

[NOTE TO BIDDERS: THIS AGREEMENT INCLUDING ITS SCHEDULES AND/OR APPENDICES THERETO DO NOT CONSTITUTE A FINAL AGREEMENT BETWEEN THE PARTIES. SARS RESERVES THE RIGHT TO AMEND SAME, AT ITS OWN DISCRETION, AT ANY POINT IN TIME PRIOR TO SIGNATURE HEREOF. YOUR SUBMISSION OF YOUR RESPONSE IS THEREFORE DEEMED TO BE AN ACKNOWLEDGEMENT AND ACCEPTANCE OF THE AFORESAID STATEMENT.]

WHATSAPP BUSINESS SOLUTION PLATFORM PLATFORM, MAINTENANCE AND SUPPORT SERVICES AGREEMENT

TERMS AND CONDITIONS

Notes to Bidder:

- 1 This agreement and its appended documents comprise 4 (four) structural layers :
 - a. At the highest level is the "Main Agreement" running from page 7 to page 51;
 - b. The next order of document in the hierarchy is a "Schedule";
 - c. Below a Schedule is an "Appendix";
 - d. Falling below an Appendix is the final and most subordinate layer which is an "Attachment".

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TERMS AND CONDITIONS

This Agreement, effective as of __ ____, 20__ ("**Effective Date**"), is entered into by and between the South African Revenue Service, an organ of State established in terms of the South African Revenue Service Act, 1997 (Act No. 34 of 1997) with its registered address located at its Pretoria Head Office, 299 Bronkhorst Street, Nieuw Muckleneuk, 0181, the Republic of South Africa ("**SARS**") and, __ ____, a company incorporated under the laws of the Republic of South Africa, with its registered address located at __ ____, the Republic of South Africa ("**Service Provider**"). As used in this Agreement, "**Party**" means either SARS or Service Provider, as appropriate, and "**Parties**" means SARS and Service Provider. The Parties agree that the following are the terms and conditions under which SARS agrees to purchase and Service Provider agrees to provide, the Services. Capitalised terms have the meanings given to them in **Schedule A (Glossary)**.

1 BACKGROUND AND OBJECTIVES

1.1 Background

This Agreement is being made and entered into with reference to the following:

SARS requires the provision of:

1.1.1 WhatsApp Business Solution Platform, Maintenance and Support Services,

as more fully described herein, Request for Proposal and in the Schedules hereto.

1.2 Service Provider warrants that it has and will continue throughout the Term of this Agreement to have, the resources, skills, qualifications, accreditation and experience necessary to perform and manage the Services to the highest standards prevailing in the WhatsApp Business Solution Platform industry at whatever volumes SARS may from time to time require in terms of the requirements of the Agreement.

1.3 In reliance on these statements and representations, SARS has selected and, subject to the terms of this Agreement, hereby appoints the Service Provider as its vendor to provide the Services described herein during the Term, which appointment the Service Provider accepts.

1.4 Objectives

SARS and Service Provider have agreed upon the following specific goals and objectives for this Agreement:

1.4.1 to provide SARS the Services in a manner that is intended to create and maintain a high level of user satisfaction in line with the Service Levels;

1.4.2 to achieve significant cost savings for SARS without any degradation in the quality of the Services;

1.4.3 to appropriately contain SARS's risk, including with respect to (i) sustained service delivery; (ii) cost containment; (iii) changes in law, the technology available to provide the Services, technology employed by SARS, SARS's processes or the like; (iv) SARS's

ability to transition the Services to itself or a Third Party at termination or expiration of this Agreement; and (v) security of Confidential Information, Data Privacy, including validation and integrity protection;

- 1.4.4 to procure the Services under a flexible and scalable arrangement pursuant to which SARS's consumption reflects its needs as they may change from time to time;
- 1.4.5 to establish a successful contractual relationship between the Parties that is flexible and highly responsive to SARS's changing requirements over the Term;
- 1.4.6 to provide SARS with expertise including that which is required to identify, analyse, recommend, provide and implement, among other things, new technologies and processes;
- 1.4.7 to provide SARS with Services that improve over the Term; and
- 1.4.8 to enable Service Provider and its Subcontractors to earn a reasonable return on their investment and a reasonable profit from the performance of the Services provided that the Service Provider meets its obligations under the Agreement, including performing the Services in terms of the Performance Standards.

2 AGREEMENT STRUCTURE AND ORDER OF PRECEDENCE

- 2.1 This Main Agreement provides a framework for, and the general terms applicable to, the Services that Service Provider will provide to SARS under this Agreement. This Main Agreement is supplemented with Schedules, Attachments and Appendices.

2.2 Schedules, Attachments and Appendices

The Schedules are the first level documents attached to the Main Agreement. The Appendices are documents attached to the Schedules. The Attachments are documents attached to the Appendices.

By written agreement, the Parties may, from time to time, include under the Main Agreement, Schedules, Attachments and Appendices pertaining to New Services as well as amendments to particular Services provided by the Service Provider to SARS under the Agreement.

The provisions of the Main Agreement will apply to all Schedules, Attachments and Appendices issued thereunder.

2.3 Order of precedence

- 2.3.1 Any conflict between the provisions of the various clauses of the Main Agreement, the Schedules, Appendices and Attachments will be resolved in accordance with the following order of precedence (in descending order of priority):
 - 2.3.1.1 in the event of conflict between the Main Agreement and Schedules, Appendices and/or Attachments, the Main Agreement will prevail;
 - 2.3.1.2 in the event of conflict between the Schedules and Appendices and/or Attachments, the Schedules will prevail; and

- 2.3.1.3 in the event of conflict between the Appendices and Attachments, the Appendices will prevail.
- 2.3.2 For the avoidance of doubt it is recorded that the terms of one Schedule, Appendix or Attachment will not apply to any other Schedule, Appendix or Attachment to the extent they are in conflict.

3 TERM

3.1 Term

The term of this Agreement will begin on the Effective Date and will expire on the 5th (fifth) anniversary of the Effective Date of the Agreement, unless: (i) the Agreement is terminated earlier in accordance with this Main Agreement in which case the Agreement will expire on such earlier termination date; or (ii) extended under clause 3.2 in which case the Agreement will expire at the end of such Renewal Term ("**Term**"). It is recorded that the term of a Work Order or purchase order may not extend beyond the Term. No new Work Orders or purchase orders may be concluded after Termination of the Agreement.

3.2 Extension

Upon giving notice to Service Provider no less than 60 (sixty) days prior to the then-current applicable expiration date of the Agreement, SARS will have the right to extend the Term for period agreed between the Parties subject to SARS procurement processes and approval, on the terms and conditions (including) the Charges pursuant to **Schedule D (Charges, Invoicing and Payments)** then in effect.

4 SERVICES

4.1 Summary of Services

The Services to be provided by the Service Provider are set forth in this Agreement (including the applicable Schedules, Appendices and Attachments hereto) as amended from time to time, for the duration of the Term. The Services are detailed in **Schedule B-x** hereto and may, subject to approval by SARS and inclusion in a Schedule executed pursuant to this Agreement, include one or more of the following functional areas of scope:

- 4.1.1 WhatsApp Business Solution Platform, Maintenances Services and Support Services: the detailed scope of the WhatsApp Business Solution Platform is set forth in **Schedule B-S** and the Request for Proposal.

4.2 Definition and Scope of Services

- 4.2.1 In addition to the provisions of clause 4.1 above, the term "**Services**" will refer to and will include the duties, services, activities, Deliverables, functions and responsibilities to be provided or to be performed by the Service Provider for SARS as described in or otherwise required under **Schedule B-x (_____ SOW)** or elsewhere in the Agreement

and as amended from time to time in accordance with this Agreement. **[Note to the Bidder: This clause will include a reference to the SOW that describes the WhatsApp Business Solution Platform for which the Agreement is being concluded]**

4.2.2 The Services will include:

- 4.2.2.1 The design, provision, development, installation, and implementation of a WhatsApp Business Solution Platform ;
- 4.2.2.2 Maintenance Services and Support Services;
- 4.2.2.3 the provision of New Services and/or Projects upon the conclusion of a Work Order;
- 4.2.2.4 services related to Managed SARS Third Party Contracts;
- 4.2.2.5 performance that is compliant with SARS procedures and policies;
- 4.2.2.6 co-operating with Third Parties;
- 4.2.2.7 complying with the Service Levels; and
- 4.2.2.8 duties, services, activities, functions, infrastructure and responsibilities required for the proper performance and provision of the Services, even if not specifically described in this Agreement, other than the Dependencies.

4.2.3 In each of the instances above, the term "**Services**" will refer to and include such services, functions and responsibilities as they may evolve during the Term and as they may be supplemented, enhanced, modified or replaced including to keep pace with changes in SARS business and advances in technology and processes available to Service Provider, all in accordance with and subject to the terms and conditions of this Agreement and where applicable as set out in a Work Order as detailed in **Appendix E-5**.

4.3 **Provision of Services**

4.3.1 For the avoidance of doubt, Service Provider will perform:

- 4.3.1.1 the Services and functions listed in the Agreement;
- 4.3.1.2 the Services (including all steps and tasks) detailed in **Schedule B-x** and/or any other Schedule or Appendix issued in terms of the Agreement; and
- 4.3.1.3 any steps and tasks required to perform the Services, even if such steps and tasks have not been listed or described in the Agreement

so as to ensure that SARS receives and realises the benefit of the Services.

4.3.2 The Service Provider will perform the Services diligently, in a timely manner, and in accordance with the Performance Standards and time schedules set forth or referred to in the Agreement. The Service Provider will promptly notify SARS upon becoming aware of

any incident or circumstances that may reasonably be expected to jeopardise the performance or timely performance of any part of the Services. Notwithstanding anything to the contrary contained in the Agreement, the Service Provider will not take or authorise any action that results in a reduction of the scope of or degradation in the quality and timeliness of the performance of the Services during the term of the Agreement.

- 4.3.3 The Service Provider will for the duration of the Agreement (a) use all Commercially Reasonable Efforts to improve the quality and efficiency of the provision of the Services, and (b) ensure that the Charges are such that the Services are cost effective to SARS. The Service Provider will be required to implement all necessary formal processes to facilitate improvement of the Services. The Service Provider will ensure that the Charges comply with the provisions of **Schedule D (Charges, Invoicing and Payments)**.
- 4.3.4 The manner in which the Services are developed and provided will be such that they are easily scalable to support any growth of or contraction in, SARS's business for the duration of the Agreement.
- 4.3.5 The Service Provider will continue to perform its obligations under the Agreement, including the performance of the Services, without any interruptions, including during any dispute between the Parties.
- 4.3.6 The Service Provider will perform the Services in accordance with and subject to the provisions of **Schedule E (Governance)**.

4.4 **Enhance Capabilities and Effectiveness**

The Services will be provided in a manner that enhances SARS's ability to deliver high-quality, cost-effective services. The technology utilised by the Service Provider will provide SARS with industry leading levels of functionality and performance.

4.5 **Cost Predictability**

The Service Provider will ensure predictable charges with no unanticipated price increases over time, so that factors affecting the Service Provider's invoiced charges to SARS remain within SARS's control.

4.6 **Improve and Maintain Technology**

Service Provider may implement alternative technologies to deliver the Services to SARS in order to maintain competitiveness in the quality and scope of Services available to SARS and to take advantage of market cost efficiencies. Service Provider may, at its own cost, refresh all technology used to provide the Services as is necessary to perform the Services in accordance with the terms of the Agreement and to meet the Service Levels.

4.7 **New Services**

- 4.7.1 Service Provider will perform New Services upon request by SARS. SARS may decide to perform New Services itself, award New Services to Service Provider, or award New Services to a Third Party Supplier at its sole discretion.
- 4.7.2 Where New Services are requested by SARS, Service Provider will commence providing

such services as directed by SARS upon conclusion of a Work Order.

- 4.7.3 Service Provider will charge for New Services only as provided in clause 6 of **Schedule D (Charges, Invoicing and Payments)** or where applicable such charges as may be agreed and set out in a Work Order.

4.8 Projects

- 4.8.1 Service Provider will perform Projects only upon conclusion of a Work Order.
- 4.8.2 Service Provider will perform such Projects in terms of the SARS project methodology as designated by SARS from time to time.
- 4.8.3 SARS may decide to perform Projects itself, award Projects to Service Provider, or award Projects to a Third Party Supplier at its sole discretion.
- 4.8.4 Service Provider will charge for Projects only as provided in clause 7 of **Schedule D (Charges, Invoicing and Payments)** or where applicable such charges as may be agreed and set out in a Work Order signed by both Parties. For purposes of clarity, the fact that one or both of the Parties may refer to an aggregation of work as a project will not cause such aggregation to be treated as a Project. Such an aggregation will only be treated as a Project if it is a Project as defined in **Schedule A (Glossary)**.

4.9 Proposals and Quotations

- 4.9.1 Where SARS requests Service Provider to provide a proposal and / or quotation in respect of any proposed Services, Service Provider will:
- 4.9.1.1 furnish SARS with a detailed written proposal and / or quotation upon which will be stated an all-inclusive price for such services (with the components of the quoted pricing being specified), the technical specifications of all Deliverables, the details as to the date until which the quotation will be open for acceptance by SARS and any other information required by SARS; and
- 4.9.1.2 within 1 (one) Business Day, provide SARS, in writing or by email, with a committed date for the delivery of the proposal and / or quotation referred to in 4.9.1. The Service Provider will deliver the proposal and / or quotation, complete in every respect on or before the committed date.
- 4.9.2 It is specifically recorded that no terms and conditions contained in any proposal and / or quotation will have any force and effect. It is the intention of the Parties that on acceptance of any proposal and / or quotation by SARS a Work Order be concluded in accordance with this Agreement.

4.10 Co-operation with SARS and Third Parties

- 4.10.1 Service Provider acknowledges that SARS may have outsourced certain of its services and business processes, related and/or ancillary to the Services, to Third Parties and that SARS may outsource certain other functions to other Third Parties. Service Provider will, at no additional cost and as part of the Services, co-ordinate, co-operate and consult with such Third Parties and SARS regarding the performance of the Services so that Service Provider and the Third Parties provide services to SARS in as seamless a manner as is

reasonably possible.

- 4.10.2 Service Provider will use Commercially Reasonable Efforts to ensure that all facilities, services, equipment, Software, Service Provider Personnel and other resources) (collectively, the "**Resources**") utilised by Service Provider or approved by Service Provider for utilisation by SARS in connection with the Services, will be successfully integrated and interfaced, and will be compatible with, the services, equipment, networks, Software, Third Party personnel, enhancements, upgrades, modifications and other resources that are being provided or recommended by Third Party Suppliers (collectively, the "**Third Party Resources**"). Further, Service Provider will use Commercially Reasonable Efforts to ensure that none of the Services or other items provided to SARS by Service Provider will be adversely affected by any such Resources and/or Third Party Resources, whether as to functionality, speed, service levels, interconnectivity, reliability, availability, performance, response times or similar measures.
- 4.10.3 To the extent that SARS performs any of the Services or functions itself, or retains Third Parties to do so, Service Provider will co-operate with SARS or any such Third Party Supplier, which co-operation will include:
- 4.10.3.1 providing reasonable access to any facilities and/or Resources being used to provide the Services;
 - 4.10.3.2 providing such information regarding the Services as SARS and/or the Third Party Supplier may request;
 - 4.10.3.3 where applicable, and where required by SARS, providing the Services until completion of the successful Transition of the Services from Service Provider to SARS and/or the Third Party Supplier;
 - 4.10.3.4 providing operational data (including documentation, schedules, and Service Level performance data); and
 - 4.10.3.5 providing such other services set out in **Schedule F (Disengagement Assistance)**.
- 4.10.4 When engaging a Third Party Supplier as contemplated in this clause 4.10, SARS will use reasonable efforts to require the Third Party Supplier (i) to comply with Service Provider's reasonable security requirements; (ii) to the extent such Third Party Supplier will be performing work on Service Provider-owned, licensed or leased Software or hardware, to comply with Service Provider's reasonable work standards, methodologies and procedures; provided, however, that SARS may disclose to Third Party Supplier such Service Provider-owned, licensed or leased Software or hardware as SARS deems necessary.
- 4.10.5 Service Provider will immediately notify SARS if an act or omission of such a Third Party Supplier may cause a problem or delay in providing the Services and will co-operate with SARS and such Third Party Supplier to prevent or circumvent such problem or delay.

5 PERFORMANCE OF SERVICES BY SUBCONTRACTORS

- 5.1 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 Agreement without the prior written consent of SARS and where SARS provides such

consent the Supplier may not subcontract more than 25% (twenty-five percent) of the value of this Agreement to any other enterprise that does not have an equal or higher B-BBEE status level than the Supplier, unless the Subcontractor is an Exempted Micro Enterprise that has the capability and ability to perform the Services.

- 5.2 The provisions of clause 27.9.1 notwithstanding, SARS will be entitled at its sole discretion to withhold approval in respect of the appointment of any Subcontractor to whom Service Provider intends to delegate the performance of a material part of the Services.
- 5.3 Where SARS has consented to the appointment of a Subcontractor as contemplated in clause 5.1 above, the agreements between Service Provider and its Subcontractors relating to the subcontracting of the Services ("**Subcontract**") will contain materially the same terms and conditions as this Agreement to the extent 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).
- 5.4 In no event will Service Provider be relieved of its obligations under this Agreement as a result of its use of any Subcontractors. Service Provider will at all times be responsible to SARS for fulfilment of all Service Provider's obligations under this Agreement and will remain SARS's sole point of contact regarding the Services, including with respect to payment.
- 5.5 Service Provider will supervise the activities and performance of each Subcontractor and will be liable for any act or failure to act by such Subcontractor which causes any harm, loss or damage to SARS.
- 5.6 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 Service Provider of its determination in writing, indicating the reasons therefore, in which event 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 5, replace such Subcontractor with another Subcontractor acceptable to SARS.
- 5.7 Service Provider will not disclose SARS's Confidential Information to a Subcontractor without SARS's prior written approval 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 clause 15 below and also complied with the integrity and security competence provided for in clause 19 below.

6 SERVICE LEVELS

Service Provider will provide the Services in accordance with the Service Levels and Service Level Credits detailed in **Schedule C (Service Levels)**; a Work Order. Service Provider's performance of the Services will be measured against these Service Levels.

7 REQUIRED RESOURCES

7.1 Service Provider Sites

- 7.1.1 Service Provider will maintain and enforce, at the Service Provider Sites, safety and physical security procedures that are at least equal to the highest of the following: (i) the procedures required to meet Service Provider's obligations under this Agreement (including its obligation to protect Confidential Information from unauthorised access); (ii) industry standard procedures for locations similar to the Service Provider's locations; (iii) SARS's procedures applicable to similar locations, including procedures relating to physical access to restricted areas within a SARS environment, as of the Effective Date; (iv) Service Provider's procedures applicable to similar locations, as such procedures may change from time to time.
- 7.1.2 Service Provider will permit SARS Personnel (including the personnel of any SARS agents and representatives) and SARS Third Party Suppliers to enter into those portions of the Service Provider Sites used to provide the Services. Such SARS Personnel and SARS Third Party Suppliers will comply with Service Provider's reasonable security and confidentiality requirements.

7.2 Resources

Service Provider will provide all Resources, excluding SARS-provided resources, required for Service Provider to perform the Services in terms of the Agreement (including the Performance Standards) at whatever volumes are from time to time required by SARS, provided that the Service Provider Personnel provided to perform the Services in terms of the Agreement shall have undergone the integrity and security competence exercise referred to in clause 19 of this Agreement.

7.3 Use of Resources

Service Provider will use all Resources as are necessary to provide the Services in an efficient, cost-effective and non-wasteful manner.

7.4 No SARS Representations and Warranties Regarding Resources

- 7.4.1 SARS makes no representations regarding the SARS assets it owns, leases or licences from Third Parties, or the SARS facilities, including any furnishings, telephonic hardware, and computer hardware (collectively the "**SARS Assets**"). Accordingly, should SARS make available the SARS Assets to Service Provider such assets will be made available on an 'as is, where is' basis, with no warranties whatsoever, including with respect to the condition, state of repair, quality, fitness for a particular purpose or merchantability thereof.
- 7.4.2 SARS makes no representations and warranties regarding any Third Party Intellectual Property including with respect to the likelihood that Service Provider will be able to obtain the Required Consent, the cost of obtaining the Required Consent, or the fitness for purpose of such Third Party Intellectual Property.
- 7.4.3 Service Provider remains fully responsible for the performance of the Services in terms of this Agreement (including Performance Standards) without regard to (i) the condition or

suitability of any SARS Assets, SARS Intellectual Property and / or Third Party Intellectual Property (ii) Service Provider's ability to obtain 1 (one) or more Required Consents; and (iii) to the performance or non-performance by any of SARS's suppliers, licensors or lessors, unless such non-performance is as a result of SARS' equipment failure

7.5 Managed SARS Third Party Contracts

[Note to the Bidder: No Managed SARS Third Party Contracts are envisaged at Effective Date, but may be required during the Term.]

- 7.5.1 When and to the extent that SARS requires the Service Provider to provide Managed SARS Third Party contract management services and where SARS obtains the right to disclose the terms of a Managed SARS Third Party Contract to Service Provider, Service Provider will manage the applicable Managed SARS Third Party's performance of services for SARS under such contract, including with respect to the Managed SARS Third Party's compliance with the terms of the contract addressing service levels and pricing.
- 7.5.2 If Service Provider becomes aware of a breach of, or has a concern with a Third Party's performance under, a Managed SARS Third Party Contract, it will immediately (i) notify SARS; (ii) provide recommendations to SARS regarding the appropriate course of action; and (iii) take such actions as SARS may direct in writing. Service Provider will not take any action or communicate in any way with the applicable Managed SARS Third Party if there is reason to believe there is a breach of the Managed SARS Third Party Contract unless it obtains SARS's prior written approval.
- 7.5.3 Subject to clause 7.5.2, Service Provider will use Commercially Reasonable Efforts to resolve any performance problems by the Managed SARS Third Party under each Managed SARS Third Party Contract.
- 7.5.4 Should SARS require Managed Third Party Services from Service Provider, such services will be provided as a New Service.

8 SERVICE PROVIDER PERSONNEL

8.1 Health, Safety and Security

- 8.1.1 Service Provider will ensure that Service Provider Personnel will at all times, whilst on SARS's premises, adhere to the standard health, safety and security procedures and guidelines applicable to SARS Personnel, as amended from time to time and which will be made available to Service Provider on request, it being incumbent on Service Provider to ensure that it regularly requests and obtains the latest versions of such procedures and guidelines. Should SARS at any time have reason to believe that any member of Service Provider Personnel is failing to comply with such standard health, safety and security procedures and guidelines, SARS will be entitled to deny such member access to any or all of SARS's premises and require Service Provider to replace such member without delay.
- 8.1.2 Service Provider will register with the Compensation Commissioner as required by the Compensation for Occupational Injuries and Diseases Act, 1993 (Act No. 130 of 1993). Documentary proof of such registration and/or a letter of good standing from the Compensation Commissioner must be made available to SARS upon request.

- 8.1.3 SARS's security requirements and regulations include, *inter alia*, the right to search (i) the person of any member of Service Provider Personnel; (ii) any container in the possession of Service Provider Personnel; and (iii) any vehicle driven by Service Provider Personnel, whilst Service Provider Personnel are on-site at any premises of SARS. Service Provider will obtain an undertaking from Service Provider Personnel irrevocably agreeing to submit to such searches and consents to such searches by SARS or any person duly appointed by SARS to undertake such searches.
- 8.1.4 Service Provider hereby agrees and undertakes, in terms of section 37(2) of the Occupational Health and Safety Act, 1993 (Act No. 85 of 1993) ("**OSHA**"), to ensure that Service Provider and Service Provider Personnel comply with the aforesaid Act. Service Provider accepts sole responsibility for all health and safety matters relating to the provision of the Services, or in connection with, or arising out of such Services including –
- 8.1.4.1 providing for the health and safety of Service Provider Personnel and ensuring that Service Provider Personnel at all times adhere to the OSHA, and the terms and conditions of this Agreement; and
- 8.1.4.2 ensuring that neither SARS Personnel nor any Third Party's health and safety is endangered in any way by Service Provider's activities or conduct in providing the Services.

8.2 Key Service Provider Personnel and Key Service Provider Positions

- 8.2.1 The Key Service Provider Positions and Key Service Provider Personnel are detailed in **Appendix E-1 to Schedule E (Governance)**. **[Note to the Bidder: The Bidder is required to populate Appendix E-1 in accordance with the notes to the Bidder in Appendix E-1 as a mark-up to the contract].**
- 8.2.2 Before assigning an individual to a Key Service Provider Position, Service Provider will notify SARS of the proposed assignment, introduce the individual to the appropriate SARS representatives (and, upon request, provide such representatives with the opportunity to interview the individual) and provide SARS with a *curriculum vitae* and other information about the individual which may be reasonably requested by SARS. If SARS in good faith objects to the proposed assignment, the Parties will attempt to resolve SARS's concerns on a mutually agreeable basis. If the Parties are not able to resolve SARS's concerns within 5 (five) Business Days of SARS so objecting or such longer period as SARS may in writing agree, Service Provider will not assign the individual to that position or to any other position on the SARS account and will propose, for approval by SARS, the assignment of an alternative individual of suitable ability and qualifications and who has undergone the integrity and security competence as provided for in clause 19 of this Agreement.
- 8.2.3 Service Provider Personnel filling Key Service Provider Positions may not be removed from the SARS account until SARS has approved a suitable replacement and such replacement has been properly trained and made familiar with the SARS account.
- 8.2.4 In the case of an unforeseen Key Service Provider Position vacancy, the Service Provider will promptly fill the vacant Key Service Provider Position with an appropriately qualified and trained individual in accordance with clause 8.2.2 above, subject to such individual undergoing integrity and security competence as provided for in clause 19 of this Agreement.

9 SARS'S RESPONSIBILITIES

9.1 Responsibilities

SARS's responsibilities under the Agreement ("**Dependencies**") are set out in **Appendix B-x-2 (Dependencies)**. [Note to the Bidder: As part of your Proposal, you must identify in the appropriate Appendix any Dependencies with respect to WhatsApp Business Solution Platform which you are submitting a Proposal for consideration by SARS.] For the avoidance of doubt, SARS will not be responsible for any tasks, functions or the like under the Agreement other than the Dependencies.

9.2 Excused Performance

- 9.2.1 Service Provider will promptly notify SARS upon becoming aware that SARS has failed to perform, or is reasonably likely to fail to perform, a Dependency.
- 9.2.2 Service Provider's failure to perform any of its obligations under the Agreement (including a failure to perform an obligation within the timeframes required under this Agreement) will be excused if and to the extent that:
 - 9.2.2.1 such failure by Service Provider would not have occurred but for SARS's failure to perform its Dependencies;
 - 9.2.2.2 such failure by SARS directly and materially adversely affects or affected Service Provider's timely performance of its obligations under the Agreement;
 - 9.2.2.3 Service Provider provides SARS with prompt written notice of such non-performance in accordance with clause 9.2.1 and uses Commercially Reasonable Efforts to perform notwithstanding SARS's failure to perform, including by way of Workarounds or other means; and
 - 9.2.2.4 Service Provider demonstrates to SARS's reasonable satisfaction that SARS's failure had a direct, material adverse impact on Service Provider's ability to perform its obligations in accordance with the Agreement.
- 9.2.3 To the extent any delay in performance by Service Provider is excused under this clause 9.2, the deadlines for its performance will be extended for a reasonable period of time to accommodate the delay actually and reasonably caused by SARS's failure to perform a Dependency in accordance with this Agreement.
- 9.2.4 Service Provider will be excused from the assessment of a Service Level Credit to the extent set forth in clause 3.7 of **Schedule C (Service Levels)**.

10 GOVERNANCE

The Parties will comply with their respective obligations set forth in **Schedule E (Governance)**.

11 CHARGES/PRICING

All Charges for the Services, as well as invoicing and payment terms, are set out in **Schedule D (Charges, Invoicing and Payments)**.

12 INTELLECTUAL PROPERTY RIGHTS

12.1 SARS Intellectual Property

- 12.1.1 SARS retains all right, title and interest in and to the SARS Intellectual Property. As of the Effective Date, Service Provider is granted a non-exclusive licence for the continued duration of this Agreement to perform any lawful act including the right to use, copy, maintain, modify, enhance and create derivative works of SARS Intellectual Property (including source code materials, programmer interfaces, available documentation, manuals and other materials to the extent available and necessary for the use, modification, or enhancement thereof) for the sole purpose of providing the Services to SARS. Service Provider will not be permitted to use SARS Intellectual Property for the benefit of any entities other than SARS without the prior written consent of SARS, which may be withheld at SARS's sole discretion. Except as otherwise requested or approved by SARS, which approval will be at SARS's sole discretion, Service Provider will cease all use of SARS Intellectual Property as of the termination or expiration date of this Agreement or the date of completion of the Services where such date is earlier.

12.2 Intellectual Property developed during the Term

- 12.2.1 SARS will have all right, title and interest in all Intellectual Property developed or generated for SARS in the course of providing the Services ("**Developed Intellectual Property**"). For avoidance of doubt this only relates to bespoke work and SARS will be liable for the cost.
- 12.2.2 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.
- 12.2.3 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.
- 12.2.4 Unless otherwise agreed, where Developed Intellectual Property incorporates Service Provider Intellectual Property, systems, and processes that Service Provider did not develop in the course of providing the Services, Service Provider hereby grants SARS an irrevocable, perpetual, world-wide, fully paid-up, royalty-free, non-exclusive licence for SARS, SARS Personnel and agents to perform any lawful act, including the right to use, copy, maintain, modify, enhance and create derivative works of such Service Provider Intellectual Property insofar as it forms part of the Developed Intellectual Property. Subject to clause 12.2.4, Service Provider retains all right, title and interest in and to Service Provider Intellectual Property that is used in connection with the Services.

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 Service Provider Intellectual Property during the Term and during the Disengagement Assistance Period.

12.3 Third Party Intellectual Property

Service Provider will neither, 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 prior written consent thereto. Service Provider will, where required, be responsible for obtaining a licence on behalf of SARS, at Service Provider's cost and in SARS's name, to use such Third Party Intellectual Property from the Third Party. Service Provider is required to perform the Services in accordance with the Service Levels notwithstanding any decisions by SARS to withhold its consent to the use of Third Party Intellectual Property and/or failure to assist in procuring the Required Consents as contemplated in clause 12.13.1 below.

12.4 Use of Third Party Intellectual Property licensed to SARS

Service Provider will not use any Third Party Intellectual Property licensed to SARS whether to provide the Services to SARS or for any other purpose whatsoever, unless prior written consent was obtained from SARS and the Third Party Licensor. 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 use such Intellectual Property strictly in accordance with the provisions of the relevant consent. Service Provider is required to perform the Services in accordance with the Service Levels notwithstanding any decisions by SARS to withhold its consent.

12.5 Source Code Escrow Requirements in respect of Third Party Software

With respect to Third Party Intellectual Property and/or Service Provider Intellectual Property that is used by the Service Provider to perform the Services or incorporated or embedded in any Deliverable and/or WhatsApp Business Solution, the Service provider shall use Commercially Reasonable Efforts to obtain the source code and arrange for its placement in escrow subject to SARS approving the terms and conditions of the escrow agreement, notwithstanding any decision by SARS to permit the use or provision of the Intellectual Property without source code.

12.6 Third Party Licensor Warranties & Obligations

12.6.1 The Service provider warrants to and in favour of SARS and the escrow agent that:

12.6.1.1 the Third Party and WhatsApp Business Solution Platform source code materials shall be understandable and usable by a reasonably knowledgeable computer programmer and that the Third Party WhatsApp Business Solution Platform 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;

12.6.1.2 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;

12.6.1.3 the Source code materials are not subject to any lien or other encumbrance;

12.6.1.4 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

12.6.1.5 it has the authority to enter into such agreement.

12.6.2 The Third Party licensor shall:

12.6.2.1 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;

12.6.2.2 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

12.6.2.3 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.

