of performance of certain of the Services that Service Provider is required to satisfy under clause 3 of **Annexure F** (Maintenance Services);
  62. "**Service Level Default**" means in respect of a Service Level, that Service Provider's actual performance of the Services fails to meet or exceed such Service Level in the relevant month;
  63. "**Service Provider**" means \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, (Registration Number \_\_\_\_\_\_\_\_\_\_\_);
  64. **“Service Provider’s Proposal”** means the response bid accepted by SARS in respect of RFP01/2019 pursuant to this MSA;
  65. "**Services**” means collectively, the Additional Services, Bespoke Services; the Support and Maintenance Services; Solution Monitoring Centre Services; Data Management Services; Installation Services, Integration Services, Implementation Services; Training Services; Disengagement Assistance Services and ancillary services thereto;
  66. **“Software”** means any computer programs, software, source code, object code, programmer interfaces, specifications and/or operating instructions owned or controlled by the Service Provider (or a Third Party) and (i) used by the Service Provider to perform the Services pursuant to this Agreement; or (ii) incorporated or embedded in any item of the Solution or any Deliverable or any Intellectual Property forming party of or related to any item of the Solution or any Deliverable;
  67. **The “Solution”** means the end to end provision and delivery of the Secure track and trace system of Cigarrete Products (i.e Hardware and Software); including but not limited to the design and delivery of a SARS’ approved Fiscal Mark and enforcement automated Devices; a Data Management system as envisaged by RFP 01/2019);
  68. "**Monitoring Centre Services**" means the support services provided through the service command centre that enables incident tracking,management and Maintenance and Support Services used by the Service Provider to track, monitor, resolve and escalate Problems and questions from SARS and its Third Party service providers;
  69. "**Stage One Testing**" has the meaning given in clause 1.5.1 of **Annexure C** (Testing) of the Agreement.
  70. "**Stage Two Testing**" has the meaning given in clause 1.5.2 of **Annexure C** (Testing).
  71. "**Stage Three Testing**" has the meaning given in clause 1.5.3 of **Annexure C** (Testing).
  72. "**Subcontractor**" means a Third Party (including an Affiliate of Service Provider) to whom the Service Provider subcontracts or otherwise delegates any Service Provider obligations to perform any of the Services (including contractors and subcontractors of a Subcontractor), provided that such Third Party has been approved for such purpose by SARS;
  73. **“Supply Chain”** means (production, importation, exportation and distribution of) (i.e. the entire cycle from production, importation, exportation and distribution).
  74. **"Support Services"** means the provision of the support services by the Service Provider to SARS whereby the Service Provider resolves all Incidents and Problems in respect of the Solution or components thereof; to ensure the continued functionality of the Solution in accordance with its Documentation, which services shall include the provision of telephonic and/or on-site assistance, remote access support for the resolution of any Bug Fixes, Work-Arounds and temporary fixes, patches and Upgrades and all support activities described generally in clause \_\_\_\_ and (if applicable), specifically any Work Order or Service Level Agreement;
  75. **“Tamper Evident”** means the ability of the authentication element to show potential compromise whether by tampering, removal or manipulation;
  76. **“Tax Laws”** means all South African tax laws;
  77. "**Taxpayer**" means a Person who is subject to the tax laws and regulations of the national or provincial governmental entities in South Africa.
  78. "**Terms and Conditions**” means the document headed "Terms and Conditions” to which this glossary is **Annexure A**;
  79. "**Test Plan**" means a detailed testing plan, developed in consultation with SARS, which details the specific mechanics of testing, annexures of testing activities and required resources, and proposed timelines to implement the objectives of the Testing Strategy Document for each Deliverable;
  80. "**Testing**" means all of the testing activities that the Service Provider is required to perform on a Deliverable which shall include unit, integration and stress testing;
  81. "**Testing Stage**" means Stage One Testing, Stage Two Testing, and Stage Three Testing;
  82. "**Testing Strategy Document**" has the meaning given in clause 1.1 of **Annexure C** (Testing);
  83. **“Tobacco Industry”** means organizations, entitles, associations and individuals that work for or on behalf of the tobacco industry, such as but not limited to, tobacco manufacturers, wholesale distributors, importers and exporters of tobacco products, tobacco retailers, front groups and any other individuals or organizations whether lawyers, scientists and lobbyists that work to further the interests of the tobacco industry;
  84. **“Traceability Events”** means the tracking and tracing events recorded against every product (included in the traceability solution) during its lifecycle through the supply chain i.e. from raw material stage to consumption, or at defined points as set out by the tracking/tracing criteria;
  85. "**Third Party**" means a person other than SARS, or the Service Provider, their personnel and their Affiliates;
  86. "**Third Party Intellectual Property**" means all Intellectual Property that is owned or controlled by a Third Party and (i) used by Service Provider to perform the Services; or (ii) incorporated or embedded in any item of the Solution or any Deliverable or any Intellectual Property forming part of or related to any item of the Solution or any Deliverable, including all Third Party Software;
  87. "**Third Party Source Code Material**" means the source code and object code (both magnetic media and printed versions), executable files, and all other programming materials; and all Documentation, sufficient for SARS and/or SARS Beneficiaries to use, reproduce, copy, adapt, maintain, support, modify, customise, enhance, develop, improve and create derivative works of the Third Party Software;
  88. "**Trader**" means importers and exporters as described under the Customs and Excise Act of No. 91 of 1964;
  89. "**Trainee**" means SARS employess or such SARS officials that shall recieve Training Services as envisaged in this MSA;
  90. "**Training Services**” means the training services provided by the Service Provider to End-Users (including without limitation Taxpayers, Traders and/or Practitioners) to enable the End-Users to properly use the Solution;
  91. **“UID”** means a Unique Identifier, whether in the form of a Mark or otherwise;
  92. "**Update**" means an upgrade or any new version of a Deliverable that is embedded, contained or otherwise part of the Deliverable;
  93. **"Upgrade"** means any change or improvement to the Product or any component thereof that relates to or affects the operating performance of such Product or an aspect of such Product, but does not change the basic operation or functionality of the Product. For the sake of clarity, Upgrades are usually identified by a change in the version number, for instance a change from version 1.1 to version 1.2;
  94. "**VAT**" means value-added tax in terms of the Value Added Tax Act No. 89 of 1991.
  95. "**Warranty Period**" has the meaning given in clause 13.1 of the Terms and Conditions;
  96. **“WHO”** means the World Health Organization; and
  97. "**Work Order**" means a work order in the form of **Annexure B** (Form of Work Order) describing in writing the details of the Additional Services in terms of this MSA, including the anticipated parameters and scope of such Additional Services including the project phase or project phase(s), Deliverables to be provided by Service Provider as part of such Additional Services and the timeline for the completion thereof including the timeline for the completion of each Deliverable.

1. – Form of Work Order

THIS WORK ORDER NO. \_\_\_\_\_\_\_\_\_\_\_\_\_\_ dated as of {\_\_\_\_\_\_\_\_\_\_\_\_} (the ‘**Work Order Commencement Date**’) is being executed pursuant to the MSA between the South African Revenue Services ("**SARS**”) and the Service Provider (Proprietary) Limited (Registration No. \_\_\_\_\_\_\_\_\_\_\_\_) ("**Service Provider**”) dated as of {***insert signature date***} (to which this Form of Work Order is **Annexure B**), the terms of which are incorporated herein by reference (the ‘**Work Order**’). Capitalized terms used but not defined herein shall have the meanings given to them under **Annexure A** (Glossary) to the aforesaid Master Turnkey Solutions Agreement.

1. DESCRIPTION OF THE SERVICES

***{Note to the Parties: Please insert a description of the Services under this Work Order. Identify the Service Provider resources, hardware to be provided by the Service Provider and Third Party Software to be provided by the Service Provider.}***

1. DELIVERABLES AND TIMELINE
   1. The Service Provider shall procure, modify, plan, design, develop and/or implement the Deliverables that are identified and described in Table B-1.

