



CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

Between

AIR TRAFFIC AND NAVIGATION SERVICES SOC LIMITED

and

**BIDDER FOR THE DESIGN, DEVELOPMENT, TESTING AND LAUNCHING
OF OPERATIONAL PERFORMANCE REPORTING TOOL TENDER**

PREAMBLE

WHEREAS:

- ATNS and the Bidder have an interest in participating in the bidding process for Operational Performance Reporting Tool, ATNS request for quotation (“**RFQ**”) Reference Number: ATNS/ATM/RFP051/FY23.24/OPERATIONAL PERFORMANCE REPORTING TOOL (“**Project**”),
- ATNS intends to share with Bidder confidential information as follows:
 - a) Tender Pack (Technical and Functional Specifications Volume 2 to 4).
- The Parties agrees that the information to be disclosed is ATNS’ proprietary information, technical knowledge, experience, data of a secret and confidential nature, all of which are regarded by ATNS as valuable commercial assets of a highly commercial nature.
- The Bidder acknowledges the great importance of the Confidential Information and recognise that ATNS may suffer irreparable harm or loss in the event of such information being disclosed or used otherwise than in accordance with this Confidentiality and Non-Disclosure Agreement (“**Agreement**”).
- In the event that the consultations and engagements with the receiving party are unsuccessful, the receiving party shall not disclose the confidential information to any third party for any reason or purpose whatsoever without the prior written consent of the disclosing party, save in accordance with the provisions of this Agreement;

NOW THEREFORE THE PARTIES HEREBY AGREE AS FOLLOWS REGARDING CONFIDENTIAL INFORMATION:

1. INTERPRETATION AND DEFINITIONS

In this Agreement:

- a. clause headings are for convenience only and are not to be used in its interpretation, unless the context clearly indicates a contrary intention;

an expression which denotes:

- b. any gender shall include the other gender;
- c. a natural person shall include a juristic person and *vice versa*;
- d. the singular shall include the plural and *vice versa*.

The following words and expressions bear the meanings assigned to them below (and cognate words and expressions bear corresponding meanings):

1.1 **“Agreement”** means the terms and conditions of this Confidentiality and Non-Disclosure Agreement;

1.2 **“Bidder”** means _____, with registration number _____, represented herein by _____, in their capacity as _____, duly authorised;

1.3 **“ATNS”** means the Air Traffic and Navigation Services Company SOC Limited, a Schedule 2 Major Public Entity, established in terms of section 2(1) of the Air Traffic

and Navigation Services Company Act No. 45 of 1993, reporting to Parliament through the Ministry of transport with registration number **1993/004150/30**.

- 1.4 **“Confidential Information”** means, without limiting the generality thereof, any confidential information, including: marketing and business plans and strategies, customers, potential customers and business associates; confidential intellectual property including but not limited to discoveries, inventions, designs, processes, know-how, works of authorship, computer software, databases, trade or business names, domain names, rights (registered or unregistered and applications for same), copyright (including rights in computer software, confidential and proprietary knowledge and information and any rights protecting same; trade secrets including but not limited to, contractual arrangements between each Party and its business associates, financial details between each Party and its business associates; and matters which relate to the business of either Party and in respect of which, information is not readily available in the ordinary course of business to a competitor of the Parties, which information may be made or become available to the other party or any personnel thereof pursuant to this Agreement;
- 1.5 **“Disclosing Party”** means a Party disclosing information to the extent that it discloses any of the Confidential Information (as hereinafter defined) to the other in terms of this Agreement;
- 1.6 **“Parties”** means both the ATNS and the Bidder. **“Party”** means each of them;
- 1.7 **“Receiving Party”** means a Party receiving information, to the extent that it receives disclosure of any of the Confidential Information (as hereinafter defined) from the Disclosing Party in terms of this Agreement;
- 1.8 **“Personal Information”** means data that can be used to identify a person and includes biometrics;
- 1.9 **“POPIA”** means the Protection of Personal Information Act, 2013 (Act No. 4 of 2013), as amended from time to time, including any regulations and/or codes of conduct made thereunder;

- 1.10 “**Project**” means Operational Performance Reporting Tool Project;
- 1.11 “**Signature Date**” means the date on which this Agreement is signed by the last Party to do so, whether in counterpart or not;
- 1.12 “**South Africa**” means the Republic of South Africa;
- 1.13 “**Third Party**” means any person other than ATNS or the Bidder.