12.7 Source Code Escrow in of the WhatsApp Business Solution Platform

12.7.1.1 The Service Provider undertakes to deposit the source codes of the Software and/or WhatsApp Business Solution Platform in escrow with SARS's appointed escrow agent and execute an escrow agreement as directed by SARS on or before the Effective Date.

12.7.1.2 Upon the occurrence of an Acts of Insolvency or any such event that hampers the Service Provider's ability to continuously render services to SARS in terms of this Agreement, SARS shall be entitled to the immediate delivery, possession and use of the documentation and source code of the Software and/or WhatsApp Business Solution Platform for the purposes of maintaining, modifying and correcting the Software and/or WhatsApp Business Solution Platform.

12.8 Escrow Agent's Obligations

12.8.1 Parties agree that the Escrow Agent shall:

12.8.1.1 hold the Third Party and WhatsApp Business Solution Platform source code materials in a safe and secure environment;

12.8.1.2 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;

12.8.1.3 inform SARS of the receipt of a copy of the Third Party and WhatsApp Business Solution Platform source code materials, in writing;

12.8.1.4 maintain full records of all Third Party and WhatsApp Business Solution Platform source

code materials deposited by the Third Party licensor; and

- 12.8.1.5 create and maintain backup copies of all Third Party WhatsApp Business Solution Platform 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.

12.9 Release Events

- 12.10 Escrow Agent shall distribute the Third Party and WhatsApp Business Solution Platform source code materials to SARS upon the occurrence of a Release Event. A Release Event shall arise where the Third Party licensor:

- 12.10.1.1 breaches its agreement 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;
- 12.10.1.2 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;
- 12.10.1.3 enters into any compromise, pledge, hypothecation, scheme of arrangement or composition with any or all of its creditors;
- 12.10.1.4 is liquidated or placed under judicial management, whether provisionally or finally;
- 12.10.1.5 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 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;
- 12.10.1.6 ceases to trade for any reason whatsoever; or
- 12.10.1.7 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.

12.11 Release Procedures

- 12.12 If SARS reasonably believes that any of the Release Events set out in clause 12.9 of this Agreement have occurred, then:
- 12.12.1.1 SARS may notify the Escrow Agent of such occurrence;
- 12.12.1.2 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

12.12.1.3 the Escrow Agent shall release the source code material to SARS if:

12.12.1.3.1 SARS provides proof of the occurrence of a Release Event; or

12.12.1.3.2 the Third Party licensor acknowledges the occurrence of a Release Event, or fails to respond timeously to a notice of the Release Event.

12.13 Required Consents and License Fees

12.13.1 Service Provider will, at its cost and expense, obtain all Required Consents with respect to any Third Party Intellectual Property required by it to provide the Services.

12.13.2 Service Provider will be responsible for all financial liability related to licence and maintenance fees under SARS's agreements with Third Parties for the licence and maintenance of any Third Party Intellectual Property to the extent that such liability arises from Service Provider's use, support, maintenance or access to such Third Party Intellectual Property.

12.13.3 Service Provider will be financially responsible for any licence and maintenance fees under Service Provider's agreements with Third Parties for the licensing and maintenance of any Third-Party Intellectual Property.

12.14 Residual Knowledge

12.14.1 Nothing contained in this Agreement will restrict either Party from the use in its business activities of any generic ideas, concepts, know-how, or techniques developed or learned by such Party pursuant to this Agreement, provided that in doing so such Party does not:

12.14.1.1 disclose Confidential Information to Third Parties;

12.14.1.2 infringe any Intellectual Property Rights of the other Party and/or Third Parties; or

12.14.1.3 use any such residual knowledge or assist or enable any Third Party to use such residual knowledge to the detriment of SARS or Service Provider.

12.15 Licence Limitations

Except for the licence rights contained in this clause 12, neither this Agreement nor any disclosure made hereunder grants any licence to either Party or any Third Party in respect of any Intellectual Property Rights of the other Party.

13 CHANGE CONTROL

Service Provider will control and manage changes to all aspects of the Services and to the environment in which it provides the Services in accordance with SARS's change management standards and procedures detailed in **Schedule B-x** and **Schedule E (Governance)**.

14 REVIEW AND ACCEPTANCE OF DELIVERABLES

All Deliverables delivered by Service Provider to SARS pursuant to this Agreement will be subject to SARS's review, approval and acceptance requirements as may be detailed in **Schedule B-x** and **Schedule C (Service Levels)** hereto.

15 SAFEGUARDING OF CONFIDENTIAL INFORMATION

15.1 Acknowledgment of Importance of Confidential Information

The Receiving Party acknowledges:

- 15.1.1 the great importance of the Confidential Information to the Furnishing Party and, where applicable, Third Party proprietors of such information, and recognises that the Furnishing Party and/or Third Party proprietors may suffer irreparable harm or loss in the event of such information being disclosed or used otherwise than in terms of this Agreement; and
- 15.1.2 that all Confidential Information of the Furnishing Party that comes to the knowledge of the Receiving Party is proprietary to the Furnishing Party or, where applicable, the relevant Third Party proprietor. The Receiving Party also acknowledges that nothing in this Agreement confers any rights or licence to Confidential Information on the Receiving Party.

15.2 Non-Disclosure

The Receiving Party agrees:

- 15.2.1 except as permitted by this Agreement, not to disclose or publish any Confidential Information in any manner, for any reason or purpose whatsoever without the prior written consent of the Furnishing Party;
- 15.2.2 notwithstanding the foregoing, Service Provider may, subject to clause 21.6, disclose such information to 1 (one) or more Third Parties performing services required hereunder where:
 - 15.2.2.1 such Third Party is performing services in terms of this Agreement;

- 15.2.2.2 such disclosure is necessary or otherwise naturally occurs in that entity's scope of responsibility; and
 - 15.2.2.3 the Third Party agrees or has agreed in writing to assume the obligations described in this clause 15;
- 15.2.3 except as permitted by this Agreement, not to utilise, employ, exploit or in any other manner whatsoever use the Confidential Information for any purpose whatsoever without the prior written consent of the Furnishing Party and, in the event that the Confidential Information is proprietary to a Third Party, it will also be incumbent on the Receiving Party to obtain the consent of such Third Party;
- 15.2.4 to restrict the dissemination of the Confidential Information only to those of its 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 the Receiving Party will initiate, maintain and monitor internal security procedures reasonably acceptable to the Furnishing Party to prevent unauthorised disclosure by its personnel;
- 15.2.5 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; and
- 15.2.6 notwithstanding the foregoing, SARS may disclose to Third Parties the Confidential Information of Service Provider to the extent required to exercise its rights under this Agreement (including **Schedule F (Disengagement Assistance)**) provided SARS obtains the written agreement of such Third Party to a confidentiality agreement materially consistent with the confidentiality provisions set out in this clause 15.

15.3 **Standard of Care**

- 15.3.1 The Receiving Party will protect the Confidential Information of the Furnishing Party in the manner that it employs to protect its own Confidential Information. In no event will the Receiving Party use less than Commercially Reasonable Efforts to protect the confidentiality of the Confidential Information of the Furnishing Party.
- 15.3.2 Service Provider will ensure that no Service Provider Personnel or unauthorised parties access any Confidential Information unless it must do so to perform the Services.
- 15.3.3 In addition, Service Provider will implement on or before the Effective Date, and thereafter maintain, appropriate safeguards against the unauthorised access to, and destruction, loss, or alteration of, SARS data in Service Provider's possession and to which the Service Provider may have access. Such safeguards must be acceptable to SARS and in accordance with all policies and procedures of SARS regarding data access, privacy and security and no less rigorous than the most rigorous of the practices prescribed by WASPA and as of the Effective Date.
- 15.3.4 In the event that SARS grants Service Provider permission to remotely access SARS's hardware, Software, Internet facilities, data, electronic communications facilities and/or network facilities, Service Provider will adhere to all SARS's policies applicable to remote access, which are available to Service Provider on request.

15.4 **Procure Undertakings from Personnel**

- 15.4.1 Service Provider will ensure that each of the Service Provider Personnel execute the SARS Oath / Affirmation of Secrecy, prior to performing any of the Services under this Agreement or being given access to any facilities used to perform the Services.
- 15.4.2 Service Provider will ensure that the Service Provider Personnel who have access to Confidential Information of SARS give a written undertaking in favour of SARS in regard to the Confidential Information on substantially the same terms and conditions contained within this Agreement in a form prescribed by SARS prior to access to any Confidential Information.
- 15.4.3 SARS will be entitled to deny Service Provider Personnel access to SARS Facilities or prevent Service Provider Personnel from conducting any work in relation to the Services should SARS not be in receipt of the SARS Oath / Affirmation of Secrecy or the integrity screening report referred to in clause 19.1.2 and, if required by SARS, a signed undertaking on such terms and conditions as determined by SARS.
- 15.4.4 Service Provider's failure to provide the undertaking and the SARS Oath / Affirmation of Secrecy or the integrity screening report referred to in clause 19.1.2, referred to in this clause 15.4 and/or SARS's failure to receive such undertaking will in no way detract from Service Provider's obligations in terms of this Agreement.
- 15.4.5 Service Provider will comply with and will procure that all Service Provider Personnel comply with all security measures imposed by SARS regarding security and access to the SARS Facilities, including SARS's integrity and security competence requirements provided for in clause 19 of this Agreement.

15.5 Exceptions

The Parties acknowledge that subject to Applicable Law this clause 15 will not be applicable where the Receiving Party discloses the Confidential Information to attorneys or auditors, provided that (i) such disclosure is reasonably required by the Receiving Party for the purposes of conducting its business activities; and (ii) the auditors agree in writing to be bound by the provisions of this clause 15 and complete and submit the SARS Oath / Affirmation of Secrecy to SARS.

15.6 Disclosure Required by Law, Regulation or Court Order

In the event that the Receiving Party is required to disclose the Confidential Information of the Furnishing Party in terms of a requirement or request by operation of law, regulation or court order but only to the extent so disclosed and only in the specific instance and under the specific circumstances in which it is required to be disclosed, the Receiving Party will:

- 15.6.1 advise the Furnishing Party thereof in writing prior to disclosure, if possible;
- 15.6.2 take such steps to limit the extent of the disclosure to the extent that it lawfully and reasonably practically can;
- 15.6.3 afford the Furnishing Party a reasonable opportunity, if possible, to intervene in the proceedings; and
- 15.6.4 comply with the Furnishing Party's requests as to the manner and terms of any such disclosure.

15.7 Loss of Confidential Information

In the event of any unauthorised disclosure or loss of, or inability to account for any Confidential Information of the Furnishing Party, the Receiving Party will promptly:

- 15.7.1 notify the Furnishing Party in writing;
- 15.7.2 at its own expense take such actions as may be necessary or reasonably requested by the Furnishing Party to minimise the violation; and
- 15.7.3 at its own expense co-operate in all reasonable respects with the Furnishing Party to minimise the violation and any damage resulting there from.

15.8 Return of Confidential Information

SARS may at any time on written instruction to Service Provider require that Service Provider immediately return to SARS, in a form reasonably acceptable to SARS, and thereafter destroy all remaining copies of SARS Confidential Information in possession of the Service Provider's personnel, agents or Subcontractors (including where applicable by electronically deleting the same in such manner that it is completely and utterly irretrievable). In addition SARS may instruct that the Service Provider furnishes a written statement to the effect that upon such return it has not retained in its possession or under its control, either directly or indirectly, any such Confidential Information or material and has fully complied with the foregoing return and destruction obligations.

16 DATA PROTECTION

- 16.1 The Service Provider acknowledges that in the course of the provision of the Services it may become privy to SARS's Confidential Information.
- 16.2 To the extent that the SARS's Confidential Information needs to be stored on the Service Provider's information technology systems, the Service Provider shall take appropriate technical safeguards and organisational measures and/or measures prescribed by POPIA and/or applicable Data Protection Legislation (where applicable), SARS Act and/or Applicable Laws against unauthorised access to, unlawful Processing, accidental loss, destruction or damage of the SARS's Confidential Information and shall provide SARS, with reasonable evidence of the Service Provider's compliance with its obligations under this Clause 16.2 on reasonable notice and request.
- 16.3 The Service Provider shall institute and operate all necessary back-up procedures to its information technology systems to ensure that, in the event of any information system malfunction or other loss of SARS's Confidential Information can be recovered promptly and that the integrity thereof and any database containing such material can be maintained.
- 16.4 The Service Provider shall ensure that all SARS's Confidential Information and information provided to it by SARS in order to render the Services is stored separately and isolated from data and property relating to the Service Provider or any third party (including any other entity with whom the Service Provider may conduct business) in accordance with the POPIA, SARS Act and the Applicable Laws.

- 16.5 The security measures to be taken by the Service Provider in terms of Clause 16.2 must –
- 16.5.1 not be less rigorous than the security safeguards, measures and practices generally maintained by SARS in respect of its data (and as communicated by SARS to the Service Provider), or maintained by the Service Provider with respect to its own confidential information of a similar nature and/or as prescribed by the Applicable Laws, POPIA and/or Data Protection Legislation; and
- 16.5.2 enable SARS and the Service Provider to conform to Applicable Law, including:
- 16.5.2.1 Data Protection Legislation;
- 16.5.2.2 the Electronic Communications and Transactions Act, 2002 (Act No 25 of 2002); and
- 16.5.2.3 the Tax Acts.
- 16.6 The Service Provider hereby indemnifies and holds SARS harmless against all Losses incurred by SARS as a result of any breach by the Service Provider of the provisions of this Clause 16.

17 PROCESSING OF PERSONAL INFORMATION

- 17.1 Without limiting any other provision of the Agreement, the Service Provider shall only store, copy or use any Personal Information disclosed to it by SARS pursuant to the Agreement to the extent necessary to perform its obligations under the Agreement and subject to the Privacy and Data Protection Requirements and/or Data Privacy Legislation binding on SARS and/or Service Provider.
- 17.2 If at any time the Service Provider suspects or has reason to believe that Personal Information disclosed to it by SARS pursuant to the Agreement has or may become lost or corrupted in any way for any reason then, the Service Provider shall immediately notify SARS thereof what remedial action it proposes to take, if any, aligned with the relevant conditions of POPIA and/or where applicable the Data Privacy Legislation.
- 17.3 The Service Provider agrees that, in regard to the Personal Information, it shall –
- 17.3.1 only Process the Personal Information subject to the Privacy and Data Protection Requirements and in accordance with written instructions from SARS and supported by written consent from a Data Subject, (which may be specific instructions or instructions of a general nature limited to the specific purpose (as prescribed by Condition 1 of POPIA “the Lawful Purpose”)), as set out in the Agreement or as otherwise notified by SARS to the Service Provider from time to time);
- 17.3.2 not otherwise modify, amend or alter the contents of the Personal Information or disclose or permit the disclosure of any of the Personal Information to any third party unless authorised in writing by SARS and where required, the Data Subject and limited to the Lawful Purpose, being carrying out duties in relation to the performance of the Services;
- 17.3.3 not maintain records of the Personal Information for longer than is necessary in order for the Service Provider to comply with its obligations under the Agreement, unless retention

thereof for a longer period is required by the Applicable Laws, POPIA and where applicable, Data Privacy Legislation or as requested in writing by SARS;

- 17.3.4 implement appropriate technical safeguards and organisational measures to protect the Personal Information against unauthorised access or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure in accordance with Condition 7 of POPIA and/or relevant provisions of the Data Privacy Legislation and shall further ensure Service Provider Personnel and where applicable Subcontractor in their role as Operators, comply in all respect with the technical safeguard and organisation measures implemented by the Service Provider or SARS to protect the Personal Information against unauthorised access or unlawful Processing, accidental loss, destruction, damage, alteration or disclosure as prescribed by the aforesaid Condition 7 of POPIA. to Personal Information and to the nature of the Personal Information which is to be protected;
- 17.3.5 keep all Personal Information and any analyses, profiles or documents derived therefrom separate from all other data and documentation of the Service Provider;
- 17.3.6 ensure that compliance to requirements of section 57 and section 58 of POPIA are followed where processing is subject to prior authorisation of the Authority.
- 17.3.7 Process the Personal Information in accordance with Privacy and Data Protection Requirements and/or requirements prescribed by Data Privacy Legislation where binding on SARS as the Responsible Party; and
- 17.3.8 co-operate as requested by SARS to enable SARS to comply with or exercise rights of Data Subject under POPIA and/or Data Privacy Legislation if binding of SARS in respect of Personal Information Processed by the Service Provider and/or Service Provider Personnel under the Agreement or comply with any assessment, enquiry, notice or investigation under the SARS Act, POPIA or Applicable Law which shall include the provision of all data requested by SARS within the timescale specified by SARS in each case, subject to compliance by SARS with POPIA.
- 17.4 The Service Provider shall provide co operation in any investigation relating to security which is carried out by or on behalf of SARS, including providing any information or material in its possession or control, provided that SARS gives its reasonable notice of its intention to carry out such an investigation.
- 17.5 The Service Provider hereby indemnifies and holds SARS harmless against all Losses incurred by SARS as a result of any Personal Information Breach by the Service Provider, Subcontractor and/or breach of any of the provisions of this Clause 17.

18 PROTECTION OF PERSONAL INFORMATION

- 18.1 Each Party shall comply with its obligations under POPIA in respect of Personal Information collected and/or Processed in connection with the Agreement and the Services.
- 18.2 Each Party shall only provide, collect and/or Process the Personal Information:
 - 18.2.1 in compliance with POPIA and where binding on a Party;

- 18.2.2 as is necessary for the purposes of the Agreement and the Services;
- 18.2.3 for maintaining its internal administrative processes, including quality, risk, client or vendor management processes;
- 18.2.4 for internal business-related purposes; and
- 18.2.5 in accordance with the lawful Purpose and reasonable instructions of SARS as the Responsible Party.
- 18.3 Both Parties shall:
 - 18.3.1 in dealing with the Personal Information either as the Responsible Party, Operator comply with the specific security safeguards or measures set out in Condition 7 of POPIA and data protection obligations imposed on them in terms of POPIA or Applicable Laws; and/or
 - 18.3.2 where applicable, comply with the specific obligations imposed on them in terms of POPIA and/or where applicable, Legislation in respect of the specific role they fulfil either as the Operator or Responsible Party in terms of providing the Services as agreed between the Parties;
 - 18.3.3 take, implement and maintain all such technical and organisational security procedures and measures as prescribed by Condition 7 of POPIA and/or relevant articles of Data Privacy Legislation where applicable, necessary or appropriate to preserve the security and confidentiality of the Personal Information in its possession and to protect such Personal Information against unauthorised or unlawful collection, disclosure, access or Processing, accidental loss, destruction or damage.
- 18.4 No Personal Information of the Data Subject shall be collected, Processed and/or shared with any other third party without obtaining written consent of the Responsible Party supported by the Data Protection Agreement (**Schedule J**) signed with the Responsible Party.
- 18.5 Neither the Service Provider nor Subcontractor in line with their role as the Operator shall be entitled to Process the Personal Information with any other third party except for the Service Provider Personnel (subject to signing of the Data Protection Agreement by Responsible Party), where necessary in order to protect the legitimate interests of any of the Parties, Data Subject or in connection with the Agreement and the Services.
- 18.6 The Service Provider may notify SARS about important developments, proposals and services which it thinks may be relevant to SARS for Service improvement etc., however, the Service Provider undertakes for the Term, not to use or Process the Personal Information to send business offering to SARS and/or Data Subject including newsletters, invitations to seminars and similar marketing material or other communications from the Service Provider.
- 18.7 Electronic communications between the Service Provider and SARS (limited only where the Service Provider Personnel are using the Service Provider's resources), may be monitored by the Service Provider to ensure compliance with its professional standards and internal compliance policies pertaining to the Agreement and not for any other purpose.
- 18.8 Electronic communications between SARS and the Service Provider and SARS

Personnel (limited only where the Service Provider Personnel are using SARS's resources), may be monitored by SARS to ensure compliance with its professional standards and internal compliance policies pertaining to the Agreement and not for any other purpose.

18.9 The Service Provider shall not Process the Personal Information to:

- 18.9.1 an outsourced information technology service provider; or
 - 18.9.2 another country, including the use of cloud-based solutions (unless those solution are approved by SARS and compliant with POPIA); or
 - 18.9.3 an Affiliate;
 - 18.9.4 without prior written consent of SARS and the Data Subject or existing Data Protection Agreement.
- 18.10 Where consent has been granted in terms of Clause 18.9 above, the Service Provider undertakes in relation to Clauses 18.7 and 18.8 and for the Term as the Operator, to require that any third party, outsourced service provider, foreign legal entity or other Affiliate involved in the Processing or storage of Personal Information, to ensure that such Personal Information is protected with the same Best Industry Practices and/or protection as is required in terms of Clause 16.3 and the provision of the POPIA Act and/or Data Legislation binding on it (where applicable).
- 18.11 The Service Provider in their role as Operator shall be held accountable for Personal Information further Processed by the Service Provider Personnel for the purposes set out in the Agreement irrespective of whether a Service Provider Personnel Subcontractor performs such role under the instruction of SARS as a Responsible Party.
- 18.12 SARS as the Responsible Party warrants that it has obtained written consent from all applicable Data Subjects for the Processing or transfer of such Data Subjects' Personal Information whenever this is required for purposes of the Agreement and the Services.
- 18.13 The Service Provider represents and warrants in favour of SARS that:
- 18.13.1 it has used reasonable measures to ensure POPIA compliance by the Service Provider Personnel when at its offices or assigned to customers on a project basis which measures includes, POPIA training and awareness; and
 - 18.13.2 it has establishment POPIA compliance programme to manage and maintain POPIA compliance.
 - 18.13.3 For these purposes, and notwithstanding that a Subcontractor will be Processing Personal Information in terms of the Agreement and not the Service Provider, the Service Provider hereby indemnifies and holds SARS harmless against all Losses incurred by SARS as a result of any Personal Information Breaches by a Subcontractor and/or breach of any of the provisions of this Clauses 16, 17 and 18.

19 INTEGRITY AND SECURITY COMPETENCE

19.1 Background Verification

- 19.1.1 As a confirmation of a Service Provider Personnel's citizenship, criminal record status, credit-worthiness, academic qualifications and membership of professional associations, the Service Provider shall conduct a background vetting on every Service Provider Personnel whom it intends to delegate/assign to SARS for the fulfilment of its obligations in terms of this Agreement.
- 19.1.2 The Service Provider shall provide SARS with a screening report for each member of its Personnel referred to in clause 19.1.1 above prior to Commencement Date, or where it is impossible to provide the report prior to Commencement Date, the Service Provider shall refrain from delegating Service Provider Personnel for this purpose without it first providing such a report to SARS.
- 19.1.3 The screening reports referred to in 19.1.2 above, shall be issued by a reputable screening agency. **[Note to Bidder: the list of screening agencies acceptable to SARS will be agreed between the Parties prior to Effective Date]**
- 19.1.4 The validity of such screening reports referred to in 19.1.2 shall not be older than 12 (twelve) months as at sc and shall be updated as reasonably required by SARS from time to time.
- 19.1.5 The Service Provider shall provide SARS with suitable, fit and proper Service Provider Personnel as a replacement of the individual member whose updated report reveals evidence that he/she no longer meets SARS's integrity and security competence requirements.
- 19.1.6 The report referred to in 19.1.2 above must include the verification of the following, amongst others:
 - 19.1.6.1 Citizenship, including residency status
 - 19.1.6.2 Criminal activity report
 - 19.1.6.3 Credit record
 - 19.1.6.4 Academic qualifications including matric certificate or equivalent record
 - 19.1.6.5 Professional association memberships

- 19.2 SARS reserves the right to verify any such report(s) provided by the Service Provider.

20 SECURITY COMPETENCE

The Service Provider Personnel delegated/assigned to provide Services to SARS in terms of this Agreement who have access, or who are reasonably expected to have access, to SARS's Confidential Information or SARS's restricted areas shall at all times during the subsistence of this Agreement, be subject to SARS policies and procedures regarding integrity, competence, security.

21 WARRANTIES

21.1 Competitive Prices

Service Provider warrants that (i) the tariffs charged to SARS shall not exceed any retail price advertised by the Service Provider, except for special offers of less than 90 (ninety) days duration; (vii) it will not offer the Services to SARS on commercial terms that are less favourable than that offered by the Service Provider its other customers; and (iii) tariffs charged to SARS shall not exceed any retail price advertised by the Service Provider, except for special offers of less than 90 (ninety) days duration.

21.2 Work Standards

Service Provider warrants that the Services will be performed with promptness and diligence and executed in a workmanlike manner, in terms of the practices and professional standards used in well-managed operations performing services similar to the Services.

21.3 Manner of Performance

Service Provider warrants that the Services will at all times be performed in a manner which will (i) not diminish SARS's reputation; and (ii) not be detrimental to SARS,

21.4 Business Continuity Services

Service Provider warrants that it has suitable and tested Business Continuity Plans in place in order to ensure continuity of the Services in the event of a Disaster.

21.5 Service Provider Personnel

21.5.1 Service Provider warrants that it will use adequate numbers of qualified individuals with suitable training, education, experience, and skill to perform the Services in terms of this Agreement and the Performance Standards.

21.5.2 Service Provider further warrants that it shall ensure that Service Provider Personnel undergo and comply with the integrity and security competence requirements provided for in clause 19 above.

21.6 Protecting SARS Confidential Information

21.6.1 Service Provider warrants that it will at all times comply with its obligations to establish and maintain such procedures as may be necessary to ensure that all Confidential Information to which Service Provider has access is not accessible to unauthorised persons, is not altered, lost or destroyed and it is capable of being retrieved only by persons duly authorised by SARS.

21.6.2 Service Provider hereby further warrants in favour of SARS that it will at all times strictly comply with all Applicable Laws relating to the protection of data and personal information, including the Tax Administration Act, 2011 (Act No. 28 of 2011) and any other tax act administered by the Commissioner for SARS, and with all the provisions and requirements of policies and procedures, as amended from time to time, for the protection of Confidential Information (including encryption standards) and any further requirements of which SARS may, from time to time, advise Service Provider in writing, or which may be required by Applicable Laws, whether within the Republic of South Africa or elsewhere in the world. The SARS Confidential Information protection policies and procedures will be made available to Service Provider on request. It is incumbent on Service Provider to ensure, for the duration of this Agreement, that (i) it remains fully cognisant of Applicable Laws relating to data and personal information protection; and (ii) requests and obtains from SARS the latest versions of the SARS Confidential Information protection policies and procedures.

21.6.3 Service Provider hereby further warrants that it will not, at any time copy, compile, collect,

collate, process, mine, store, transfer, alter, delete, interfere with or in any other manner use the Confidential Information for any purpose other than to provide the Services to SARS.

- 21.6.4 Service Provider further warrants that it will ensure that all its systems and operations which it uses to provide the Services, including all systems on which Confidential Information is copied, compiled, collected, collated, processed, mined, stored, transmitted, altered or deleted or otherwise used as part of providing the Services, will at all times be of at least the minimum standard required under Applicable Law and further be of a standard no less than the standards which are in compliance with best practice for the protection, control and use of such data.

21.7 Non-Infringement

Service Provider warrants that:

- 21.7.1 it will perform its responsibilities under the Agreement in a manner that does not infringe or constitute an infringement or misappropriation of any patent, copyright, trademark, trade secret or other intellectual property or proprietary rights of SARS and/or any Third Party; and
- 21.7.2 the assets it uses to perform the Services will not infringe, or constitute an infringement or misappropriation of, any patent, copyright, trademark, trade secret or other intellectual property or proprietary rights of SARS and/or any Third Party.

21.8 Authorisation

[Note to Bidder: The successful Bidder will be required to obtain a Board Resolution authorising the successful Bidder's signatory to enter into this Agreement]

- 21.8.1 Each Party warrants to the other that it has the requisite authority to enter into this Agreement.
- 21.8.2 The Service Provider further warrants that as at the Effective Date and during the Term: (i) it has all the necessary licences, certificates, authorisations and consents required under the laws of the Republic of South Africa or under any other applicable jurisdiction for the provision of the Services under this Agreement; and (ii) it will comply with all legal requirements and with the terms and conditions of all licences, certificates, authorisations and consents required for the provision of the Services.

21.9 Inducements

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

21.10 Disabling Code

Service Provider warrants that:

- 21.10.1 it will not use, or authorise Service Provider Personnel Third Parties, to use any code that

would have the effect of disabling or otherwise shutting down all or any portion of the Services; and

- 21.10.2 with respect to any disabling code that may be part of any Software in any way related to the provision of the Services, Service Provider will not invoke, or authorise Service Provider Personnel or a Third Party to invoke, such disabling code at any time, including upon expiration or termination of this Agreement for any reason.

21.11 Service Level Measurement

Service Provider warrants that the steps, tools, processes, workflows and interfaces provided in **Appendix C-x** for measuring Service Provider's performance against the Service Levels will, on a Service Level by Service Level basis, produce a system of measuring Service Provider's performance against the Service Level that is at least as automated and objective as the most automated and objective system for measuring a similar service level deployed in a comparable, well-managed commercial environment by a professional service provider performing services similar to the Services.

21.12 Tax Compliance

- 21.12.1 Service Provider warrants that as of the Effective Date it and its Subcontractors are in full compliance, and throughout the Term will remain in full compliance, with all Applicable Laws relating to taxation in South Africa.
- 21.12.2 Service Provider undertakes that it will inform SARS should it become aware that Service Provider and/or any of its Subcontractors are not tax compliant.
- 21.12.3 If SARS becomes aware of any such tax non-compliance of Service Provider and/or its Subcontractors and should such non-compliance not be remedied within 3 (three) months (or such other shorter period as the Applicable Law may prescribe) after SARS has given notice to Service Provider to remedy such non-compliance, such non-compliance will be deemed to constitute a material breach of this Agreement by the Service Provider.
- 21.12.4 SARS will be entitled to all remedies (including termination for cause) provided for in this Agreement pursuant to a material breach hereof by the Service Provider or SARS may in the alternative (at its sole discretion) upon written notice, require the Service Provider to remedy the material breach. In the case of non-compliance by a Subcontractor the Service Provider will ensure that the Subcontractor immediately ceases providing Services to SARS. SARS will have no liability to Service Provider with respect to a termination under this clause 21.12.4.
- 21.12.5 Service Provider further warrants that Service Provider will deliver to SARS on the Effective Date and each anniversary thereof during the Term a valid tax clearance certificate issued for the then-current year in respect of the Service Provider and each Subcontractor. If Service Provider fails to provide such certificates (i) in respect of itself and not due to any failure by SARS in the production of the certificate, SARS may terminate the Agreement on 30 (thirty) days' notice; and (ii) in respect of any Subcontractor, and not due to any failure by SARS in the production of the certificate, SARS may direct Service Provider to procure that the Subcontractor immediately ceases providing Services pursuant to the subcontract. SARS will have no liability to Service Provider with respect to a termination under this clause 21.12.5.

21.13 Legal and Regulatory Compliance

- 21.13.1 Service Provider warrants that it and its Subcontractors are and will remain for the duration of this Agreement, fully cognisant of and compliant with any relevant legislative or regulatory requirements (as may be amended from time to time) and/or rulings or codes of practice of any competent authority or industry body that has jurisdiction over the provision of or is relevant to the Services and/or Deliverables under the Agreement.
- 21.13.2 Service Provider will, within 14 (fourteen) days of the Effective Date, furnish SARS with copies of all regulated licences (including all amendments and renewals as well as copies of all radio frequency spectrum licences) granted to Service Provider by the Independent Communications Authority of South Africa and which are required by Service Provider for the provision of the Services to SARS. The details of all licence terms and conditions and other obligations imposed on Service Provider which are not contained in Service Provider's licences must be furnished in writing by Service Provider to SARS.

21.14 Broad-Based Black Economic Empowerment Compliance

Service Provider undertakes and warrants that it and its Subcontractors are and will remain for the duration of this Agreement, fully cognisant of and compliant with the obligations detailed in Broad-based Black Economic Empowerment Act, 2003 (Act 53 of 2003, as amended). During the currency of this Agreement (including any extension or renewal hereof which may apply), the Service Provider shall use reasonable endeavours to maintain and improve its current BEE Status ("BEE Status" means the BEE Status of an Entity based on its Generic Scorecard (or the QSE scorecard, as may be applicable) as measured and certified by a Verification Agency in accordance with the applicable Codes or the compliance bands applicable to QSE's under the Codes, as the case may be.