***{Note to the Parties: In Table B-1, please identify each Deliverable and provide the other information required to complete such Table.}***

|  |  |  |
| --- | --- | --- |
| **Table B-1** | | |
| **Name of Deliverable** | **Description** | **Key Milestones and Timeline** |
|  |  |  |
|  |  |  |
|  |  |  |

* 1. Subject to clause 1.2.1 of **Annexure K** (Maintenance Services), Service Provider shall provide Maintenance Services the Deliverables under this Work Order, from the following date {***Insert***}

1. KEY POSITIONS
   1. Key Service Provider Positions, are listed in Table B-4.

***{Note to the Parties: In Table B-4, please identify each Key Service Provider Position and provide the other information required to complete such Table.}***

|  |  |  |
| --- | --- | --- |
| **Table B-4** | | |
| **Position** | **Name of the Individual** | **Contact Information** |
|  |  | **Mobile Phone No.:**  **Email Address:** |
|  |  | **Mobile Phone No.:**  **Email Address:** |
|  |  | **Mobile Phone No.:**  **Email Address:** |
|  |  | **Mobile Phone No.:**  **Email Address:** |

* 1. The SARS’ contact personnel for the purposes of this Work Order are listed in Table B-5.

***{Note to the Parties: In Table B-5, please identify the SARS’ personnel on this Work Order}***

|  |  |  |
| --- | --- | --- |
| **Table B-5** | | |
| **Position** | **Name of Individual** | **Contact Information** |
|  |  |  |
|  |  | **Mobile Phone No.:**  **Email Address:** |
|  |  | **Mobile Phone No.:**  **Email Address:** |

1. MAINTENANCE WINDOWS

The Maintenance Windows for each Work Order Maintained Deliverable are set forth below in Table B-6.

***{Note to the Parties: In Table B-6, for each Work Order Maintained Deliverable, please list the Maintenance Window for such Deliverable.}***

|  |  |
| --- | --- |
| **Table B-6** | |
| **Work Order Maintained Deliverable** | **Maintenance Window** |
|  |  |
|  |  |
|  |  |

**{Signature blocks appear on the next page.}**

IN WITNESS WHEREOF, the duly authorized representatives of the Parties hereto have caused this Work Order to be duly executed.

|  |  |
| --- | --- |
| TheThe Service Provider (Proprietary) Limited  By:  Printed:  Title:  Date:  TheThe Service Provider (Proprietary) Limited  By:  Printed:  Title:  Date: | South African Revenue Service  By:  Printed:  Title:  Date:  South African Revenue Service  By:  Printed:  Title:  Date: |

