MANAGED SERVICES ORDER

UNDER

[msacheck]

This Managed Services Order (the “**Managed Services Order**”) is made effective as of \_\_\_\_\_\_\_\_ (the “**Order Effective Date**”), between **[nke\_entname\_lu]**, an Indian company (“Authorized Buyer”) located at Ground & 1st Floor Olympia Building, No. 66/1, Bagmane Tech Park, CV Raman Nagar, Bengaluru, Karnataka, India - 560093 and [IS\_entname\_lu], a company incorporated under the [Companies Act 1956] (“Service Provider”) located at [IS\_entadd\_lu], [IS\_entcity\_lu]], [IS\_entcountry\_lu]. Each of Authorized Buyer and Service Provider is referred to individually as a “**Party**,” and together they are referred to as the “**Parties**.”

This Managed Services Order is incorporated into, forms a part of, and is in all respects subject to the terms of, the Local Country Agreement ([nke\_entlcaname\_lu]) between [nke\_entname\_lu] (**“NIKE”**) and Service Provider dated [nke\_entlcadate\_lu] (the “**Local Agreement**”) as entered into under the [msacheck] between NIKE and [IS\_entname\_lu] dated December 11, 2012 (collectively, the “**Master Agreement**”). All capitalized terms that are not defined in this Managed Services Order have the meanings assigned to those terms in the Master Agreement.

Authorized Buyer desires to engage Service Provider to provide a package of managed services as further described in this Managed Services Order (the “**Managed Services**” or the “ **Managed Services Package**”) in support of Authorized Buyer’s [program\_name] program (as further described on **Exhibit A**, the “**Program(s)**”), and to provide expert management counseling and delivery assistance for the Programs. Service Provider desires to provide such Managed Services.

The Parties therefore agree as follows:

# Managed Services.

## Managed Service Package.

Service Provider will provide the package of Managed Services described on **Exhibit A** “**The Managed Service Package**” in accordance with the terms and conditions of this Managed Services Order, the Master Agreement and the Local Agreement.

## Service Provider’s Strategic Role.

Authorized Buyer also wishes to engage Service Provider to provide strategic consulting to Authorized Buyer’s team that is responsible for the Program (the “**Program Team**”). Authorized Buyer and Service Provider agree that Service Provider’s responsibilities in this respect will include, without limitation, (a) the presentation of proposals to the Program Team for enhancements to program performance, productivity and the management capabilities of the Program Team, (b) providing management, leadership and direction for Service Provider’s personnel who will be performing services under this Managed Services Order, and (c) engaging with Authorized Buyer’s leaders of the Authorized Buyer Program Team to help drive the delivery of the strategic goals and objectives of the Program.

## Service Provider Accountabilities.

Service Provider’s responsibilities under this Managed Services Order include (a) identifying Service Provider’s personnel that are appropriately experienced and otherwise qualified to participate in support teams and the delivery of the Managed Services; (b) orienting such qualified personnel to the goals and objectives of the Program; (c) managing the performance of Service Provider’s personnel who will be performing Managed Services, and providing training to such personnel; (d) providing Service Provider’s personnel with any equipment, supplies and other materials that may be necessary or appropriate for them to perform the Managed Services and that are not otherwise provided by Authorized Buyer; (e) recommending to Authorized Buyer the appropriate location for the performance of the Managed Services (whether at Authorized Buyer’s location or some other location); (f) advising Authorized Buyer regarding best practices in automation, artificial intelligence and other delivery technologies; (g) otherwise teaming with Authorized Buyer as a strategic provider to help drive the performance of Program technology; (i) managing personnel turnover to avoid disruption of Program objectives; (j) providing budgeting, cost and resource utilization reporting and analysis to Authorized Buyer from time to time; and (k) developing a skills continuity strategy for the Managed Services reasonably satisfactory to Authorized Buyer.

## General Standards of Performance.

Service Provider will perform and ensure that its personnel perform the Managed Services (a) with the highest professionalism consistent with the standards of quality, timeliness, diligence and innovation prevailing in the information technology industry, and (b) in strict accordance with the requirements of the Master Agreement, the Local Agreement and this Managed Services Order.

## Service Levels.

Service Provider will perform the Managed Services in strict compliance with the Service Level Agreement attached to this Managed Services Order as **Exhibit B** “**Service Level Agreement**”. In the event of a conflict between the Service Level Agreement attached to the Master Agreement, and the Service Level Agreement attached as **Exhibit B**, the Service Level Agreement attached as **Exhibit B** shall govern.

## Governance Framework.

The Parties will work together to design, develop and implement a governance framework for the effective management of the Managed Services within a reasonable period after the Order Effective Date unless such Governance Framework is included as a part of **Exhibit A**.