21.15 Documentation

Service Provider warrants that it will provide and maintain such documentation as is authored by or on behalf of the Service Provider so that it (i) accurately reflects the operations and capabilities of any corresponding Deliverables; (ii) is accurate, complete and written in a manner easily understood by SARS; and (iii) is promptly updated from time to time to reflect any change.

21.16 Conflicts of Interest

- 21.16.1 Service Provider warrants that neither it nor any member of the Service Provider Personnel:
- 21.16.1.1 will have or will acquire any direct or indirect contractual, financial, business or other interest or advantage that would conflict in any manner or degree with Service Provider's performance of its duties and responsibilities to SARS under this Agreement and Service Provider will promptly inform SARS of any such interest that may be incompatible with the interests of SARS;
 - 21.16.1.2 has used or will use the authority provided or to be provided under this Agreement to improperly obtain financial gain, advantage or benefit;
 - 21.16.1.3 has used or will use any SARS Confidential Information acquired in

connection with this Agreement to obtain financial gain, advantage or benefit;

21.16.1.4 has accepted or will accept anything of value or an inducement that could provide a financial gain, advantage or benefit, based on an understanding that the actions of the Service Provider or Service Provider Personnel on behalf of SARS could be influenced thereby; and

21.16.1.5 has paid or agreed to pay any Person any fee, commission, percentage, brokerage fee, gift or any other consideration, that is contingent upon or resulting from the award or execution of this Agreement, save for such remuneration as is paid to *bona fide* Service Provider Personnel working solely for the Service Provider or any of the Service Provider's Subcontractors.

21.16.2 Service Provider warrants that it will not attempt to influence any SARS Personnel by the direct or indirect offer of anything of value or an inducement.

22 INSURANCE AND RISK OF LOSS

22.1 Insurance

22.1.1 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 Agreement, consistent with acceptable and prudent business practices, including:

22.1.1.1 insurance cover, in accordance with Service Provider's insurance cover as of the date of last signature of this Agreement as disclosed to SARS and attached hereto as **Schedule K (Service Provider's Insurance Policies)**, affording sufficient cover in order to cover Service Provider's potential liability in terms of clause 22.1.1; and

22.1.1.2 run-off cover identical to that contemplated in clause 22.1.1 above, for a period of 2 (two) years, subsequent to termination or expiration of the term of this Agreement.

22.2 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 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 Service Provider, SARS may purchase the requisite insurance and deduct the costs thereof from any amounts owed to Service Provider under this Agreement.

22.3 Risk of Loss

Service Provider will be responsible for risk of loss of, and damage to, any hard ware, Software or other assets of SARS that it may have in its possession or under its control. Any hardware or Software in the possession or control of Service Provider's

Subcontractors or agents (including couriers, freight companies and the like) will be deemed to be under the control of the Service Provider.

23 INDEMNITIES

23.1 Indemnity by Service Provider

Service Provider hereby indemnifies, holds harmless and agrees to defend SARS and SARS Personnel from any and all Losses arising from or in connection with, any of the following:

- 23.1.1 all claims and any actions taken against SARS in respect of Service Provider's non-compliance with legislation and regulations within the scope and responsibility of Service Provider's provision of the Services.
- 23.1.2 Third Party claims attributable to Service Provider's breach of its obligations with respect to clause 15 and 21.6;
- 23.1.3 Third Party claims attributable to theft, fraud or other unlawful activity or any negligent, wilful or fraudulent misconduct by Service Provider or Service Provider Personnel, and claims attributable to errors or omissions for which Service Provider is required to insure under clause 22.1.1 to the extent of the insurance required there under;
- 23.1.4 Third Party claims of infringement of any patent, trade secret, trademark, copyright or other proprietary rights, arising out of or relating to the Services, any deliverable and/or technology used and/or provided by Service Provider or its Subcontractors to provide the Services other than technology and Software owned or provided by SARS;
- 23.1.5 Third Party claims of infringement of any patent, trade secret, trademark, copyright or other proprietary rights, alleged to have occurred because of hardware or Software provided to Service Provider by SARS to the extent arising from a change in the use or configuration of such hardware or Software by Service Provider or its Subcontractors on or after Effective Date;
- 23.1.6 Third Party claims arising from breach of an agreement between Service Provider and a Subcontractor or supplier (including claims by the Subcontractor or supplier);
- 23.1.7 Third Party claims arising from (i) Service Provider's failure to observe or perform any duties or obligation in terms of any law, licence, certificate and/or authorisation relating to any legislation governing labour brokers, personal services companies or personal services trusts and (ii) any Service Provider Personnel instituting any action against SARS in terms of the Labour Relations Act, 1995 (Act No. 66 of 1995), in each case in the event that, in the performance of the Services, Service Provider is found to be a labour broker, personal services company, or a personal services trust;
- 23.1.8 claims brought by any Service Provider Personnel based upon any act by Service Provider, its employees, agents and/or its Subcontractors on or after the Effective Date including, without limitation, any claim arising from clauses 8.2.2 and **Error! Reference source not found.**, any claim relating to the failure to appoint or promote employees by Service Provider, claims for wages, benefits, discrimination or harassment of any kind, wrongful termination and/or refusal to pay severance or notice pay or termination payments upon leaving Service Provider's employ;

- 23.1.9 Third Party claims arising from or related to the death or bodily injury of any agent, employee, customer, business invitee, or business visitor or other person caused by the negligent or wilful conduct of Service Provider;
- 23.1.10 Third Party claims arising from or related to damage to tangible personal or real property including computer data, data loss or any other damage, notwithstanding the form in which any such action is brought (e.g. contract, delict or otherwise), to the extent such injuries or damages arise directly or indirectly from acts, errors or omissions that constitute negligence, wilful misconduct or a contravention of law, by Service Provider and/or Service Provider Personnel; and
- 23.1.11 any Third Party claim, demand, charge, action, cause of action, or other proceeding asserted against SARS in SARS's capacity as an employer of a person resulting from an act or omission of Service Provider.

23.2 **Infringement**

If any item used by Service Provider to provide the Services becomes, or in Service Provider's reasonable opinion is likely to become, the subject of an infringement or misappropriation claim or proceeding, Service Provider will, in addition to indemnifying SARS as provided in clause 23.1 and to the other rights SARS may have under this Agreement or otherwise, promptly take the following actions, at no additional charge to SARS, in the listed order of priority: (i) secure the right to continue using the item; (ii) replace or modify the item to make it non-infringing, provided that replacement or modification must not degrade performance or quality or increase SARS's costs; or (iii) remove the item from the Services in which case Service Provider's charges will be equitably adjusted to reflect such removal.

23.3 **Indemnification Procedures**

With respect to Third Party claims, the following procedures will apply:

- 23.3.1 **Notice:** Promptly after receipt of notice of the commencement or threatened commencement of any civil, criminal, administrative, or investigative action or proceeding involving a claim in respect of which SARS may seek indemnification in terms of this clause 23, SARS will notify the Service Provider of such claim in writing. Failure to so notify the Service Provider will not relieve the Service Provider of its obligations under this Agreement except to the extent that it can demonstrate damages attributable to such failure. Within 15 (fifteen) days after receipt of notice from SARS relating to any claim, but (to the extent possible) not later than 10 (ten) days before the date on which any response to a complaint or summons is due, the Service Provider will notify SARS in writing if the Service Provider elects to assume control of the defence and settlement of that claim ("**Notice of Election**").

- 23.3.2 **Procedure Following Notice of Election:** If the Service Provider delivers a Notice of Election relating to any claim within the required notice period, the Service Provider will be entitled to have sole control over the defence and settlement of such claim; provided that (i) SARS will be entitled to participate in the defence of such claim and to employ counsel at its own expense to assist in the handling of such claim; and (ii) the Service Provider will obtain the prior approval of SARS before entering into any settlement of such claim or ceasing to defend against such claim. After the Service Provider has delivered a Notice of Election relating to any claim in terms of the preceding paragraph, the Service Provider will not be liable to SARS for any legal expenses incurred by SARS in connection with the defence of that claim. In addition, the Service Provider will not be required to indemnify SARS for any amount paid or payable by SARS in the settlement of any claim for which Service Provider has delivered a timely Notice of Election if such amount was agreed to without the consent of the Service Provider.
- 23.3.3 **Procedure Where No Notice of Election Is Delivered:** If the Service Provider does not deliver a Notice of Election relating to any claim within the required notice period, SARS will have the right to defend the claim in such manner as it may deem appropriate, at the cost and expense of the Service Provider. The Service Provider will promptly reimburse SARS for all such costs and expenses.
- 23.3.4 Regardless of the provisions of this clause 23.3 (i) SARS will be entitled, prior to permitting the Service Provider control over the defence and settlement of the claim in terms of clause 23.3.2 above, to require the Service Provider to furnish SARS with security in such form and to such amount as SARS at its discretion may require to ensure that SARS is able to meet the full value of all amounts and costs which may be awarded against SARS or for which SARS may become liable; and (ii) SARS will be entitled to withdraw control of the defence and settlement of the claim if SARS at its discretion but acting reasonably, considers that any act or omission of the Service Provider or the control of the defence and settlement by the Service Provider may in any way be adverse to SARS's good name and reputation.

23.4 **Force Majeure**

- 23.4.1 Neither Party will be liable for any default or delay in the performance of its obligations under this Agreement if and to the extent that: (i) the default or delay is caused, directly or indirectly, by fire, flood, elements of nature or acts of God, changes of laws or regulations, or any other cause beyond the reasonable control of the Party; and (ii) the non-performing Party is without fault and the default or delay could not have been prevented by reasonable precautions ("**Force Majeure Event**"). Subject to clause 23.4.2, in such event, the non-performing Party is excused from further performance for as long as such circumstances prevail and provided the non-performing Party continues to use its Commercially Reasonable Efforts to recommence performance. Any Party so delayed will notify the Party to whom performance is due and describe the circumstances causing the delay.
- 23.4.2 If a Force Majeure Event substantially prevents or delays performance of the Services or any part thereof necessary for the performance of SARS functions that SARS at its discretion reasonably believes to be critical at reasonable levels of service for more than 5 (five) consecutive days (or such longer period as SARS may agree at its sole discretion), then at SARS's option, SARS may:

- 23.4.2.1 at its expense procure the Services in question from an alternate source, in

which case SARS will be relieved of its obligation to pay Service Provider for such Services for so long as Service Provider's performance is impaired;

- 23.4.2.2 terminate the portion of the Agreement affected as of a date specified by SARS and the Charges will be equitably reduced to reflect the termination of the terminated Services; or
- 23.4.2.3 if a substantial portion of the Services is affected, terminate the Agreement as of a date specified by SARS in a written notice to Service Provider.
- 23.4.3 Termination of the Agreement under clause 23.4.2 will not be treated as a termination for convenience. SARS will have no liability to Service Provider for terminating the Agreement.
- 23.4.4 Service Provider will not be entitled to rely on the provisions of this clause 23.4 as a result of any failed performance by Subcontractors, unless the Subcontractor's failure to perform was caused by a Force Majeure Event and the Subcontractor has made and continues to use its Commercially Reasonable Efforts to recommence performance.

24 AUDITS

24.1 Audit Rights

- 24.1.1 Service Provider and its Subcontractors will maintain a complete audit trail of financial and non-financial transactions resulting from the Agreement. SARS will give the Service Provider 14 (fourteen) days' notice period of its intention to conduct an audit. Service Provider will on notice provided provide to SARS, its internal or external auditors, inspectors and regulators access to any facility or part of a facility at which either Service Provider or any of its Subcontractors is providing the Services, to Service Provider Personnel, and to equipment, Software, personnel, data, records and documentation, including agreements between Service Provider and its Subcontractors, relating to the Services for the purpose of performing audits and inspections of either Service Provider or its Subcontractors to (i) verify the accuracy of Service Provider's Charges and invoices; (ii) verify the accuracy of payments by or credits from Service Provider; (iii) verify the accuracy of price changes to the extent such changes are determined by reference to 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 Service Provider's performance of the Services, including verifying compliance with the Performance Standards; (vi) verify compliance with the terms of the Agreement; (vii) satisfy the requirements of any legislative, judicial or regulatory authority having jurisdiction; (viii) to the extent applicable to the Services performed by Service Provider and/or the Charges therefore, examining (a) practices and procedures, (b) systems, (c) general controls, and (d) the efficiency of Service Provider's operation; and (ix) any other audit reasonably required by SARS.
- 24.1.2 SARS will not use a competitor of Service Provider to perform an audit under this clause 24 without Service Provider's prior approval; provided, however, that the Parties specifically agree that the audit arms of the major accounting firms will not be treated as competitors of Service Provider.
- 24.1.3 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 Service Provider's normal course of business and will comply with the Service Provider's confidentiality requirements.

- 24.1.4 Unless SARS has a good faith suspicion of fraud, SARS will provide 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.
- 24.1.5 All costs incurred by SARS in performing audits of 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 Service Provider.
- 24.1.6 If an audit reveals an overcharge, Service Provider will promptly refund the overcharge plus interest at the Agreement Interest Rate or 15% (fifteen percent) per annum, whichever is the highest, from the date of payment of the overcharge through the date the overcharge is refunded by Service Provider.
- 24.1.7 All Subcontractors will be obliged to comply with the provisions of this clause 24. If Service Provider seeks to hire a Subcontractor, and such prospective Subcontractor does not grant SARS the audit rights described in this clause 24, 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 Service Provider will be obliged to continue providing the Services in accordance with the Performance Standards, notwithstanding SARS's decision to withhold such approval.

24.2 Audit Follow-Up

- 24.2.1 Following an audit or examination, SARS or its external auditors will meet with Service Provider to obtain factual concurrence with issues identified in the audit or examination.
- 24.2.2 Within 1 (fifteen) Business Days following the provision to 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 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 Service Provider. The Audit Response Plan will identify the steps that 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 written approval, Service Provider will implement such Audit Response Plan at Service Provider's cost and expense. 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 the Agreement.
- 24.2.3 Service Provider will promptly make available to SARS the results of any reviews or audits conducted by 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 Services.

- 24.2.4 Promptly after the issuance of any audit report or findings issued under clause 24.2.3, the Parties will meet to review such report or findings and to agree on how to respond to the suggested changes.

24.3 Records Retention

Service Provider will maintain and provide SARS with access to the records, documents and other information required to meet SARS's audit rights under the Agreement until the later of (i) 5 (five) years after expiration or termination of the Agreement, (ii) all pending matters related to the Agreement are closed, or (iii) such longer period as required by Applicable Law.

25 DISPUTE RESOLUTION

A dispute of whatsoever nature between the Parties arising out of or in connection with this Agreement, including disputes: (i) as to the validity, existence, enforceability, interpretation, application, implementation, breach, termination or cancellation of this Agreement; (ii) as to the Parties' rights and/or obligations in terms of this Agreement; or (iii) in connection with any documents furnished by the Parties in terms of this Agreement, will be finally settled as provided in this clause 25.

25.1 Informal Dispute Resolution

- 25.1.1 Prior to the initiation of formal dispute resolution procedures, the Parties will first attempt to resolve their dispute informally in accordance with the procedure set forth in this clause 25.1.
- 25.1.2 Upon the written request of a Party, any dispute, which arises between the Parties, will be referred to a joint committee consisting of a senior representative nominated by each Party. The joint committee will 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 in connection with its resolution.
- 25.1.3 The nominated representatives of the Parties will 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, will 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 will be left to the discretion of the joint committee.
- 25.1.4 Formal proceedings for the resolution of a dispute may not be commenced until the nominated representatives of the Parties conclude in good faith that amicable resolution through continued negotiation of the matter does not appear likely.
- 25.1.5 In the event that the informal dispute resolution process fails, a Party may either approach a competent court for relief or alternatively the Parties may, by agreement, refer the dispute to formal dispute resolution in accordance with clause 25.2. Once the Parties have committed to formal dispute resolution, the Parties irrevocably consent to any proceedings in terms thereof.

25.2 Formal Dispute Resolution

Any dispute which is not resolved in the manner referred to in clauses 25.1, may be submitted to binding arbitration before a single arbitrator and will be subject to the rules of the Arbitration Foundation of Southern Africa or its successor-in-title ("AFSA").

25.2.1 The arbitrator will, if the dispute is:

25.2.1.1 primarily an accounting matter, be an independent practising accountant of not less than 10 (ten) years standing as such;

25.2.1.2 primarily a technical matter, be an independent technical expert of not less than 10 (ten) years' experience in the electronic communications and related environments;

25.2.1.3 primarily a legal matter, be an attorney of not less than 15 (fifteen) years standing as such or a practising senior counsel.

25.2.2 The Parties will, within 3 (three) Business Days of the date on which the arbitration is demanded, agree in writing as to the nature of the dispute and the identity of the arbitrator to be appointed. Should the Parties be unable to reach agreement as contemplated within such 3 (three) Business Day period, the arbitrator will (irrespective of the nature of the dispute) be appointed by the Chairman of the AFSA upon request by either Party. The appointment of the arbitrator (whether by agreement or by the Chairman of AFSA or its successor-in-title as contemplated in the preceding sentence) will be final and conclusive and may not subsequently be challenged on any grounds by either Party.

25.2.3 The arbitration will be held as soon as is reasonably possible, with a view to completion within 30 (thirty) days of it being demanded.

25.2.4 Promptly after appointment of the arbitrator, either Party will be entitled to call upon the arbitrator to set: (i) the date(s) on which the arbitration is to be held; and (ii) the procedure that will govern the arbitration. The arbitration proceedings will be held in Johannesburg, Republic of South Africa.

25.2.5 Any order or award that may be made by the arbitrator:

25.2.5.1 will be final and binding;

25.2.5.2 will be carried into effect; and

25.2.5.3 may be made an order of any competent court.

25.3 Interim Relief

Nothing in this clause 25 will preclude either Party from obtaining interim relief on an urgent basis from a court of competent jurisdiction.

25.4 Continued Performance

SARS reserves the right to withhold payment of amounts it disputes in good faith under clause 3.3 of **Schedule D (Charges, Invoicing and Payments)**, and to terminate the Agreement while the dispute is being resolved. Each Party agrees to continue performing its obligations under this Agreement while any dispute is being resolved, unless SARS terminates the Agreement as aforesaid.

26 TERMINATION

26.1 Termination for Cause by SARS

- 26.1.1 SARS may, by giving notice to Service Provider, terminate this Agreement, in whole or in part (provided that SARS will not terminate the Agreement in part unless the Services being terminated include the Services with respect to which the termination for cause occurred), as of a date set out in the notice of termination, in the event that:
- 26.1.1.1 Service Provider commits a material breach of this Agreement, which breach is not cured within 30 (thirty) days after notice of breach from SARS to Service Provider;
 - 26.1.1.2 Service Provider commits a material breach of this Agreement that is not capable of being cured within 30 (thirty) days;
 - 26.1.1.3 Service Provider commits a non-material breach of this Agreement, which breach is not cured within 60 (sixty) days after notice of breach from SARS to Service Provider;
 - 26.1.1.4 Service Provider regularly commits breaches of this Agreement and fails to prevent reoccurrences of such breaches within 30 (thirty) days after notice from SARS to Service Provider, that such breaches together with any future breach will collectively constitute a material breach;
 - 26.1.1.5 Service Provider fails to meet the same Service Level for 3 (three) consecutive months, or if Service Provider fails to meet the same Service Level for 4 (four) months, not necessarily consecutive, out of any 12 (twelve) consecutive month period; and/or
 - 26.1.1.6 Service Provider is placed under provisional or final liquidation; placed under judicial management; or enters into an arrangement with its creditors.
- 26.1.2 In the case of a termination of the Agreement in part, the charges payable under this Agreement will be reduced in terms of clause 13 of **Schedule D (Charges, Invoicing and Payments)** to reflect the partial termination of the Agreement.
- 26.1.3 SARS may immediately terminate this Agreement, by giving notice to Service Provider, if Service Provider fails to comply with clauses 21.6 or 21.12.
- 26.1.4 SARS will have no liability to Service Provider with respect to a termination under this clause 26.1.

26.2 Termination for Cause by Service Provider

- 26.2.1 In the event that SARS fails to pay Service Provider undisputed amounts or amounts which have been finally adjudged to be due under this Agreement and fails to make such payment within 90 (ninety) days of the later of (i) notice from Service Provider of the failure to make such payment; or (ii) the date that an amount is finally adjudged to be due under the Agreement, then Service Provider may, by giving notice to SARS, terminate this Agreement as of a date set out in the notice of termination.
- 26.2.2 Service Provider will have no right to terminate this Agreement other than in accordance with the provisions of clause 26.2.1 above.

26.3 Termination for Convenience

Unless otherwise agreed between the Parties or otherwise provided in this Agreement SARS may terminate this Agreement in whole or in part for convenience and without cause at any time by giving Service Provider at least 90 (ninety) days prior notice designating the Termination Date. SARS will have no liability to Service Provider with respect to such termination.

26.4 Termination upon Sale, Acquisition, Merger or Change of Control

In the event of a sale, acquisition, merger, or other change of Control of 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 Service Provider in a single or series of related transactions, then SARS may terminate this Agreement by giving Service Provider at least 90 (ninety) days prior written notice and designating a date upon which such termination will be effective. SARS will have no liability to Service Provider with respect to such termination, unless otherwise agreed between the Parties.

26.5 Extension of Termination Effective Date

SARS will, not later than 90 (ninety) days (or 30 (thirty) days in the case of a termination for cause) prior to expiration or termination of the Agreement, have the option to require that Service Provider continues to provide some or all of the Services for a fixed term of up to 180 (one hundred and eighty) days following the effective date of expiration or termination of the Agreement on the terms and conditions (including price as adjusted for inflation under **Schedule D (Charges, Invoices and Payments)**) then in effect.

26.6 Disengagement Assistance

The Parties will comply with their respective obligations set forth in **Schedule F (Disengagement Assistance)**.

27 GENERAL

27.1 Destructive Elements

Service Provider undertakes that it will use all Commercially Reasonable Efforts to ensure that no Bugs, Destructive Elements or similar items are coded or introduced into the systems used to provide the Services, and/or into any SARS systems. In the event a Bug or a Destructive Element is found, the Service Provider will at no additional charge to the extent commercially reasonable, assist SARS to reduce the effects of such Bug or Destructive Element and, if such Bug or Destructive Element causes a loss of operational efficiency or loss of data, to mitigate and restore such losses.

27.2 Binding Nature and Assignment

Unless otherwise agreed between the Parties, this Agreement will be binding on the Parties hereto and their respective successors and assigns. Neither Party may assign this Agreement without the consent of the other, except that SARS may assign its rights and obligations under this Agreement without the approval of Service Provider to another Government Entity.

27.3 Non-Solicitation

During the Term, and for a period of 1 (one) year thereafter, the Parties shall not directly solicit or encourage, or attempt to solicit or encourage any employee of the other Party to leave the employment of that Party unless prior consent is obtained from the other Party.

27.4 Entire Agreement; Amendment

- 27.4.1 Any commitments made by Service Provider in its response to the Request for Proposal, which is attached hereto as **Schedule G (Service Provider Proposal)**, will be deemed binding on Service Provider. Notwithstanding anything to the contrary stated in the Service Provider's response, in the event of a conflict between the Service Provider's response and this Agreement, the Agreement will prevail and nothing in the Service Provider's response will in any way limit SARS's rights or expand SARS's obligations under this Agreement.
- 27.4.2 This Agreement, including any Schedules, Appendices and Attachments referred to herein and attached hereto, each of which is incorporated herein for all purposes, constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior agreements, whether written or oral, with respect to the subject matter contained in this Agreement.
- 27.4.3 Any standard documents maintained by Service Provider (whether or not filed with a government agency and including those published from time to time on a Service Provider web site) will be effective only for the purpose of providing a technical description of Service Provider's standard service offerings. Any terms or conditions (including service levels, service credits, charges, conditions of usage, indemnification, limits on liability and exclusive remedies, ownership and intellectual property rights, or suspension and termination rights) set out in any other documents will have no effect on,

nor will vary, supersede, cancel, amend, modify or supplement the terms and conditions of the Agreement.

- 27.4.4 No variation or consensual cancellation of this Agreement, including of this clause, and no addition to this Agreement will be of any force or effect unless reduced to writing and signed by the Parties or their duly authorised representatives.

27.5 Compliance with Applicable Laws

27.5.1 Governing Law:

This Agreement will in all respects (including its existence, validity, interpretation, implementation, termination and enforcement) be governed by the laws of the Republic of South Africa.

27.5.2 General Obligation:

Each Party will perform its obligations in a manner that complies with the Applicable Laws (including identifying and procuring required permits, certificates, approvals and inspections).

27.5.3 SARS's Rules and Regulations:

Service Provider will perform its obligations in a manner that complies with SARS's safety, security, environmental and health rules and regulations as from time to time identified by SARS to Service Provider.

27.5.4 Monitoring and Changes to Law:

27.5.4.1 As part of the Services, Service Provider will monitor Applicable Laws that apply to comparable service providers generally, Third Party service providers generally and corporations in South Africa generally to identify any proposed changes to Applicable Law. Service Provider will remain responsible for communications with and participation in any governmental or regulatory body having jurisdiction over the Service Provider, or any industry body in which the Service Provider participates.

27.5.4.2 Upon identifying or being notified by SARS of a change or proposed change described in clause 27.5.4.1, Service Provider will promptly analyse the impact of such change or proposed change on the Services, notify SARS of such impact, and propose changes to the Services to SARS, if any, that are, or in the case of a proposed change may be, required. Service Provider will be solely responsible for any fees, costs or expenses incurred in this regard. SARS will promptly review such proposal, and upon SARS's approval, Service Provider will promptly implement such changes to the Services as well as any other changes requested by SARS and reasonably required as a consequence of a change described in clause 27.5.4.1., save for regulatory amendments.

27.5.4.3 In the event that Service Provider establishes to SARS's reasonable satisfaction that a change in Applicable Laws after the Effective Date (other than a change in Applicable Laws described in clause 27.5.4.1) directly and materially increases the cost to Service Provider of providing the Services in

terms of the Service Levels, Service Provider will be entitled to propose amendments to appropriate clauses of **Schedule D (Charges, Invoicing and Payments)** under which Service Provider's charges would be increased on a prospective basis, but not in excess of the amount required for Service Provider to recover the additional costs solely and directly attributable to the change in Applicable Laws under this clause 27.5.4.3. If SARS is unwilling to agree to such an increase in Service Provider's charges, SARS may terminate the affected Service, or the Agreement in whole, as of a date set out in a notice from SARS to Service Provider. Such a termination will not be treated as a termination for convenience and SARS will not be liable for the payment of any termination fees, save for regulatory amendments.

27.5.5 Non-Compliance:

- 27.5.5.1 If either Party is charged with non-compliance of any Applicable Laws, the Party charged with such non-compliance will promptly notify the other Party of such charges in writing.
- 27.5.5.2 Service Provider will be solely responsible for any fines and penalties imposed on Service Provider or SARS resulting from Service Provider's failure to comply with the provisions of this clause 27.5. For avoidance of doubt SARS will be liable for fines and penalties imposed on it resulting from SARS failure to comply with applicable laws, example RICA

27.6 Notices

- 27.6.1 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 will be as follows:

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 Group Executive,
Corporate Legal Services)

Facsimile: Office of the Commissioner

(012) 422 5250 (marked for the urgent attention of the Head
, Corporate Legal Services)

with a copy to: **[to be completed upon finalisation]**

In the case of Service Provider: **[to be completed upon finalisation]**

Facsimile: **[to be completed upon finalisation]**

with a copy to: **[to be completed upon finalisation]**

- 27.6.2 All notices, requests, demands, and determinations under this Agreement (other than routine operational communications), will be valid and effective only if in writing. Such notices, requests, demands and determinations under this Agreement will be deemed duly given only when delivered by hand during ordinary Business Hours to a responsible person at the addressee's *domicilium*. Such notices, requests, demands and determinations under this Agreement may also be sent by facsimile to the facsimile number set out in clause 27.6. Notices, requests, demands and determinations sent by facsimile and received prior to 13h00 on a Business Day will be deemed duly given on such Business Day; notices, requests, demands and determinations sent by facsimile and received at other times will be deemed duly given on the first Business Day following the date that such facsimile is received.
- 27.6.3 Either Party may by notice to other Party change its *domicilium* to another physical address in the Republic of South Africa and the change will take effect on the seventh day after the date when the notice is duly given.
- 27.6.4 The Parties record that whilst they may correspond via email during the currency of this Agreement for operational reasons, no formal notice required in terms of this Agreement, nor any amendment of or variation to this Agreement may be given or concluded via email.

27.7 Relationship of Parties

- 27.7.1 Service Provider, in rendering the Services, 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.
- 27.7.2 Neither Party's personnel will be deemed personnel of the other Party.
- 27.7.3 Nothing contained in this Agreement will be construed as creating any company, close corporation, joint venture, partnership or association of any kind involving SARS or Service Provider or their Affiliates; nor is anything contained in this Agreement 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.
- 27.7.4 Unless expressly authorised by this Agreement, neither of the Parties (nor their respective agents) will have the authority or right, nor will 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.

27.8 Restatement and Severability

In the event that any provision of this Agreement conflicts with the law under which this Agreement is to be construed or if any such provision is held invalid by an arbitrator or a

court with jurisdiction over the Parties, such provision will be deemed to be restated to reflect as nearly as possible the original intentions of the Parties in terms of Applicable Laws, or if not possible, then to be severed from the remainder of the Agreement. The remainder of this Agreement will remain in full force and effect.

27.9 Consents and Approval

- 27.9.1 Any approval, acceptance, consent or similar action required to be given by either Party in terms of this Agreement will, unless specifically otherwise stated or stated to be at the discretion of a Party, not be unreasonably withheld.
- 27.9.2 Written approval for operational purposes may be given by a duly authorised person via email.
- 27.9.3 An approval, acceptance, consent or similar action by a Party (including of a plan or deliverable) under this Agreement will not relieve the other Party from responsibility for complying with the requirements of this Agreement, nor will it be construed as a waiver of any rights under this Agreement, except as and to the extent otherwise expressly provided in such written approval or consent. For example, where this Agreement sets forth a standard by which a plan is to be developed, Service Provider will be responsible for complying with such requirement and will not be deemed to be relieved of it merely because SARS has approved such plan.

27.10 Penalties

Wherever a provision of this Agreement stipulates for, or operates as, a penalty in favour of SARS, (i) Service Provider waives, to the fullest extent permitted by law, any right it may have to claim a reduction of such penalty and (ii) SARS will be entitled to at any time claim damages in lieu of such penalty.

27.11 Waiver of Default and Cumulative Remedies

- 27.11.1 A delay or omission by either Party hereto to exercise any right or power under this Agreement will not be construed to be a waiver thereof. A waiver by either of the Parties hereto of any of the undertakings to be performed by the other or any breach thereof will not be construed to be a waiver of any succeeding breach thereof or of any other undertaking herein contained. No waiver by SARS will be valid unless reduced to writing and signed by the SARS Contract Executive or his or her designee.
- 27.11.2 Except as otherwise expressly provided herein, all remedies provided for in this Agreement will be cumulative and in addition to and not in lieu of any other remedies available to either Party at law, in equity or otherwise.

27.12 Survival

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

27.13 Public Disclosures

- 27.13.1 No advertising or publicity matter of either Party having or 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) will be made by or for a Party or Subcontractors without first obtaining written approval from the other Party.

- 27.13.2 Service Provider may not use the SARS logo or any other service marks or trademarks of SARS.

27.14 Third Party Beneficiaries

Except as set out in this Agreement, this Agreement is entered into solely between, and may be enforced only by, SARS and Service Provider. This Agreement will not be deemed to create any rights in Third Parties, including suppliers and customers of a Party, or to create any obligations of a Party to any such Third Parties.