1. - Testing
2. GENERAL
   1. Service Provider shall develop and prepare for SARS review and approval a testing strategy document detailing the approach to testing and the associated plan to direct the test effort to ensure that each Deliverable and all of its Related Deliverables provide the functionality described in the SARS Business Requirements Document and in the functional specifications, satisfy the Performance Criteria, and operate consistently without Material Errors or Deficiencies (the ‘**Testing Strategy Document**’). Among other things, the Testing Strategy Document shall require that Service Provider maintain version control of software through the testing process, and contain user acceptance, data conversion and Performance Criteria.
   2. The Testing Strategy Document shall provide for multiple levels of testing including unit, integration, QA, user testing; and other types of testing to assess functionality, usability, reliability and performance. Without limiting the generality of the foregoing, the Testing Strategy Document shall provide for testing that is sufficiently rigorous and complete so as to identify any Material Errors or Deficiencies that are reasonably discoverable.
   3. The initial draft of the Testing Strategy Document shall be provided to SARS on or before such date as is reasonably required to allow reasonable time for SARS to review and Service Provider to revise the Testing Strategy Document in accordance with SARS’ comments and complete a Testing Strategy Document that is acceptable to SARS by the date therefore under the Project Plan. If any Deliverables have been tested prior to SARS acceptance of the Testing Strategy Document, and the tests performed differ from that required under the Testing Strategy Document, Service Provider shall, at SARS’ request and Service Provider’s expense, re-test in accordance with such Testing Strategy Document. All testing shall be performed in accordance with the Testing Strategy Document approved by SARS in writing.
   4. Service Provider shall develop and prepare, in accordance with the Project Plan, for SARS’ review and approval, test packs for each Testing Stage. The test packs shall include: (a) the data, which shall be subject to SARS’ review and approval, which shall be described in the Testing Strategy Document; (b) the test scripts; and (c) the expected results of the testing. If a Deliverable has been tested prior to SARS’ approval of the applicable test pack, and the test pack utilized for such test(s) differ from the test pack later approved by SARS, Service Provider shall, at SARS’ request and Service Provider’s expense, re-test the Deliverable using the approved test pack.
   5. The three Stages of Testing are:
      1. Stage One Testing. In this stage Service Provider shall test the functionality of the Deliverable and its Related Deliverables and confirm that such Deliverables have the functionality described in the SARS Business Requirements Document and in the functional specifications, and satisfy the Performance Criteria, by performing unit and integration testing in Service Provider’s development environment before promoting such Deliverables to the quality assurance environment. Such testing shall also test the conversion routines to ensure that they operate in accordance the specifications therefore;
      2. Stage Two Testing. In this stage Service Provider shall test performance and functionality (including conversion routines) of the Deliverable and its Related Deliverables in a quality assurance environment to enable Service Provider to minimize to the extent possible the prospect that (a) the functionality and performance shall degrade upon elevation to the production environment, and (b) elevation to production environment shall cause degradation in other SARS’ production systems. In addition, Service Provider shall perform stress testing in this environment to ascertain the extent to which the Deliverable is scalable and confirm that it meets SARS’ workload requirements or otherwise as required under this Agreement. Such testing shall continue until (a) Service Provider establishes to SARS’ reasonable satisfaction that the testing was successful, and (b) the Documentation is up to date, complete and meets the standards set forth in clause 4.16 of the Terms and Conditions. Service Provider shall perform such testing before the Deliverable is promoted to SARS’ production environment; and
      3. Stage Three Testing. SARS shall perform production testing by operating each Deliverable and its Related Deliverables in actual production until each of such Deliverables operates without Material Errors or Deficiencies or Bugs for twenty (20) consecutive Business Days and until Service Provider establishes to SARS’s reasonable satisfaction that the Deliverable performs materially in accordance with the functional and technical specifications therefore and is otherwise reasonably acceptable to SARS.
   6. Exception to Regression Testing. If at any time, Service Provider is of the view that testing all Related Deliverables each time a Deliverable is tested is not in the best interests of SARS or the Services, Service Provider shall propose to the SARS Chief Officer for Modernisation and Technology, and to the -, an alternative approach to that required under this **Annexure C** (Testing) that would reduce the amount of such regression testing required with respect to the Deliverable in question. Such proposal shall include a detailed description of the alternative, a comparison of it to the approach required under this **Annexure C** (Testing), and a detailed explanation of the rationale for using the alternative approach. Service Provider may implement such alternative approach with SARS’ prior written consent.
   7. SARS shall provide and maintain the quality assurance environment, at its sole cost and expense. The quality assurance environment shall be a simulated production environment that is used for purposes of testing Deliverables and, throughout the Term, shall mimic SARS’ production environment to the extent reasonably possible.
   8. No Deliverable and its Related Deliverables shall be elevated from Stage One Testing to Stage Two Testing unless prior Testing has been successfully completed as set forth in clause 2 of this **Annexure C** (Testing), or from Stage Two Testing to Stage Three Testing, unless prior Testing has been successfully completed as set forth in clauses 2 and 3 of this **Annexure C** (Testing); provided, however, that SARS may elect to elevate any such Deliverable and its Related Deliverables despite Service Provider’s failure to successfully complete the prior stage of testing with respect to such Deliverables. Without limiting the generality of the foregoing, the Parties shall use Commercially Reasonable Efforts to timely complete each Testing Stage and, to the extent possible, make-up for delays through expediting subsequent Testing Stages.
   9. For purposes of this **Annexure C** (Testing), SARS shall authorize the appropriate SARS personnel to act on its behalf. Service Provider shall seek comments, approvals and acceptances through such authorised SARS personnel.
3. STAGE ONE TESTING
   1. Service Provider shall commence and perform Stage One Testing in accordance with the Testing Strategy Document.
   2. If, during Stage One Testing, Service Provider identifies Material Errors or Deficiencies in a Deliverable and its Related Deliverables, Service Provider, working in a development environment, shall promptly correct such Material Errors or Deficiencies and, subject to clause 1.6of this **Annexure C** (Testing), re-perform the Stage One Testing. Service Provider shall repeat this process until there are no Material Errors or Deficiencies and the test results demonstrate that the implementation of such functionality is not reasonably likely to give rise to any Material Errors or Deficiencies in any other SARS’ systems existing at such time. The decision to classify an error or deficiency as material and therefore a Material Error or Deficiency shall be made by SARS.
   3. Upon completion of Stage One Testing, Service Provider shall provide SARS a copy of the Stage One Testing results and any other information regarding Stage One Testing as SARS may reasonably request, and the senior Service Provider project manager responsible for the Services shall confirm to SARS in writing that, having done reasonable due diligence, he or she believes that Service Provider has successfully performed Stage One Testing in accordance with the requirements of the Testing Strategy Document and this Agreement. SARS and, subject to its execution of a confidentiality agreement materially in accordance with the Confidentiality and Non-Use Agreement set forth in **Annexure E** (Confidentiality and Non-Use Agreement), its Third Party service providers, shall be entitled to monitor Stage One Testing.
   4. Stage One Testing shall include:
      1. function testing to verify proper data acceptance, processing and retrieval, and the appropriate implementation of the business rules;
      2. business cycle testing to emulate the type of transactions and type of activities that would occur during a year’s period;
      3. user interface testing to ensure that the user interface provides the user with appropriate access and navigation;
      4. security and access control testing to ensure that the actors are restricted to specific functions or use cases, or that they are limited in the data available to them;
      5. conversion testing to ensure the operation of the data conversion routines in accordance with the specifications thereof.
4. STAGE TWO TESTING
   1. Promptly following SARS’ confirmation that Stage One Testing has been successful under clause 2 of this **Annexure C** (Testing), Service Provider shall install the Deliverable and its Related Deliverables in the quality assurance environment for Stage Two Testing.
   2. Service Provider shall commence and perform Stage Two Testing of each Deliverable and its Related Deliverables in the quality assurance environment in accordance with the Testing Strategy Document and Project Plan promptly following installation of such Deliverables in such environment; provided, however, that the foregoing shall not be interpreted as permitting Service Provider to elevate such Deliverables into the quality assurance environment prior to the successful completion of Stage One Testing.
   3. Service Provider shall commence and perform Stage Two Testing of any Correction or Update for each maintained and supported Deliverable in the testing environments as required under this clause 3of **Annexure C** (Testing). Service Provider shall apply patches to the maintained and support Deliverables in the quality assurance environment, and Service Provider shall be responsible for migrating the Deliverables, as modified by the Correction or Update, among the applicable testing environments from Stage Two Testing to Stage Three Testing.
   4. During Stage Two Testing, the Deliverable shall be run using copies of scrambled and production data, and/or test data, in either case entered and retrieved in a normal concurrent manner in a quality assurance environment in accordance with the Testing Strategy Document. Moreover, the volumes and types of data processed during the Stage Two Testing must be sufficient to demonstrate that the Deliverable and its Related Deliverables perform in accordance with the user acceptance, data conversion and Performance Criteria set forth in the Testing Strategy Document. Service Provider shall provide the data and simulated transactions for Stage Two Testing on the basis of representative SARS’ data provided to it by SARS.
   5. Service Provider shall promptly notify SARS of any Material Errors or Deficiencies identified during Stage Two Testing. If any Material Error or Deficiency is identified during Stage Two Testing, the Deliverable and its Related Deliverables shall be returned to the development environment where Service Provider shall correct such Material Error or Deficiency and certify the Correction under clause 3.2of this **Annexure C** (Testing). Promptly thereafter Service Provider shall reinstall the Deliverable and its Related Deliverables in the quality assurance environment and again perform Stage Two Testing. This process shall continue until the Deliverable and its Related Deliverables operate in the performance quality assurance environment without Material Errors or Deficiencies.
   6. During Stage Two Testing, the Deliverable and its Related Deliverables shall be deemed to have no Material Errors or Deficiencies only when the Deliverable operates in the quality assurance environment for that number of consecutive Business Days set forth in the Testing Strategy Document (including, where appropriate, a simulated peak period) in such a fashion that:
      1. one hundred percent (100%) of the items of functionality included in such Deliverable and its Related Deliverables (i) achieve the expected results set forth in the test packs related to Stage Two Testing, and (ii) do not provide any indication of the existence of any Material Errors or Deficiencies, except to the extent that Service Provider advises SARS in advance that the quality assurance environment provided by SARS does not permit the testing of such functionality, Service Provider recommends the changes to that environment that would be required to conduct such tests, and SARS declines to implement such recommendations in a timely fashion; and
      2. the test results demonstrate that the implementation of such functionality is not reasonably likely to give rise to any Material Errors or Deficiencies in other SARS’ systems.
   7. Notwithstanding the foregoing, SARS may elect to elevate any such Deliverable and its Related Deliverables to the production environment despite Service Provider’s failure to successfully complete Stage Two Testing with respect to such Deliverables.
   8. Upon completion of Stage Two Testing, Service Provider shall provide SARS a copy of the Stage Two Testing results and any other information regarding Stage Two Testing as SARS may reasonably request and shall certify that it has successfully performed Stage Two Testing in accordance with the requirements of the Testing Strategy Document and this Agreement. SARS and its Third Party service providers shall be entitled to monitor Stage Two Testing.
   9. Stage Two Testing shall contain:
      1. performance testing in which response times, transaction rates and other time sensitive requirements are measured and evaluated to verify that performance requirements set out in the SARS Business Requirements Document and functional specifications have been achieved;
      2. load and stress testing which subjects varying workloads to the test environment to measure and evaluate the performance behaviours and the ability of the Deliverable and its Related Deliverables to continue to function under varying workloads;
      3. load and stress testing which subjects varying workloads to the test environment to measure and evaluate the performance behaviours outside of projected volumes;
      4. failover and recovery testing which ensures that each Deliverable and its Related Deliverables can successfully failover and recover from a variety of hardware, software or network malfunctions without loss of data or data integrity;
      5. unit/string testing (including verification that the maintained and supported Deliverable modified by the Correction or Update is accurately described in the Documentation as modified to reflect the Correction or Update for such Deliverable); and
      6. integrated system testing (including full regression testing across all applicable WAN/LAN topologies), except to the extent that Service Provider advises SARS in advance that the quality assurance environment provided by SARS does not permit the testing of such functionality, Service Provider recommends the changes to that environment that would be required to conduct such tests, and SARS declines to implement such recommendations in a timely fashion.
5. STAGE THREE TESTING.
   1. Within a reasonable period following SARS’ confirmation that Stage Two Testing has been successful under clause 3of this **Annexure C** (Testing), SARS shall elevate each Deliverable and its Related Deliverables to the production environment for Stage Three Testing. Service Provider specifically acknowledges and agrees that it shall not be unreasonable for SARS to defer elevation of such Deliverables for ten (10) Business Days after the commencement of a generally applicable SARS’ freeze period.
   2. Subject to clause 1.6of this **Annexure C** (Testing), SARS shall commence Stage Three Testing for each Deliverable and its Related Deliverables upon its elevation to production. If, during Stage Three Testing, SARS identifies a Material Error or Deficiency, Service Provider shall, at its sole cost and expense, promptly correct such Material Error or Deficiency in the development environment and, unless otherwise agreed by SARS, repeat all Testing Stages to ensure that such Material Error or Deficiency has been corrected and that the Correction has not created any new Material Errors or Deficiencies.
   3. Service Provider shall also provide such assistance as SARS or its Third Party service providers may reasonably request with respect to the installation by SARS or its Third Party service providers of systems software and/or equipment, any other applications software that may be relevant, and any required infrastructure components in the production environment. Service Provider shall coordinate the application of patches to SARS’ systems software as required to test the Correction or Update in the production environment.
6. – Oath of Secrecy / Solemn Declaration