## No Exclusivity.

Authorized Buyer’s appointment of Service Provider to perform the Managed Services is not exclusive, and Authorized Buyer has the right in its sole discretion to source any part of the Managed Services from any other provider.

## Rules of Interpretation.

The Managed Services are “Designated Services” within the meaning of the Master Agreement, and are delivered by Service Provider under the terms of this Managed Services Order, the Local Agreement and the Master Agreement. This Managed Services Order is a “Work Order” entered into by the Parties under the terms of the Master Agreement and the Local Agreement, is governed in all respects by the Master Agreement and the Local Agreement and will be deemed to be a part of, and construed in accordance with, the Master Agreement and the Local Agreement.

## Indemnification.

Service Provider acknowledges and agrees that the indemnifiable claims included within the scope of its indemnification obligations under the Master Agreement shall include any claim that any employee, principal, contractor or subcontractor of Service Provider is an employee of Authorized Buyer, NIKE or any Affiliate of Authorized Buyer or NIKE.

## Compliance with the laws of India.

Service Provider acknowledges and agrees that its compliance commitments under the Master Agreement include the obligation to comply in all respects with all labor and other laws of India that are relevant to its performance of the Managed Services, including without limitation, its obligations (a) to pay salaries and remuneration to its personnel and to remit all statutory contributions required under such laws for its personnel; (b) to comply with the Minimum Wages Act, 1948, the Payment of Wages Act, 1936, the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (the “EPF Act”), the Employees State Insurance Act, 1948 (the “ESI Act”), the Employees' Compensation Act, 1923, the Payment of Gratuity Act, 1972, the Payment of Bonus Act, 1965, the Contract Labour (Regulation and Abolition) Act, 1970 (“CLRA”), the Maternity Benefit Act, 1961, the Equal Remuneration Act, 1976, the state labor welfare fund and professional tax laws and the applicable shops and commercial establishment law; (b) to cover its employees and other eligible personnel under all applicable social security laws, including without limitation, the EPF Act and the ESI Act; (c) to file, submit and maintain all data, statutory registers, returns, records, receipts, contribution challans, payslips, certificates and other documentation required to be so filed, submitted and maintained under applicable labor laws applicable to the employment of Service Provider's personnel; and (d) to respond appropriately to any decision of Authorized Buyer resolving any complaint associated with the conduct of any personnel of Service Provider. Without limiting the generality of the foregoing, Service Provider shall (a) submit to Authorized Buyer upon request from time to time appropriate confirmation that it is registered with the relevant authorities under the EPF Act, ESI Act, CLRA and other applicable labor laws and is otherwise in compliance with its obligations under this Managed Services Order and specifically this Section 1.10 (including, without limitation its obligations under Section 1.10(a)); (b) provide to Authorized Buyer copies of its monthly remittance challans to Authorized Buyer on a schedule to be agreed upon with Authorized Buyer; and (c) will immediately remediate any failure to timely comply with its obligation under this Section 1.10.

# Resources.

## Personnel Assignment.

As part of its accountabilities under Section 1.3, Service Provider will select the personnel it desires to use to perform the Managed Services. As part of the governance framework for the Managed Services, Service Provider will consult with Authorized Buyer to determine the criteria that Service Provider should use in selection of Service Provider’s personnel for the performance of the Managed Services under this Managed Services Order.

## Personnel Reassignment.

In order to avoid disruption of the Managed Services, Service Provider will use reasonable commercial efforts not to reassign during the Order Term any personnel assigned to perform any Managed Services. If any Resource stops providing Managed Services under this Managed Services Order for any reason, Service Provider will promptly provide an equivalent replacement in accordance with its obligations under Section 1.3 of this Managed Services Order. Time spent transitioning work to a replacement Resource, including time spent by that Resource learning about the Program, will not be charged to Authorized Buyer.

## Personnel Qualifications.

Service Provider will ensure that its Resources have appropriate professional qualifications to serve in the corresponding roles to be performed by each such Resource. Authorized Buyer and Service Provider shall develop and incorporate appropriate procedures for review and approval of Resource qualifications as part of the governance framework for the Managed Services.

## Personnel Management.

To the extent required to render Managed Services under this Managed Services Order, to provide various Deliverables under this Managed Services Order and to meet its other commitments under this Managed Services Order, Service Provider will receive direction from Authorized Buyer, identify for its personnel performance requirements that are responsive to such direction and manage compliance with such requirements by its personnel. Service Provider acknowledges and agrees that (a) personnel of Service Provider will work in close coordination with personnel of Authorized Buyer, (b) personnel of both Authorized Buyer and Service Provider may be organized into teams under the management of a team leader provided by Authorized Buyer, (c) it therefore may be efficient and appropriate from time to time for Authorized Buyer to provide instructions on performance objectives directly to personnel of Service Provider and (d) such team structures and team management by Authorized Buyer will not establish any employment relationship between Authorized Buyer and Service Provider's personnel, entitle personnel of Service Provider to any employment rights or other benefits from Authorized Buyer or imply that such personnel are subject as a general matter to the direct control or supervision of Authorized Buyer.