27.15 Undertaking against Cession, Pledging and Assignment

- 27.15.1 The Service Provider may not assign, delegate or in any other manner transfer any benefit, rights and/or obligations in terms of this Agreement to a third party, with or without the prior written consent of SARS.
- 27.15.2 The Service Provider may only cede this Agreement in favour of registered Financial Services Providers (FSP) and state institutions established for the express purpose of providing funding to businesses and entities (State Institution). Therefore, cession shall only be permissible in the event that -
- 27.15.2.1 It is intended to transfer rights to receive payment for services rendered by the Service Provider to SARS;
- 27.15.2.2 The written request for cession to SARS is by the Service Provider and not any third party; and
- 27.15.2.3 The written request by the Service Provider must be accompanied by the cession agreement the parties intend to enter into.

27.16 Covenant of Good Faith

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

[Remainder of page intentionally blank.]

IN WITNESS WHEREOF SARS and **[Service Provider name]** have each caused this Agreement to be signed and delivered by its duly authorised officer.

[Service Provider name]

By: _____

Printed:

Title:

Date:

South African Revenue Service

By: _____

Printed:

Title:

Date:

South African Revenue Service

By: _____

Printed:

Title:

Date:

South African Revenue Service

By: _____

Printed:

Title:

Date:

South African Revenue Service

By: _____

Printed:

Title:

Date:

SCHEDULE A: GLOSSARY

1 DEFINITIONS

- 1.1 Acts of Insolvency** means when a Party is unable to pay its debts, becomes insolvent, is going through business rescue, is the subject of any order made or a resolution passed for the administration, winding-up or dissolution (otherwise than for the purpose of a solvent amalgamation or reconstruction), has an administrative or other receiver, manager, trustee, liquidator, administrator, or similar officer appointed over all or any substantial part of its assets, enters into or proposes any composition or arrangement with its creditors generally or is the subject of any events or circumstances or analogous to the foregoing in the Republic of South Africa, as fully defined in the Insolvency Act, 1936 (Act No. 24 of 1936), as amended;
- 1.2 Acceptance Certificate** means the document signed by SARS, indicating its acceptance of WhatsApp Business Solution and/or Services.
- 1.3 Acceptance Testing** means the criteria and process of measurement, examination and/or such other activities, required to verify that the Deliverable.
- 1.4 Actual Performance** means, in respect of each Service Level, Service Provider's actual performance of the Services against such Service Level.
- 1.5 Adjustment Date** has the meaning set out in clause 2.3 of **Schedule D (Charges, Invoicing and Payments)**.
- 1.6 Affiliate** means, with respect to any entity, any other entity controlling, controlled by or under common Control with such entity. The term "**Affiliate**" will also include (i) a subsidiary of such entity, as the term "**subsidiary**" is defined in section 3 of the Companies Act, 2008 (Act No. 71 of 2008), as amended, and (ii) any foreign company which, if it were registered under such Act, would fall within the ambit of such term.
- 1.7 Agreement** means the Main Agreement together with all Schedules, Appendices, Attachments and other documents attached thereto or referenced therein.
- 1.8 Agreement Interest Rate** means the bank lending rate set by the South African Reserve Bank from time to time.
- 1.9 Anti-Spam** means measures aimed at preventing the entry of unsolicited and unwanted email.

1.10 Applicable Law	<p>means any of the following, from time to time, to the extent it applies to a Party (including, as applicable, Affiliates and Subcontractors of a Party), or the Services (including the performance, delivery, receipt or use of the Services, as applicable and wherever occurring):</p> <ul style="list-style-type: none"> (a) any statute, regulation, policy, by-law, ordinance or subordinate legislation (including treaties, multinational conventions and the like having the force of law); (b) South African common law; (c) any binding court order, judgment or decree; (d) any applicable industry code, policy or standard enforceable by law; and (e) any applicable direction, policy or order that is given by a regulator (other than SARS's directions or policies given as a customer of the Services).
1.11 At Risk Amount	has the meaning set out in clause 3.1.2 of Schedule C (Service Levels) .
1.12 ATM	means Asynchronous Transfer Mode transport layer (a telecommunications concept standard for carriage of a complete range of user traffic, including voice, data, and video signals).
1.13 Audit Response Plan	has the meaning set out in clause 24.2.2 of the Main Agreement .
1.14 BRI	means Basic Rate Interface.
1.15 BRS	SARS Business Requirements Specification which forms part of the Request for Proposal number 23/2022.
1.16 Bug	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.
1.17 Business Continuity Plan	means the plan or plans which contain detailed and specific requirements to be performed by the Service Provider in the event of a Disaster occurring.
1.18 Business Day	means any day between and including Monday and Friday except official public holidays in South Africa.
1.19 Business Hours	means 08h00 through 17h00 on a Business Day.
1.20 Charges	means the amounts payable by SARS to Service Provider under Schedule D (Charges, Invoicing and Payments)

together with its Appendices, Attachments and any other documents attached thereto or referenced therein.

1.21 Commercially Reasonable Efforts

means taking such steps and performing in such a manner as a well-managed entity would undertake where such entity 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.

1.22 Commencement Date

means the date on which Service Provider is to assume full responsibility for performing the Services accordance with this Agreement (including the Performance Standards). **[Note to Bidder: This will be the agreed date by which all of the Services to SARS are to be delivered. SARS expects to have committed calendar dates for the applicable Commencement Dates agreed before signing and the Agreement when it is executed.]**

1.23 Confidential Information

(a) means in relation to SARS, subject to sub-clause (c) immediately below in this definition, any information or data of any nature, whether provided orally or in writing or otherwise obtained and in any format or medium, which –

(i) is “taxpayer information”, which means any information provided by a taxpayer or obtained by SARS in respect of the taxpayer, including biometric information;

(ii) is ‘SARS Confidential Information’ as defined and regulated in accordance with Chapter 6 of the Tax Administration Act, 2011, (Act No 28 of 2011), i.e.

- personal information about a current or former SARS official, whether deceased or not;
- information subject to legal professional privilege vested in SARS;
- information that was supplied in confidence by a third party to SARS the disclosure of which could reasonably be expected to prejudice the future supply of similar information, or information from the same source;
- information related to investigations and prosecutions described in section 39 of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000);
- information related to the operations of SARS, including an opinion, advice, report, recommendation or an account of a consultation, discussion or deliberation that

has occurred, if—

- the information was given, obtained or prepared by or for SARS for the purpose of assisting to formulate a policy or take a decision in the exercise of a power or performance of a duty conferred or imposed by law; and
 - the disclosure of the information could reasonably be expected to frustrate the deliberative process in SARS or between SARS and other organs of state by—
 - inhibiting the candid communication of an opinion, advice, report or recommendation or conduct of a consultation, discussion or deliberation; or
 - frustrating the success of a policy or contemplated policy by the premature disclosure thereof;
 - information about research being or to be carried out by or on behalf of SARS, the disclosure of which would be likely to prejudice the outcome of the research;
 - information, the disclosure of which could reasonably be expected to prejudice the economic interests or financial welfare of the Republic or the ability of the government to manage the economy of the Republic effectively in the best interests of the Republic, including a contemplated change or decision to change a tax or a duty, levy, penalty, interest and similar moneys imposed under an act administered by the Commissioner of SARS;
 - information supplied in confidence by or on behalf of another state or an international organisation to SARS;
 - a computer program, as defined in section 1 (1) of the Copyright Act, 1978 (Act No. 98 of 1978), owned by SARS; and
 - information relating to the security of SARS buildings, property, structures or systems.
- (iii) by its nature, content, or circumstances of disclosure is or ought reasonably to be identifiable by Service Provider as confidential (including by reason of such information not

being generally known to, or readily ascertainable by, Third Parties generally) and/or proprietary to SARS, including (I) data, financial information, information independent contractors and suppliers of SARS and Governmental Entities; processes and plans of SARS and Governmental Entities; projections, manuals, forecasts, and analysis of SARS and Governmental Entities; Intellectual Property owned by or licensed to SARS or a Governmental Entity; (II) information relating to the knowledge, know-how, show-how, expertise, trade secrets and activities of SARS; (III) any information which SARS (without creating a presumption that only so designated information is confidential), acting reasonably, may designate in writing, at the time of disclosure to Service Provider, as being confidential information; and (IV) and any other information of SARS or Governmental Entities which would be regarded by a reasonable person to be confidential or proprietary in nature;

- (iv) SARS or any person acting on behalf of SARS discloses or provides (or has previously disclosed or provided) to Service Provider (including Service Provider Personnel, Third Party service providers or agents, as applicable) or which Service Provider (including Service Provider Personnel, Third Party service providers or agents, as applicable) otherwise becomes aware of in connection with this Agreement or as a result of the provision or receipt of Services under this Agreement, and which information will include this Agreement;
- (b) means in relation to Service Provider, subject to sub-clause (c) immediately below in this definition, any information or data of any nature, whether provided orally or in writing and in any format or medium, which is clearly designated in writing by Service Provider, at the time of disclosure to SARS, as being Confidential Information, and which written designation is in each case acknowledged by SARS, by SARS initialling such designation;
- (c) does not include information that (i) is lawfully publicly available to, or lawfully in the Receiving Party's possession, at the time of disclosure thereof by the Furnishing Party (whether before or after the Effective Date) to the Receiving Party; or (ii) is independently developed or learned by the Receiving Party without

reference to or use of the Confidential Information of the Furnishing Party; or (iii) is in or enters the public domain without breach of this Agreement or any other obligation owed by the Receiving Party to the Furnishing Party; (iv) the Receiving Party receives from a Third Party without restriction on disclosure and without breach of a non-disclosure obligation; provided always that notwithstanding the foregoing –

- (i) the onus will at all times rest on the Receiving Party to establish that such information falls within such exclusions;
- (ii) the information disclosed will not be deemed to be within the foregoing exclusions merely because such information is embraced by more general information that is publicly available or in a Party's possession;
- (iii) any combination of features will not be deemed to be within the foregoing exclusions merely because individual features are publicly available or in a Party's possession, but only if the combination itself is publicly available or in a Party's possession; and
- (iv) the determination of whether information is Confidential Information will 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.

1.24 **Configuration Management**

means the ITIL discipline embodied by the Configuration Management Procedures and Configuration Management Services.

1.25 **Control**

and its derivatives 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 stock (or other ownership interest if not a corporation) 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.

1.26 **Cost Review Meeting**

has the meaning set out in clause 1.5.1 of **Schedule D (Charges, Invoicing and Payments)**.

1.27 CPI	CPI (or its equivalent successor in title) as published by Statistics South Africa. Should Statistics South Africa cease publishing the CPI or substantially change the content or format thereof SARS will by notice to Service Provider substitute another appropriate measure.
1.28 Critical Deliverables	means those milestones, activities, actions and projects identified as such in this Agreement including, without limitation, in Appendix C-x to Schedule C (Service Levels) .
1.29 Critical Service Level	means the Service Level established in respect of any Critical Deliverable.
1.30 Data Protection Agreement	means the Data Protection Agreement to be signed by the Service Provider as the Operator required for the Processing of the Personal Information as part of the provision of the Services attached to this Agreement as Schedule "J" .
1.31 Data Protection Legislation	means collectively, POPIA and any other legislation applicable to the protection of Personal Information in the Republic of South Africa.
1.32 Data Subject	means the person to whom Personal Information relates.
1.33 Deliverable	means any tangible or intangible object, material or service to be produced for or provided to SARS by the Service Provider as part of the Services pursuant to this Agreement.
1.34 Destructive Element	<p>means any computer code, device, procedures, routines, mechanisms, method or means, including any virus, Trojan horse, back door, worm, lock-up, time lock, time bomb, logic bomb or disabling code, drop dead device, that:</p> <ul style="list-style-type: none"> (a) causes the unplanned interruption, disruption, distortion (including aesthetic disruptions or distortions) of the Services or accessibility to, use or operation of any – <ul style="list-style-type: none"> (i) Deliverables; (ii) item of Intellectual Property forming part of or related to any Deliverable; (iii) item of Intellectual Property arising out of or pursuant to the rendering of any Services under this Agreement; or (iv) systems, networks, Software, firmware or computer hardware and peripherals, wide area network, or local area network of Service Provider or SARS or SARS data contained therein ((a)(i) to (a)(iv) inclusive hereinafter for the purposes of this

“**Destructive Element**” definition collectively referred to as the “**Components**”), or is designed to interrupt, disrupt, distort (including aesthetically disrupt or distort) the aforementioned;

- (b) alters, damages, erases, disables or causes to cease functioning (including by the elapsing of a period of time, exceeding an authorised number of copies, advancement to a particular date or other numeral), harms, destroys, disrupts, impedes or inhibits the use or operation of any of the Components or is designed to alter, disable, cause to cease functioning, harm, impede or inhibit (including aesthetically alter, harm, impede or inhibit) the aforementioned);
- (c) otherwise blocks authorised access to any of the Components or is designed to block access to the aforementioned;
- (d) interferes with, or is designed to interfere with, the delivery of the Services to SARS;
- (e) is intended or designed to permit any party access to or the use of any of the Components to cause any of the effects described above (inclusive); or
- (f) can erase, cause damage or corrupt data, storage media, programs, equipment or communications, or otherwise interfere with operations of any Components;
- (g) any other form of destructive coding and/or device, including those which result in aesthetical disruptions or distortions.

1.35 Developed Intellectual Property	has the meaning set out in clause 12.2.1 of the Main Agreement.
1.36 Dependency	bears the meaning set out in clause 9.1 of the Main Agreement. All Dependencies are set forth in Appendix B-x-2 of the relevant SOW
1.37 Disaster	means the likely, partial or complete loss of a Service or facility where such Service or facility is unrecoverable through normal back-up and recovery processes and where the physical location from where Services are provided have to move in order for the full provision of Services to continue.
1.38 Disclosing Party	means a Party disclosing the Confidential Information to the Receiving Party;

1.39 Disengagement Assistance	has the meaning set out in clause 1.1 of the Schedule F (Disengagement Assistance) .
1.40 Disengagement Assistance Manager	has the meaning set out in clause 1.8.1 of the Schedule F (Disengagement Assistance) .
1.41 Disengagement Assistance Period	means the period commencing 6 (six) months prior to expiration of this Agreement, or commencing on any notice of termination and continuing through the effective date of expiration (as it may be extended in terms of the Main Agreement) or, if applicable, through the effective date of termination (as such effective date may be extended in terms of the Agreement) and ending up to 12 (twelve) months after such date as is necessary to successfully complete Disengagement Assistance.
1.42 Disengagement Assistance Plan	means the disengagement assistance plan(s) to be developed in accordance with Schedule F (Disengagement Assistance) .
1.43 Documentation	means a list of documentation, functional specification, user manuals, training manuals, support manuals to be delivered by the Service Provider as part of the provision of the Services and/or implementation of a WhatsApp Business Solution Platform;
1.44 Effective Date	has the meaning set out in the preamble of the Main Agreement .
1.45 Extraordinary Event	has the meaning set out in clause 11.2 of Schedule D (Charges, Invoicing and Payments) .
1.46 Firewall	means a system (comprising of hardware and Software) designed to prevent unauthorized access to or from a private network.
1.47 Force Majeure Event	has the meaning set out in clause 23.4 of the Main Agreement .
1.48 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 employees, Affiliates, Subcontractors, Third Party Suppliers 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 employees, Affiliates, Subcontractors, Third Party Suppliers and agents, as applicable).
1.49 Governmental Entity	for the purpose of this Agreement, this refers to an organ of state as defined in the Constitution of South Africa, 1996, i.e. any department of state or administration in the national, provincial or local sphere of government; or any other

functionary or institution (i) exercising a power or performing a function in terms of the Constitution or a provincial constitution; or (ii) exercising a public power or performing a public function in terms of any legislation, but does not include a court or a judicial officer;

1.50 ICASA

means the Independent Communications Authority of South Africa, an independent regulatory body of the South African government, established in accordance with the Independent Communications Authority of South Africa Act, 2000 (Act No 13 of 2000), to regulate both the telecommunications and broadcasting sectors in the public interest.

1.51 Impact

has the meaning set out in **Appendix E-4 (SARS Red Alert Process)**.

1.52 Inactive Component

has the meaning set out in **Schedule B-x [Note to Bidder: where x is a reference to the WhatsApp Business Solution Platform]**.

1.53 Incident

means any event that is not part of the standard operation of a Service (including a fault with hardware or Software or a failure to successfully complete a batch job on time) and that causes, or may cause, an interruption to, or a reduction in, the quality of that Service.

1.54 Intellectual Property

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, communication channel layouts and mask-works, plans, reports, data, works protected under the Copyright Act, 1978 (Act No. 98 of 1978), works of authorship, video recordings, audio recordings, photographs, models, samples, substances, trade secrets, formulae, know-how, show-how, 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.

1.55 Intellectual Property Rights

means all rights of whatever nature and how described in respect of Intellectual Property, including:

- (a) all patents and other patent rights, including divisional and continuation patents, utility models;
- (b) rights in and to inventions, whether patentable or not;
- (c) rights in trademarks, service marks, logos, slogans, corporate, business and trade names, trade dress, brand names and other indicia of origin;
- (d) rights in designs, topography rights, rights in communication channel layouts and mask-works;
- (e) copyright, including all copyright in and to computer programs;
- (f) rights in Internet domain names, reservations for Internet domain names, uniform resource locators and corresponding Internet sites;
- (g) rights in databases and data collections;
- (h) 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 foregoing, 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.

1.56	IP	means Internet protocol and is an electronic communications protocol used on networks, enabling the transmission of data packets, from one end system to another based on address information carried in the message.
1.57	ISO (number)	Means the International Organisation for Standardisation standard designated by the number following the letters ISO.
1.58	ITIL	means the Information Technology Infrastructure Library published by the UK Office of Government Commerce (" OGC "), 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 (ITSMF) from time to time, including any natural successor organisations to the ITSMF.
1.59	Key Service Provider Personnel	means the personnel approved by SARS to fill the Key Service Provider Positions. The Key Service Provider Positions and Service Provider Personnel approved to fill such positions as of

the Effective Date are set out in **Appendix E-1**.

1.60 Key Service Provider Positions	has the meaning as set out in clause 8.2 of the Main Agreement.
1.61 Known Error	means an identified Problem for which a temporary Workaround or permanent solution has been identified.
1.62 Losses	means all losses, liabilities and damages arising from claims (whether actual or threatened) and all related costs and expenses (including legal fees, disbursements and costs of investigation, litigation, settlement, and judgment), fines, interest and penalties.
1.63 Main Agreement	means the WhatsApp Business Solution Platform, Maintenance and Support Services Agreement Terms and Conditions.
1.64 Managed SARS Third Party	means a Third Party Supplier who has entered into a Managed SARS Third Party Contract.
1.65 Managed SARS Third Party Contract	means a contract between SARS and a Managed SARS Third Party that Service Provider is to oversee and manage. [Note to the Bidder: To be completed upon finalisation of Agreement if required]
1.66 Maintenance Services	means without being limited thereto, (i) preventative maintenance, corrective maintenance and emergency maintenance as may be required for the purpose of ensuring continued functionality and operation of the Software or WhatsApp Business Solution Platform in accordance with the Functional Specification and Documentation, including the performance of: (ii) the maintenance activities; (iii) the identification and notification of Problems and/or Deficiencies (iv) installing of workarounds, patches, Bug-fixes, upgrades, enhancements and new releases;
1.67 Monitoring and Reporting Portal	means a Service Provider provided portal which is accessible by SARS via a secure Internet connection to provide monitoring and reporting functionality as defined in Schedule B-x [Note to Bidder: where x is a reference to the WhatsApp Business Solution Platform] .
1.68 MPLS	means multi-protocol label switching methods that provide for forwarding of IP traffic using a label. This label instructs the Routers and the switches in the network where to forward the packets based on pre-established IP routing information.
1.69 New Services	means any services closely associated with the provision of the Services and that are not included in the definition of the Services. New Services will be provided in accordance with clause 4.7 of the Main Agreement and as set out in a Work Order.
1.70 Notice of Election	has the meaning set out in clause 23.3.1 of the Main Agreement.

1.71 OGC	has the meaning set out in the definition of ITIL in this Schedule A: Glossary .
1.72 Operator	means a person who processes personal information for a responsible party in terms of a contract or mandate, but does not come under the direct authority or control of the Responsible Party and for the purposes of the Agreement, Operator means the Service Provider
1.73 Out-of-Band	means, with reference to control; measurement; and signalling network traffic, that it is carried in bandwidth separately allocated to the bandwidth allocated to SARS. This will have the necessary implication that the bandwidth requested for a communication channel by SARS will be fully available to SARS and that it will not be reduced by the carriage of control, measurement and signalling traffic that the Service Provider requires for the management of the communication channel.
1.74 Party or Parties	has the meaning set forth in the preamble to the Main Agreement.
1.75 Pass Through Expense	means an expense charged by a Third Party Supplier for goods or services which relates to the Services, is purchased by Service Provider on behalf of SARS, and SARS agrees to pay on a Pass Through Expense Basis.
1.76 Pass Through Expense Basis	means the actual and reasonable amount charged or invoiced by the applicable Third Party for Pass Through Expenses without the addition of, or separate charge for, any margin, mark-up, administrative or other similar fee.
1.77 Performance Standard	means a quantitative or qualitative level of service specified in this Agreement as to which Service Provider's performance of the Services must conform. Performance Standards include Service Levels.
1.78 Person	means any person or entity, whether an individual, trustee, corporation, partnership, limited partnership, company (whether incorporated or not), trust, organisation, business association, firm, joint venture, Governmental Entity or other governmental unit, agency or other body.
1.79 Personal Information	means information relating to an identifiable, living, natural or juristic person as fully defined in Section 1 of POPIA.
1.80 Personal Information Breach	means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of or access to, Personal Information transmitted, stored or otherwise Processed.
1.81 POPIA	means Protection of Personal Information Act, 2013 (Act No. 4 of 2013);

- 1.82 Personnel Rates** means the applicable Charges by skill set for Services performed on a Time and Materials Basis as set out in **Appendix D-4 to Schedule D (Charges, Invoicing and Payments)**.
- 1.83 Privacy and Data Protection Requirements** means the 8 (eight) requirements for the lawful Processing of personal information contained in Chapter 3 of POPIA;
- 1.84 Problem** means the unknown underlying cause of one or more Incidents.
- 1.85 Process and Processing** means any operation or activity or any set of operations, whether or not by automatic means, concerning Confidential Information, including its collection, receipt, recording, organisation, collation, storage, updating or modification, merging, linking, blocking, degradation, erasure or destruction retrieval, alteration, consultation, testing or use, dissemination or distribution by any means.
- 1.86 Process and Procedures Library** means the comprehensive and detailed manual described in clause 4.5 of **Schedule E (Governance)**, including processes and procedures applicable to the Services.
- 1.87 Project** means a set of tasks and other work relating to the Services that is requested by SARS after the Effective Date and performed by the Service Provider thereafter so long as:
- (a) the work is discrete and non-recurring;
 - (b) the work requires start-up, planning, execution and closure;
 - (c) the completion of the work is likely to result in a change to the environment in which the Services are provided; and
 - (d) the work is not required for Service Provider to:
 - (i) meet the Performance Standards,
 - (ii) implement changes to the environment required as a result of benchmarking under the Agreement;
 - (iii) meet Service Provider's currency (including refresh) obligations under the Agreement, or
 - (iv) meet any other obligations of Service Provider under this Agreement.

Projects must be contained in a Work Order in accordance with **Appendix E-5**.

The Parties may agree to refer to other aggregations of work that do not meet the requirements of this definition of the term Projects as projects. In such case, such projects will be in scope and will not attract additional charges and will not necessarily be set out in a Work Order.

- 1.88 Proposal** means the Service Provider's response to the Request for Proposal 23/2022 as attached in **Schedule G**.
- 1.89 Receiving Party** means the Party receiving Confidential Information from the Furnishing Party.
- 1.90 Remedy** is the BMC Incident, problem and change management product Remedy ITSM.
- 1.91 Renewal Term** has the meaning set out in clause 3.2 of the Main Agreement.
- 1.92 Replacement Service** has the meaning set out in clause 6.2 of **Schedule D (Charges, Invoicing and Payments)**.
- 1.93 Reports** means the reports to be provided by Service Provider in accordance with the Agreement.
- 1.94 Request for Proposal** means SARS's Request for Proposal number 23/2022 for WhatsApp Business Solution Platform, Maintenance and Support Services.
- 1.95 Required Consent** means, with respect to Third Party Intellectual Property or any other resource provided to SARS under contract, those consents and approvals necessary to effect Service Provider's assumption of financial, administrative and operational responsibility, or Service Provider's access and use thereof, as applicable.
- 1.96 Resolve** means to correct an Incident, Problem or Known Error so that the affected Service is recovered and restored (and in the case of Incidents, Problems or Known Errors affecting supported hardware or supported Software, the relevant supported hardware or supported Software is operating correctly), or a Workaround is otherwise successfully implemented, and that the end user or SARS support group has confirmed such resolution in accordance with the provisions of the Process and Procedures Library and the Configuration Management database has been appropriately updated to reflect the Incident and its Resolution. "**Resolution**" and "**Resolved**" will have corresponding meanings.
- 1.97 Resources** has the meaning set out in clause 4.10.2 of the Main Agreement.
- 1.98 Router** means a network layer device that uses one or more metrics to determine the optimal path along which network traffic should be forwarded. Routers forward packets from one network

	segment to another based on network layer information.
1.99 Run Down Period	means the earlier of – <ul style="list-style-type: none"> (a) a period of 6 (six) months before the expiry of the Term; and (b) the period commencing upon SARS's dispatch of a notice of termination.
1.100 SARS	has the meaning set out in the preamble to the Main Agreement.
1.101 SARS Assets	has the meaning set out in clause 7.4.1 of the Main Agreement.
1.102 SARS Contract Executive	means the one individual designated by SARS to whom all Service Provider communications concerning this Agreement will be addressed. SARS may change the SARS Contract Executive from time to time during the Term upon notice to Service Provider.
1.103 SARS Disengagement Assistance Manager	has the meaning set out in clause 1.8.2 of the Schedule F (Disengagement Assistance) ;
1.104 SARS Oath / Affirmation of Secrecy	means the document attached as Schedule M as amended by SARS from time to time.
1.105 SARS Personnel	means any employees, officers, contractors or consultants of SARS other than Service Provider Personnel.
1.106 SARS PPS&G	means SARS's policies, procedures, processes, standards, guidelines, and other similar issuances (including any updates, amendments or revisions) that are applicable to the Services or Service Provider from time to time. The SARS PPS&G are specified in Appendix E-3 (SARS PPS&G) of Schedule E (Governance) .
1.107 SARS Site	means a campus, office or other physical location lease, owned or occupied by SARS.
1.108 SARS Software	means – <ul style="list-style-type: none"> (a) Software owned by SARS and modifications made thereto during the Term; and (b) Software developed by or for, or acquired by, SARS during the Term and modifications thereto during the Term. SARS Software will include Software developed during the course of Service Providers performance of a Project or a New Service, to the extent such Software is developed by Service Provider and SARS.
1.109 Security Incident	means an adverse security-related event in which there was a

	loss of data confidentiality, disruption of data or system integrity as well as denial of service attacks, malicious code, unauthorised access and inappropriate usage.
1.110 Service Coverage Hours	means the hours during the Service Coverage Period that is designated by SARS for the relevant Device or other Supported Asset.
1.111 Service Coverage Period	has the meaning set out in clause 1.3.2 of Schedule C (Service Levels) ;
1.112 Service Level	means the quantitative standards of performance of certain of the Services that Service Provider is required to satisfy under Schedule C (Service Levels) .
1.113 Service Level Credit	means an amount by which SARS is entitled to reduce the Charges payable by it as contemplated in clause 1.4.1 of Schedule C (Service Levels) and as determined in accordance with the provisions of Schedule C (Service Levels) and Appendix C-x .
1.114 Service Level Credit Increment	has the meaning set out in clause 3.2.2 of Schedule C (Service Levels) .
1.115 Service Level Failure	means in respect of a Service Level where Actual Performance fails to meet or exceed such Service Level in the relevant month.
1.116 Service Level Report	has the meaning set out in clause 2.3.1 of Schedule C (Service Levels) .
1.117 Service Level Target	has the meaning given in clause 3.2.2(b) of Schedule C (Service Levels) .
1.118 Service Provider	has the meaning set out in the preamble to the Main Agreement .
1.119 Service Provider Personnel	means any Affiliate, Subcontractor or agent and any staff employed by or on behalf of Service Provider (or any Affiliates , Subcontractor or agent) who perform any of the Services.
1.120 Service Provider Policies	has the meaning set out in clause 4.4.1.1.2 of Schedule E (Governance) .
1.121 Service Provider Program Executive	means a person designated by the Service Provider who will (i) serve as Service Provider's single point of accountability for the Services; and (ii) have day-to-day authority for ensuring Service Provider's fulfilment of its obligations under the Agreement and SARS's satisfaction with the Services. The Service Provider Program Executive will be a senior member of the Service Provider Personnel who will have the authority to act on behalf of Service Provider and its Subcontractors.
1.122 Service Provider	means the Service Provider's formal response to the Request

Proposal	for Proposal 23/2022 as per Schedule G .
1.123 Service Provider Site	means a physical location from which Service Provider or a Subcontractor is performing any of the Services, excluding any SARS Sites.
1.124 Service Provider Supported Hardware	means hardware owned or leased and used by Service Provider in order for Service Provider to perform the Services.
1.125 Services	means collectively provision, software development, customisation, and implementation of the WhatsApp Business Solution Platform, Support Services, Maintenance Services, and any services related to the aforementioned and furthermore has the meaning set forth in clause 4 of the Main Agreement and as stipulated in the BRS.
1.126 Software	means any elements of coding or computer programs (including related documentation and media), including as applicable the object code and/or source code and without limit to whether the software is operating system software, applications software, Tools, firmware or otherwise.
1.127 SOW	means Statement of Work set out in Schedule B .
1.128 Steering Committee	has the meaning set out in clause 4.1 of Schedule E (Governance) .
1.129 Subcontract	has the meaning set out in clause 5.3 of the Main Agreement.
1.130 Subcontractor	means a Third Party (including a Service Provider Affiliate) to whom Service Provider subcontracts or otherwise delegates any Service Provider obligations to perform any of the Services (including subcontractors of a Subcontractor) provided that such Third Party has been approved for such purpose by SARS in accordance with the Main Agreement . For clarity, "Subcontractor" excludes parties for whom the Service Provider acts as a value-added reseller in terms of a reseller agreement with a bulk supplier / distributor of utilities.
1.131 Successor	means SARS or any replacement service provider designated by SARS that replaces the Service Provider as the service provider to SARS of the Services or part of the Services.
1.132 Support Services	means the (i) support services of the Software and where applicable the provision of the WhatsApp Business Solution Platform including all support activities as well as those services, functions or responsibilities not specifically mentioned herein but which are reasonably and necessarily required for the proper performance and provision of the Services as these may evolve or be supplemented, enhanced, modified, amended or replaced in accordance with the terms of the Main Agreement logged by SARS and escalated to the Service Provider in accordance with the Service Level Agreement; (ii)

	resolution of all Incidents and Problem logged by SARS in accordance with the Service Levels; and (iii) attendance to any break fix, installation and repair of all hardware or software;
1.133 Term	has the meaning set out in clause 3.1 of the Main Agreement.
1.134 Terminated Services	means the Services or part of the Services that are no longer to be performed by Service Provider and instead are to be performed by a Successor at the end of the Term, including where such Services are replaced by alternative Services or New Services.
1.135 Termination Date	means the effective date of termination or expiration pursuant to clause 26 of the Main Agreement as it may be extended by SARS pursuant to clauses 3.2 and 26.5 of the Main Agreement.
1.136 Third Party	means a Person other than SARS, a Governmental Entity, Service Provider or its Affiliates.
1.137 Third Party Intellectual Property	means all Intellectual Property that is owned or controlled by a Third Party and – <ul style="list-style-type: none"> (a) licensed to SARS; (b) used by Service Provider to perform the Services; or (c) incorporated or embedded in any Deliverable or any Intellectual Property forming part of or related to any Deliverable.
1.138 Third Party Resources	has the meaning set out in clause 4.10.2 of the Main Agreement.
1.139 Third Party Software	means any computer programs, software, source code, object code, programmer interfaces, specifications and/or operating instructions owned or controlled by a Third Party and (i) used by Service Provider to perform the Services; and / or (ii) incorporated or embedded in any Deliverable(s) or any Intellectual Property forming party of or related to any Deliverable(s).
1.140 Third Party Supplier	means a Third Party that is a licensor of Software, lessor of equipment, or supplier of other goods or services to SARS (or to a Governmental Entity that is receiving Services under this Agreement) from time to time, including such Third Party's employees, agents, Affiliates, Subcontractors and Third Party suppliers. Third Party Suppliers exclude any Affiliate, Subcontractor (direct or indirect), or other agents of Service Provider to the extent involved in performing or delivering the Services under contract (direct or indirect) with Service Provider.