1. – Confidentiality and Non-Use Agreement

**CONFIDENTIALITY UNDERTAKING**

given by

……………………………………………………….. **(PROPRIETARY) LIMITED**

(the "**Recipient**")

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Registration Number** | |  | | | |
| **Physical Address** | | {Complete} | | | |
| **Postal Address** | | {Complete} | | | |
| **Fax No.** | | {Complete} | | | |
| **Signed at** | |  | | **Date** |  |
| Draft – Not for Signature | | | | | |
| **Name** |  | | who warrants that they are duly authorised to sign | | |
| **Designation** |  | |
| **Witness 1** |  | | | | |
| **Witness 2** |  | | | | |

in favour of

**THETHE SERVICE PROVIDER (PROPRIETARY) LIMITED**

(")

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Registration Number** | |  | | | |
| **Physical Address** | |  | | | |
| **Postal Address** | | {Complete} | | | |
| **Fax No.** | | {Complete} | | | |
| **Signed at** | |  | | **Date** |  |
| Draft – Not for Signature | | | | | |
| **Name** |  | | who warrants that they are duly authorised to sign | | |
| **Designation** |  | |
| **Witness 1** |  | | | | |
| **Witness 2** |  | | | | |

In terms of which the Parties agree as follows:

1. INTERPRETATION

In this Confidentiality Undertaking (the "**Undertaking**") the following expressions bear the meanings assigned to them below and cognate expressions bear corresponding meanings:‑

* 1. "**Client**" means the South African Revenue Service;
  2. "**Confidential Information**" means information or data, whether disclosed orally or in writing, that is identified as being confidential or proprietary at the time of disclosure or has the necessary quality of confidence about it and includes, without limitation, any information relating to the Beneficiary's:
     1. business, business policies, pricing models and other business and commercial information;
     2. know-how, trade secrets, specifications, drawings, sketches, models, samples, data, diagrams and flow charts;
     3. business relationships, products, services;
     4. technical information, including use of technology, systems, hardware, software (and the incidence of any faults therein), architectural information, demonstrations, processes and machinery and related material and documentation;
     5. past, present and future research and development;
     6. plans, designs, drawings, functional and technical requirements and specifications;
  3. but excluding information or data which:‑
     1. is at the time of disclosure to the Recipient lawfully and without breach of any confidentiality obligations, within the public domain;
     2. is, at the time of such disclosure, already within the possession of the Recipient, or it has been independently developed by the Recipient; or
     3. is obliged to be produced under order of a court or government agency of competent jurisdiction, or in terms of statute;

provided that the onus shall at all times rest on the Recipient to establish that such information falls within the exceptions contained in clauses 1.3.1 to 1.3.3 of this **Annexure E** (Confidentiality and Non-Use)inclusive and provided further that information disclosed in terms of this Undertaking shall not be deemed to be within the foregoing exceptions merely because such information is embraced by more general information in the Recipient's possession.

* 1. "**Disclosing Purpose**" means strictly to enable the Recipient to provide various services to the Client, including (without limitation) to assist and enable the Beneficiary to provide the Services (as defined in the Turnkey Solutions Agreement);

1. RECITALS
   1. In terms of the MSA Beneficiary undertook to grant access to its Confidential Information to third parties contracted by the Client, subject to the condition that such Third Parties executed this Undertaking.
   2. The Recipient requires access to the Confidential Information of the Beneficiary pursuant to such provisions for the disclosing purpose and the parties wish to record the basis on which the Recipient shall honour and protect the Confidential Information of the Beneficiary.
2. RESTRICTIONS ON DISCLOSURE AND USE

The Recipient hereby irrevocably agrees:-

* 1. that it shall only be entitled to use the Confidential Information for the specific purposes set out in the Disclosing Purpose, and it shall not utilize, employ, exploit or in any other manner use the Confidential Information of the Beneficiary for any purpose other than the Disclosing Purpose and specifically shall not use the Confidential Information for its own benefit beyond that of achieving the Disclosing Purpose;
  2. subject to clause 3.3 of this **Annexure E** (Confidentiality and Non-Use), not to disclose the Confidential Information to any third party or publish such information in any manner, for any reason or purpose whatsoever without the prior written consent of the Beneficiary, which consent may be withheld in the sole discretion of the Beneficiary;
  3. it shall restrict the dissemination of the Confidential Information of the Beneficiary to only those of its personnel who are actively involved in carrying out the Disclosing Purpose and then only on a "need to know" basis and shall take all practical steps to impress upon those personnel who need to be given access to Confidential Information, the proprietary, secret and confidential nature thereof.

1. TITLE

The Recipient shall acquire no right, title or interest in any information disclosed to it by the Beneficiary pursuant to this Undertaking and it shall not remove any proprietary legends from materials containing the Confidential Information. In addition, the Recipient shall further, upon written request from the Beneficiary, add any proprietary legend to such materials.

1. STANDARD OF CARE
   1. **Standard of Care**. The Recipient shall protect the Confidential Information of the Beneficiary in the same manner and with the same endeavour which a reasonable person would use to protect its own Confidential Information. Should the Recipient become aware of any unauthorised copying, disclosure or use of Beneficiary’s Confidential Information, it shall immediately notify the Beneficiary thereof in writing and, without in any way detracting from the Beneficiary’s rights and remedies in terms of this Undertaking, take such steps as may be reasonable and necessary to prevent a recurrence thereof.
   2. **Forced Disclosure**. To the extent that the Recipient is ordered to disclose any of the Beneficiary's Confidential Information pursuant to a judicial or government request, requirement or order (hereafter called the "**Forced Disclosure**"), the Recipient shall promptly notify the Beneficiary thereof and take any and all reasonable steps to assist the Beneficiary in contesting such a request, requirement or order, or otherwise take all reasonable steps to protect the Beneficiary's rights prior to Forced Disclosure.
2. DISCLAIMER

The Recipient acknowledges that the Confidential Information may still be under development, or may be incomplete, and that such information may relate to products that are under development or are planned for development. The Beneficiary makes no warranties regarding the accuracy of the Confidential Information.

1. RETURN OF INFORMATION
   1. **Return or Destruction.** At any time after the fulfilment of the Disclosing Purpose, the Recipient shall, on the written request of the Beneficiary –
      1. return any material containing, pertaining to, or relating to the Confidential Information and may, in addition, request the Recipient to furnish a written statement to the effect that upon such return, the Recipient has not retained in its possession, or under its control, either directly or indirectly, any such material; or
      2. alternatively to clause 7.1.1 of this **Annexure E** (Confidentiality and Non-Use) at the instance of the Beneficiary, destroy such material and furnish the Beneficiary with a written statement to the effect that such material has been destroyed.
   2. **Compliance with request**. The Recipient shall fully comply with a request in terms of this clause 7 of this **Annexure E** (Confidentiality and Non-Use) within 3 (three) days of receipt of such request, or such shorter period as the Beneficiary may demand, so long as this allows the Recipient adequate time to fully comply.
2. INDEMNITY

The Recipient acknowledges that any unauthorized use, publication or other disclosure of the Confidential Information shall cause irreparable loss, harm and/or damage to the Beneficiary. Accordingly, the Recipient hereby indemnifies and holds the Beneficiary harmless against any loss, action, expense, claim, harm or damage of whatsoever nature suffered or sustained by the Beneficiary pursuant to a breach by the Recipient of the provisions of this Undertaking.

1. DURATION

This Undertaking shall remain in force for a the duration of the MSA from the date of fulfilment of the Disclosing Purpose.