## Personnel Selection.

Authorized Buyer may review and provide feedback on Service Provider’s personnel identified as key lead Resources prior to Service Provider placing such Resource with Authorized Buyer; however, Service Provider solely is the party responsible for determining a Resource’s qualifications and ensuring that all Resources are appropriately experienced, capable, qualified, skilled, and trained. Authorized Buyer may ask Service Provider to replace Resources who are not, in Authorized Buyer’s reasonable determination, qualified for their positions.

# TERM AND TERMINATION.

## Order Term.

The term of this Managed Services Order begins on the Order Effective Date and ends on {IF [!deleted\_square\_bracket] IS ##yes## THEN ##[!deleted\_square\_bracket|MMMM d, yyyy]## ELSE ##\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_##}, unless earlier terminated by either Party as provided in Sections 3.2, 3.3 and 3.3 below or in accordance with the applicable provisions of the Master Agreement. The period from the Order Effective Date through the effective date of expiration or termination of this Managed Services Order constitutes the “**Order Term”**.

## Termination for Cause.

Authorized Buyer may terminate this Managed Services Order for cause if Service Provider breaches any material provision of this Managed Services Order or the Master Agreement as it applies to this Managed Services Order and fails to cure such breach within thirty (30) days after written notice thereof by Authorized Buyer to Service Provider.

## Termination for Service Level Breach.

Authorized Buyer may also terminate this Managed Services Order for a Service Level breach as further described in **Exhibit B**.

## Termination for Convenience.

Authorized Buyer may terminate this Managed Services Order for convenience at any time upon prior written notice to Service Provider. In the event of any such termination, Authorized Buyer will pay Service Provider for any Managed Services performed by Service Provider through the effective date of termination, and for any transition services performed by Service Provider for Authorized Buyer at the direction of Authorized Buyer.

# Price.

## Charges.

The charges for the Managed Services provided under this Managed Services Order (the “**Charges**”) will be calculated in accordance with **Exhibit C** to this Managed Services Order, “**Charges and Invoicing**”. Unless and until this Managed Services Order is amended in a writing that specifically references this Section 4.1, Charges under this Managed Services Order that are calculated as an hourly charge shall not exceed the “**Not-to-Exceed Caps”** established under **Exhibit C** to this Managed Services Order, and Charges under this Managed Services Order that are calculated as a fixed fee shall not exceed the Charge Total Established under **Exhibit C** to this Managed Services Order.

## Invoicing and Payment.

The Charges shall be invoiced in accordance with **Exhibit C** to this Managed Services Order and the terms of the Master Agreement. In the event of any conflict or inconsistency between **Exhibit C** and the terms of the Master Agreement, **Exhibit C** shall govern.

## Expenses.

Unless otherwise specifically provided on **Exhibit C,** the Charges for the Managed Services shall cover all expenses incurred by Service Provider in performing the Managed Services and Service Provider shall not invoice Authorized Buyer separately for such expenses.

## Taxes.

### **Taxes imposed on Authorized Buyer.** In addition to the Charges, Service Provider will invoice Authorized Buyer for, collect from Authorized Buyer, and timely remit to the appropriate governmental authorities, all central, national, state, local and foreign taxes (including sales and use taxes, ad valorem taxes and value added taxes), tariffs, duties and similar charges, however designated (collectively, **“Taxes”**), that Service Provider is legally required to collect from Authorized Buyer relative to Authorized Buyer’s purchase of the Managed Services from Service Provider. Service Provider is solely responsible for any miscalculation of Taxes, for any failure to invoice Authorized Buyer for Taxes, and for any failure to remit Taxes to the appropriate governmental authority when due, and any resulting interest or penalties as a result thereof.

### **Taxes Imposed on Service Provider.** Service Provider is solely responsible for all: (a) Taxes imposed upon Service Provider’s income, gross receipts or assets; (b) Taxes in respect of Service Provider’s employees or payroll; and (c) Taxes assessed on the provision of Managed Services resulting from Service Provider’s relocating or rerouting the delivery of Managed Services to, from or through a location other than the service delivery locations recommended by Service Provider to Authorized Buyer at the beginning of the Order Term in accordance with Section 1.3 of this Managed Services Order.