1.141 Time and Materials Basis	means compensation to Service Provider, where and to the extent additional work is expressly authorised to be paid in this manner under this Agreement, as follows: <ul style="list-style-type: none"> (a) at the Personnel Rates for the actual time expended on such work; and (b) on a Pass Through Expenses Basis for material or incidental costs incurred in performing such work.
1.142 Tool	means any Software tool or process used to deliver the Services.
1.143 Unit Rates	means the price for each unit of product as defined in the specifications set out in Schedule D (Charging, Invoicing and Payments) .
1.144 Urgency	has the meaning set out in Appendix E-4 (SARS Red Alert Process) .
1.145 VAT	means value-added tax as levied from time to time in terms of the Value-Added Tax Act, 1991 (Act No. 89 of 1991).
1.146 WASPA	means Wireless Application Service Providers' Association.
1.147 WASPA's Code of Conduct	means WASPA's code of conduct as amended from time to time.
1.148 WhatsApp Business Solution Platform	means a WhatsApp business platform provided, developed, customised and implemented in line with the SARS BRS which forms part of SARS Request for Proposal number 23/2022, providing a communication, outbound and inbound, channel that taxpayers and prospective taxpayers can use to interact and transact with SARS remotely, and has the meaning set out in clause 1 of Schedule B-S (WhatsApp Business Solution Platform SOW);
1.149 Workaround	means in respect of an Incident or Problem that the Incident or Problem is avoided either by implementing a temporary fix or by using a technique so that SARS is not reliant on the particular aspect of the Service (or the relevant hardware, Software or part thereof) that is affected by the Incident or Problem.
1.150 Work Order	means a work order substantially in the form and fulfilling the requirements of Appendix E-5 (Form of Work Order) and describing at least (i) the details of the New Services and or Projects to be performed under this Agreement, (ii) the amount, schedule and method of payment (subject to the provisions of Schedule D), (iii) start and end date or where applicable to the timeframes for performance, (iv) where applicable the

completion and acceptance criteria, (v) any applicable Service Levels and Service Level Credits, etc. A Work Order will only be binding of the Parties once the Work Order has been signed by duly authorised representatives of both Parties and the receipt of a purchase order issued in accordance with SARS's procurement policies and procedures.

1.151 **24x7x365** means at all times.

2 INTERPRETATION

2.1 Construction

In this Agreement, a reference to:

2.1.1 a statutory provision, includes a reference to:

2.1.1.1 the statutory provision as modified or re-enacted from time to time (whether before or after the Effective Date); and

2.1.1.2 any subordinate legislation made under the statutory provision (whether before or after the Effective Date);

2.1.2 persons or entities, includes a reference to natural persons, any body corporate, association, trust, partnership or other entity or organization;

2.1.3 a person or entity, includes a reference to that persons or entity's successors or assigns;

2.1.4 a Schedule, Appendix or Attachment unless the context otherwise requires, is a reference to a schedule, appendix or attachment to this Agreement; and

2.1.5 the singular includes the plural and vice versa, unless the context otherwise requires.

2.2 Other

2.2.1 Wherever a term is defined in this Agreement anywhere outside of this **Schedule A**, such term will bear the meaning so assigned to it throughout this Agreement wherever it appears in the title case.

2.2.2 Technical terms that are not contained in the definitions set out above have their generally understood meaning in the electronic communication and information technology industries and, if used in ITIL, then in ITIL.

2.2.3 The headings in this Agreement will not affect the interpretation of this Agreement.

2.2.4 This Agreement will not be construed against either Party as a result of that Party having drafted or proposed the relevant clause.

2.2.5 The words "include" and "including" mean "include without limitation" and "including without limitation". The use of the words "include" and "including" followed by a specific example or examples will not be construed as limiting the meaning of the general wording preceding it.

- 2.2.6 Whenever any person is required to act "as an expert and not as an arbitrator" in terms of this Agreement, then –
- 2.2.6.1 the determination of the expert will (in the absence of manifest error) be final and binding;
 - 2.2.6.2 subject to any express provision to the contrary, the expert will determine the liability for his or her charges, which will be paid accordingly;
 - 2.2.6.3 the expert will be entitled to determine such methods and processes as he or she may, at his or her sole discretion, deem appropriate in the circumstances provided that the expert may not adopt any process which is manifestly biased, unfair or unreasonable;
 - 2.2.6.4 the expert will consult with the relevant Parties (provided that the extent of the expert's consultation will be at his or her sole discretion) prior to rendering a determination; and
 - 2.2.6.5 having regard to the sensitivity of any confidential information, the expert will be entitled to take advice from any person considered by him or her to have expert knowledge with reference to the matter in question.
 - 2.2.6.6 Notwithstanding the above SARS, in its sole election, will be entitled to bring any matter under consideration by an expert before the North Gauteng High Court, Pretoria and the Service Provider hereby submits to the jurisdiction of that court.
- 2.2.7 All references to:
- 2.2.7.1 hours will be to actual hours during a calendar day and not to Business Hours;
 - 2.2.7.2 time will be to local time at the site at which the Service is being received;
 - 2.2.7.3 days, months and quarters will be to calendar days, calendar months and calendar quarters, respectively.
- 2.2.8 Where a time period is specified by a number of Business Days it will exclude the first Business Day and include the last Business Day.

SCHEDULE B

COMMON SERVICES SOW

1 INTRODUCTION

Service Provider will provide the Services described in this **Schedule B** and the **Appendices to this Schedule B** in conjunction with the Services described in:

- 1.1 **Schedule B-S**, and the **Appendices to Schedule B-S**.

2 GENERAL

2.1 General Principles

Without limiting Service Provider's specific obligations under this Agreement, the following are included in the Services:

- 2.1.1 compliance with commercially reasonable requirements of ISO 20000, ISO 17799, ISO 12207, ISO 29119 and ISO 27001;
- 2.1.2 compliance with the SARS PPS&G;
- 2.1.3 the use of good housekeeping professionalism in the maintenance of any office, work or storage space, that SARS makes available to the Service Provider for the purposes of providing the Services, or other SARS Sites, switch rooms and closets, and items of Service Provider Supported Hardware; and
- 2.1.4 compliance with good engineering practices.

2.2 Management of Service Provider

SARS may appoint an agent to manage Service Provider's performance under the Agreement on SARS's behalf. Service Provider acknowledges and expressly agrees that SARS's appointed agent may be a service provider that is a competitor of Service Provider in certain geographies or with respect to certain services. Service Provider agrees to co-operate with SARS's agent and to execute such agent's instructions that are within the scope of the Services.

2.3 SARS's Agent

At SARS's request, Service Provider will agree to act as SARS's agent in ordering electronic communications services from Third Parties that are necessary to provide electronic communications services and to perform service management functions with respect to such Third Party services, all at no additional charge to SARS.

3 COMMON OPERATIONAL REQUIREMENTS

3.1 Service Management Services

In addition to the requirements for the Service Provider to provide service management service specified in this Agreement, Service Provider is also required to follow any additional service management processes it needs to follow in order to satisfy the Performance Standards. Moreover, Service Provider is required to comply with its responsibilities under **Appendix E-4 (SARS Red Alert Process)** in the event of certain high-impact Incidents affecting the Services.

3.2 Integration with SARS Service Management Processes

The Service Provider is required to receive Incidents and Changes from, and log Incidents and Changes to, the SARS Incident and Change management system.

[Note to Bidder: the Service Provider must either integrate its service management system(s) with the SARS Remedy system or purchase sufficient licences for the Service Provider to work directly on the SARS Remedy system].

3.3 Alerting

- 3.3.1 Service Provider will alert SARS in the event of an unscheduled outage and escalate in accordance with the escalation procedures set out in clause 8.3.
- 3.3.2 Service Provider will recommend to SARS, on a monthly basis, thresholds and settings that will improve the process of alerting SARS to failures or potential failures that affect or may affect the Services and, on SARS's acceptance, implement and include such recommendations into the Service Provider monitoring and reporting procedures and systems.
- 3.3.3 Service Provider will provide automatic alerts to SARS based on Service Provider recommended thresholds and priorities as approved by SARS, in accordance with alerting procedures determined by SARS, of events and Incidents that affect or are likely to affect the Services, including any event indicating operational performance outside thresholds set by SARS. The alerts provided to SARS must be filtered by the Service Provider so that SARS does not receive duplicate alerts for the same underlying event. Such alerts must include those indicating traffic, errors, capacity utilisation, round trip times, jitter and packet loss in excess of defined thresholds. The notification of such alerts must be capable of being delivered by SMS and email and to be reflected on the Monitoring and Reporting Portal.

4 SINGLE POINT OF CONTACT

Service Provider will provide a SPOC for all contacts ("**Contacts**") between the Parties relating to the performance, receipt and use of the Services as described in this clause 4. The SPOC will provide primary support for resolution of Incidents, Problems or requests relating to the Services and will provide a seamless interface for other communications or activities relating to the Services. The SPOC will provide SARS with support relating to the Services through the SPOC.

4.1 **Contacts**

- 4.1.1 Service Provider will keep a record of all Contacts. Contacts may relate to known or suspected Incidents or Problems, requests for Changes or New Services, or questions relating to the use of the Services.
- 4.1.2 Service Provider will report to SARS monthly on the number and disposition of Contacts received. Contacts will be categorised as follows: (i) Incidents or Problems relating to the Services; (ii) questions relating to the Services; (iii) requests for Changes; (iv) other issues or questions relating to the Services; or (v) issues or questions that do not relate to the Services.
- 4.1.3 With respect to telephonic Contacts, the SPOC will as far as reasonably possible immediately resolve such Contacts without transferring or escalating the Contact.

4.2 **Resources**

Service Provider will ensure that Service Provider Personnel providing SPOC functions will be trained in, or will otherwise be made knowledgeable about, the Services, the environments and SARS. Service Provider will provide sufficient numbers of Service Provider Personnel with the requisite training to be able to address SARS's specific issues and questions. Service Provider will develop and maintain a knowledge base to aid the Service Provider Personnel providing SPOC functions to do so.

4.3 **Hours of Service**

Service Provider will provide contact information so that the Service Provider Personnel providing SPOC functions can be accessed as appropriate on a 24x7 basis.

5 **INCIDENT MANAGEMENT SERVICES**

Service Provider will perform Incident Management, including the Services described in this clause 5 (collectively, the "**Incident Management Services**"). Service Provider will perform the Incident Management Services in accordance with the processes and procedures set forth herein and in **Schedule C (Service Levels)** or the applicable SARS PPS&G, interfacing seamlessly and non-disruptively with such applicable SARS PPS&G.

5.1 **Incident Management Procedures**

5.1.1 **Development**

By at least 60 (sixty) days prior to the Commencement Date, Service Provider will prepare for SARS's review and approval detailed Incident Management processes and procedures for the Services. Such Service Provider Incident Management processes and procedures will interface seamlessly with the applicable SARS PPS&G and the other SARS processes. Service Provider will incorporate SARS's comments on such processes and procedures and include such revised procedures in the Process and Procedures Library promptly but in no event later than thirty (30) days after SARS has provided such comments ("**Incident Management Procedures**"). The Incident Management Procedures will be based on the processes and procedures set forth in this clause 5 and, to the extent

consistent with the processes and procedures set forth in this clause 5, Service Provider's standard processes and procedures that it uses to perform Incident management services for other customers.

- 5.1.2 Service Provider will follow the Incident Management Procedures from the date that they have been approved by SARS. Before such date, the Services Provider will follow the processes and procedures regarding Incident Management that are set forth in this clause 5 supplemented with Service Provider's own standard processes and procedures (to the extent they are not inconsistent with this clause 5).

5.1.3 Updates

Service Provider will promptly update the Incident Management Procedures to reflect any changes in the applicable SARS PPS&G. Service Provider will submit the revised Incident Management Procedures to SARS for its review and approval in the same manner as set forth in clause 5.1.1 above.

5.2 Incident Recording

5.2.1 Recording Incidents.

Service Provider will record Incidents in the Incident tracking system immediately upon their earliest detection. Manners in which an Incident may be detected include: by (i) a member of SARS personnel, the SPOC or Service Provider Personnel; (ii) a system; (iii) the SARS Service Desk.

5.2.2 Checking for the Same or Similar Incidents.

When recording an Incident, so as to avoid recording the same Incident as separate Incidents, Service Provider will first check to see if there are similar open Incidents. If there are and they concern the same Incident, Service Provider will update the Incident information and link the newly reported Incident to the existing Incident record. If this is not a report of an already open or closed Incident, then Service Provider will open a new Incident. If this is the report of a new Incident but there have been other similar Incidents, this will be noted and addressed (including being made a part of the Incident Management reporting to SARS). Service Provider will identify and analyse the reasons for any differences in the effectiveness of the resolution for similar Incidents.

5.2.3 Incident Tracking System.

At all times during the Term Service Provider will utilise an electronic Incident tracking system capable of capturing and storing appropriate information relating to each Incident, including the information specified in this clause 5 as being stored in such Incident tracking system.

5.3 Classification

All Incidents will be classified in accordance with the process set forth in this clause 5.3. Service Provider will comply with the then-current SARS PPS&G relating to Incident Management and will interface closely with SARS so as to correctly identify and classify Incidents.

5.3.1 Process.

In the first instance, Service Provider will make such classification in accordance with SARS's then-current Impact and Urgency classifications in accordance with the SARS PPS&G. Such classifications as of the Effective Date are set out in **Appendix E-4 (SARS Red Alert Process)**. If there is a disagreement as to the priority level that should be assigned to an Incident, the priority level will be that prescribed by SARS in its reasonable judgment.

5.3.2 Re-categorisation of Recurring Incidents.

Service Provider will re-categorise recurring Incidents to a higher Impact and Urgency classifications in accordance with the Incident Management Procedure.

5.3.3 Incident Record.

Service Provider will create and maintain an Incident record for each Incident containing details of the Incident symptoms, an initial Incident categorisation, and the Impact of the Incident. Service Provider's records of Incidents will be designed to enable Service Provider to measure and improve the affected processes, provide information required for other Service Management processes, and report on progress.

5.4 Communications

Service Provider will keep the applicable SARS contact persons (as then specified in the Process and Procedures Library and escalation procedures) apprised of the status of Incident Management activities on an on-going basis in accordance with the notification and escalation processes set forth in the Incident Management Procedure. Service Provider's obligations in such regard will include:

5.4.1 documenting and maintaining in the Incident Management Procedures processes and procedures for notifying affected parties, including SARS, of Incidents, escalation paths, contacts and timescales;

5.4.2 alerting SARS of any Incidents in accordance with the Incident Management Procedures;

5.4.3 informing the SARS Incident Manager about the estimated maximum time to Resolve the

Incident, and apprising him or her of progress on an on-going basis;

- 5.4.4 at SARS's request, providing SARS with a preliminary report of the Incident on an expedited basis;
- 5.4.5 updating status in the relevant record in the Incident tracking system promptly upon any developments occurring so that it is current on a real time basis; and
- 5.4.6 notifying the SARS Incident Management team promptly in accordance with the Incident Management Procedure in the event that an Incident is likely to require a Problem Investigation, including informing the SARS Problem Management team.

5.5 Resolution and Recovery

- 5.5.1 Service Provider will resolve Incidents and return the affected Services to full performance in accordance with this Agreement, including the Performance Standards, as soon as possible but in no event later than to meet any applicable Service Levels with the least possible impact on the operations of SARS. The Service Provider will give priority over all other work to effect the resolution and recovery of SARS Incidents including the giving of the highest priority to the printing of test prints required to be made in the resolution process.
- 5.5.2 Service Provider will provide SARS with prior notice of any temporary Workaround or permanent solution that:
 - (a) may have a further impact on the Services and / or on SARS;
 - (b) represents a departure from SARS's processes; or
 - (c) materially increases or is likely to materially increase the workload of SARS personnel or SARS systems or SARS's costs.

The implementation of every temporary Workaround or permanent solution will be subject to the Operational Change Management Procedure. Without limiting the generality of the foregoing, Service Provider will identify and describe all other temporary Workarounds in the morning report submitted by Service Provider on the next Business Day after the Workaround was implemented.

- 5.5.3 In addition to the Incident Management Procedures, Service Provider will follow the processes described in **Appendix E-4 (SARS Red Alert Process)** in regard to Severity One Incidents (as defined therein).

5.6 Completion and Closure of Incidents

- 5.6.1 An Incident will not be Resolved until all Changes, the date and time of resolution, the final classification and priority of the Incident, the Services/ functions that were affected and any Workarounds have been captured on the Service Provider's Incident tracking system.
- 5.6.2 When an Incident has been resolved, Service Provider will record the Incident as completed and communicate this fact to SARS.
- 5.6.3 Service Provider will participate in Incident post mortem and improvement activities to

prevent the re-occurrence of the Incident and to improve the Incident Management process.

5.7 Incident Management Services Outputs

The outputs of Incident Management Services include:

- 5.7.1 Incident Management Procedures;
- 5.7.2 up-to-date records in the Service Provider's Incident tracking system (updated with information about each Incident relating to status, solutions, and Workarounds);
- 5.7.3 Change request records implemented to Resolve Incidents; and
- 5.7.4 management information relating to Incident Management Services as requested by SARS from time to time (e.g. status, updates, efficiency and effectiveness, other management or performance metrics).

6 PROBLEM MANAGEMENT SERVICES

Service Provider will perform Problem Management including the services described in this clause 6 (collectively, the "**Problem Management Services**") and will do so in accordance with the processes and procedures set forth or referred to herein and in a manner that interfaces seamlessly and non-disruptively with the applicable SARS PPS&G. In performing the Problem Management Services, Service Provider will minimise the adverse effect of Problems on SARS's operations, the Services and proactively minimise the Impact, and prevent the occurrence, of Problems.

6.1 Problem Management Procedures

6.1.1 Development

By at least 60 (sixty) days prior to the Commencement Date, Service Provider will prepare for SARS's review and approval detailed Problem Management processes and procedures for the Problem Management Services. Such processes and procedures will interface seamlessly with the applicable SARS PPS&G and the other Service Management processes. Service Provider will incorporate SARS's comments on such processes and procedures and include such revised processes and procedures in the Process and Procedures Library promptly but in no event later than thirty (30) days after SARS has provided such comments ("**Problem Management Procedures**"). The Problem Management Procedures will be based on the processes and procedures set forth in this clause 6 and, to the extent consistent with the processes and procedures set forth in this clause 6, Service Provider's standard processes and procedures that it uses to perform Problem Management services for other customers.

- 6.1.2 Service Provider will follow the Problem Management Procedures from the date that they have been approved by SARS. Before such date, the Services Provider will follow the processes and procedures regarding Problem Management that are set forth in this clause 6 supplemented with Service Provider's own standard processes and procedures (to the extent they are not inconsistent with this clause 6).

6.1.3 Updates

Service Provider will promptly update the Problem Management Procedures to reflect any changes in the applicable SARS PPS&G. Service Provider will submit the revised Problem Management Procedures to SARS for its review and approval in the same manner as set forth in clause 6.1.1.

6.2 Proactive Problem Management

Service Provider will use Commercially Reasonable Efforts to proactively prevent Problems, including by means of performing trend analysis and identifying potential Incidents before they occur. Service Provider will use Commercially Reasonable Efforts to prevent failures from spreading. Service Provider will identify and investigate weaknesses of infrastructure components.

6.3 Problem Control

Service Provider will be responsible for identifying Problems and investigating their root cause in accordance with the terms of this clause 6.3 ("**Problem Control**"). When the Problem investigation has identified the root cause of a Problem and a resolution to the Problem, the Problem will be classified as a Known Error. In performing Problem Control, Service Provider will perform the following services:

6.3.1 Problem Identification and Recording

Service Provider will associate Incidents caused by one or more Problem(s) with such Problem(s), including Incidents that recur or are expected to recur, as well as any single significant Incident.

6.3.2 Problem Classification

Service Provider will analyse Problems and classify them in accordance with SARS's then-current Impact and Urgency classifications. The analysis will include an Impact analysis assessing the seriousness of the Problem and its effect on the Services. Service Provider will confer with SARS in formulating these classifications and categorizations. If there is a disagreement as to the priority level that should be assigned to a Problem, the priority level will be that prescribed by SARS in its reasonable judgment. Factors to be considered in determining the classification of a Problem will include:

- (a) category: identifying the relevant domain, for example hardware or Software;
- (b) impact on the business;
- (c) urgency: extent to which deferral of the solution is acceptable;
- (d) priority; and
- (e) status e.g. Problem, Known Error, Resolved, closed pending post-implementation review.

These classifications and categorisations will be updated to reflect any changes during the Resolution of the Problem. For example, new Incidents may increase the Impact and Urgency and accordingly Priority of a Problem.

6.3.3 Problem Investigation and Resolution

- (a) Service Provider will investigate and diagnose each Problem to achieve Resolution.
- (b) Service Provider will perform the Error Control activities described below in clause 6.4.
- (c) If a temporary fix requires modification of infrastructure, Service Provider will implement it in accordance with the Operational Change Management Procedures.
- (d) Service Provider will comply with and interface with SARS's Problem Management processes and procedures.
- (e) Service Provider will correctly identify Problems and investigate and monitor the Problem(s) to Resolution.
- (f) Service Provider will conduct a formal root cause analysis to identify the origin of each Problem that: (i) gave rise to a Service Level Failure; (ii) resulted from a Severity One Incident; or (iii) repeat Incident.
- (g) Once Service Provider has identified the root cause of a Problem and a method of resolving it, such Problem will be classified as a Known Error. Service Provider will record all Known Errors against the current and potentially affected Services in addition to the component at fault and any Workarounds. Known Errors will not be closed until they have been Resolved.
- (h) Service Provider will use Commercially Reasonable Efforts to eliminate the root cause of each of the types of Problems specified in clause 6.3.3(f) and prevent recurrence of such Problem, including by means of performing a detailed review of each such Problem.
- (i) Service Provider will facilitate Problem Management investigations and reviews of Problems, including identifying Problem trends.
- (j) Service Provider will participate in cross-functional Problem determination activities, including facilitating Problem Management review and Problem Management investigation meetings as reasonably required by SARS.
- (k) Service Provider will adhere to the mutually agreed Problem escalation path for each Problem severity group.
- (l) Service Provider will take 'ownership' for all Problems assigned to Service Provider by SARS, including using Commercially Reasonable Efforts to manage Third Party Suppliers where necessary in order to determine the root cause of and / or resolve the Problem.

- (m) Service Provider will report to SARS during the normal reporting cycle the results of any root causes analyses conducted with respect to Problems that were not the result of a Severity One Incident or did not cause a Service Level Failure.
- (n) Service Provider will report to SARS daily Service Provider's progress in conducting root causes analyses on each Problem that gave rise to a Service Level Failure or was the result of a Severity One Incident.
- (o) Service Provider will conduct all root cause analyses in accordance with the applicable procedures set forth in the Process and Procedures Library.
- (p) With respect to each Problem that:
 - (i) gave rise to a Service Level Failure; or
 - (ii) (results from a Severity One Incident,

Service Provider will provide SARS with: (1) a plan for correcting such failure and preventing its recurrence; (2) reasonable evidence that the Problem has been corrected and will not recur, and (3) a detailed explanation of Service Provider's contingency plan.

6.4 Error Control

Service Provider will monitor and manage Known Errors until they are successfully resolved ("**Error Control**"). Service Provider will perform Error Control in accordance with the Operational Change Management Procedures and evaluate the changes in a post-implementation review, as described in clause 6.5. Service Provider will monitor and report on all Known Errors from their identification through to their resolution.

6.5 Problem Closure and Post-Implementation Review

When they are resolved, Service Provider will record Problems and Known Errors as resolved. Only SARS will close Problems. Once implemented, all Changes to resolve Problems and Known Errors will be reviewed in a post-implementation review. SARS will not close the Problem until (i) the post-implementation review has been completed, (ii) any other steps mandated under the relevant SARS PPS&G have been completed, and (iii) the Parties agree (acting reasonably) that the Change(s) was (were) implemented in such a fashion so as to Resolve the Problem or Known Error. In such case, all related Problem and Known Error records, together with their associated Incident records, will be closed by SARS. For Problems designated as major, in SARS's reasonable judgment, a separate major problem review will promptly be undertaken jointly by Service Provider and SARS to identify:

- (a) what was done well;
- (b) what was done badly;
- (c) how it can be done better in future; and
- (d) further steps Service Provider should take to prevent a recurrence.

6.6 Communications

Service Provider will keep applicable SARS contacts apprised of the status of Problem Management activities in accordance with the Problem Management Procedure notification and escalation processes. Service Provider's obligations will include:

- 6.6.1 alerting SARS of any Problems in accordance with the Service Levels; and
- 6.6.2 at SARS's request, providing a preliminary report of the Problem on an expedited basis to SARS.

6.7 Problem Management Services Outputs

The outputs of Problem Management Services include:

- (a) Problem Management Procedures;
- (b) a Known Error database, which is a subset of the Problem Management system;
- (c) up-to-date Problem records (updated with information about status, Known Errors, solutions and/or Workarounds);
- (d) closed Problem records (once the root cause has been eliminated and the Problem Resolved);
- (e) matching of Incidents to Problems and Known Errors;
- (f) Problem reports indicating history and status of Problems, categorised by type, time period and status as reasonably requested by SARS; and
- (g) management information relating to Problem Management Services as requested by SARS from time to time (e.g. status, updates, efficiency and effectiveness, other management or performance metrics).

7 OPERATIONAL CHANGE MANAGEMENT SERVICES

7.1 Introduction

- 7.1.1 Service Provider will perform Operational Change Management, including the Services described in this clause 7 ("**Operational Change Management Services**") and will do so in accordance with the processes and procedures set forth or referred to herein and in a manner that:

- (a) interfaces seamlessly and non-disruptively with the SARS PPS&G relating to Operational Change Management and the other Service Management processes;
- (b) facilitates the efficient and prompt handling of any Changes made by Service Provider; and

- (c) facilitates making Changes quickly and with the least possible impact on the operations of SARS or on the affected users.

7.1.2 A "**Change**" is any modification, alteration, or other change made by Service Provider to:

- (a) the Services;
- (b) the manner, means or format in which Service Provider supplies and delivers the Services, including any work product, forms, reports, data feeds or other outputs of the Services; or
- (c) the Service Provider environment, but only if the Change impacts the SARS environment, SARS's receipt or use of the Services, or the Charges or Pass Through Expenses.

Examples of Changes include changes to systems or processes, configuration changes, changes in technology, changes to environmental parameters and changes to policies or procedures.

7.1.3 Service Provider will notify SARS in advance of any change that will or will potentially affect the Services and use Commercially Reasonable Efforts to ensure that SARS is impacted as minimally as possible by such activities.

7.1.4 Service Provider will notify SARS of any changes to the means of providing the Services.

7.1.5 Service Provider will develop a process to interface its change management processes with the SARS Operational Change Management Procedures and processes.

7.1.6 After the implementation of, or any change to, a component of the Services the Service Provider will allow SARS to perform acceptance testing for 5 (five) Business Days. Acceptance testing is defined to be successful if the network has operated for 5 (five) Business Days, uninterrupted by defect, and performing as described in the specific functional requirements.

7.1.7 If Service Provider intends to conduct any planned change, including any scheduled maintenance activity, that could result in a disruption of the Services to SARS then:

7.1.7.1 if such a change will, or potentially will, only affect the Services delivered to SARS, then the Service Provider will notify SARS of the nature, scope and potential impact of the change by raising a change request in the SARS Incident and Change Management system and only proceed with such change with SARS's approval; or

7.1.7.2 if such a change will potentially affect the services delivered to more than one of Service Provider's clients then Service Provider must:

7.1.7.2.1 in the case of major changes or changes affecting more than one SARS site, provide SARS with notice at least 10 (ten) Business Days in advance and provide SARS with the opportunity to lodge an objection with the Service Provider (which objection the Service Provider will consider and provide SARS with timeous feedback); and

7.1.7.2.2 in the case of changes affecting a single SARS site, provide SARS with at least 3 (three) Business Days' notice in advance.

- 7.1.7.3 Should it be critical to perform emergency maintenance outside the aforementioned maintenance windows, Service Provider will, where practically possible, notify SARS of such emergency maintenance in accordance with clause 7.1.7.2. If not practically possible to provide SARS with the required notification, Service Provider will provide reasonable notice to SARS or will inform SARS of the emergency maintenance within:
- 7.1.7.3.1 5 (five) minutes after the emergency maintenance has begun, should any of the Services be affected; or
- 7.1.7.3.2 30 (thirty) minutes after the emergency maintenance has begun, should the Services not be affected.
- 7.1.7.4 Downtime experienced by SARS without the required notice periods having been given by the Service Provider to SARS as set out in clause 7.1.7.2 will be regarded as unscheduled downtime.
- 7.1.8 No Change may commence without the prior approval of the SARS Change Advisory Board ("**SARS CAB**").
- (a) SARS will not unreasonably withhold its approval for Changes solely to the Service Provider environment under clause 7.1.2(c) provided that (i) Service Provider puts SARS in the position it would have been had any adverse effects (including operational and economic) not resulted from such Change, and (ii) the impact on SARS, the Services or the SARS environment is not material.
- (b) SARS may withhold approval for, in its sole discretion, any other Change.

7.2 Operational Change Management Procedures

- 7.2.1 By at least 60 (sixty) days prior to the Commencement Date, Service Provider will prepare for SARS's review and approval detailed operational change management processes and procedures for the Operational Change Management Services. Such processes and procedures will interface seamlessly with the applicable SARS PPS&G and the other Service Management Processes. Service Provider will incorporate SARS's comments on such procedures and include such revised processes and procedures in the Process and Procedures Library promptly but in no event later than thirty (30) days after SARS has provided such comments ("**Operational Change Management Procedures**"). The Operational Change Management Procedures will be based on the processes and procedures set forth in this clause 7.2, and, to the extent consistent with the processes and procedures set forth in this clause 7.2, Service Provider's standard processes and procedures that it uses to perform operational change management services for other customers.
- 7.2.2 Service Provider will follow the Operational Change Management Procedures from the date that they have been approved by SARS. Before such date, the Services Provider will follow the processes and procedures that are set forth in this clause 7.2 supplemented with Service Provider's own standard processes and procedures (to the extent they are not inconsistent with this clause 7.2).

- 7.2.3 Service Provider will promptly update the Operational Change Management Procedures to reflect any Changes in the applicable SARS PPS&G. Service Provider will submit the revised Operational Change Management Procedures to SARS for its review and approval in the same manner as set forth in clause 7.1.1 above.
- 7.2.4 The Operational Change Management Procedures must meet the following requirements:
- (a) the Operational Change Management Procedures will include a set of sub-processes designed to: (i) manage and control the response to planned Changes; (ii) control creation and execution of plans for approved projects, including reporting on progress and issues; (iii) ensure that ownership responsibilities for resources will be properly exercised; and (iv) assess the potential operational impact of Changes on SARS;
 - (b) the Operational Change Management Procedures will embody the principle that Changes may only be commenced after approval by the SARS CAB.
 - (c) The Operational Change Management Procedures will include procedures for co-ordinating Change activity with SARS's operational change procedures as set out in the applicable SARS PPS&G consistent with clause 7.1.2. As part of such co-ordination, Service Provider will invoke the SARS Operational Change Management Procedures for each Change; provide any required information, notices or updates; provide or participate in (as requested by SARS) assessments, evaluations or analyses of the proposed Change, including its Impact and Urgency; seek SARS approvals and provide for SARS reviews when mandated (for example, approvals will be required to proceed with planning a Change and subsequently to implement such Change); promptly notify SARS of status updates and any problems in implementation; and participate in post-implementation reviews or verifications. In doing so, Service Provider will adhere to the relevant timescales specified in the applicable SARS PPS&G or otherwise specified by SARS;
 - (d) the Operational Change Management Procedures will facilitate a high degree of co-ordination and communication across SARS business units and facilitate measures to minimise the business Impact and risk to SARS of any Change activity;
 - (e) the Operational Change Management Procedures will provide processes for managing conflicts of timing, resources and priorities;
 - (f) the Operational Change Management Procedures will enable the clear assignment of responsibility for individual Changes to be established and maintained throughout the change process, with regular and applicable progress updates communicated back to those affected; and
 - (g) the Operational Change Management Procedures will include an emergency change process for any Changes that must be implemented in less than the minimum scheduled change period

provided for by the applicable SARS PPS&G, including for a Change that is judged by SARS as to have a material operational impact and is classified by SARS as 'urgent' and a Change needed in response to an Incident.