1. DOMICILIA AND NOTICES
   1. **Addresses.** The Parties hereby choose *domicilium citandi et executandi* ("***Domicilium***") for all purposes under this Undertaking the physical addresses set out on the signature page of this Undertaking.
   2. **Change of Address.** Either Party may give written notice to the other, change its *Domicilium* to any other address or number in the Republic of South Africa, provided that such change shall take effect fourteen 14 (fourteen) days after delivery of such written notice.
   3. **Deemed Receipt.** Any notice to be given by either Party to the other shall be deemed to have been duly received by the other Party -
      1. if addressed to the addressee at its *Domicilium* and posted by pre-paid registered post on the tenth (10th) day after the date of posting thereof; or
      2. if delivered to the addressee’s *Domicilium* by hand during business hours on a business day, on the date of delivery thereof; or
      3. if sent by fax to the addressee on the first business day following the date of sending thereof.
   4. **Use of email.** The parties record that whilst they may correspond via email during the currency of this Undertaking for operational reasons, no formal notice required in terms of this Undertaking, nor any amendment or variation to this Undertaking may be given or concluded via email.
2. INTERPRETATION

This Undertaking shall be subject to the following rules of interpretation.

* 1. **Headings**. Headings and sub-headings are inserted for information purposes only and shall not be used in the interpretation of this Undertaking.
  2. **References**. Unless otherwise stated, references to clauses, sub-clauses, annexures or paragraphs are to be construed as references to clauses, sub-clauses, annexures or paragraphs of this Undertaking.
  3. **References to persons**. References to:-
     1. persons shall include companies, corporations, trusts and partnerships;
     2. any party shall, where relevant, be deemed to be references to, or to include, as appropriate, their respective successors or permitted assigns;
     3. the singular shall include the plural and *vice versa*;
     4. any one gender shall include a reference to all other genders.
  4. **Calculation of days**. When any number of days is prescribed in this Undertaking, 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 business day. Any reference to a “Business Day” is to any day other than a Saturday, Sunday or proclaimed public holiday in South Africa.
  5. **Neutral construction**. The rule of construction that the Undertaking shall be interpreted against the party responsible for the drafting or preparation of the Undertaking, shall not apply.
  6. The words "include", "includes", and "including" means "include without limitation", "includes without limitation", and "including without limitation". The use of the word "including" followed by a specific examples shall not be construed as limiting the meaning of the general wording preceding it.

1. GENERAL
   1. **Entire Undertaking**. This Undertaking, together with the annexures hereto and the documents, records or attachments referred to herein or therein, constitutes the entire Undertaking by the Recipient in favour of the Beneficiary in respect of the subject matter hereof.
   2. **Variation**. No amendment or modification to this Undertaking shall be effective unless in writing and signed by authorised signatories of the parties.
   3. **Waiver**. No granting of time or forbearance shall be or be deemed to be a waiver of any term or condition of this Undertaking and no waiver of any breach shall operate a waiver of any continuing or subsequent breach.
   4. **Applicable Law**. This Undertaking shall be governed and construed according to the laws of the Republic of South Africa.
   5. **Costs**. Each party shall be responsible for its own legal and other costs relating to the negotiation of this Undertaking.
2. – Maintenance Services

**Exhibits**

|  |  |
| --- | --- |
| Exhibit K-1 | Time to Respond |
| Exhibit K-2 | Time to Resolve |
| Exhibit K-3 | Applicable Penalties |

1. INTRODUCTION
   1. **General**
      1. The Service Provider shall perform the Services described in this **Annexure K** (Maintenance Services) in accordance with the MSA (including its Annexures and Exhibits) and any Work executed under this Agreement.
      2. Maintenance Services shall be provided to SARS on: (i) all Deliverables; (ii) all portions of the Comprehensive the Solution; and (iii) anything else that is embedded, contained or otherwise part of the aforesaid (i) and (ii) (the ‘**Maintained Deliverables**’). In addition, in the event SARS requests that Service Provider provides maintenance services to a SARS Affiliate, Service Provider shall in good faith negotiate a maintenanceagreement to fulfil such request. Notwithstanding any of the aforegoing (and in addition to any right of termination that SARS may have in clause 19 of the Terms and Conditions), SARS shall at any time be entitled, on written notice to Service, to prevent Service Provider from performing all or any of the Maintenance Services on any one or more Maintained Deliverables permanently, or for a stipulated period.
      3. The Maintenance Services described in this **Annexure F** (Maintenance Services) include preventive maintenance, corrective maintenance, emergency maintenance, minor enhancements, incident management, maintenance of certain Third Party software, and the design, development and/or implementation of Corrections and Updates for all Maintained Deliverables.
      4. Service Provider shall adhere to Service Provider’s generally applicable policies and procedures except to the extent inconsistent with or in conflict with an applicable SARS Policies and Procedures. In such case, Service Provider shall adhere to the applicable SARS Policies and Procedures. Notwithstanding the generality of the foregoing, and subject to clause \_\_\_of the Terms and Conditions, Service Provider shall utilize SARS Change Control Procedures as they may change from time to time and are communicated to Service Provider.
      5. In the event of a conflict between the terms of this **Annexure F** (Maintenance Services) and one or more terms of the Terms and Conditions, the Terms and Conditions shall prevail unless the relevant provision of this **Annexure F** (Maintenance Services) references and specifically overrides a provision of the Terms and Conditions referenced therein. In the event of a conflict between the terms of this **Annexure F** (Maintenance Services) and other Annexures or Exhibits of this Agreement, the terms of this **Annexure F** (Maintenance Services) shall prevail if the conflict concerns the provision of Maintenance Services specifically or if the clause in **Annexure F** (Maintenance Services) references and specifically overrides the clause from the other document of this Agreement. A clause from this **Annexure F** (Maintenance Services) shall be deemed to reference and override the clause from the Terms and Conditions or the other document of this MSA if it provides that it applies "notwithstanding” such clause.
   2. **Term**
      1. The Service Provider shall provide Maintenance Services for all of the Maintained Deliverables for the full Term, provided that such Maintenance Services shall, in respect of Maintained Deliverables that are only created during the Term, be provided from the Acceptance of such Maintained Deliverables (the ‘**Initial Maintenance Term**’).
      2. Notwithstanding the terms of clause 1.2.1 above and/or the expiry or termination of the Agreement, SARS shall be entitled to extend the Initial Maintenance Term at its sole election in one year increments (the ‘**Renewal Maintenance Term**’) on the same terms as are applicable during the Initial Maintenance Term, The Initial Maintenance Term and the Renewal Maintenance Term shall be referred to herein as the ‘**Maintenance Services Term**’.
   3. **Resources**

The Service Provider shall provide sufficient resources (including hardware and software) and the Service Provider personnel, with all personnel having an appropriate background in, and knowledge of, the Maintained Deliverables and the Comprehensive the Solution, and an appropriate degree of knowledge, skills, and experience in software maintenance services, to perform the Maintenance Services in accordance with the terms of the MSA including **Annexure F** (Maintenance Services) (‘**Deployable Maintenance Resources**’).

* 1. **Cooperation with SARS Third Party Service and Product Providers**

The Service Provider acknowledges that, in its information technology environment, SARS utilizes or procures services or products provided by Third Parties, including infrastructure service providers, applications development and maintenance service providers, software licensors, and hardware service providers. As an information technology service provider to SARS, Service Provider further acknowledges and agrees that it shall provide such Third Parties such cooperation and information as SARS or any such Third Party may reasonably request, including providing copies of applications software code (including scripts, executables and source code) and Documentation in accordance with clause 4.16 of the Terms and Conditions.

1. MAINTENANCE SERVICES

The Service Provider shall provide the Maintenance Services, including the tasks, functions and responsibilities set forth below in clause 2 of this **Annexure F** (Maintenance Services).