### **Withholding of Taxes.** As and to the extent required by applicable law, Authorized Buyer may withhold from the payment of Charges any Taxes on Service Provider’s income payable to the country from which Service Provider performs, provides and/or invoices the Managed Services, except to the extent Service Provider submits to Authorized Buyer a certificate from the appropriate governmental authority expressly exempting Authorized Buyer from such tax withholding obligation. Authorized Buyer will remit any withheld Taxes to the appropriate governmental authority and will provide Service Provider with such evidence of payment as may be required for Service Provider to claim the payment as a deduction or credit against Service Provider’s Taxes.

### **Payroll Taxes and Employment Benefits.** Authorized Buyer will not provide workers’ compensation coverage for Service Provider or any of Service Provider’s personnel, and will not withhold or pay for any employment benefits under central, national, state or local laws, including income taxes (domestic or foreign), social security contributions, Medicare, holiday, vacation or sick pay, health and welfare benefits, profit sharing, any employee stock option or stock purchase plans, unemployment or disability insurance, workers’ compensation insurance, or other similar social taxes or assessments on account of Authorized Buyer’s payments made pursuant to this Managed Services Order. Service Provider will be solely responsible to pay all applicable taxes and tax withholdings with respect to Service Provider’s revenues or income, or associated with any payments, benefits or other actual or imputed compensation made to any of Service Provider’s personnel arising out of the Managed Services under this Managed Services Order and Authorized Buyer shall not be liable for any such obligations for any reason.

* + - 1. GST Compliance. Service Provider shall comply in all respects with the Goods and Services Tax (“GST”) laws of India, including without limitation, securing GST registration, issuance of invoices in accordance with invoicing protocols approved by Authorized Buyer, making timely payment of GST and submitting GST returns in accordance with GST Requirements. Service Provider shall provide a copy of its current GST registration to Authorized Buyer upon request from Authorized Buyer from time to time.

## Apportionment of Charges, Expenses and Taxes.

If any of Service Provider’s personnel provide services to Authorized Buyer or its Affiliates under contracts other than this Managed Services Order, any compensation payable to Service Provider or its personnel in respect of such other services shall not be included in the Charges under this Managed Services Order.

## Volume Discounts.

The Charges payable by Authorized Buyer under this Managed Services Order will be included in any calculation of any volume discount or similar benefit provided to Authorized Buyer by Service Provider under the terms of the Master Agreement.

# amendments.

Authorized Buyer and Service Provider may amend this Managed Services Order only by a written instrument that expressly refers to the provisions of this Managed Services Order and this Article 5, provides the full text of the amendment, and is signed by an authorized representative of each Party.

# Additional Terms.

## Integration.

This Managed Services Order, together with the Master Agreement and the Local Agreement, constitutes the entire agreement between the Parties concerning the subject matter of this Managed Services Order, and supersedes all prior and contemporaneous oral and written agreements, commitments and understandings concerning such subject matter.

## Counterparts and Delivery.

This Managed Services Order may be executed in counterparts. Each counterpart will be considered an original, and all of them, taken together, will constitute a single agreement. Facsimile and electronic signatures will be deemed original signatures for all purposes under this Managed Services Order. When properly signed, this Managed Services Order may be delivered by facsimile or electronically, and any such delivery will have the same effect as physical delivery of a signed original.

## Supersession of Prior Agreements.

This Managed Services Order replaces and supersedes the prior contracts and ordering documents identified on **Exhibit D**, “**Prior Agreements**”, if any (the “**Prior Agreements**”). From and after the Order Effective Date, any performance and payment obligations that would have arisen under the Prior Agreements after the Order Effective Date shall be deemed to arise under this Managed Services Order, and the payment terms and other provisions of this Managed Services Order shall apply to all such obligations. The payment obligations and other liabilities of the Parties that arose under the Prior Agreements prior to the Order Effective Date shall survive and shall be paid, performed or discharged by the Parties in accordance with the Prior Agreements and applicable law.

# governing law and dispute resolution.

This Managed Services Order shall be interpreted under and governed by the laws of India without reference to its conflicts of law principles. Any disputes under this Managed Services Order shall be resolved in accordance with the dispute resolution provisions of the Master Agreement.

Authorized Buyer and Service Provider have executed and delivered this Managed Services Order as of the Order Effective Date.