7.3 Processing Changes

7.3.1 Recording

Service Provider will record or log all requests for change ("**Requests for Change**" or "**RFC**"). When an RFC is submitted in order to diagnose or resolve an Incident, Problem or Known Error, Service Provider will also link the RFC to the related Incident, Problem or Known Error.

7.3.2 Acceptance

- (a) After recording the RFC, the Parties will make an initial assessment to determine if such RFC is unclear, irrational, impractical or unnecessary and, if so, reject it.
- (b) Service Provider will record on the RFC all the CI's that are related to, or impacted by, the RFC.
- (c) Service Provider will update the change record to include the information required for further processing (e.g., implementation plan).

7.3.3 Classification

- (a) Once an RFC has been accepted, the Parties will determine the Impact and Urgency (and thereby risk). The presumptive timing for implementing the RFC is specified by the SARS PPS&G according to the risk of the RFC. Deviations in timing may only be made with SARS's prior approval in its sole discretion.

7.3.4 Planning and Approval

- (a) All Changes will be implemented only after Service Provider has obtained the required approvals in accordance with the applicable SARS PPS&G. Where Service Provider has obtained the required approvals for the design of a standard Change, Service Provider will not be required to obtain SARS's approval for further implementations of such standard Change so long as there are no alterations to the design of the standard Change. The other Change Management Procedures relating to implementing a Change will apply to each implementation of a standard Change (e.g. co-ordination and requirements regarding scheduling the implementation of the Change, any required testing, etc.).
- (b) Service Provider will plan all Changes and list them on SARS's forward schedule of changes ("**FSC**"). Service Provider will submit to SARS for inclusion in the FSC pertinent details of all Changes and their planned implementation dates.

7.3.5 Executing Changes

(a) Build Phase

- (i) Where applicable, Service Provider will plan and execute a specific building phase for Changes.
- (ii) Service Provider will prepare a sufficiently detailed back-out plan (i.e., a plan describing the process to be followed to reverse a Change) ("**Back-out Plan**") before implementing any Change that could have an adverse impact (as determined by SARS) on SARS, the Services, taxpayers or SARS constituents if the Change is not successful or cannot be completed on time. Such Back-out Plan will include:
 - a. fall-back procedures if it is necessary to reverse a Change due to a failure;
 - b. modification and escalation lists;
 - c. Workaround plans; and
 - d. risk assessments.
- (iii) Service Provider will prepare a sufficiently detailed communication plan before implementing any Change that impacts taxpayers.
- (iv) Service Provider will prepare a sufficiently detailed implementation plan for all Changes.

(b) Testing

- (i) Before implementing any Changes (or as otherwise mutually agreed in a specific instance), Service Provider will test the back-out procedure; Change implementation; and envisaged result of the Change. In conducting such testing, Service Provider will give due consideration to any change criteria defined by the SARS CAB.
- (ii) Service Provider will not implement Changes without first conducting testing that is independent of the testing conducted by the builders of the Change. Such testing will consist of user acceptance testing for any Changes unless otherwise agreed.
- (iii) Unless SARS agrees otherwise with respect to a particular Change, Service Provider will develop for SARS's approval a test plan and acceptance criteria for each Change. Service Provider will proactively recommend objective test criteria for approval by SARS and the determination as to whether a test was successful will be made on the basis of whether the test results met the applicable acceptance criteria for the testing effort as set out in the relevant test plan.
- (iv) Service Provider's Commercially Reasonable Efforts in fulfilling its testing obligations for Changes will include performing testing on such components in as near real life conditions as is according to SARS's instructions.

(c) Implementing

- (i) After completing the building and testing activities described in clauses 7.3.5(a) and 7.3.5(b), Service Provider will implement the Change, after obtaining the necessary approvals to implement, in accordance with this clause 7.3.5(c) and conduct additional testing in order to verify that the implementation of the Change was successful.
- (ii) Service Provider will implement all Changes authorised by SARS. Service Provider's obligations for implementing Changes, including Changes that are incorporated into Projects that have been approved for implementation, will include:
 - a. project managing the implementation of the Change;
 - b. keeping SARS informed (through the SARS Program Manager) on an on-going basis as to the status of the implementation of the Change, including providing status reports; and

- c. mutually agreeing the applicable test requirements with SARS prior to commencing the implementation of a Change.

7.3.6 Evaluation

- (a) Service Provider will evaluate all Changes after they have been implemented and apprise the SARS CAB of the results of its evaluation.
- (b) The SARS CAB will decide whether any follow-up is needed, based on considerations such as whether the Change achieved the expected objective, whether users are satisfied with the result, and whether there were any side effects.
- (c) Upon completing the RFC Service Provider will mark the RFC as completed and include the results in the post-implementation review or Change evaluation. The RFC may only be closed by SARS, and SARS will do so once SARS has verified that the Change was completed successfully.
- (d) If the Parties do not agree that the Change was successful, Service Provider will restart the Operational Change Management Procedure where it went wrong, using an approach that (i) is modified to address the failure(s) and (ii) is approved by SARS before Service Provider may recommence performing the Change.

7.3.7 Implementing Urgent Changes

- (a) Service Provider will implement urgent changes in accordance with SARS's PPS&G addressing emergency or Urgent Change procedures. Where a diversion of resources of Service Provider would allow an Urgent Change to be implemented more quickly, Service Provider will apprise SARS of that option, including the consequences to the Services of diverting such resources. If SARS in its sole discretion authorises the redeployment, Service Provider will be excused for failing to perform Services in a timely fashion that the redeployed resources would have performed but solely to the extent of the impact advised by Service Provider in advance and solely to the extent Service Provider could not reasonably have performed the affected Services nonetheless using Commercially Reasonable Efforts.
- (b) Service Provider will minimise the number of urgent Changes by ensuring where possible that Changes are requested sufficiently in advance, before they become urgent.
- (c) Where possible, SARS will organise an emergency meeting of those SARS CAB members whose participation is needed to evaluate, authorise, and provide the resources for an Urgent Change.
- (d) Where time does not permit normal tests to be performed before an urgent Change is made as agreed by SARS, as soon as possible

thereafter Service Provider will complete all the required stages of the normal testing process and will update the Change records.

7.3.8 Procedures for Submitting Changes

Service Provider will submit all Changes in accordance with the requirements set out in the SARS PPS&G.

7.3.9 Other Operational Change Management Responsibilities

- (a) Service Provider will attend SARS's regularly scheduled and ad hoc meetings regarding Operational Change Management in respect of the Services when called upon to do so by SARS.
- (b) Service Provider's responsibilities with respect to Operational Change Management also include the following:
 - (i) controlling Changes and implementing Changes only as approved by SARS;
 - (ii) implementing Changes in a manner that ensures continuity;
 - (iii) communicating, scheduling and reviewing proposed Changes with SARS to minimise disruption of normal business processes;
 - (iv) collecting data on each Change attempted, including the cause of any resulting Incidents or Problems, measures taken to prevent reoccurrence, and impact on end users;
 - (v) providing an audit trail of each Change; and
 - (vi) defining the roles and responsibilities of the functional areas involved in the Operational Change Management Procedures, as well as formalising the communication process between the Parties.
- (c) Service Provider will comply with SARS's release readiness process as defined in the SARS PPS&G.

7.4 Operational Change Management Outputs

Service Provider will amongst others, produce the following outputs from Operational Change Management: updates to SARS's FSC; and Service Provider Operational Change Management reports.

8 CONFIGURATION AND INVENTORY MANAGEMENT

- 8.1 Service Provider will maintain a Configuration Management database that is accessible by SARS, and which documents the configuration and configuration requirements for the Services. The configuration database will be updated real-time as the inventory is

changed by any order activity or change. Service Provider will provide a mechanism to give SARS access to such Configuration Management database including queries run against the Configuration Management database to be accessible from the Monitoring and Reporting Portal. Service Provider will, in addition, provide a monthly inventory listing of all invoices for all accounts/locations for data services.

- 8.2 Service Provider will adopt SARS's existing network naming scheme with respect to the Services and will not make any changes, nor will require changes to be made, to SARS's network naming scheme without SARS's prior written approval (which SARS may withhold at its sole discretion).

8.3 Escalation

- 8.3.1 Any operational related communication relating to the Services will be escalated in accordance with the escalation procedures set out in **Appendix E-2 (Escalation Procedure)**.
- 8.3.2 As part of the escalation procedures set forth in the Process and Procedures Library, each Party will provide and update the other Party with the names and mobile phone numbers of 1 (one) or more individuals who will serve as points of contact for urgent concerns. Each Party will make a contact person available on a 24x7x365 basis.

9 ACCEPTANCE TESTING AND DELIVERY

- 9.1.1 To ensure the successful implementation of the Services within SARS's environment.
- 9.1.2 The Service Provider shall:
- 9.1.2.1 conduct Acceptance Testing of the Services in order to ensure that once implemented, the Services will conform to the functional specification required by SARS in terms of the BRS.
 - 9.1.2.2 in conducting Acceptance Testing comply with the process and procedures set out below.
- 9.1.3 **Pre-delivery Testing:**
- 9.1.3.1 Prior to presenting any Deliverable to SARS for Acceptance Testing, the Service Provider will carry out Pre-delivery Testing in order to ensure that the Deliverable functions in accordance with the relevant functional specifications and complies with the BRS.
- 9.1.4 **Acceptance Testing Procedure:**
- 9.1.4.1 Following delivery of the Services, SARS shall in its discretion, conduct Acceptance Testing thereof (collectively referred to as "Tested Deliverable(s)").
 - 9.1.4.2 During Acceptance Testing, the Service Provider shall (if required by SARS), assist SARS, to the extent necessary and reasonable, in conducting the Acceptance Testing and respond to any queries relating to the Services

and/or Tested Deliverables, within a reasonable time. Without limiting the foregoing, the Service Provider shall be available to liaise with SARS regarding any queries arising with regard to the Tested Deliverables and its related documentation and shall assist SARS with its evaluation of such Tested Deliverables and its related Documentation.

- 9.1.4.3 Should SARS not accept the Tested Deliverables and/or its related Documentation, SARS shall provide the Service Provider with written notice of its non-acceptance of such Tested Deliverables and/or its related functional specification. The Service Provider shall correct any deficiencies in such Tested Deliverables and functional specification within timeframe agreed upon by the Parties in writing to ensure that such Tested Deliverable is free from deficiencies and conform to SARS's business and security requirements, where after such Tested Deliverable will be resubmitted to Acceptance Testing in accordance with this Clause.
- 9.1.4.4 The acceptance of the functionality of the Tested Deliverables shall be governed by a test and acceptance procedure and criteria, which shall demonstrate the correct and satisfactory operation and functioning of the relevant functionality of the Tested Deliverables in accordance with the Documentation.
- 9.1.4.5 SARS shall have the right to review and accept or reject all Tested Deliverables and any components of such Tested Deliverables to be provided by the Service Provider to SARS under this Agreement, pursuant to the methodology set forth in this Clause.
- 9.1.4.6 The Service Provider will be available to liaise with SARS regarding any queries arising with regard to a Deliverable and will assist SARS with its evaluation of Tested Deliverables.
- 9.1.4.7 Should SARS not accept the Tested Deliverable, SARS will provide the Service Provider with written notice of its non-acceptance, as well as detailed reasons for it not being acceptable. The Service Provider will correct any deficiencies within 5 (five) business days of receiving SARS's notice, where after the Tested Deliverables will be resubmitted to SARS for review and evaluation in accordance with this Clause 9.
- 9.1.4.8 If the Service Provider is still unable to correct the Deficiency within this period, then SARS may in its sole discretion elect to –
 - 9.1.4.8.1 direct the Service Provider to continue its efforts to make the Tested Deliverables acceptable to SARS, in which case the Service Provider shall continue such efforts; or
 - 9.1.4.8.2 accept the deficient Tested Deliverables, in which event the Services Fees with respect to such Tested Deliverables shall be equitably reduced to reflect the presence of such Deficiency; or
 - 9.1.4.8.3 without limiting the generality of SARS's right to terminate the Services Agreement for cause or to claim damages, without liability by providing written notice to the Service Provider, in which case the Service Provider shall refund to SARS all amounts paid by SARS to

the Service Provider in respect of that Tested Deliverables. Such refund shall be made within 14 (fourteen) days of receiving SARS's notice.

9.1.5 Functionality Testing

- 9.1.5.1 Upon delivery of any Tested Deliverables, SARS shall conduct Acceptance Testing thereof and record in writing the outcome of the Acceptance Testing, including any failures or exceptions noted during the Acceptance Testing.
- 9.1.5.2 During Acceptance Testing, the Service Provider shall assist SARS, to the extent necessary and reasonable, in conducting the Acceptance Testing and respond to any queries relating to the operation and/or functionality of any Tested Deliverables within a reasonable time. The Service Provider shall further assist SARS with the evaluation of such Tested Deliverables.
- 9.1.5.3 Should SARS not accept the Tested Deliverable and/or its related documentation, SARS shall provide the Service Provider with written notice of its non-acceptance of such Tested Deliverable. The Acceptance Testing will be repeated in respect of such failures or any element which was not approved by SARS in order to correct any deficiencies in such Tested Deliverable, until SARS is satisfied with the outcome of the Acceptance Testing. The Service Provider shall correct any deficiencies in such Tested Deliverable and its related documentation within 24 (twenty-four) hours of receiving SARS's notice to ensure that they are free from deficiencies and conform to SARS's business and security requirements, where after such Tested Deliverable will be resubmitted to Acceptance Testing in accordance with the provisions of Clause 9.1. 1.
- 9.1.5.4 If the Service Provider is unable to correct such deficiencies within a period of 14 (fourteen) days, SARS shall, without limiting any of its other rights contained in this Agreement, be entitled to a refund of the Service Fees paid for such Tested Deliverable and its related Documentation and shall return the Deliverable and its related Documentation to the Service Provider. Such refund shall be made within 14 (fourteen) days of receiving SARS's notice.
- 9.1.5.5 The Service Provider will ensure that the Tested Deliverable procured in terms of this Agreement are compatible with the information technology and telecommunications standards and architectures of SARS. This information is available to the Service Provider upon prior written request.
- 9.1.5.6 Once SARS is satisfied with the outcome of Acceptance Testing, SARS will furnish the Service Provider with a formal acceptance of the functionality of the Tested Deliverable.

9.1.6 Documentation

- 9.1.7 The Service Provider shall deliver the Documentation in respect of each Tested Deliverable on the date agreed upon by the Parties for review and approval. SARS shall give the Service Provider written notice of its approval or non-approval of the Documentation. If the Service Provider does not approve the Documentation, SARS shall give written reasons for its non-approval of the deliverable.

- 9.1.8 Once SARS is satisfied with the outcome of the approval process, SARS shall furnish the

Service Provider with a formal acceptance of the Documentation.

10 MAINTENANCE

- 10.1.1 The Service Provider will perform preventative maintenance, corrective maintenance, emergency maintenance in respect of the Service in accordance with the applicable original equipment manufacturer's guidelines and, in any case, no less frequently than annually.
- 10.1.2 The Service Provider will perform preventative maintenance, corrective maintenance in accordance with the Change Management Procedures.
- 10.1.3 Service Provider shall be responsible for performing preventative maintenance will include but not limited to providing updates with respect to the WhatsApp Business Solution Platform and/or Software, to prevent errors, and otherwise to minimise the need for corrective maintenance. The Service Provider's obligations in this regard include performing configuration services, application tuning, code restructuring, database indexing, database compaction, and other similar activities required to improve the efficiency, performance, and reliability of the WhatsApp Business Solution Platform and/or Software and/or Systems. Providing technical and other information regarding the WhatsApp Business Solution Platform and/or Software. Performing other preventive maintenance functions reasonably required to maintain the WhatsApp Business Solution Platform and/or Software in good working order.
- 10.1.4 Service Provider responsible for performing corrective maintenance will include but not limited to developing patches, fixes, maintenance releases and other corrections ("Corrections") for all (i) errors, abnormal, termination, performance or operational issues, security holes or other vulnerabilities and (ii) other issues arising from operation, use, performance or functionality of the WhatsApp Business Solution Platform and/or Software (collectively, the 'Problems'). Whenever a Correction is introduced, Service Provider shall be responsible for promptly updating the Documentation.
- 10.1.5 If Problem or Incident rises to the level of an operational emergency with respect to WhatsApp Business Solution Platform and/or Software, 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 WhatsApp Business Solution Platform and/or Software that is lost, incorrect or corrupted.

11 SERVICE OPTIMIZATION

- 11.1 Service Provider will perform an annual cost and efficiency review of the Services and make recommendations for optimizing Services based on SARS's usage of particular components of the Services. Analysis and recommendations will be provided to SARS in writing within 1 (one) month prior to the anniversary of the Effective Date and, at a minimum, will include comprehensive analysis and recommendations for optimization.
- 11.2 SARS has the right to participate in the annual cost and efficiency review (including by using external consultants) to be conducted by Service Provider described in clause

11.1.

- 11.3 If SARS reasonably determines that Service Provider should have made a service optimization recommendation but did not, and as a result, over a 12 (twelve) month period SARS paid Service Charges totalling 2% (two percent) (or more) in excess of the Service Charges it would have paid had Service Provider made (and had SARS exercised) such recommendation, Service Provider will refund (or credit) such excess payments. The refund (or credit) will be calculated from the first day of the 12 (twelve) month period that begins 90 (ninety) days following the date that Service Provider should have submitted the written results and recommendations of the relevant annual cost and efficiency review to the date that the optimization is actually implemented.
- 11.4 If Service Provider achieves advances in technology that can substitute current products and/or services with similar features, performance, and functionality, SARS reserves the right to use Service Provider's new technology. If SARS elects to use the new technology, Service Provider will offer the services at prices and Service Levels that are commensurate with the contract terms and Charges offered in the Agreement.
- 11.5 If SARS desires to migrate the Services or a component of the Services to an alternative solution that is provided using different technology and if the Service Provider does not offer such technology or is unable to provide that technology competitively (considering terms and conditions, Service Levels, price and technical capability), then SARS may discontinue the components of the Services being replaced by the alternative solution with no liability (other than paying for Services properly provided prior to the effective date of such termination).
- 11.6 SARS will not be obligated to provide Service Provider with a first bid, last call or other such right under any circumstances, including events described in clause 11.5

12 TERMINATION AND DISCONNECTION

- 12.1 There will be no termination charge or liability for terminating any component of the Service(s) other than those set out in **Schedule D (Charges, Invoicing and Payments)** and its Attachments.
- 12.2 Except in cases in which a notice given by SARS expressly states otherwise, a notice of termination of the Agreement on a certain date that is delivered by SARS to Service Provider will also be deemed to be a notice of termination of each component of the Services, with the sole exception of any component of the Services as SARS at its sole discretion may elect to continue. This provision does not relieve Service Provider of providing Disengagement Assistance for the terminated Services.
- 12.3 The Service Provider will serve SARS with a written notice 14 (fourteen) days prior to the disconnection of any component of the Service. If SARS is the cause for such written notice to be served by the Service Provider, the Service Provider will provide SARS an opportunity to cure such cause prior to the disconnection of the component of the Services. If Service Provider disconnects a component of the Service without serving SARS with written notices upon SARS's instruction the Service Provider will immediately restore such component of the Service.
- 12.4 Service Provider and SARS agree that Service Provider's improper disconnection of an individual component of the Service will cause SARS to suffer significant monetary

damages which are incapable of precise calculation. Accordingly, if Service Provider improperly disconnects an individual component of the Service, Service Provider will pay liquidated damages equalling 3 (three) months' Charges for the improperly disconnected component of the Service. If the Charges for the improperly disconnected component of the Service are usage based, then the liquidated damages will be equal to the average of the previous 3 (three) months' invoiced Charges.

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SCHEDULE B-S: WHATSAPP BUSINESS SOLUTION PLATFORM SOW

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SCHEDULE B-S

WHATSAPP BUSINESS SOLUTION PLATFORM SOW

1 INTRODUCTION

Service Provider will provide, operate, manage, administer, monitor, design, engineer, develop, implement, optimise, support and maintain:

- 1.1 the WhatsApp Business Solution Platform and the infrastructure necessary for such instant messaging platform;
- 1.2 the Services described in this **Schedule B-S** and the **Appendices to this Schedule B-S**;
- 1.3 the Services described in **Schedule B** and the **Appendices to Schedule B**;
- 1.4 any other obligations of Service Provider under this Agreement relating to the WhatsApp Business Solution Platform, Maintenance Services and Support Services (e.g., Service Levels, reporting),

save for those services, activities, functions, and responsibilities set out in **Appendix B-I-2 (WhatsApp Business Solution Platform Dependencies)**

(collectively, the “**WhatsApp Business Solution Platform**”).

2 SARS'S OBLIGATIONS

- 2.1 Service Provider will advise SARS of such information as may be required in order to enable Service Provider to render the Service.
- 2.2 Service Provider may with SARS's prior written consent and subject to the provisions of clause 15 of the Main Agreement disclose only such information as may be legally required by a regulatory or other competent authority.
- 2.3 SARS will comply with:
 - 2.3.1 the relevant provisions of any enactment, or other competent authority, as advised by Service Provider to SARS from time to time;
 - 2.3.2 any licence granted thereunder which governs the operating of electronic communications services by SARS;
 - 2.3.3 any code of practice regulating the provisions of the WhatsApp Business Solution Platform;
 - 2.3.4 WASPA's Code of Conduct, in so far as it is applicable to SARS.
- 2.4 ensure that all marketing and/or promotional material issued by it or on its behalf in

respect of or in connection with the Service in terms of this Agreement complies in all respects with WASPA's Code of Conduct or order of court.

3 SERVICE PROVIDER'S OBLIGATIONS

- 3.1 Service Provider will use all reasonable endeavours to maintain the Service 24 (twenty four) hours a day and will render the Services in accordance with the Service Levels contained in **Schedule C (Service Levels)**.
- 3.2 Service Provider may withdraw, terminate or suspend the Service to SARS if required by any network operator or by any statutory or regulatory authority or order of court. Service Provider will immediately advise SARS of the intention to withdraw, terminate or suspend the Service and will provide SARS with written reasons for such action. All fees and charges payable by SARS to Service Provider in respect of the Services will be *pro rata* reduced for the period that the Service was withdrawn, terminated or suspended.

4 OPERATIONAL REQUIREMENTS

4.1 Service Management Services

Except as otherwise provided herein, the WhatsApp Business Solution Platform does not include an obligation to perform the specific service management services, provided, however, that, Service Provider is required to comply with commercially reasonable requirements of ISO 20000 and, in any event, Service Provider is also required to follow any additional service management processes it needs to follow in order to satisfy the Performance Standards.

4.2 WhatsApp Business Solution Platform Monitoring and Reporting

4.2.1 Service Provider will monitor the WhatsApp Business Solution Platform on an on-going basis and promptly notify SARS of any potential Incidents, Problems or other irregular issues relating to the Services in accordance with the notification and escalation procedures as set out in this SOW and in accordance with SARS PPS&G.

4.2.2 Service Provider will provide an interface to its network management tools with SARS's current network management tools (or those of its designated agent) Service Provider's network management tools are specified in Schedule G (Service Provider Proposal).

4.3 Monitoring and Reporting Portal

4.3.1 Service Provider will, as part of the WhatsApp Business Solution Platform and at no additional charge, provide a secure web-based portal (the "**Monitoring and Reporting Portal**") accessible only by Service Provider, SARS and SARS's designated agents to provide monitoring and reporting functionality. The Monitoring and Reporting Portal will be available on a 24x7x365 basis and accessible from the Internet. The Monitoring and Reporting Portal will provide SARS with the ability to view and print on an as needed basis:

4.3.1.1 real-time (or near real time with no longer than 10 (ten) minutes delayed updating) status of all in-scope elements of the WhatsApp Business Solution Platform including:

4.3.1.1.1 Up / down availability of Services

4.3.1.1.2 Capacity utilisation of Services

4.3.1.1.3 Queue status

4.3.1.1.4 Error rates

4.3.1.2 up-to-date accumulated statistics (or near real time with no longer than 10 minutes delayed updating) of all in-scope elements of the WhatsApp Business Solution Platform over the term of the agreement including:

4.3.1.2.1 Traffic volumes

4.3.1.2.2 Incidents and problems

4.3.1.2.3 Error rates

Detailed time interval records should be kept for at least 60 (sixty) days.

4.4 Monitoring of Inactive Components

The Service Provider will monitor the usage of all components as part of the Services. The Service Provider will notify SARS on a monthly basis of all components that have carried no operational traffic for a period of 30 (thirty) consecutive days (an “**Inactive Component**”) and propose cancelling such Inactive Component. If SARS confirms the cancellation of such Inactive Components the Service Provider will regard such confirmation as notice of cancellation and take such Inactive Component out of service on expiry of the notice period. If the Service Provider fails to report an Inactive Component to SARS timeously, the Service Provider will be liable for all charges SARS may bear for such Inactive Component in excess of the charges SARS would otherwise have had to bear if the Service Provider had provided timeous notice and SARS had provided immediate notice of cancellation.

5 SECURITY SERVICES

5.1 Introduction

- 5.1.1 Service Provider will perform security services as part of the Services, including the Services described in this clause 5 (**Security Services**) and will do so in accordance with the SARS PPS&G and in a manner that interfaces seamlessly and non-disruptively with SARS’s processes and procedures for Security Services.
- 5.1.2 Within 60 (sixty) days after the Effective Date Service Provider will develop and deliver to SARS for its review and approval procedures (**Security Procedures**) detailing how Service Provider will implement its responsibilities under this clause 5 and interface with SARS, which Security Procedures will be consistent with the SARS PPS&G. Service Provider will implement any reasonable SARS comments on such Security Procedures and include such Security Procedures in the Process and Procedures Library. Service Provider will keep such Security Procedures current throughout the Term by proposing changes for SARS’s review and approval and incorporating SARS’s reasonable comments. Service Provider will follow the then-current Security Procedures in its performance of the Security Services.

APPENDIX B-S-2: WHATSAPP BUSINESS SOLUTION PLATFORM DEPENDENCIES

[Note to the Bidder: SARS is seeking a solution in which the Service Provider takes complete responsibility and disfavours solutions which shift responsibilities back to SARS.

With this in mind, please identify any dependencies on which the charges or any of Service Provider's responsibilities may depend.]

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APPENDIX B-S-3: WHATSAPP BUSINESS SOLUTION PLATFORM REPORTS

[Note to the Bidder:

This schedule will be completed as part of final contract negotiations. The additional reports which the Bidder proposes as part of its solution should be specified in detail with sample output if possible, including the mode of delivery, frequency, detail of fields etc. The minimum set of reports are stated in the requirements of *RFP 23/2022 Business Requirements Specification*

The Bidder is encouraged to supply and to make available, any additional online reports that will be available on the reporting portal that will be part of the Bidder's proposed solution. The Bidder should supply details of the reports/screens/custom enquiries that will be made available.]

APPENDIX B-S-4: WHATSAPP BUSINESS SOLUTION PLATFORM SPECIFICATIONS AT EFFECTIVE DATE

[Note to the Bidder: this schedule will be completed as part of final contract negotiations.]

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SCHEDULE C: SERVICE LEVELS

Appendices and Attachments

Appendix C-S	Service Levels applicable to WhatsApp Business Solution Platform, Maintenance and Support Services
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1 INTRODUCTION

1.1 General

1.1.1 This **Schedule C (Service Levels)** and its Appendices set out the Service Levels that will apply during the Term and the method for calculating any Service Level Credits that will apply if Service Provider fails to perform the Services in accordance with such Service Levels.

- (a) **Appendix C-S** sets out the Service Levels, Critical Deliverables and Service Level Credits that apply specifically to the WhatsApp Business Solution Platform.

[Note to the Bidder: the relevant Appendix will be included in the final contract]

1.1.2 The measurements and Service Levels set forth in this **Schedule C** and its Appendices will be used to measure Service Provider's performance of the Services. During the Term, new Service Levels may be added by SARS or substituted by agreement between the Parties in order to achieve a fair, accurate, and consistent measurement of Service Provider's performance of the Services. For example, such additions or substitutions may occur in conjunction with changes to the environment and the introduction of new hardware or Software or means of Service delivery; provided, however, that where such hardware or Software or means of Service delivery is a replacement or upgrade of existing technology, there will be a presumption of equivalent or improved performance.

1.1.3 Service Provider will monitor its performance of the Services with respect to the Service Levels on a continuous basis.

1.1.4 Service Provider will measure and report on its performance of the Services with respect to the Service Levels as set out in this **Schedule C (Service Levels)**.

1.1.5 Any disputes regarding the accuracy of the Service Level reports produced by the Service Provider that cannot be resolved at an operational level will be escalated in accordance with the dispute resolution procedure set forth in clause 25 of the Main Agreement.

1.2 Service Levels

- 1.2.1 Service Provider will perform the Services in accordance with the Service Levels from the Effective Date.
- 1.2.2 From the Effective Date, Service Provider will perform the services that were performed by or provided to SARS prior to the Effective Date, and which correspond to the Services, in accordance with this **Schedule C (Service Levels)** and with at least the same degree of accuracy, completeness, efficiency, quality, responsiveness and timeliness as was provided prior to the Effective Date unless otherwise specifically provided for in this Agreement. Service Provider will perform the Services to the highest standards prevailing in the WhatsApp Business Solution Platform service provider industry. Moreover, Service Provider will perform the Services promptly, using reasonable skill and care and in a professional and workmanlike manner. Service Provider will also perform the Services in accordance with any other Performance Standards specified in the Agreement.

1.3 Changes in Service Levels

The Service Levels will change in accordance with the following:

- 1.3.1 Annually upon each anniversary of the Effective Date, SARS and Service Provider will review the Service Levels and will make adjustments to them as appropriate to reflect improved performance capabilities associated with advances in the technology and methods used to perform the Services. The Service Levels will be improved over time.
- 1.3.2 A communication channel may also have one of two service coverage periods (each, a 'Service Coverage Period') designated as the period of time during which Service Levels are to be measured against Service Provider's provision of the Services. The Service Coverage Periods are set forth below. SARS has designated the Service Coverage Period of each communication channel as of the Effective Date in **Schedule I: SARS Sites**. If no Service Coverage Period is specified for any communication channel, its Service Coverage Period will be Premium as defined in paragraph 1.3.3 below. SARS may change the designation of a communication channel in terms of its Service Coverage Period designations as provided with 60 (sixty) days' notice to the Service Provider.

1.3.3

Premium	24x7x365
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1.4 Status of Service Level Credits

The following will apply in respect of Service Level Credits:

- 1.4.1 Service Level Credits ("**Service Level Credits**") are a price adjustment for the relevant period or order as detailed below to reflect the reduced level of Service performed by Service Provider. Service Level Credits are not an estimate of the loss or damage that may be suffered by SARS as a result of the Service Level Failure.
- 1.4.2 The payment of a Service Level Credit by Service Provider is without prejudice to, and will not limit, any right SARS may have to terminate this Agreement and/or seek damages

or other remedies at law resulting from such Service Level Failure and any resulting termination.