* 1. **Preventive Maintenance**

The Service Provider shall be responsible for performing preventive maintenance, including providing Updates, with respect to the Maintained Deliverables to improve the performance and reliability of such Maintained Deliverables, to prevent errors, and otherwise to minimize the need for corrective maintenance. Service Provider’s obligations in this regard include:

* + 1. Performing configuration services, applications tuning, code restructuring, database indexing, database compaction, and other similar activities required to improve the efficiency, performance and reliability of the Maintained Deliverables to the extent required for Service Provider to perform the Services in accordance with the terms of the MSA including **Annexure F** (Maintenance Services);
    2. Providing technical and other information regarding the Maintained Deliverables as SARS or its Third Party service providers may reasonably request for input into the SARS Configuration Management Database (CMDB); and
    3. Performing other preventive maintenance functions reasonably required to maintain the Maintained Deliverables in good working order and as otherwise required to perform the Services in accordance with the terms of the MSA including **Annexure F** (Maintenance Services).
  1. **Corrective Maintenance** 
     1. The Service Provider shall be responsible for developing patches, fixes, maintenance releases and all other corrections (collectively the ‘**Corrections**’) for all: (i) errors, abnormal terminations, performance or operational issues, security holes or other vulnerabilities; and (ii) other issues arising from the operation, use, performance or functionality of the Maintained Deliverables ((i) and (ii) collectively, the ‘**Problems**’). Whenever a Correction is introduced, Service Provider shall be responsible for promptly updating the Documentation as required to meet the requirements of clause 4.16 of the Terms and Conditions were it applicable. Service Provider’s obligations in this regard shall include:
        1. resolving Problems in accordance with the applicable Service Level(s) set forth in clause 3 of this **Annexure F** (Maintenance Services);
        2. in the event that a Problem arises that is attributable to Third Party Software and hardware not part of a Maintained Deliverable, but somehow affects a Maintained Deliverable, Service Provider shall work in collaboration with and provide all reasonable assistance to, SARS and its Third Party service providers to:
           1. develop a plan for dealing with such Problem; and
           2. design, develop and implement a Correction for such Problem in accordance with such plans, but only to the extent such Problem is attributable in whole or in part to the design of the Maintained Deliverable, and the integration of hardware and Third Party Software;
     2. The Service Provider acknowledges that in some cases resolving a Problem with a Maintained Deliverable may require changes to hardware and/or to hardware and Third Party Software that is not embedded, contained or otherwise part of the Maintained Deliverables (*e.g.*, configuration changes to the operating system or hardware upgrades). Service Provider’s responsibilities with respect to such changes shall be to:
        1. work with SARS and its Third Party service providers and suppliers to identify and evaluate the Problem;
        2. with such service providers and suppliers develop and present recommendations to SARS for correcting the Problem, but only to the extent such Problem is attributable in whole or in part to the design of the Maintained Deliverable, and the integration of hardware and Third Party Software; and
        3. provide SARS and its Third Party service providers and suppliers such other assistance as they may reasonably request, with such service providers and suppliers developing and presenting recommendations to SARS for correcting the Problem, but only to the extent such Problem is attributable in whole or in part to the design of the Maintained Deliverable, and the integration of hardware and Third Party Software.
     3. Unless otherwise agreed by SARS in its sole discretion, Maintenance Services, other than emergency Maintenance Services described in clause 2.3 of this **Annexure F** (Maintenance Services), shall be performed during the applicable Maintenance Windows: (i) set forth in the applicable Work Order or ; or (ii) where no Maintenance Window has been specified in a Work Order or . for the Maintained Deliverable in question, the applicable Maintenance Window shall be as advised by SARS in writing.
  2. **Emergency Maintenance**

If SARS is of the view that a Problem rises to the level of an operational emergency with respect to a Maintained Deliverable, Service Provider shall provide Maintenance Services on an urgent basis to rectify the emergency in accordance with SARS Emergency Processes. Without limiting the generality of the foregoing, as part of emergency maintenance, Service Provider shall use Commercially Reasonable efforts to correct or restore data, with respect to Deliverables, that is lost, incorrect or corrupted. In addition, Service Provider shall provide SARS and its Third Party service providers and suppliers such assistance as they may reasonably request, to correct any problems with hardware and Third Party Software that is not part of a Deliverable but interfaces with or is otherwise associated with such Deliverable, except as otherwise directed by SARS. Service Provider shall coordinate with SARS and SARS’ Third Party service providers and suppliers, as applicable.

* 1. **Minor Enhancements**

As part of Maintenance Services, and without additional charge, Service Provider shall perform Minor Enhancements to Maintained Deliverables, without regard to whether such changes are Chargeable Changes.

* 1. **Testing and Implementation of Corrections**

Prior to providing a Correction or Update to SARS or SARS’ Third Party infrastructure for elevation into production:

* + 1. Service Provider shall perform testing to demonstrate the capabilities and completeness of the Correction or Update and any Maintained Deliverable modified thereby. Notwithstanding the provisions of clauses 3.9.2 and 3.9.3of **Annexure C** (Testing), such testing shall include all Stage One Testing and Stage Two Testing under **Annexure C** (Testing) except for load and stress testing for the Correction or Update, and any additional testing as reasonably required by SARS, including stress and load testing, as applied to Corrections and Updates. In determining whether a request for additional testing is reasonable or not, all relevant factors shall be taken into account including those applicable to Service Provider (e.g., the number of Deployable Maintenance Resources and the skill sets of such resources).
    2. Notwithstanding the foregoing, in the case of an emergency Correction or Update, Service Provider may implement such Correction or Update on a temporary basis, performing only such testing as required by SARS Emergency Processes under the circumstances. Before implementing an emergency Correction or Update, to the extent reasonably under the circumstances, Service Provider shall attempt to contact the SARS Executive (Operations) to obtain SARS’ concurrence that the situation constitutes an emergency.
    3. For each Correction and Update, Service Provider shall modify existing interfaces and develop any new interfaces between the Maintained Deliverables and SARS’ other systems to the extent required in connection with, or as a consequence of, the implementation of the Correction and Update.
  1. **Incident Management**
     1. In accordance with SARS Incident Management Procedures as they may change from time to time, Service Provider shall perform the tasks necessary to resolve Problems and answer questions relating to the Maintained Deliverables, whether raised by SARS or its Third Party service providers, including:
        1. utilizing the Monitoring Centre to track, monitor, resolve and escalate Problems and questions from SARS and its Third Party service providers once SARS has opened and submitted a trouble ticket to Service Provider;
        2. updating the status of each such trouble ticket on a timely basis. Service Provider Personnel providing stand-by maintenance shall remotely log Problems and questions to the Monitoring Centre on a timely basis. Service Providers shall monitor and update the status of each such trouble ticket until each such Problem has been resolved to the reasonable satisfaction of SARS;
        3. responding to, diagnosing and resolving or escalating Problems with respect to Maintained Deliverables in accordance with the Service Levels;
        4. providing SARS’ IT staff or its Third Party service providers "how to” advice and assistance to SARS’ personnel or personnel of its Third Party service providers that are using the Maintained Deliverables; and
        5. on a quarterly basis, performing trend analysis on recurrent Problems and questions and developing for SARS’ review and approval plans to reduce the number of such Problems and questions. Upon SARS’ approval, Service Provider shall implement such plans in accordance with clause 3.1.5 of this **Annexure F** (Maintenance Services).
     2. The Service Provider shall provide a reasonable number of Service Provider Personnel on stand-by to provide Maintenance Services outside of Business Hours, including with respect to emergencies. In this regard, Service Provider shall:
        1. monitor and keep current a list of such Personnel including contact information;
        2. require such personnel to have mobile communications devices and PCs in their possession and require that such communications devices: (i) be turned on at all times during on-call; and (ii) have Remote Access Service (RAS) software installed sufficient to perform the Maintenance Services remotely;
        3. require that such personnel have internet access from the sites at which they shall spend substantially all of their time during on call; and
        4. dispatch such personnel to SARS Facilities as SARS may reasonably request subject.
  2. **Maintenance of Certain Third Party Software**

With respect to Third Party Software that is embedded, contained or otherwise part of a Maintained Deliverable, Service Provider shall perform the following tasks, functions and responsibilities to address and resolve Problems affecting such Third Party Software:

* + 1. taking from SARS or its Third Party service providers a call, email, or SMS message from reporting a Problem, and monitoring and updating a trouble ticket in the Monitoring Centre in accordance with clause 2.6.1.2 of this **Annexure F** (Maintenance Services);
    2. on a timely basis, escalating the Problem to SARS or its Third Party maintenance service provider as appropriate;
    3. tracking resolution of such Problems; and
    4. otherwise managing the process for resolving such Problems with Third Party Software, but only to the extent such software is embedded, contained or otherwise a part of a Maintained Deliverable.