*Signatures on Next Page*

|  |  |
| --- | --- |
| [nke\_entname\_lu] | [IS\_entname\_lu] |
| By:  Signature | By:  Signature |
| Name:  (Print or Type) | Name:  (Print or Type) |
| Title:  (Print or Type) | Title:  (Print or Type) |
| Date: | Date: |

EXHIBIT A

THE MANAGED SERVICE PACKAGE

1. **PROGRAM.** NIKE’s [program\_name] provides [program\_desc].
2. **SUPPORTED APPLICATIONS MODULES AND INTERFACES.** The Managed Service Package will support the applications and other technologies identified on **Annex A** to this **Exhibit A** and those additional applications identified by, and agreed to, from time to time by Authorized Buyer and Service Provider after the Order Effective Date (collectively, “**Supported Applications**”).
3. **SPECIFIC TASKS.** The Managed Service Package will include the specific service tasks and other commitments described on **Annex B** to this **Exhibit A**.
4. **SERVICE COVERAGE, SUPPORTED LOCATIONS AND SUPPORTED LANGUAGES.** Service Provider will deliver the Managed Service Package during the coverage hours detailed on **Annex C** to this **Exhibit A** for each location identified on **Annex C** with the language capabilities identified on **Annex C**.
5. **DESCRIPTION OF DELIVERABLES.**

Service Provider will provide in support of the Managed Services the Deliverables listed in **Annex D** to this **Exhibit A** under this Managed Services Order, as well as any Deliverables reasonably requested by Authorized Buyer from Service Provider after the Order Effective Date. The delivery dates for such Deliverables shall be as set forth on **Annex D** or otherwise agreed to by Authorized Buyer and Service Provider.

1. **GOVERNANCE FRAMEWORK.**

Authorized Buyer and Service Provider shall manage their relationship under this Managed Services Order in accordance with the governance framework of the Master Agreement and the more detailed governance program set forth on **Annex E** to this **Exhibit A**.

**ANNEX A**

**SUPPORTED Application Modules and Interfaces**

**Table 1 – Application Modules**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Environment**  **Application Name** | **Interfaces** | **Technology Stacks** | **Support Coverage** | **Global Delivery Locations** |
| GOAL MVS –Product, UPC, Customer, Factory, Corporate Table, Rational Business Developer | Refer to  Table 2 Interfaces (GOAL) | Cobol, SQL, DB2, JCL, VSAM, Rational Business Developer, Easytrieve | S1-S2: 24X7 S3-S5: 18X5 | WHQ |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |

**ANNEX b**

**Specific Tasks**

**[NTD: This Template provides only representative content and will need to be customized for each engagement.]**

1. **APPLICATION MANAGEMENT**

Service Provider will act as the Advance Support team for all builds, administration, corrections, adjustments, fixes, release support and preventive maintenance relating to the System as requested by Frontline Team. Release related activities to be performed by advance support team include:

* 1. Pre-release activities including participating in planning and executing system build plans for new releases.

1. Work with Authorized Buyer teams to restore and/or refresh System environments and ensure that these environments are up to date & also ensure that the development and quality assurance environments are up to date, including restoring these environments from the production environment.
2. Provide testing support for individual ticket requests as provided by Authorized Buyer or Authorized Buyer designated Frontline Team, System Integration Testing ("**SIT**") and as otherwise required. Batch support in the SIT test environments is required twenty-four (24) hours a day, five (5) days a week whenever needed if requested in advance by Frontline support team.
   1. Release activities including coordinating releases with Authorized Buyer and Authorized Buyer Third Party Contractors and creating and executing batch plans for new releases.
   2. Post-release activities including completing analysis, participating in the creation, planning, and execution of system plans, and resolving tickets and work requests associated with new releases.
   3. Providing support for all application releases (as applicable), including the following:
3. Coordination with other teams.
4. Complete analysis and system development work for tickets, raised by Frontline team associated with the releases.
5. Participate in the execution of system build plans.
6. Participate in the creation and execution of batch plans.
7. Communication of data to downstream systems as required.
8. **SYSTEM MANAGEMENT.**

Upon receipt of request or as otherwise required to provide the Managed Services, Service Provider will act as a single point of contact for the Managed Services that requires advance support and, as necessary, will coordinate with Authorized Buyer and/or Authorized Buyer Third Party Contractors to provide continuous maintenance and support, including:

1. Complying with and enforcing all Authorized Buyer compliance policies and standards provided to Service Provider in writing, including, PCI and Sarbanes-Oxley compliance requirements.
2. Ensuring sufficient Service Provider Resources are available and properly trained to provide continuous Managed Services in accordance with this Managed Services Order and the Master Agreement.
3. Supporting the assigning and managing access rights to objects within the scope of advance support Managed Services.
4. Operating the software necessary to support the System, including the following functions and tasks:
5. Subject to Authorized Buyer 's approval, running or terminating utilities to minimize the negative impact of such utilities or other negative effects to end users.
6. Performing stress testing and performance tuning as requested by Authorized Buyer and as needed in order to perform the Managed Services.
7. **ADVANCE SUPPORT.**

Service Provider will provide Frontline Team with operational support and ticket management for issues within the scope of the Managed Services.