2. **USE OF CONFIDENTIAL INFORMATION**

- 2.1 The Receiving Party shall maintain the other Party’s confidential information in confidence and shall exercise in relation thereto no lesser security measures and degree of care than those which the Receiving Party applies to its own confidential information, which the Receiving Party warrants as providing adequate protection against unauthorised disclosure, copying or use.
- 2.2 The Receiving Party may disclose the Confidential Information only to its partners, officers and employees, and then only such partners, officers and employees to whom such disclosure is reasonably necessary. The Receiving Party agrees to procure that such partners, officers and employees will be bound by this Agreement even after their relationship with the Receiving Party has been terminated.
- 2.3 Copies or reproductions containing Confidential Information shall not be made except to the extent reasonably necessary for the Project, and copies or reproductions made shall remain the property of the Disclosing Party. Following the Project all confidential information and copies thereof shall be returned to the Disclosing Party.
- 2.4 Unless the Parties otherwise agree in writing, any documentation or records relating to the Disclosing Party’s confidential information which comes into the possession of the Receiving Party during the existence of this Agreement:
- 2.4.1 shall be deemed to be the property of the Disclosing Party;

- 2.4.2 shall not be published or circulated by the Receiving Party;
 - 2.4.3 shall not be copied or reproduced by the Receiving Party other than strictly in accordance with the requirements of the Project, and any such copies and reproductions shall be kept separate from other documents and records of the Receiving Party;
 - 2.4.4 shall be surrendered to the Disclosing Party on request, and the Receiving Party shall not retain any extracts therefrom.
- 2.5 The Receiving Party agrees:
- 2.5.1 not to disclose the Confidential Information to any Third Party for any reason or purpose whatsoever without the prior written consent of the Disclosing Party, save in accordance with the provisions of this Agreement;
 - 2.5.2 not to utilise, employ, exploit or in any other manner whatsoever use the Confidential Information disclosed pursuant to the provisions of this Agreement for any purpose whatsoever other than strictly in relation to the Project.
- 2.6 The Receiving Party indemnifies and holds the Disclosing Party harmless against any loss, claim, or damage, suffered or sustained by the Disclosing Party pursuant to a breach by the Receiving Party in terms of this Agreement.

3. OWNERSHIP OF CONFIDENTIAL INFORMATION

- 3.1 Confidential Information disclosed under this Agreement shall at all times remain the property of the Disclosing Party. No license or other rights in or to the material disclosed, is granted by this Agreement or any disclosure of Confidential Information under this Agreement except as provided herein. All Confidential Information made available under this Agreement, including copies thereof, shall be returned to the Disclosing Party upon the first to occur of:
- 3.1.1 completion of the purpose(s) set forth in this Agreement; or
 - 3.1.2 the reasonable request of the Disclosing Party;
 - 3.1.3 cancellation of this Agreement.

- 3.2 Disclosure of Confidential Information shall not constitute any representation, warranty, assurance, guarantee or inducement by the Disclosing Party with respect to infringement of patents or other rights of Third Parties. No warranty or representation as to the accuracy, completeness, or technical or scientific quality of any Confidential Information is provided herein.
- 3.3 The Receiving Party shall indemnify and hold harmless the Disclosing Party, its employees and agents, from and against any claims or liabilities which might arise from or in connection with this Agreement or as a result of the use, misuse, dissemination or publication of the Confidential Information.
- 3.4 Immediately upon the written request by the Disclosing Party at any time, the Receiving Party will return to the Disclosing Party all proprietary information and all documents or media containing any such proprietary information and any and all copies or extracts thereof, save that where such proprietary information is a form incapable of return or has been copied or transcribed into another document, it shall be destroyed or erased, as appropriate.