- 1.4.3 Notwithstanding the provisions of clauses 1.4.1 and 1.4.2, any claim for damages resulting from such Service Level Failure, in respect of which a Service Level Credit has already been paid, will be reduced by the amount paid to SARS in respect of that Service Level Credit.

2 PERFORMANCE AGAINST SERVICE LEVELS

2.1 Measurement

- 2.1.1 Except as otherwise set out in the description of the individual Service Level, Service Provider's performance with respect to the Service Levels will:

- (a) commence being measured by Service Provider on the Commencement Date; and
- (b) be measured against Service Provider's Actual Performance of the Services against the Service Levels, not merely a sampling of its performance of such Services.

- 2.1.2 Except as otherwise specifically provided herein, Service Provider will be responsible for monitoring, measuring and reporting on performance as required to apply the Service Levels, including the provision, installation and support of any automated Tools required or appropriate for such purpose. Service Provider will provide, deploy, implement, and make operational a Service Level measurement system that will collect, calculate and report data as required to determine Service Provider's compliance with each of the Service Levels. Such Tools:

- (a) will be automatic and/or electronic, to the extent technically feasible and commercially reasonable. Service Provider acknowledges and agrees that such Tools may evolve over time as more advanced Tools with improved performance measurement capabilities become available in the marketplace;
- (b) will be acquired, implemented and maintained at Service Provider's own cost and expense; and
- (c) will be able to produce reports at a level of detail which are sufficient to verify Service Provider's compliance with the Service Levels.

- 2.1.3 SARS will have the right to perform an audit on the Tools described above in clause 2.1.2 in accordance with clause 24 of the Main Agreement to determine whether the Tools are functioning properly; provided however that if SARS reasonably believes that Service Provider may be in breach of the provisions of this clause, SARS may promptly initiate an audit of the Tools on reasonable notice to Service Provider.

- 2.1.4 The Service Level measurement system implemented by Service Provider will be documented as part of the Process and Procedures Library and the system will include the following information regarding a Service Level Failure:

- (a) the nature of the Service Level Failure;
- (b) the specific Service or Services that are impacted;
- (c) the start time and date of all Service Level Failures;
- (d) the time and date on which the Service is fully restored or is fully compliant;
- (e) the root cause of the Incident or other event that gave rise to the Service Level Failure;
- (f) the impact of the Service Level Failure on other components of the Services and associated trend analyses; and
- (g) a summary of (i) the steps Service Provider has taken to determine the root cause of the Service Level Failure; (ii) the steps Service Provider has taken to restore the Service or to restore compliance; and (iii) the steps Service Provider has taken to reduce, to the extent reasonably possible, the likelihood that such Service Level Failure will be repeated.

2.2 Actions on Failures

2.2.1 In respect of any Service Level Failure, Service Provider will:

- (a) investigate, assemble, and preserve pertinent information with respect to, and report on the causes of, the Incident, including performing an appropriate root cause analysis of each Incident which led to the Service Level Failure;
- (b) propose and execute a written corrective action plan;
- (c) advise SARS of the status of remedial efforts being undertaken with respect to such Incident. In this respect, Service Provider will track the status of such remedial efforts and make available such progress information to SARS through an electronic on-line tool;
- (d) minimise the impact of the Incident, correct it, and resume meeting the Service Level as soon as possible once it is corrected; and
- (e) use Commercially Reasonable Efforts to employ preventive measures to ensure that the Incident does not recur, including allocating additional Service Provider Personnel and resources to the performance of the Services and proposing changes to the procedures it uses to perform the Services.

2.2.2 Service Provider will, on a monthly basis, perform trend analyses on the Service Level performance data. If Service Provider or SARS identifies a trend in Service Level performance which reasonably indicates a meaningful risk of a future Service Level Failure, then Service Provider will perform a root cause analysis with respect to the trend, report to SARS on its findings and use Commercially Reasonable Efforts (as approved by SARS) to prevent the Service Level Failure from actually occurring.

2.3 Reporting

- 2.3.1 Service Provider will issue a report ("**Service Level Report**") at the end of each month during the Term, containing the quantified performance of the Service Provider for that month with respect to all the Service Levels as defined in this **Schedule C (Service Levels)**. The Service Level Report must be presented to SARS on or before the 6th (sixth) Business Day after the end of the month being reported upon.
- 2.3.2 As part of the monthly Service Level Report required pursuant to clause 2.3.1, Service Provider will provide SARS with a set of soft-copy reports on Service Provider's performance against the Service Levels. Detailed supporting information for each Report will be provided to SARS in soft-copy as reasonably requested by SARS.

3 SERVICE LEVEL CREDITS

3.1 Entitlement to Service Level Credits

- 3.1.1 Subject to clause 3.7, for each Service Level Failure occurring during the Term, the Charges for the month following the month in which the Service Level Failure occurred will be reduced by the Service Level Credits calculated in accordance with clause 3.2.
- 3.1.2 In no event will the total, aggregate amount of Service Level Credits payable by Service Provider for a calendar month exceed 15% (fifteen percent) of the total of all amounts invoiced to SARS by Service Provider for such month ("**At Risk Amount**"), provided however that Pass Through Expenses invoiced in any particular month will not be taken into account in calculating such At Risk Amount.
- 3.1.3 If Service Provider is able to show to SARS's reasonable satisfaction that:
- (a) a single triggering event directly caused 2 (two) or more Service Level Failures in any month; and
 - (b) but for such event, none of such Service Level Failures would have occurred,
- then SARS will be entitled to receive only a single Service Level Credit (selected by SARS) and Service Level Credits will not apply to such other Service Level Failures.

3.2 Calculation of Service Level Credits

- 3.2.1 Each of the Service Levels set out in this **Schedule C (Service Levels)** and its Appendices constitutes a single Service Level, even if it has multiple metrics. Service Provider must satisfy each metric of those Service Levels with multiple metrics in order to satisfy the Service Level as a whole. If Service Provider fails any single metric, Service Provider will be deemed to have failed the entire Service Level.
- 3.2.2 Escalating Service Levels
- (a) Service Level Credits for each of the following Service Levels are determined on an escalating basis by reference to number of Business Days that an event exceeds its Service Level Target:

- (i) PLATINUM SITE CUMULATIVE UNAVAILABILITY
- (ii) **Error! Reference source not found.**
- (iii) CORE NETWORK OUTAGE SERVICE LEVEL
- (iv) GENERAL OBLIGATIONS SERVICE LEVEL
- (v) MONITORING AND REPORTING PORTAL UNAVAILABILITY
- (vi) OUTBOUND AND INBOUND OUTAGE SERVICE LEVEL
- (vii) MONITORING AND REPORTING PORTAL UNAVAILABILITY

(b) Each measured event has a maximum allowable elapsed time within which it must be completed ("**Service Level Target**"). If the event is not completed within the Service Level Target then:

- (i) a Service Level Credit to the value specified, either a percentage of a specified charge will be payable to SARS or a specified fixed amount will be payable to SARS; and
- (ii) for each further period by which the completion of the event exceeds the Service Level Target the Service Level Credit payable to SARS will increase by the value specified (the "**Service Level Credit Increment**"), either a percentage of a specified charge or a specified fixed amount.

3.2.3 All Service Level Credits will be set off against the first monthly invoice following the month in which the Service Level Failure(s) occurred. Service Level Credits arising in respect of the last month of the Term will be withheld out of the final payment due.

3.3 **Excused Performance**

3.3.1 Where Service Provider can establish to the reasonable satisfaction of SARS that:

- (a) the cause of its failure or the extent to which it failed to achieve a Service Level was a factor or factors outside of the reasonable control of Service Provider;
- (b) Service Provider would have achieved such Service Level or would not have failed the Service Level to the same extent that it did but for such factor(s);
- (c) Service Provider used Commercially Reasonable Efforts to perform and achieve that Service Level notwithstanding the presence and impact of such factor(s); and
- (d) Service Provider is without fault in causing such factor(s),

the Service Level Credit will be reduced by the extent to which such factor(s) satisfying all of the conditions 3.3.1 (a), (b), (c) and (d) have affected the Service Level Credit.

4 MISCELLANEOUS

4.1 General Sections

Descriptions of each of the Service Levels in the 'General' Sections in the Appendices to this **Schedule C (Service Levels)** are intended to summarise each Service Level and will be subject to the full description of the Service Level set out in the remainder of the relevant clause.

APPENDIX C-S: WHATSAPP BUSINESS SOLUTION PLATFORM SERVICE LEVELS

SERVICE LEVELS, CRITICAL DELIVERABLES AND CREDITS FOR WHATSAPP BUSINESS SOLUTION PLATFORM

[Note to Bidder: the Service Levels will be defined in accordance with the Bidder's Proposal]

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SCHEDULE D: CHARGES, INVOICING AND PAYMENTS

Appendices and Attachments

Attachment D-S-1	Transition Project Charges [this will be populated from Template TS.1]
Attachment D-S-2	WhatsApp Business Solution Platform Charges [this will be populated from Template TS.2]
Attachment D-S-3	WhatsApp Business Solution Platform Gateway Charges [this will be populated from Template TS.3]
Attachment D-S-4	Personnel Rates - SMS [this will be populated from Template TS.4]
Attachment D-S-5	Annual Price Deflation - WhatsApp Business Solution Platform [this will be populated from Template TS.5]

SCHEDULE D

CHARGES, INVOICING AND PAYMENTS

1 GENERAL

1.1 General

- 1.1.1 This **Schedule D** describes how the Charges payable by SARS to Service Provider pursuant to this Agreement are calculated and invoiced.
- 1.1.2 The Charges will commence on the Effective Date.
- 1.1.3 The Charges are set forth in the Appendices to this **Schedule D**.
- 1.1.4 The Charges detailed in this **Schedule D**, its Appendices and Attachments are the only amounts payable by SARS to Service Provider for the Services or otherwise in connection with this Agreement and no other charges, expenses, costs or other amounts incurred by Service Provider will be chargeable to or payable by SARS to Service Provider.
- 1.1.5 Unless specifically provided otherwise in this Agreement, the Charges will include all incidental expenses (e.g. travel and lodging, document reproduction and shipping) that Service Provider incurs in performing the Services. Prices for New Services and Projects (as contemplated in clauses 6 and 7 below) and Pass Through Expenses (as contemplated in clause 9 below) must similarly include all incidental expenses.
- 1.1.6 There will be no changes to the Charges except to the extent:
- 1.1.6.1 required under clause 1.4 below;

- 1.1.6.2 permitted under clause 6 below; permitted under clause 7 below;
- 1.1.6.3 required under clause 11 below; required under clause 13 below; required under clause 14 below; [permitted by SARS under clause 27.5.4.3 of the Main Agreement ; **or**
- 1.1.7 Service Provider will not be entitled to unilaterally (i) impose or seek payment of any amounts or charges under the Agreement other than the Charges, (ii) establish any new types of charges under the Agreement and/or (iii) modify any of the Charges (including the Unit Rates) under the Agreement.
- 1.2 Currency**
- The Charges are stated in South African Rand and will be invoiced and paid in South African Rand. The Charges are not subject to adjustment due to any currency fluctuations.
- 1.3 Taxes**
- 1.3.1 All Charges and Unit Rates are VAT inclusive and include all applicable taxes, duties and levies.
- 1.3.2 Each Party will be responsible for: any real estate taxes and real estate transfer taxes on real estate it acquires, owns or leases; for any wage taxes levied on wages for employees employed by the relevant Party in connection with the provision or the receipt of the Services and for taxes based on its net or gross income, in particular corporate income tax and trade tax. SARS will not be responsible for any allocation of any of the aforementioned taxes that are levied on the Service Provider.
- 1.3.3 Except for value added taxes, the general tax risk allocation principle as set out in Section 1.3.2 will apply mutatis mutandis with respect to all taxes that are not addressed in Section 1.3.2, in particular, including taxes levied outside South Africa.
- 1.3.4 The Service Provider will be responsible for any taxes levied by a regulator or other government authority that are assessed on goods and services used or consumed by the Service Provider in providing the Services. SARS will not be responsible for any allocation of taxes that are levied on goods and services used or consumed by the Service Provider in providing the Services.
- 1.4 Service Provider's Obligation to Reduce Costs**
- 1.4.1 In the event that tariffs charged under this Agreement are changed by government or ICASA regulation, the Service Provider will adjust such prices to SARS appropriately as soon as possible but not later than 30 (thirty) days after such adjustment by government or ICASA regulation.
- 1.4.2 In consultation with SARS, Service Provider will continually investigate methods to reduce the Charges.
- 1.4.3 Without limiting the generality of its obligations under clause 1.4.1, Service Provider will:
- 1.4.3.1 use Commercially Reasonable Efforts to identify methodologies, processes, solutions and technologies that SARS or the Service Provider may employ to

reduce consumption, costs and to claim applicable discounts.

1.4.3.2 model the effects of the methodologies, processes, solutions and technologies at different levels and mixes of consumption; and

1.4.3.3 periodically report (but no less frequently than quarterly) on such efforts and make recommendations to SARS regarding steps SARS, Service Provider or both may take to reduce the Charges.

1.5 Cost Review Meetings

1.5.1 Within 60 (sixty) days prior to the Adjustment Date defined in clause 2.3 below, and at such other times as SARS may reasonably request, the Parties will meet to:

1.5.1.1 formally review the Charges;

1.5.1.2 formally review the extent to which Service Provider is achieving all efficiencies in its performance of the Services to the extent reasonably possible; and

1.5.1.3 consider whether the Agreement is achieving its objective of providing SARS the Services in accordance with the Performance Standards at the lowest possible prices

each such meeting being referred to as a "**Cost Review Meeting**".

1.5.2 At each Cost Review Meeting, Service Provider will be prepared to discuss, and will discuss (i) proposals arising from Service Provider's report under clause 1.4 above; (ii) any specific issues that SARS wishes to discuss; and/or (iii) any other pertinent matter.

1.5.3 During Cost Review Meetings, Service Provider, having analysed the Charges in detail in advance of such review, will propose, and the Parties will discuss and consider, changes that can reasonably be expected to result in a reduction of the cost of the Services to SARS. Such changes may relate to, for example: SARS's business processes; the technology used to provide and deliver, or to receive and use, the Services; Service Provider Personnel; Service Provider's processes; and/or the selection and use of Subcontractors and Third Party service providers.

1.5.4 Service Provider will schedule Cost Review Meetings by giving SARS at least 45 (forty five) days prior notice. Service Provider will use Commercially Reasonable Efforts to co-ordinate with SARS before scheduling the review. The foregoing notwithstanding, SARS will be entitled to schedule a Cost Review Meeting at any time that SARS deems fit. A Cost Review Meeting will run for such period of time as is reasonably required by SARS. All Cost Review Meetings will take place at a venue designated by SARS.

1.5.5 In order to prepare for and participate in any Cost Review Meeting, Service Provider will make available such resources as are reasonably required: (i) to analyse SARS consumption and the cost of the Services to SARS; (ii) to perform all of the tasks and activities described in this clause 1.5 associated with such Cost Review Meeting; and (iii) otherwise to maximise the likelihood that such Cost Review Meetings will result in a reduction in the Charges and the cost of the Services to SARS. The Parties acknowledge and agree that the application of this provision will not result in any changes to the Agreement, Services or Service Levels unless set forth in a formal amendment to the

Agreement pursuant to clause 27.4.3 of the Main Agreement.

- 1.5.6 Without limiting the generality of the foregoing, at least 5 (five) Business Days prior to the commencement of each Cost Review Meeting, Service Provider will provide SARS with a draft description of any proposals Service Provider intends to make during the Cost Review Meeting, including any charges or Charge adjustments proposed by Service Provider in order to implement any such proposals, or resulting from their implementation, as well as projections of any changes to the costs of the Services to SARS resulting from such proposal.
- 1.5.7 If SARS decides (at its sole discretion) to implement any such proposals, Service Provider will promptly implement them or (at SARS request) assist SARS to implement them, as applicable.
- 1.5.8 Service Provider acknowledges and agrees that the process described in this clause 1.5 is critical to enable the Parties to achieve their price/performance objectives during the Term.

2 CHARGES

2.1 Charges – Specific Charges Requirements

- 2.1.1 Except as expressly provided otherwise in this Agreement, the only amounts payable by SARS for the Services will be the Charges and applicable taxes as and to the extent Service Provider generally charges them to its customers of similar services, provided that such amounts are specified on **Schedule D** (Charges, Invoicing, and Payments).
- 2.1.2 Unless otherwise expressly set forth in this **Schedule D** or its **Appendixes** or its **Attachments**, all installation and one-time charges for Services are waived.
- 2.1.3 Service Provider will not charge SARS to expedite for any Services ordered under the Agreement. There will be no limit on the number of requests to expedite Services.
- 2.1.4 SARS will have the right to reschedule or delay installation due dates for service elements or equipment without incurring any increased or separate charges.
- 2.1.5 Service Provider will not charge SARS for any Service Provider-supplied Third Party service components for which costs are incurred after expiry of SARS's notice of cancellation of a service component to Service Provider.
- 2.1.6 Service Provider represents and warrants that the Unit Rates and any other rates or Charges set forth in Service Provider's Proposal constitute the totality of all of the Charges (all costs to SARS are included in these rates) for all of the SMS Carrier. SARS will not be liable for any amounts that are not set forth in Service Provider's Proposal for any of the Services.

2.2 No Minimums

No minimum charges are applicable in relation to this Agreement.

- 2.2.1 If there is an inconsistency between the Agreement and Service Provider's tariffs or other regulatory filings which preclude SARS from receiving all of the rights and benefits

provided for by the Agreement, then Service Provider will amend the tariff or otherwise resolve the inconsistency to provide such rights or benefits to SARS. If the aforementioned is not possible, SARS will have the right to terminate upon 60 (sixty) days prior written notice (given at any time within 90 (ninety) days after Service Provider notifies SARS in writing of any such discrepancy) any or all of the affected Services with no liability (other than paying for Services properly provided prior to the effective date of such termination).

2.3 Charge adjustments

The Charges, other than regulated tariffs, will be adjusted on a date to be determined by SARS ("**Adjustment Date**") and on each anniversary thereof to take account of changes in Service Provider's labour costs and the costs of consumables, market pricing of the services and future pricing adjustment commitments as set out in **Appendix D-S-5**, but only to the extent set forth in this clause 2.3. The first Adjustment Date will be on the first anniversary of the Effective Date.

2.3.1 The adjustments for non-tariffed charges will be calculated as follows:

$$\text{Adjusted Price} = [(1+A)*B]$$

Where:

A = the annual adjustment percentage at the Adjustment Date.

B = the price for the period immediately preceding the Adjustment Date.

2.3.2 Service Provider will calculate the applicable adjustments in accordance with this clause 2.3 and provide these adjustments to SARS within 10 (ten) Business Days of the relevant Adjustment Date.

2.3.3 Adjustments accepted by SARS will be set out in a written notice in the form of **Appendix E-7 (Record of Consensus on New Charges)** stating the new Charges and will become binding on the Parties on signature of both Parties of the Record of Consensus on New Charges notice.

3 INVOICING AND PAYMENT

3.1 Invoicing

3.1.1 Service Provider will invoice SARS for the Charges (other than for Projects) on a monthly basis in arrears on or before the 5th (fifth) Business Day of the month following the month in which the Services were performed. Projects will be invoiced in accordance with the agreed methodology for the Project, which may be (i) monthly; (ii) upon SARS's acceptance of delivery milestones; or (iii) upon completion of the Project and acceptance thereof by SARS.

3.1.2 Each invoice will contain or have attached such information, and be in such form and on such media as SARS may reasonably request.

- 3.1.3 Subject to clause 3.1.4 below, invoiced Charges will be reduced: (i) by 1 (one) percent if SARS does not receive the invoice by the 20th (twentieth) day of the month in which Service Provider is obligated to deliver such invoice; and (ii) by an additional 1 (one) percent for each month thereafter.
- 3.1.4 Notwithstanding this Agreement, SARS will not be obliged to pay any amounts that are invoiced more than 120 (one hundred and twenty) days after the Services were rendered.
- 3.1.5 Each invoice will consist of or have attached:
- 3.1.5.1 a statement of the total amount due. In addition, at SARS's request, Service Provider will provide SARS the algorithms for the calculation of the Charges;
 - 3.1.5.2 the Service Provider's estimate of the Charges as approved by SARS for any work performed by Service Provider Personnel on a Time and Materials Basis prior to commencement of such work;
 - 3.1.5.3 if so requested by SARS, copies of daily time cards signed by an authorised SARS representative and the reference number generated by the SARS service desk for any work performed by Service Provider Personnel on a Time and Materials Basis;
 - 3.1.5.4 a valid SARS purchase order number; and
 - 3.1.5.5 any additional details and information reasonably specified by SARS, in the format reasonably specified by SARS from time to time.
- 3.1.6 Service Provider will send the invoices to the department designated by SARS from time to time and provide copies of the invoices to other SARS contacts as may be designated by SARS from time to time.
- 3.1.7 Service Provider will maintain complete and accurate records of, and supporting documentation for, the amounts invoiced to and payments made by SARS in accordance with International Financial Reporting Standards (IFRS).
- 3.1.8 Within 10 (ten) days after SARS's request, Service Provider will provide SARS with any other documentation or information reasonably required in order to verify (i) the accuracy of the Charges on an invoice; and (ii) its compliance with the requirements of this Agreement.
- 3.1.9 Service Provider will verify that each invoice is complete and accurate and that it conforms to the requirements of this Agreement (including by carrying out detailed checks of each invoice) before issuing the invoice to SARS.
- 3.1.10 Service Provider will provide appropriately skilled Service Provider Personnel as SARS's point of contact for answering invoicing queries. Such individuals will respond promptly to any billing queries. Prior to the issuance of each invoice and subject to compliance with the provisions of this Schedule D and the Agreement, such Service Provider Personnel will meet with the applicable SARS Personnel to review a draft of the invoice.
- 3.1.11 At no additional charge to SARS, Service Provider will review all of its invoices submitted to SARS during the first 3 (three) months of the Term and certify in writing that each invoice was calculated correctly, including using the correct Unit Rates set out in the Agreement and only invoiced for Services actually provided. Service Provider will provide

this certification within 15 (fifteen) days after it submits each such invoice. If Service Provider discovers discrepancies in an invoice submitted to SARS within the first 3 (three) months pursuant to this procedure, it will reissue such invoice and such invoice will be deemed to have been 'received' (for purposes of calculating the payment due date) by SARS on the date that SARS receives the corrected invoice.

- 3.1.12 Service Provider will, at no additional charge to SARS and within 60 (sixty) days following the end of each subsequent calendar quarter, review and validate each invoice that it issued to SARS during such quarter. Service Provider will provide SARS with a reconciliation report listing the results including exception reports, errors and a complete reconciliation of invoices to actual required invoice amounts. Service Provider will promptly credit any amounts that were improperly invoiced and may issue a supplemental invoice with respect to amounts that Service Provider discovers could have been invoiced but were not invoiced.
- 3.1.13 Service Provider may round off invoiced amounts only once per invoice, at the highest summary (or aggregate) level.
- 3.1.14 Service Provider will provide SARS with the option of implementing, at any time during the Term, invoicing and payment in a mutually agreed electronic, digital, EDI or Web-based format, within 90 (ninety) days of SARS's request at no additional cost to SARS. In addition, Service Provider will provide hard copies of invoices where required under Applicable Law and in the format, and with the information and detail, required by Applicable Law.
- 3.1.15 Service Provider will invoice all Charges within 60 (sixty) days after providing the Services giving rise to such Charges.
- 3.1.16 Service Provider will cease charging for a disconnected communication channel or Service as of the expiration date of the cancellation notice that SARS provided for such communication channel or Service to be disconnected, with any periodic Service Charges for the month of disconnected pro-rated on a day for day basis.
- 3.1.17 Service Provider will charge for a newly provisioned communication channel or Service as from the first day following the day on which a satisfactory acceptance test was completed. SARS will have 2 (two) Business Days to complete acceptance testing for newly provisioned communication channels.

3.2 **Payment**

- 3.2.1 SARS will pay undisputed Charges to Service Provider within 30 (thirty) days following receipt of each invoice provided such invoice is accurate and meets the requirements of this Agreement.
- 3.2.2 SARS may set off any amounts due by Service Provider pursuant to this Agreement against any Charges payable by SARS pursuant to this Agreement. If the amounts payable by Service Provider to SARS exceed the Charges payable by SARS to Service Provider pursuant to an outstanding invoice under this **Schedule D** then, at SARS's option, Service Provider will either (i) issue a credit note for the net amount which SARS may set off against any other invoices rendered by Service Provider; or (ii) pay the amount to SARS.

3.3 **Disputed Charges and Invoicing Errors**

- 3.3.1 SARS may withhold payment of Charges that SARS disputes in good faith (or, if the disputed Charges have already been paid, SARS may withhold an equal amount from a later payment), including disputes in respect of an error in an invoice or an amount paid. If SARS withholds any such amount:
- 3.3.1.1 SARS will promptly notify Service Provider that it is disputing such Charges; and
 - 3.3.1.2 the Parties will promptly address such dispute in accordance with clause 25 of the Main Agreement.
- 3.3.2 If the dispute relates to (or, in the case of disputed charges that have already been paid, is equal to) only certain of the Charges included on an invoice, then SARS will pay the undisputed amounts in accordance with clause 3.2.1 above.
- 3.3.3 If an invoice is identified by either Party as incorrect, then Service Provider will either issue a correct invoice if the amount has not yet been paid, or make a correction on the next invoice if the amount has been paid; provided, however, that Service Provider will refund any overpayments with interest (calculated at the Agreement Interest Rate) calculated from the date of SARS's payment to the date of the refund both dates inclusive. SARS will not be responsible for paying interest on undercharged amounts, if any.
- 3.4 **Duplicate charges**
- 3.4.1 If Service Provider transfers an electronic communications communication channel from one carrier to another carrier, unless otherwise required and approved by SARS, Service Provider will do so in a manner such that SARS does not pay duplicate charges for such communication channel (e.g., SARS would not pay for both the old communication channel and the new communication channel with respect to the same period of time).

4 CALCULATION OF CHARGES

- 4.1 **[Note to Bidder: the detailed calculation of charges will be populated from the Pricing Templates in the Bidder's Proposal]**

5 CHARGES ON A TIME AND MATERIALS BASIS

5.1 General

- 5.1.1 New Services and Projects will be charged on a Time and Materials Basis, unless otherwise agreed in a Work Order. In such cases, the time component of the time and materials charge will be the product of the units of time (e.g., hour, day) and the applicable Personnel Rates.
- 5.1.2 Personnel Rates (by skill classification) are set forth in the on an hourly, daily, and monthly basis. If a Personnel Rate for a skill classification required for the performance of the work to be performed on a Time and Materials Basis is not set out in the Appendix, Service Provider's rate for such skill set will be the rate for the next closest, lowest skill set specified in **Appendix D-S-4**

5.2 Chargeable Time

- 5.2.1 For Services performed on a Time and Materials Basis, Service Provider may charge for travel time only if, and to the extent that, the Service Provider Personnel performing such Services are required to travel more than 50 (fifty) kilometres and Service Provider has used Commercially Reasonable Efforts to deploy alternative Service Provider Personnel who do not have to travel more than 50 (fifty) kilometres.
- 5.2.2 The Service Provider Personnel will accurately complete daily time sheets on a concurrent basis showing the actual time spent performing the work that is chargeable on a Time and Materials Basis.
- 5.2.3 All work to be performed on a Time and Materials Basis will be performed by Service Provider in a productive and efficient manner (including using Service Provider Personnel charged at the lowest appropriate rate).
- 5.2.4 SARS will not be charged (and will not be liable to pay) for any time spent by Service Provider Personnel in remedying Service Provider errors.

6 NEW SERVICES

6.1 Generally

In the event that any New Service is requested by SARS, Service Provider will quote to SARS a reasonable fixed or unit price for such New Service and the Parties will promptly meet to discuss such quote. If the Parties fail to reach agreement on the fixed or unit price for such New Service, SARS may elect at its sole discretion to have Service Provider perform the New Services, and Service Provider will perform the New Services, on a Time and Materials Basis at the Personnel Rates unless otherwise agreed in a Work Order.

6.2 Replacement Services

If a New Service, once approved by SARS, replaces any of the Services (a “**Replacement Service**”) SARS will only be charged for incremental resources and costs net of any savings or reduced costs realised from no longer performing the Service that is being replaced (including a Replacement Service that requires fewer resources, which causes the applicable Charges to be equitably reduced).

7 PROJECTS

In the event any Project is requested by SARS, Service Provider will quote to SARS a reasonable fixed price for such Project and the Parties will promptly meet to discuss such quote. If the Parties fail to reach agreement on the price for such project, SARS may elect at its sole discretion to have Service Provider perform the Project, and Service Provider will perform the Project on a Time and Materials Basis at the Personnel Rates.

8 CHANGES TO SARS STANDARDS

If after the Effective Date, SARS materially changes any of the standards under clause 4.4 of **Schedule E (Governance)** other than as part of transition and solely as a result of such change Service Provider is unable to avoid a material change to the Services, then such change to the Services will be treated as New Services (or Replacement Services, as the case may be) under **clause 6** of this **Schedule D**.

9 PASS THROUGH EXPENSES

- 9.1 Any Pass Through Expenses will be subject to prior approval by SARS and will be charged to SARS on a Pass Through Expense Basis. Service Provider will use Commercially Reasonable Efforts to minimise the cost of goods and services provided to SARS on a Pass Through Expense Basis.
- 9.2 Materials procured on a Pass Through Expense Basis will be acquired in SARS's name and SARS will have all right, title and interest in such materials.
- 9.3 Service Provider must procure any goods or services related to the Services, on behalf of SARS on a Pass Through Expense Basis, should SARS so require.

10 DISENGAGEMENT ASSISTANCE

Service Provider may charge for Disengagement Assistance only in accordance with the provisions of **Schedule F (Disengagement Assistance)**.

11 EXTRAORDINARY EVENTS

- 11.1 In the case of an Extraordinary Event (defined in clause 11.2 below), Service Provider's Charges will, on prior approval by SARS, be equitably adjusted.
- 11.2 "**Extraordinary Event**" means:
 - 11.2.1 a governmental reorganisation;
 - 11.2.2 a change in law; or
 - 11.2.3 the addition, reduction, or other elimination of a significant 'Line of Operations' or other similar organisational change to SARS; and
- 11.3 which Service Provider is able to show, to SARS's reasonable satisfaction, has a material impact on Service Provider's cost structure in respect of the Services.

12 TERMINATION CHARGES

SARS will under no circumstances be liable for any termination charges under this Agreement.

13 CESSATION UPON PARTIAL TERMINATION OR REDUCTION IN REQUIREMENTS

In the event that SARS exercises its rights pursuant to the Main Agreement to partially terminate the Services (clause 23.4.2.2 and clause 26.3 of the Main Agreement) then any Charges that relate to the Services that are no longer being performed will no longer be chargeable to or payable by SARS .

14 SERVICE LEVEL CREDITS

The Charges will be adjusted by the application of Service Level Credits.

APPENDIX D-X- : PRICING TABLES

PRICING

[Note to the Bidder: this will be populated with the completed pricing templates, tables and amounts upon finalisation of the contract. Please refer to the table of Appendices and Attachments.]

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SCHEDULE E: GOVERNANCE

1 INTRODUCTION

This **Schedule E (Governance)** details the terms which are relevant to and which will govern Service Provider's management of its performance of the Services and SARS's management of Service Provider.

2 CHANGE

2.1 Technology Refresh

2.1.1 Service Provider will ensure that the Software and hardware it uses and/or provides in connection with its performance of the Services, including measurement, management and monitoring Tools, are:

2.1.1.1 current and proven;

2.1.1.2 supported by the applicable maintenance provider's maintenance agreement;

2.1.1.3 supporting Service Provider's obligation to perform the Services in terms of its obligations under this Agreement (including the Performance Standards); and

2.1.1.4 where applicable to the Services, compatible with the SARS Software and hardware.

2.1.2 Notwithstanding the foregoing, Service Provider will have sole responsibility for the cost of purchasing and replacing its own assets as required for it to meet its obligation to perform the Services in terms of its obligations under this Agreement (including the Performance Standards)

2.2 Migration of the Services

Service Provider may not perform the Services from a facility other than the Service Provider Sites without SARS's prior approval.