1. **Operational Support**. Service Provider will provide advance support, as necessary, by coordinating with Authorized Buyer Third party Contractors to provide continuous end user operational support including:
2. Implementing, providing, and conducting the Managed Services in accordance with industry recognized best practices.
3. Providing application support in the languages and during the hours specified in **Annex C**
4. Tracking issues using the Ticketing Intake or Authorized Buyer provided Tools and communicating with users to prioritize tickets as provided by Frontline team.
5. Following Authorized Buyer operational procedures.
6. **Relationship Management.** Service Provider shall coordinate with authorized users, and business units regarding IT Managed Services, including as appropriate and relevant to the performance of the Managed Services, providing end users, authorized users, and business units with documentation of IT -related business missions, objectives, and requirements.
7. **SUPPORT SYSTEM MAINTENANCE/BUG FIXES/SMALL ENHANCEMENTS, INCLUDING:**
8. Analyzing issues and providing estimates for all requests from Authorized Buyer
9. Completing detailed analysis and system development work estimated to be completed in less than one hundred and sixty (160) hours per month.
10. **OTHER ADVANCE SUPPORT ACTIVITIES:**
11. Process improvement for areas in scope of advance support.
12. Phase-wise divestiture support as per advance support team bandwidth availability.
13. Discussing current workload and solutions/ work distribution among the team.
14. Release related activities including coordinating releases with Authorized Buyer and Authorized Buyer Third Party Contractors and creating and executing batch plans for new releases.
15. Status update of the current project/ support activities to the Authorized Buyer higher management

**ANNEX C**

SERVICE COVERAGE, SUPPORTED LOCATIONS AND SUPPORTED LANGUAGES

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **App#** | **Service or Application** | **Site** | **Language** | **Support Coverage\*** |
| **1** | GOAL MVS – Product, UPC, Customer, Factory, Corporate Table, Rational Business Developer | WHQ | English | S1-S2 : 24X7 S3-S5 : 18X5 |
| **2** | GOAL WMS – Shelby, Purchase Order, Outbound Transportation, Rational Business Developer | WHQ, Memphis, TN | English | S1-S2 : 24X7 S3-S5 : 18X5 |
| **3** | DB2 Engineering work – DB2 , QMF Upgrade and DB2 Advanced work | WHQ | English | S1-S2 : 24X7 S3-S5 : 18X5 |
| **4** | MAPPER Apparel – Divestiture of Buy Plan and AME processes, PO, MLP, Salesman Sample, Buy Ready, Purchase Order  MAPPER Finance – Divestiture of Royalties, Journal Entries, NFL, NBA, Base Compensation and all other Finance modules | WHQ,  Asia Pacific, EMEA | English | S1-S2 : 24X7 S3-S5 : 18X5 |

Support Coverage Key for GOAL and MAPPER Advance Support

* “**24X7**” means on-desk support Monday-Friday, 9:00 am to 6:00 pm PT, and on-desk support from Monday-Friday, 9:00 pm to 6:00 am PT. On-call support at all other times including Saturdays, Sundays and Holidays.
* “**18X5**” means on-desk support Monday-Friday, 9:00 am to 6:00 pm PT and on-desk support from Monday-Friday, 9:00 pm to 6:00 am PST excluding Saturdays, Sundays and Holidays.

**ANNEX D`**

**Deliverables**

**Table E-1 Deliverable Details**

|  |  |
| --- | --- |
| **GOAL Advance Team** | **MAPPER Advance Team** |
| Resolution of all issues (MVS & WMS) that need any data manipulation, update, analysis in production | Resolution of all issues that need any data manipulation, update, analysis in production |
| All enhancements less than 80 hrs./month, code change in production | All enhancements less than 80 hrs./month., code change/bug fix in production |
|  |  |
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|  |  |

* + - 1. At Authorized Buyer's request, Service Provider will create a process area assessment to determine the resources and processes required to support every application environment within the System. Advance Support includes, but is not limited to:

1. Ensuring all data processing is completed following the present schedule; attending to failures as described in this Managed Services Order**.**
2. Resolving user requests, issues, and defects; securing acceptance approval from users and obtaining approval from Authorized Buyer and/or Authorized Buyer Third Party Contractors (as appropriate) to promote.
3. Positioning resources to prevent problems from occurring, mitigating the impact of problems, and implementing processes that prevent reoccurrence of such problems.
4. Ensuring all tasks are completed as described in this Managed Services Order.
   * + 1. Service Provider will review and maintain all System level documentation (requirements, specifications, diagrams and future/current state documents) that are available.
       2. Service Provider will review, create, modify, and/or maintain the following documentation and reports as required, as systems are modified, and obtain approval from Authorized Buyer where appropriate:
5. Problem resolution documentation.
6. Support schedules (day-to-day coverage; holiday coverage).
7. Escalation processes and procedures.
8. Frequently asked questions (FAQ's)
   * + 1. Service Provider will communicate to Authorized Buyer all System changes as they occur that would impact the following documents as maintained by Authorized Buyer:
   1. System architecture design diagrams.
   2. Maintenance procedure documents.