4. **EXCLUSIONS**

Nothing in this Agreement shall prohibit or limit either Party's use of information (including, but not limited to, ideas, concepts, know-how, techniques, and methodologies):

- 4.1 which at the time of disclosure is published or otherwise generally available to the public;
- 4.2 which after disclosure by the Disclosing Party is published or becomes generally available to the public, otherwise than through any act or omission on the part of the Receiving Party;
- 4.3 which the Parties can show was in their possession at the time of disclosure and which was not acquired directly or indirectly from each other;

- 4.4 rightfully acquired from Third Parties who did not obtain it under pledge of secrecy to either of the Parties;
- 4.5 which the Receiving Party is obliged to disclose in terms of an order of court, subpoena or other legal process;
- 4.6 In the event either Party receives a subpoena or other validly issued administrative or judicial process requesting Confidential Information of the other Party, the Receiving Party shall promptly notify the Disclosing Party thereof.

5. BREACH

It is agreed that the breach of this Agreement by the Receiving Party may cause the Disclosing Party irreparable injury not compensable in monetary damages alone. Accordingly, in the event of a breach, or a threat of a breach, the Disclosing Party, in addition to its other remedies, is entitled to a restraining order, preliminary injunction or similar relief so as to specifically enforce the terms of this Agreement or prevent, cure or reduce the adverse effects of the breach.

6. DATA PROTECTION AND PERSONAL INFORMATION

6.1 Access to Disclosing Party's Data

- 6.1.1 The Disclosing Party shall permit the Receiving Party to have access to the Disclosing Party's Data solely to the extent the Receiving Party requires access to such data for the Project in accordance with the terms of this Agreement.
- 6.1.2 The Receiving Party may not otherwise modify the Disclosing Party's data, merge it with other data, commercially exploit it or engage in any other practice or activity that may in any manner adversely affects the integrity, security or confidentiality of such data, other than as specifically permitted herein or as directed by Disclosing Party in writing.

- 6.1.3 The Receiving Party understands and agrees that Disclosing Party owns all right, title and interest in and to the Disclosing Party's data and in and to any modification, compilation or derivative works therefrom (collectively, "**Modified Data**"), and also owns all intellectual property, and other proprietary rights in and to the data and Modified Data.
- 6.1.4 The Receiving Party warrants that it shall secure and keep confidential the Disclosing Party's data and protect such Disclosing Party data against unauthorised or unlawful disclosure, access or processing, accidental loss, destruction or damage.
- 6.1.5 The Receiving Party hereby warrants in favour of the Disclosing Party that it shall at all times strictly comply with all legislation relating to data protection in force, from time to time.
- 6.1.6 The Receiving Party hereby warrants and undertakes that it shall not, at any time copy, compile, collect, collate, process, mine, store, transfer, alter, delete, interfere with or in any other manner use the Disclosing Party's data for any purpose other than with the express prior written consent of the Disclosing Party, and to the extent necessary in respect of the Project.
- 6.1.7 The Receiving Party further warrants that it shall ensure that all its systems and operations which it uses in respect of the Project shall at all times be of a minimum standard required under legislation and further be of a standard no less than the standards which are in compliance with the international best practice for the protection, control and use of such data.

6.2 Processing of Personal Information

- 6.2.1 In the course of the relationship between the Parties and the Project, and pursuant to the Party's obligations under this Agreement, Personal Information will be shared.