1. THE SERVICE LEVELS AND SERVICE CREDITS
   1. **General**
      1. The Service Provider shall perform the Maintenance Services for the Maintained Deliverables in accordance with the Service Levels set out in this clause 3of **Annexure F** (Maintenance Services). Service Provider shall monitor its performance so as to enable it to establish to SARS’ reasonable satisfaction that Service Provider has satisfied the Service Levels. Such monitoring shall be of Service Provider’s actual performance of such Services and not merely a sampling thereof. Failure to monitor performance to the extent required under this clause 3.1.1in any month with respect to any Service Level shall be deemed to be a failure of the underlying Service Level for such month and SARS shall be entitled to invoke the penalties as set out in Exhibit K – 3 which shall be in addition to any other remedies available to SARS in law or as provided elsewhere in this Agreement.
      2. Unless otherwise noted in this **Annexure F** (Maintenance Services), all Service Levels shall be measured and monitored on a monthly basis.
      3. For purposes of clause 3.3 of this **Annexure F** (Maintenance Services), Problems shall not include matters that are properly transferred to SARS or SARS’ Third Party service providers. For this purpose, "properly transferred” requires Service Provider to transfer the call in accordance with all policies or procedures as determined by SARS.
      4. For purposes of clause 3.3 of this **Annexure F** (Maintenance Services), a Problem shall be deemed to begin at the time that the Problem is first reported to, or otherwise discovered by, Service Provider.
      5. Service Provider shall provide a set of hard and soft copy reports to verify Service Provider’s performance of and full compliance with the Service Levels, which, without limiting the generality of SARS rights or Service Provider’s obligations hereunder, shall be subject to audit by SARS in accordance with clause 12 of the Terms and Conditions. Such reports shall be delivered to SARS on the fifth (5th) Business Day of the month immediately following the month to which the report relates.
      6. The Service Provider shall provide SARS detailed supporting information for each report in a format reasonably acceptable to SARS.
      7. The raw data, and all supporting information that supports the calculation of the Service Levels, shall be SARS Data and accessible by SARS on a 24/7/365 basis other than during Maintenance Windows. Service Provider shall not have the right to use such data and information for the benefit of any entity other than SARS.
   2. **Root Cause Analysis**
      1. Promptly following the discovery of a Problem, Service Provider shall perform a root cause analysis in accordance with SARS Problem Analysis Standards, correct the Problem, and prepare for SARS review and approval a written plan for preventing the Problem from recurring. With SARS’ approval, Service Provider shall implement such plan. Service Provider shall keep SARS informed of the status of its efforts to investigate, analyse, correct and prevent the reoccurrence of the Problem to the extent SARS may reasonably request.
      2. Service Provider shall employ work-arounds on an interim basis where they are available and can be deployed more rapidly than a permanent solution. Provided however, that Service Provider uses Commercially Reasonable Efforts to implement a permanent solution as soon as possible.
   3. **Service Levels**
      1. Time to Respond

Service Provider shall respond to a Problem within the periods set forth on Exhibit K-1 commencing from the time that Service Provider receives a call, email or SMS message from SARS’ information technology personnel or a Third Party service provider’s personnel reporting a Problem, or Service Provider otherwise becomes aware of a Problem.

* + 1. Time to Resolve
       1. Service Provider shall resolve the Problem within the periods set forth on Exhibit K-2 depending on the categorization of the Problem. SARS shall categorize each Problem according to the following:
          1. "**High (Severity Level 1) Problem**", which is an incident causing a complete loss of critical functionality, or an incident impacting one percent (1%) or more of End Users, an entire site or a department under circumstances in which essential service delivery is interrupted, or any other circumstance in which essential service is interrupted.
          2. "**Medium (Severity Level 2) Problem**", which is an incident causing a complete loss of critical functionality that does not rise to the level of a High (Severity Level 1) Problem, or an incident causing a partial loss of critical functionality under circumstances in which essential service delivery is not interrupted but is impaired. For the avoidance of doubt, a Problem shall be categorised as a Medium (Severity Level 2) Problem if it is an incident that causes any loss of any functionality that does not rise to the level of a High (Severity Level 1) Problem but rises above the level of a Low (Severity Level 3) Problem.
          3. "**Low (Severity Level 3) Problem**", which is anincident affecting non-critical application functionality under circumstances in which only minor inconvenience results and the SARS’ day to day operations continue as normal.
       2. For purposes of this clause 3.3.2 of **Annexure F** (Maintenance Services), the periods set forth on Exhibit K-2 shall not commence until the earlier of the time that: (a) SARS’ information technology personnel have reasonably communicated the nature of the Problem and the extent to which such Problem affects SARS’ operations; or (b) Service Provider otherwise becomes sufficiently aware of the nature of the Problem to commence resolution efforts (even if there is some risk that such efforts may be misdirected).
       3. A Problem shall not be deemed to be resolved until Service Provider has obtained SARS’ confirmation thereof. SARS shall not unreasonably withhold or delay such confirmation. Notwithstanding the foregoing, if Service Provider has implemented a workaround under clause 3.2.2of this **Annexure F** (Maintenance Services), Service Provider shall be deemed to have resolved the problem when the workaround is first implemented and operational provided the work around provides SARS a reasonable level of systems performance and Service Provider deploys and makes operational a permanent solution as soon as reasonably possible.
    2. End User Response Time

The Service Level for the Response Time of the End User shall compare the Average Response Time achieved by the system processing from a reasonable number of End Users determined by SARS to 1 (one) second.

**Exhibit K-1**

**Time to Respond**

| **Severity Level** | **Service Level –Time to Respond in Minutes** | |
| --- | --- | --- |
| **Business Hours** | **After Hours \*** |
| High (Severity Level 1) Problem |  |  |
| Medium (Severity Level 2) Problem |  |  |
| Low (Severity Level 3) Problem |  |  |

\*In the event that SARS reports, or the Service Provider becomes aware of, a High (Severity Level 1) Problem or Medium (Severity Level 2) Problem during After Hours, and the permitted time period to respond during After Hours is longer than the period between the report of such Problem and the commencement of Business Hours, the Problem shall be treated as if reported at the commencement of Business Hours, and Service Provider shall respond within the permitted time period during Business Hours. Notwithstanding the foregoing, Service Provider shall use Commercially Reasonable Efforts to respond prior to the commencement of Business Hours.

**Exhibit K - 2**

**Time to Resolve**

| **Severity Level** | **Service Level –Time to Resolve** |
| --- | --- |
| **All Hours** |
| High (Severity Level 1) Problem |  |
| Medium (Severity Level 2) Problem |  |
| Low (Severity Level 3) Problem |  |

**Further Procedures**

If the Service Provider fails to fully comply with the requirements for solving High (Severity Level 1) Problems set out in the table above, Service Provider shall fully comply with the following procedures in regard to the resolving of such Problems:

1. The Service Provider shall acknowledge receipt of the reporting of a Problem (as contemplated in clause 3.3.1 of this **Annexure K** (Maintenance Services)) within the time periods set out in the above table via the same medium of communication by which the report was made;
2. Service Provider shall use Commercially Reasonable Efforts to –
   1. provide regular reports (and report forthwith on demand by SARS) on the status of the solution of the Problem;
   2. solve the Problem by eliminating the defect (either by providing a correction, patches, Bug fix or software update) or demonstrating to SARS which steps to take to avoid the effects of the defect. With respect to the aforesaid demonstration, if the steps required by SARS have a material adverse impact on the cost to SARS of the Comprehensive the Solution, or the performance or operation of the Comprehensive the Solution, such solution shall be temporary and Service Provider shall use Commercially Reasonable Efforts to eliminate the defect as soon as possible; and
   3. without limiting the generality of the foregoing, in relation to High (Severity Level 1) Problems, Service Provider shall act in a determined manner and use Commercially Reasonable Efforts to resolve the problem as quickly as possible and within the periods set forth in the table above, including adopting a “follow-the-sun approach”, if such approach could reasonably be expected to expedite resolution. For this purpose "follow-the-sun approach" means Service Provider making diligent efforts, in accordance with Best Industry Practice, to assign a technical support case from one team of Service Provider Personnel to another to enable the Problem to be worked on twenty four (24) hours a day, three hundred and sixty five (365) days a year.