**ANNEX E**

**GOVERNANCE FRAMEWORK**

1. **GENERAL**

The Governance Procedures set forth in this **Annex E** (“**Governance Procedures**”) include a general structure for the governance of the Managed Services, the roles and responsibilities of both Parties in the execution of their respective obligations under this Managed Services Order, and a framework for the schedule, type, content and frequency of the governance meetings to be conducted under this Managed Services Order.

* 1. **Purpose.**  The Governance Procedures apply to all Managed Services under this Managed Services Order and establish procedures for the Parties to:
     1. Discuss and implement strategies and prioritize actions;
     2. Recognize, escalate and address risks and issues;
     3. Measure and review performance of Managed Services;
     4. Consider and mutually agree upon changes to the Managed Services; and
     5. Expand upon the scope of Managed Services and/or Deliverables, including adding or deleting Supported Applications.
  2. **Principles.** The principles that guide the Governance Procedures include:
     1. Service management processes shall be implemented, performance shall be measured and monitored, and clear accountability will be established.
     2. Standardized incident and problem management, program management, project management and other methodologies will be implemented and institutionalized.
  3. **Components.** The high-level functional components of the Governance Procedures will cover:
     1. Relationship management;
     2. Performance management;
     3. Financial management; and
     4. Contract administration

1. **GOVERNANCE ROLES**
   1. **Authorized Buyer Governance Team.** The following roles will be staffed by Authorized Buyer employees or contractors:
      1. **Authorized Buyer Business Executive.** On the Order Effective Date and throughout the Order Term, Authorized Buyer shall appoint and maintain in service a senior Authorized Buyer IT executive to serve as the “**Authorized Buyer Business Executive**” for purposes of this Managed Services Order, and who shall have overall responsibility for managing this Managed Services Order. Without limiting the generality of the foregoing, the Authorized Buyer Business Executive shall:
         1. Manage the overall relationship with Service Provider relative to the provision of Managed Services under this Managed Services Order.
         2. Provide leadership and guidance to the Authorized Buyer’s representatives involved with planning and managing the receipt of Managed Services hereunder.
         3. Work with the Service Provider Account Executive and the Service Provider Account Manager to achieve the highest standards in the Service Level Agreement and to otherwise achieve the objectives of this Managed Services Order.
         4. Lead discussions with Service Provider’s corporate executive leadership concerning the IT support needs of Authorized Buyer.
         5. Resolve escalated issues according to the applicable governance escalation procedures set forth herein.

The Authorized Buyer Business Executive will work with the Service Provider Account Executive to: (a) manage the relationship and strategy with Service Provider; (b) resolve escalated issues according to the applicable governance escalation procedures; (c) oversee the performance of the Managed Services; and (d) monitor Service Provider’s overall operational compliance with this Managed Services Order.