- 6.2.2 The Parties agree, at all times, to strictly comply with all applicable South African laws in regard to data privacy including POPIA.
- 6.2.3 The Receiving Party shall ensure that no Personal Information is transferred or processed outside of the borders of South Africa unless the Disclosing Party provides its prior written consent thereto.
- 6.2.4 The Receiving Party will notify the Disclosing Party prior to any disclosure in the event that the Receiving Party is required by law, regulation or court order to disclose any Personal Information with an obligation imposed by law on Disclosing Party. The Receiving Party will limit the extent of the disclosure as is lawfully and reasonably practical and will afford the Disclosing Party a reasonable opportunity, if possible and permitted, to intervene in the proceedings and further, will comply with the Disclosing Party's requests as to the manner and terms of any such disclosure.
- 6.2.5 Should either Party constitute an operator and the other Party a responsible party for purposes in terms or relating to this Agreement, the Party constituting the operator shall:
- 6.2.5.1 Process such Personal Information with the knowledge or authorisation of the other Party, in accordance with this Agreement or as required by POPIA and as necessary to perform its obligations under this Agreement and for no other purpose;
 - 6.2.5.2 treat such Personal Information as confidential and not disclose it, unless required by law or in the course of the proper performance of its duties under this Agreement;
 - 6.2.5.3 secure the integrity and confidentiality of such Personal Information by taking appropriate, reasonable technical and organisational measures to prevent loss of, damage to or unauthorised destruction of Personal Information and unlawful access to or processing of Personal Information;

- 6.2.5.4 take reasonable measures to:
- 6.2.5.4.1 identify all reasonably foreseeable internal and external risks to Personal Information;
 - 6.2.5.4.2 establish and maintain appropriate safeguards against the risks identified;
 - 6.2.5.4.3 regularly verify that the safeguards are effectively implemented;
 - 6.2.5.4.4 ensure that the safeguards are continually updated in response to new risks or deficiencies in previously implemented safeguards;
 - 6.2.5.4.5 have due regard to generally accepted information security practices and procedures which may apply to that Party generally or be required in terms of specific industry or professional rules and regulations; and
 - 6.2.5.4.6 notify the responsible party as soon as reasonably possible, but not more than 24 hours, after obtaining actual knowledge of reasonable grounds to believe that the Personal Information has been accessed or acquired by any unauthorised person. The operator shall provide co-operation in any investigation which is carried out by or on behalf of the responsible party, including providing any information or material in its possession or control and implementing new security measures, to the extent requested by the responsible party.

7. COMMENCEMENT AND DURATION

- 7.1 This Agreement shall commence on the Signature Date and terminate upon successful completion of the Project.

7.2 Despite the provisions of clause 7.1 above, the obligation to keep the confidential information secret will survive the termination of this Agreement and will remain binding for an indefinite period.

8. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of South Africa and any dispute arising therefrom shall be adjudicated by a competent court in South Africa and for these purposes the Parties agree to the exclusive jurisdiction of the South African courts for the adjudication of such disputes.

9. ENTIRE AGREEMENT

This Agreement is the only and exclusive agreement between the Parties with respect to the subject matter of this Agreement, and it supersedes all prior or contemporaneous representations, promises, inducements, proposals, discussions and other communications.

10. GENERAL PROVISIONS

10.1 In the event of a dispute of (which cannot be resolved amicably between the Parties), such dispute will be referred to a competent court of law.

10.2 Any legal notice shall be posted in the addresses as mentioned in the definition clause.

10.3 No public announcement or disclosure beyond those disclosures authorised for Confidential Information hereunder may be made by either Party concerning this Agreement without the prior written approval of the other Party.

10.4 If any clause or term of this Agreement should be invalid, unenforceable or illegal, then the remaining terms and provisions of this Agreement shall be deemed to be severable therefrom and shall continue in full force and effect unless such invalidity, unenforceability or illegality goes to the root of this Agreement.

IN WITNESS WHEREOF, the Parties have duly executed this document as of the date first written below.

THUS DONE and **SIGNED** at _____ on this the _____ day of _____ **2024**.

AS WITNESSES:

1. _____

For and on behalf of **ATNS:**
Sandile Hogana in his capacity
as **Chief Customer Solutions**
Officer.

THUS DONE and **SIGNED** at _____ on this _____ day of _____ **2024**.

AS WITNESSES:

1. _____

For and on behalf _____:
_____ in their capacity as
Bidder.