**Exhibit K – 3**

**Applicable Penalties**

The penalties to be applicable as referred to in clause 3.1.1 of this **Annexure F** (Maintenance Services) shall be as follows in regard to any failure to fully comply with the requirements set out in Exhibit K‑1 or Exhibit K‑2 of this **Annexure F** (Maintenance Services):

1. In regard to High (Severity Level 1) Problems, a penalty equal to \_\_\_% of the monthly Maintenance Services Charge per failure, subject to a maximum monthly penalty of 50% of such Charge;
2. In regard to Medium (Severity Level 2) Problems, a penalty equal to \_\_% of the monthly Maintenance Services Charge per failure, subject to a maximum monthly penalty of \_\_% of such Charge;
3. In regard to Low (Severity Level 3) Problems, a penalty equal to \_\_% of the monthly Maintenance Services Charge per failure, subject to a maximum monthly penalty of \_\_\_% of such Charge.
4. - Certain SARS Policies and Procedures
5. - Source Code Escrow Requirements in respect of Third Party Software
6. GENERAL

The Service Provider shall cause the Third Party licensor to deposit the Third Party Source Code Materials in respect of the Third Party Software with an Escrow Agent prior to Service Provider’s use of such Third Party Software to provide the Services, or incorporation or embedment of such Third Party Software in any item of the The Solution or any Deliverable in any Intellectual Property forming part of or related to any item of the The Solution or any Deliverable. Service Provider shall use Commercially Reasonable Efforts to ensure that the obligations of the respective parties and the Escrow Agent described in the remainder of this **Annexure H** (Source Code Escrow Requirements in respect of Third Party Software) are incorporated into the escrow agreement to be concluded between the Third Party licensor, SARS and the Escrow Agent.

1. THIRD PARTY LICENSOR WARRANTIES & OBLIGATIONS
   1. The Third Party licensor warrants to and in favour of SARS and the Escrow Agent that:
      1. the Third Party Source Code Materials shall be understandable and usable by a reasonably knowledgeable computer programmer and that the Third Party Source Code Materials do not involve any proprietary programming languages or programming components that a reasonably knowledgeable computer programmer could not reasonably be expected to understand, except to the extent that the Third Party Source Code Materials contain sufficient commentary to enable such programmer to understand and use the proprietary languages or components;
      2. if the Third Party Source Code Materials are encrypted, the decryption tools and decryption keys shall be deposited with the Escrow Agent as part of the Third Party Source Code Materials;
      3. the Source Code Materials are not subject to any lien or other encumbrance;
      4. it has sufficient rights in and to the Third Party Source Code Materials to meet its obligations under the escrow agreement to be concluded between the Third Party licensor, SARS and the Escrow Agent; and
      5. it has the authority to enter into such agreement.
   2. The Third Party licensor shall:
      1. deliver a copy of the latest version of the Third Party Source Code Materials to the Escrow Agent within 10 (ten) days of the date set forth in the escrow agreement;
      2. be required to timeously provide the Third Party Source Code Materials in respect of all upgrades, updates, new releases and versions of the Third Party Software to the Escrow Agent and in any event within 10 (ten) days of the release date thereof; and
      3. at all times ensure that the Third Party Source Code Materials that are delivered to the Escrow Agent is capable of being used to generate the latest version of the Third Party Software issued by the Third Party licensor to SARS and shall deliver further copies as and when necessary.
2. ESCROW AGENT’S OBLIGATIONS
   1. The Escrow Agent undertakes to SARS that it shall:
      1. hold the Third Party Source Code Materials in a safe and secure environment;
      2. allow both SARS and the Third Party licensor rights to audit and inspect the written records of the Escrow Agent pertaining to the escrow agreement;
      3. inform SARS of the receipt of a copy of the Third Party Source Code Materials, in writing;
      4. maintain full records of all Third Party Source Code Materials deposited by the Third Party licensor; and
      5. create and maintain backup copies of all Third Party Source Code Materials for access in case such Materials are damaged by (a) an act or omission of Escrow Agents or its personnel; or (b) a Force Majeure Event.
3. RELEASE EVENTS
   1. Escrow Agent shall distribute the Third Party Source Code Materials to SARS upon the occurrence of a Release Event. A Release Event shall arise where the Third Party licensor:
      1. breaches its MSA with SARS, which governs the license, support and maintenance of the Third Party Software, and such breach remains unremedied for thirty (30) days after due notice has been given to rectify the same in terms of such agreement;
      2. fails to adhere to any legal requirement or breaches any term or condition of any license, authorisation or consent required for the provision of the Third Party Software to SARS;
      3. enters into any compromise, pledge, hypothecation, scheme of arrangement or composition with any or all of its creditors;
      4. is liquidated or placed under judicial management, whether provisionally or finally;
      5. undergoes a change of Control, which shall be deemed to have occurred in circumstances where, subsequent to the date that Service Provider first uses the Third Party Software owned or licensed by such Third Party to provide Services, or incorporates or embeds such Third Party Software into a Deliverable, any person (whether natural, juristic or otherwise) acquires the ability, by virtue of ownership, rights of appointment, voting rights, management agreement, or agreement of of any kind, to control or direct, directly or indirectly, the board or executive body or decision making process or management of the Third Party licensor;
      6. ceases to trade for any reason whatsoever; or
      7. commits any act or any omission which is an act of insolvency by an individual in terms of the Insolvency Act, 1936, or the existence of circumstances which would allow for the winding up of Service Provider in terms of section 344 of the Companies Act of 1973.
4. RELEASE PROCEDURES
   1. If SARS reasonably believes that any of the Release Events set out in clause 4 of this **Annexure H** (Source Code Escrow Requirements in respect of Third Party Software) have occurred, then:
      1. SARS may notify the Escrow Agent of such occurrence;
      2. upon receipt of such notice, the Escrow Agent shall provide a copy of the notice to the Third Party licensor. Third Party licensor shall then have ten (10) Business Days from the receipt of such notice to object to the release of the Source Code Material to SARS; and
      3. the Escrow Agent shall release the Source Code Material to SARS if:
         1. SARS provides proof of the occurrence of a Release Event; or
         2. the Third Party licensor acknowledges the occurrence of a Release Event, or fails to respond timeously to a notice pursuant to clause 5.1.2 of this **Annexure H** (Source Code Escrow Requirements in respect of Third Party Software).
5. COSTS

SARS shall pay the Escrow Agent's costs in accordance with the standard practice of the Escrow Agent.

1. – The Service Provider’s Insurance Policy

The Parties agree that this **Annexure N** (Service Provider’s Insurance Policy) shall be populated in accordance with the insurance provisions of the MSA.

1. - The Service Provider’s Tax Clearance Certificates

1. –Monitoring Centre Services

The Parties agree that this **Annexure K** (Call Centre Services) shall be populated in accordance with the provisions of clause\_\_\_ of the Terms and Conditions.

1. – Training Services

The Parties agree that this **Annexure L** (Training Services) shall be populated in accordance with the Training provisions contained in the MSA and BRS document.

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