3 REVIEWS

3.1 Innovation

Without limiting the generality of Service Provider's other obligations under this Agreement, Service Provider will on a quarterly basis:

3.1.1 seek to (i) identify innovative ways to reduce SARS internal and external costs associated with the Services, including the Charges and (ii) increase functionality of the Services, in each case evaluating SARS's use of technology and considering whether changes to

such use or technology would reduce SARS's internal and external costs or increase the functionality provided by the hardware and Software;

- 3.1.2 summarise the results of Service Provider's efforts under clause 3.1.1 in the form of proposals, including recommendations regarding ways to achieve the goals articulated in clause 3.1.1;
- 3.1.3 analyse and evaluate the proposals referred to in clause 3.1.2 and any similar proposals reasonably made by SARS; and
- 3.1.4 implement such proposals with SARS's approval.

3.2 Quarterly Review of Services and Service Levels

The Parties will perform quarterly review of the Services and the Service Levels to determine whether: (i) Service Provider is meeting its obligations in clause 1.2 of **Schedule C (Service Levels)** to improve its level of Service throughout the Term; and (ii) the specific Service Levels required of Service Provider should be more favourable to SARS than those set out in **Schedule C (Service Levels)**. Upon completion of this review, Service Provider will propose all potential improvements to the Service Levels for SARS's review and approval.

3.3 Annual Review of Charges

In addition to the Cost Review Meetings detailed in clause 1.5 of **Schedule D (Charges, Invoicing and Payment)**, the Parties will perform an annual review of the Charges (including any expenses or Charges charged on a Pass Through Expense Basis and/or a Time and Materials Basis under the Agreement) and Service Provider's efforts and success in fulfilling its obligations set out in clause 1.4 of **Schedule D (Charges, Invoicing and Payment)**. As part of these periodic reviews, Service Provider will provide a description of the success to date in fulfilling such obligations including analyses of (i) any reduction in Charges and Pass Through Expenses; and (ii) potential savings achieved or anticipated.

4 PROJECT AND CONTRACT MANAGEMENT

4.1 Steering Committee

The Parties will form a steering committee to facilitate communications between them ("**Steering Committee**"). The Steering Committee will be composed of the SARS Contract Executive (and at such Executive's election, other SARS Personnel) and Service Provider's Program Executive.

4.2 Reports

Service Provider will provide SARS with the reports reasonably required by SARS, including the reports set out in **Appendix B-x-3 (_____ Form Reports)**. The format, content and frequency of such reports will be as is reasonably required by SARS.

4.3 Meetings

- 4.3.1 Within 30 (thirty) days of the Effective Date, Service Provider will propose for SARS's review and approval a set of monthly, quarterly, ad hoc, and other periodic meetings to be held between representatives of SARS and Service Provider.
- 4.3.2 The Service Provider's proposal for the set of meetings will include:
 - 4.3.2.1 a monthly meeting to be held by operational SARS Personnel and Service Provider Personnel to discuss daily performance and planned or anticipated activities, including changes in the Services that might adversely affect performance, and otherwise address, review, and discuss matters specific to SARS;
 - 4.3.2.2 a monthly meeting to be held by the SARS Contract Executive (and at such Executive's election, other members of SARS contract management team) and the Service Provider Program Executive to discuss day-to-day operations, the status of on-going and planned activities including changes that might adversely affect performance, and such other matters as appropriate;
 - 4.3.2.3 a quarterly management meeting of the Steering Committee (and other members of SARS contract management team) to (i) review the monthly performance reports for each month during the quarter; (ii) review Service Provider's overall performance under the Agreement; (iii) review progress on the resolution of issues; (iv) provide a strategic outlook for the systems requirements of SARS; and (v) discuss such other matters as appropriate;
 - 4.3.2.4 an annual meeting of senior management of the Parties to review relevant relationship, contract and performance issues; and
 - 4.3.2.5 such other meetings between SARS and Service Provider Personnel as may be reasonably requested by SARS and as may be necessary to address relevant relationship, contract and performance issues.
- 4.3.3 Service Provider will prepare and circulate an agenda sufficiently in advance of such meetings to give participants an opportunity to prepare for the meeting. Service Provider will incorporate into such agenda items that SARS desires to discuss. At the request of SARS, Service Provider will prepare and circulate minutes promptly after a meeting for review and approval by SARS.

4.4 SARS Policies, Procedures, Standards and Guidelines

- 4.4.1 Compliance with Policies
 - 4.4.1.1 Service Provider will comply with the following (and to the extent that the same issue is addressed by two or more of these policies or procedures, Service Provider will comply with the higher standard):
 - 4.4.1.1.1 SARS PPS&G, as such policies and procedures may be changed in terms of clause 4.4.1.2; and
 - 4.4.1.1.2 Service Provider's standard policies and procedures that relate to the

performance of the Services or Service Provider's other obligations under this Agreement (to the extent that they do not conflict with the SARS Policies or the other provisions of this Agreement) ("**Service Provider Policies**"). Service Provider will provide copies of the Service Provider Policies (including any amendments, updates or replacements) to SARS.

4.4.1.2 SARS PPS&G as at the Effective Date are attached hereto as **Appendix E-3**. If SARS changes the SARS PPS&G, or introduces new standard policies and procedures that are applicable to the Services, SARS will provide Service Provider with reasonable notice, and a copy, of same. The pricing impact (if any) of such a change will be addressed in terms of clause 8 of **Schedule D (Charges, Invoicing and Payments)**.

4.4.1.3 Changes to the Service Provider Policies will not result in an increase in the Charges or in any other costs to be borne by SARS (e.g. Pass Through Expenses, internal costs).

4.5 **Process and Procedures Library**

4.5.1 Service Provider, in consultation with SARS, will prepare a Process and Procedures Library detailing the operational and management processes by which the Service Provider will perform and deliver the Services under this Agreement. The Process and Procedures Library will also include:

- 4.5.1.1 change control processes;
- 4.5.1.2 Incident management processes;
- 4.5.1.3 problem management processes;
- 4.5.1.4 business continuity processes;
- 4.5.1.5 backup and restore processes;
- 4.5.1.6 capacity management practices;
- 4.5.1.7 project management processes;
- 4.5.1.8 management information processes; and
- 4.5.1.9 various administrative processes including invoicing practices.

4.5.2 The Process and Procedures Library will be suitable for use by SARS Personnel to understand how Service Provider will provide the Services and to enable SARS and SARS's internal and external auditors to verify and audit the manner in which the Service Provider is providing the Services.

4.5.3 The Service Provider will develop the Process and Procedures Library for SARS's review and approval by no later than 60 (sixty) days prior to the Effective Date, and obtain SARS's review and approval of an integrated Process and Procedures Library for all of the Services within 60 (sixty) days of the Effective Date. Failure to provide a final draft that is reasonably acceptable to SARS within the aforementioned time period will be a material breach of the Agreement. SARS will provide detailed and reasonable comments

on each draft within 15 (fifteen) Business Days after receipt of any draft and Service Provider will incorporate such comments in the next draft.

Service Provider will update the Process and Procedures Library on an on-going basis during the Term to reflect changes in the operations or procedures described therein. Service Provider will provide updates to the Process and Procedures Library to SARS on the 5th (fifth) business day of each month during the Term or review and approval.

- 4.5.4 The Service Provider will perform the Services in terms of the Process and Procedures Library provided that, in the event there is a conflict between the provisions of this Agreement and the provisions of the Process and Procedures Library, the provisions of this Agreement will take precedence. Moreover, the Process and Procedures Library may not (i) be contrary to the scope of Services; or (ii) modify any of the terms or conditions of this Agreement. Without limiting the generality of Service Provider's obligation to perform the Services in terms of the Performance Standards, Service Provider may, in terms of clause 4.4.1, use existing SARS procedures prior to the approval of the Process and Procedures Library.

5 WORK ORDERS

- 5.1 The Parties may, from time to time, include Work Orders under the Agreement pertaining to New Services, Projects or changes to the Services provided by the Service Provider to SARS under the Agreement, substantially in accordance with the Work Order template appended hereto as **Appendix E-**.
- 5.2 The provisions of this Agreement will apply to each and every Work Order issued under this Agreement.
- 5.3 The Service Provider will provide the Services to the SARS subject to the terms and conditions of this Agreement generally and in particular subject to the terms and conditions set forth in the relevant Work Order provided that a Work Order may amend the terms and conditions of this Agreement only with respect to the subject matter of such Work Order.

APPENDIX E-1: KEY SERVICE PROVIDER POSITIONS

[Note to the Bidder: The Bidder is required to propose a list of Key Service Provider Positions in its response to this document. The list of proposed Key Service Provider Positions must be made as a mark-up to the contract. At a minimum, the Bidder should include the Service Provider Program Executive.]

DRAFT

APPENDIX E-2: ESCALATION PROCEDURES

[Note to the Bidder: this Appendix will be completed as part of final contract negotiations.]

DRAFT

APPENDIX E-3: SARS PPS&G

SARS PPS&G

[Note to the Bidder: This Appendix will be populated in accordance with clause 4.4 of Schedule E (Governance)]

DRAFT

APPENDIX E-5: FORM OF A WORK ORDER

THIS WORK ORDER NO. {number} dated as of {date} (the 'Work Order Commencement Date') is being executed pursuant to the WhatsApp Business Solution Platform, Maintenance and Support Services Agreement between the South African Revenue Service ("SARS") and {insert name} (Proprietary) Limited (Registration No. {insert number}) ("Service Provider") dated as of {insert signature date}, the terms of which are incorporated herein by reference. Capitalised terms used but not defined herein will have the meanings given to them under **Schedule A (Glossary)** to the aforesaid Agreement.

1. DESCRIPTION OF THE SERVICES

{Note to the Parties: Please insert a description of the Services under this WhatsApp Business Solution Platform, Maintenance and Support Services Agreement . Identify Service Provider resources, hardware to be provided by Service Provider and Third Party Software to be provided by Service Provider.}

2. DURATION / DELIVERABLES AND TIMELINE

{Note to the Parties: delete whichever is not applicable}

- 2.1. This Work Order will commence on the Work Order Commencement Date and will terminate on {date} unless extended or terminated earlier in accordance with the Agreement.
- 2.2. Service Provider will procure, modify, plan, design, develop and/or implement the Deliverables that are identified and described in Table B-1.

{Note to the Parties: In the case of Projects, please identify each Deliverable and provide the other information required to complete Table B-1}

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

{Note to the Parties: In the case of New Services and/or applicable maintenance and support, please identify the scope of the New Service and provide the other information required to complete Table B-2}

Table B-2	
Scope	Description

3. **SERVICE LEVELS AND SERVICE LEVEL CREDITS**

{Note to the Parties: Please list any applicable Service Levels and Service Level Credits}

4. **SERVICE PROVIDER CHARGES**

Service Provider's Charges for Services under this WhatsApp Business Solution Platform, Maintenance and Support Services Agreement will be the amount of R {amount} in accordance with Table B-3 below:

Table B-3	
Name of Deliverable / New Service	Allocated Portion of the Fixed Price
Total	

{Note to the Parties: Please list the name of each Deliverable identified in Tables B-4 and take note of Payment Milestones for each such Deliverable / New Service as set out in Table B-3. Table B-4 may be adapted to suit the requirements}

Table B-4			
Name of Deliverable	Payment Milestones for such Deliverable	Amount to be Paid Upon Achievement of Milestone	Dates that Payment Milestones are to be Achieved
Total			

{Signature blocks appear on the next page.}

The Parties' duly authorised representatives hereby confirm their acceptance of this Work Order.

{name} (Proprietary) Limited
By:

Printed:
Title:
Date:

South African Revenue Service
By:

Printed:
Title:
Date:

{name} (Proprietary) Limited
By:

Printed:
Title:
Date:

South African Revenue Service
By:

Printed:
Title:
Date:

DRAFT

APPENDIX E-7: RECORD OF CONSENSUS ON NEW CHARGES

1. We refer to the WhatsApp Business Solution Platform, Maintenance and Support Services Agreement (the “**Agreement**”) which commenced on {date} concluded between the South African Revenue Service and {insert name} (the “**Service Provider**”).
2. In terms of the aforesaid Agreement, the Service Provider was to provide to SARS, *inter alia*, the Services (as defined in the Agreement), at a charge to be reviewed by the Parties annually.
3. Therefore in accordance with clause 2.3.3 of Schedule D of the Agreement, it is hereby recorded that the Parties have reached consensus that the Charges are amended as per the attached pricing tables.
4. The Agreement is hereby amended and the Charges as per paragraph 3 above will apply with effect from [date] until [date].

{Signature blocks appear on the next page.}

The Parties’ duly authorised representatives hereby confirm their acceptance of the terms and conditions set out above.

{name} (Proprietary) Limited
By:

Printed:
Title:
Date:

{name} (Proprietary) Limited
By:

Printed:
Title:
Date:

South African Revenue Service
By:

Printed:
Title:
Date:

South African Revenue Service
By:

Printed:
Title:
Date:

SCHEDULE F: DISENGAGEMENT ASSISTANCE

1 GENERAL

- 1.1 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**").
- 1.2 Disengagement Assistance provided to SARS prior to the effective date of termination or expiration will be chargeable by Service Provider to SARS only to the extent that the appointment of additional resources (above and beyond those resources used in providing the Services) is strictly necessary for Service Provider to provide such assistance and provided Service Provider has notified SARS of such appointment and SARS has pre-approved such appointment (and related charges) in writing, which approval will be exercised at SARS's sole discretion. Service Provider will use Commercially Reasonable Efforts to perform the Disengagement Assistance without deploying additional resources. Disengagement Assistance provided to SARS after the effective date of termination or expiration will be chargeable to SARS on a Time and Materials Basis in accordance with the Personnel Rates. Charges related to materials will be treated on a Pass Through Expense Basis.
- 1.3 Disengagement Assistance will include the provision of all information and assistance requested by SARS and necessary to ensure the seamless Transition of Services and functions being performed by Service Provider or its agents to the Successor. Disengagement Assistance may include capacity planning, consulting services, facilities planning, electronic communications services planning, Software configuration, reviewing all system Software with a new vendor, generating machine readable listings of source code, uploading production databases, providing parallel processing, testing, and providing such other assistance as is described in this **Schedule F (Disengagement Assistance)**.
- 1.4 Service Provider will perform the Disengagement Assistance in a manner such that (to the extent within Service Provider's control):
 - 1.4.1 the Terminated Services are transferred to the Successor in an efficient and orderly manner;
 - 1.4.2 the impact on SARS's operations (including SARS Personnel) and the internal and Third Party costs incurred by SARS in transferring the Terminated Services are minimised;
 - 1.4.3 the Terminated Services continue to be performed by Service Provider until the Termination Date has occurred without disruption or deterioration except as approved by SARS and included in the Disengagement Assistance Plan;
 - 1.4.4 any disruption or deterioration of the Terminated Services following the Termination Date (except as approved by SARS and included in the Disengagement Assistance Plan) is minimised;

- 1.4.5 there is a knowledge transfer as part of which SARS and/or the Successor are provided with all information held by Service Provider (or a Subcontractor) that is required to perform services replacing or reasonably equivalent to the Terminated Services following the Termination Date; and
- 1.4.6 SARS is able, at its option, to receive services similar to the Terminated Services, independently of the Service Provider following termination, including by the transfer to SARS or the Successor of the resources specified in clause 3.
- 1.5 If there is more than one Successor, then Service Provider will perform the Disengagement Assistance in respect of each Successor.
- 1.6 **Approach to disengagement**
- SARS will be entitled to determine on notice to Service Provider the approach to be taken in respect of the transfer of the Terminated Services, including that:
- 1.6.1 the transfer of the Terminated Services from Service Provider to a Successor may either occur:
- 1.6.1.1 on the Termination Date; or
- 1.6.1.2 over a period prior and up to the Termination Date in accordance with a timetable, specified by SARS with a corresponding adjustment of the Charges in accordance with clause 13 of **Schedule D (Charges, Invoicing and Payment)**, provided that all Terminated Services will cease being performed by Service Provider no later than the Termination Date or such later date as determined by SARS and advised to Service Provider; and
- 1.6.2 interim changes are made to the Services to enable the transfer of the Terminated Services.
- 1.7 **Disengagement Assistance Plan**
- 1.7.1 The Disengagement Assistance Plan will be developed for each transfer of Terminated Services. SARS will elect whether the Disengagement Assistance Plan is to be developed by SARS or in whole or part by Service Provider.
- 1.7.2 If SARS elects to develop the Disengagement Assistance Plan (or any part thereof), SARS will provide the Disengagement Assistance Plan to Service Provider.
- 1.7.3 If SARS elects for Service Provider to develop all or part of the Disengagement Assistance Plan, then:
- 1.7.3.1 a detailed draft that complies with this Agreement will be delivered to SARS for its comments and review by:
- 1.7.3.1.1 in the case of expiry of the Term, 8 (eight) months prior to the end of the Term; or
- 1.7.3.1.2 in all other cases, 10 (ten) Business Days following the date of delivery of a notice of termination or a notice to reduce the scope of the Services.

- 1.7.3.2 Service Provider will incorporate SARS's reasonable comments and changes into the Disengagement Assistance Plan (and any subsequent version of the Disengagement Assistance Plan) and finalise the Disengagement Assistance Plan within 15 (fifteen) days following receipt of the same; and
 - 1.7.3.3 the final Disengagement Assistance Plan will be subject to the written approval of SARS.
- 1.7.4 The Disengagement Assistance Plan will clearly and in detail:
 - 1.7.4.1 give effect to any approach to the Disengagement Assistance specified by SARS in accordance with clause 1.6;
 - 1.7.4.2 describe actions to be taken by Service Provider in performing the Disengagement Assistance (without limitation to any other actions requested by SARS pursuant to this **Schedule F** during the Disengagement Assistance Period);
 - 1.7.4.3 subject to clause 1.7.7, describe in detail any SARS and/or Successor tasks (including an estimate of the specific staffing required);
 - 1.7.4.4 describe how any transfer of assets and contracts will be achieved;
 - 1.7.4.5 specify the detailed information that will be provided (having regard to the categories in **Appendix F-1 (Disengagement Assistance Data)**);
 - 1.7.4.6 set out the timetable for the transfer of each element of the Terminated Services (including key milestones to track the progress of the transfer); and
 - 1.7.4.7 specify reasonable acceptance criteria and testing procedures to confirm whether the transfer of the Terminated Services has been successfully completed.
- 1.7.5 Following SARS's approval of and authorisation to proceed with the final Disengagement Assistance Plan, Service Provider will perform the Disengagement Assistance in accordance with the Disengagement Assistance Plan.
- 1.7.6 During the Disengagement Assistance Period, either Party may propose changes to the Disengagement Assistance Plan and Service Provider will proactively recommend changes that are necessary or desirable. Any changes to the Disengagement Assistance Plan will be subject to the other Party's approval.
- 1.7.7 SARS (or Successor) tasks to be performed in respect of Disengagement Assistance will only apply where:
 - 1.7.7.1 the task is reasonable and there is no other practical manner in which Service Provider can perform the Disengagement Assistance without such task being performed by SARS or a Successor; or
 - 1.7.7.2 SARS notifies Service Provider that SARS wishes to perform such task.

1.8 Disengagement Assistance Management

- 1.8.1 Service Provider will appoint a senior project manager as its "**Disengagement Assistance Manager**" who will be responsible for the overall performance of the Disengagement Assistance and who will be the primary point of contact for SARS in respect of the Disengagement Assistance during the Disengagement Assistance Period. Service Provider will appoint such representative by the relevant date specified in clause 1.7.3.1.
- 1.8.2 SARS will appoint a senior project manager as its "**SARS Disengagement Assistance Manager**" who will be the primary point of contact for Service Provider during the Disengagement Assistance Period.
- 1.8.3 Both Parties will use Commercially Reasonable Efforts to ensure that any Disengagement Assistance issues or disputes are resolved promptly by the Disengagement Assistance Managers. Any disputes that cannot be resolved will be escalated in accordance with the dispute resolution procedure set forth in clause 25 of the Main Agreement.
- 1.8.4 Service Provider will manage the Disengagement Assistance in accordance with SARS's reasonable directions, including:
- 1.8.4.1 resolving any Incidents or problems arising with respect to the Disengagement Assistance;
 - 1.8.4.2 defining an escalation process, as approved by SARS, to be used if there is a failure in any part of the disengagement;
 - 1.8.4.3 establishing, as directed by SARS, the necessary communications and interfaces between SARS, Service Provider, the Successor and the Subcontractors; and subject to the provisions of clause 1.2 above, providing individuals with the required expertise to perform Disengagement Assistance.
- 1.8.5 Service Provider will monitor progress of all tasks and responsibilities in the Disengagement Assistance Plan (whether the responsibility of Service Provider, SARS or any Third Party) against the Disengagement Assistance Plan and promptly escalate to SARS any failures (or potential failures) to perform any tasks or responsibilities, including failures by SARS or the Successor.
- 1.8.6 Service Provider will provide reports to SARS not less than once a week which:
- 1.8.6.1 describe the progress of the Disengagement Assistance against the Disengagement Assistance Plan; and
 - 1.8.6.2 identify any risks encountered during the performance of the Disengagement Assistance and propose steps to mitigate such risks.
- 1.8.7 The Disengagement Assistance Managers appointed pursuant to **clauses 1.8.1 and 1.8.2** above will meet on a weekly basis (or as otherwise required by SARS) during the Disengagement Assistance Period to review the status of the Disengagement Assistance Plan.
- 1.8.8 SARS may appoint a Successor during the Disengagement Assistance Period to manage Service Provider's performance of the Disengagement Assistance and any Terminated Services. Service Provider will follow the direction of such Successor only to the extent

that:

- 1.8.8.1 Service Provider would be obliged to follow SARS's directions under this Agreement; and
- 1.8.8.2 SARS has authorised the Successor and notified Service Provider of such authorisation.

1.9 Confidentiality and Security Compliance

- 1.9.1 Prior to a Successor (other than SARS) being provided with any Service Provider Confidential Information as part of Disengagement Assistance, SARS will enter into a confidentiality agreement with the Successor on terms substantially similar to those set out in clause 15 of the Main Agreement or as otherwise agreed by the Parties.
- 1.9.2 SARS will procure that any Successor entering any Service Provider or Subcontractor facilities in connection with the Terminated Services will comply with Service Provider's reasonable security and site regulations and policies notified to SARS in advance.

2 SPECIFIC DISENGAGEMENT ASSISTANCE REQUIREMENTS

2.1 Bid Assistance

- 2.1.1 At any time during the Term (whether before or during the Disengagement Assistance Period), Service Provider will, as requested by SARS, reasonably co-operate and promptly provide assistance with any bid or tender process that SARS runs in relation to any of the Terminated Services (or potential Terminated Services) including:
 - 2.1.1.1 providing information, reports and data for inclusion in SARS's request for information and request for proposals;
 - 2.1.1.2 answering questions raised by potential Successors; and
 - 2.1.1.3 allowing potential Successors to perform reasonable due diligence activities in respect of the relevant Services, including providing reasonable access to facilities from where the Services are performed (subject to Service Provider's reasonable security requirements), Service Provider support systems and Service Provider Personnel (including personnel located off SARS Sites); provided that such due diligence will be performed in such a reasonable manner so that it does not materially disrupt Service performance (unless SARS excuses such disruption in advance, in writing).
- 2.1.2 The bid assistance to be performed pursuant to clause 2.1.1 above will be at least to the level:
 - 2.1.2.1 that would be required for reasonably skilled and experienced Third Party service providers to:
 - 2.1.2.1.1 prepare an informed, non-qualified offer for the relevant Terminated Services; and
 - 2.1.2.1.2 not be disadvantaged compared to Service Provider (if Service

Provider is invited to participate) in respect of access to information;
and

- 2.1.2.2 in any event, be no less than the co-operation and assistance provided by SARS to Service Provider prior to the Effective Date.

2.2 Return of Materials

Service Provider will return to SARS (or destroy) the SARS Confidential Information in accordance with clause 15.8 of the Main Agreement.

2.3 Information

- 2.3.1 As requested by SARS, Service Provider will promptly (and in any event within 5 (five) Business Days following the request) provide SARS with and permit SARS to share with the Successor if the Successor is not SARS:

2.3.1.1 the information and data listed in **Appendix F-1 (Disengagement Assistance Data)**, subject to any timing restrictions specified in that Appendix; and

2.3.1.2 any other information relating to the Services which would be reasonably required by a reasonably skilled and experienced provider of services to continue to perform the Services without disruption or deterioration following the Termination Date.

- 2.3.2 Subject to clause 1.8 above, SARS may provide to a Successor (or potential Successor):
(a) the information identified in clause 2.3.1 and (b) the Agreement.

- 2.3.3 Service Provider will provide updates to the information provided pursuant to this **Schedule F**, during the Disengagement Assistance Period.

2.4 Knowledge Transfer

Service Provider will provide knowledge transfer services to the Successor (and SARS where SARS is not the Successor) as reasonably required by SARS, including:

- 2.4.1 explaining procedures, standards and operations used to perform the Terminated Services;

- 2.4.2 answering questions in respect of the information provided pursuant to **clause 2.3** above; and

- 2.4.3 for reasonable periods during the Disengagement Assistance Period prior to the Termination Date, allowing Successor personnel to work alongside Service Provider Personnel to shadow their role and enable knowledge transfer.

2.5 Co-operation

As requested by SARS, Service Provider will co-operate with (and procure that the Subcontractors co-operate with) the Successor during the Disengagement Assistance Period.

2.6 Change Freeze

Service Provider will, unless otherwise approved by SARS, ensure that during the 3 (three) month period prior to the Termination Date no material changes are made to:

- 2.6.1 the Terminated Services (including to any hardware, Software or other facilities used to perform the Terminated Services), other than changes necessary for the continued performance of the Services in accordance with the Performance Standards; and
- 2.6.2 any hardware, Software or contracts that SARS has the right to acquire in accordance with clause 3 below.

2.7 Backlogs

Service Provider will perform its obligations under this Agreement so that there is not an unreasonable backlog of requests for support or resolution of Incidents as at the Termination Date.

2.8 Business Continuity

Service Provider will provide the following assistance to support SARS's requirements for business continuity:

- 2.8.1 where SARS is not the Successor, informing Successors of SARS's then-current policies and procedures with regard to backup and disaster recovery relating to the Terminated Services;
- 2.8.2 arranging for additional overlapping coverage or support through the Run Down Period to minimise disruption in the event of an outage during the Run Down Period; and
- 2.8.3 as requested by SARS, assisting in disaster recovery testing during the Run Down Period in accordance with the processes and procedures detailed in the Process and Procedures Library.

3 TRANSFER OF ASSETS AND GRANT OF RIGHTS

3.1 Option to purchase hardware

- 3.1.1 At SARS's election, Service Provider will sell to SARS some or all of the hardware used primarily to provide the Services to SARS. Service Provider will sell hardware that SARS elects to purchase under this provision at the lesser of fair market value or net book value. For this purpose, fair market value will be determined by a registered valuator designated by SARS.

By the relevant date as contemplated in clause 1.7.3.1 above, Service Provider will provide a list of any hardware that is owned by Service Provider or a Subcontractor and is used primarily to provide the Services to SARS. The list will specify for each item of hardware: the manufacturer, model, configuration, age, location, function in the provision of the Services and net book value.

- 3.1.2 If SARS elects to purchase hardware pursuant to clause 3.1.1 above, then:
- 3.1.2.1 as requested by SARS, Service Provider will de-commission the purchased hardware and prepare it for transportation (including packaging) or provide it for collection by SARS or the Successor;
 - 3.1.2.2 risk in the purchased hardware will pass to SARS only upon collection by SARS or upon delivery to SARS; and
 - 3.1.2.3 Service Provider will execute or provide any title, bills of sale, invoices or other documents as may be required to give effect to this clause 3.1 and to perfect the transfer of title to SARS or the Successor.
- 3.1.3 If SARS elects not to purchase any such hardware, Service Provider will be responsible for the re-use or safe disposal of the same (including, if it contains any SARS data, cleansing the same to the standards specified in this Agreement).
- 3.1.4 Service Provider will provide SARS, the Successor or both (as specified by SARS) with such assistance as is reasonably required to ensure the migration of SARS's software, SARS data or SARS-provided resources from any hardware which SARS does not wish to acquire to alternative hardware designated by SARS, or secure deletion (as required by SARS).
- 3.1.5 At SARS's election, Service Provider will assign to SARS some or all of the Third Party contracts relating to hardware used primarily to provide the Services to SARS. Service Provider will be responsible for obtaining, at its sole cost and expense, any Required Consents necessary for the assignment of the applicable lease.

3.2 **Assignment of contracts**

- 3.2.1 SARS or a Successor (where SARS is not the Successor) will have the option (exercisable by SARS on a contract by contract basis) to assume contracts for any Services provided by Third Parties to Service Provider and used exclusively by Service Provider to provide Services to SARS. Service Provider will take all steps necessary to formally assign such contracts to SARS. In respect of Third Party service contracts, Service Provider will, where required by SARS, use Commercially Reasonable Efforts to arrange for the provision of the Services by the Third Party to SARS under terms at least as favourable as those in the Third Party Service Contract.
- 3.2.2 Service Provider will provide further information about such contracts in accordance with **Appendix F-1 (Disengagement Assistance Data)**.

APPENDIX F-1: DISENGAGEMENT ASSISTANCE DATA

1 DISENGAGEMENT ASSISTANCE DATA

The Disengagement Assistance Data consists of:

1.1 Third Party contracts

1.1.1 In respect of each Third Party contract entered into by Service Provider (or by a Subcontractor) in relation to the Services, including contracts with Subcontractors, and warranties, maintenance agreements and leases relating to hardware and licences and maintenance agreements relating to Software:

- 1.1.1.1 the type of contract, such as maintenance or support services;
- 1.1.1.2 a description of the service being provided;
- 1.1.1.3 whether the contract exclusively relates to the Services;
- 1.1.1.4 whether the contract can be assigned or novated;
- 1.1.1.5 the licences, rights or permissions granted under the contract by the Third Party;
- 1.1.1.6 amounts payable under the terms of such contract;
- 1.1.1.7 the remaining term of contract and termination rights;
- 1.1.1.8 contact details of the Third Party;
- 1.1.1.9 a history of dealings with the Third Party (including performance histories against service levels that may be in effect with respect to such Third Party);
- 1.1.1.10 a list of projects or unfilled orders in progress and the status of each; and
- 1.1.1.11 a copy of each of the contracts with each Third Party.

1.2 Other Information

- 1.2.1 A copy of all documents in the Process and Procedures Library required to provide the Services to SARS;
- 1.2.2 A list of any Tools, systems, hardware, assets, Software, processes and procedures that are necessary to perform the Services that will not be transferred to the Successor;
- 1.2.3 All Software back-ups of systems used to perform the Services;
- 1.2.4 Any security features, passwords and password control policies that the Successor needs to know to continue to perform the Services;

- 1.2.5 Key support contact details for Service Provider Personnel and Third Party service providers (excluding Subcontractors), including a contact listing of current potential alternative sources of resources, including skilled labour and spare hardware and parts; and
- 1.2.6 Work volumes, staffing requirements, actual Service Levels and information on historical performance for each Service component during the preceding 12 (twelve) months.

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SCHEDULE G: SERVICE PROVIDER PROPOSAL

[Note to the Bidder: The Bidder's Proposal will be included from Request for Proposal documents upon finalisation of Agreement]

DRAFT

SCHEDULE J: DATA PROTECTION AGREEMENT

[Note to the Bidder: It will be attached separately]

DRAFT

SCHEDULE K: SERVICE PROVIDER'S INSURANCE POLICIES

[Note to the Bidder: The Bidder's Insurance Policies as at the time of contracting will be attached here]

DRAFT

SCHEDULE L: REQUEST FOR PROPOSAL

[Note to the Bidder: The Request for Proposal documentation will be attached here]

DRAFT

SCHEDULE M: SARS OATH/ AFFIRMATION OF SECRECY

[Note to the Bidder: The SARS Oath/Affirmation of Secrecy will be attached here]

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