* + 1. **Authorized Buyer Account Manager.** On the Order Effective Date and throughout the Order Term, Authorized Buyer shall appoint and maintain in service an experienced IT professional to serve as the “**Authorized Buyer Account Manager**” for purposes of this Managed Services Order, and who shall have primary operating performance responsibility for determining with Authorized Buyer its Managed Services needs and coordinating with the Service Provider Delivery Manager the delivery of Managed Services by Service Provider. Without limiting the generality of the foregoing, the Authorized Buyer Account Manager shall:
       1. Monitor compliance by Service Provider and Authorized Buyer of their respective obligations under this Managed Services Order.
       2. Staff and manage Authorized Buyer team members involved with planning and managing the receipt of Managed Services hereunder.
       3. Escalate within the Authorized Buyer organization performance or other issues under this Managed Services Order, as necessary or appropriate.
       4. Evaluate Service Level Defaults and Service Level Credits and approve or reject any action plans resulting from critical performance failures.
       5. Approve, authorize and oversee all policies and procedures related to this Managed Services Order.
       6. Coordinate the preparation and execution by the appropriate Authorized Buyer of any local country agreements necessary or desirable for Managed Services to be provided in particular countries.
  1. **Service Provider Governance Team.** The following roles will be staffed by Service Provider employees:
     1. **Service Provider Account Executive.** On the Order Effective Date and throughout the Order Term, Service Provider shall appoint and maintain in service a senior Service Provider IT executive to serve as the “**Service Provider Account Executive**” for purposes of this Managed Services Order, who shall have overall responsibility for performance by Service Provider in providing Managed Services and Deliverables hereunder. Without limiting the generality of the foregoing, Service Provider Account Executive shall:
        1. Manage the overall relationship between Authorized Buyer and Service Provider with respect to Managed Services hereunder.
        2. Oversee the successful transition of services within the scope of this Managed Services Order from the resources currently performing them to Service Provider.
        3. Ensure that Service Provider fulfils all its obligations under this Managed Services Order with respect to this Managed Services Order.
        4. Work with Authorized Buyer to establish, manage and meet commitments, requirements and expectations.
        5. Work with Authorized Buyer executives and business unit managers to align the delivery of Managed Services with the various IT support needs of Authorized Buyer.
        6. Oversee the development and implementation of procedures to keep Authorized Buyer up to date on IT developments relevant to its businesses and operations.
        7. Resolve escalated issues according to the applicable governance escalation procedures.
     2. **Service Provider Delivery Manager.** On the Order Effective Date and throughout the Order Term, Service Provider shall appoint and maintain in service an experienced IT professional to serve as the “**Service Provider Delivery Manager**” for purposes of this Managed Services Order, and who shall have primary operating performance responsibility for ensuring the timely delivery of accurate Managed Services under this Managed Services Order by Service Provider. Without limiting the generality of the foregoing, the Service Provider Delivery Manager shall:
        1. Coordinate with the Service Provider Account Executive and the Authorized Buyer Account Manager to manage and meet commitments, requirements and expectations for Managed Services under this Managed Services Order.
        2. Oversee the successful implementation thereof and the delivery to Authorized Buyer of copies of records from personnel currently providing Managed Services to the extent necessary or convenient to allow Service Provider to perform Managed Services.
        3. Ensure that all Service Provider Service Level Agreement commitments are met, and that Service Provider’s performance requirements as they relate to the Managed Services and related business objectives are being satisfied.
        4. Coordinate the activities of Service Provider to assure that Service Provider performs and complies with the applicable terms and conditions of this Managed Services Order.
        5. Ensure prompt identification and resolution of all Managed Services delivery issues.
        6. Escalate within the Service Provider organization performance or other issues under this Managed Services Order, as necessary or appropriate.
        7. Receive all Change Requests, coordinate Service Provider’s response to all Change Requests, and finalize all Change Orders approved by Service Provider for execution.
        8. Coordinate the preparation and execution by the appropriate Service Provider Affiliate of all local country agreements necessary or desirable for Managed Services to be provided in particular countries.
        9. Oversee the preparation and delivery of all reports required under this Managed Services Order.

1. **GOVERNANCE STRUCTURE AND MEETINGS**

Authorized Buyer and Service Provider shall organize the management committees with the operating protocols described in this Section 3 under this **Annex E**. All governance meetings will be held at the premises of Authorized Buyer, or as Authorized Buyer otherwise advises (with remote participants via teleconference or video conference as appropriate).

* 1. **Executive Committee.**
     1. **Objectives.** The Executive Committee will: (a) set and manage the long-term plan and strategy for the Managed Services; (b) review Managed Service performance; and (c) address escalated items from the Performance Committee, as well as external or significant organizational or policy issues that require resolution.
     2. **Meeting Structure.**

|  |  |  |  |
| --- | --- | --- | --- |
| **Participants** | **Key Agenda Items** | **Outputs** | **Meeting Frequency** |
| **Authorized Buyer:** Authorized Buyer Business Executive  Authorized Buyer Account Manager  **Service Provider:** Service Provider Account Executive  Service Provider Delivery Manager | * Service strategy agreement and review * Update on key business initiatives in progress that may impact Services materially * Service Level performance * Material contract change review and approval | * Strategy input, direction and agreement * Material contract change decisions * Service Level sign off * Minutes and administration points | Quarterly |

* 1. **Performance Committee.**
     1. **Objectives.** The Performance Committee will: (a) set the direction and drive progress of the Managed Services in a manner consistent with the strategy established by the Executive Committee; (b) review and manage performance of the Managed Services, including against Service Levels, and address issues and problems with the Managed Services; (c) resolve issues escalated from the Management Committee or otherwise referred to the Performance Committee; (d) review and agree scope changes (in accordance with the Change Control Procedures); and (e) review the Charges and financial matters related to the Managed Services in order to resolve Managed Service performance.
     2. **Meeting Structure.**

|  |  |  |  |
| --- | --- | --- | --- |
| **Participants** | **Key Agenda Items** | **Outputs** | **Meeting**  **Frequency** |
| **Authorized Buyer:** Authorized Buyer Account Manager  **Service Provider:** Service Provider Delivery Manager | * Review Performance Reports * Service performance against Service Levels with remedial action points * New services or changes to existing Services * Review and sign off new business cases and implementation plans for new services or changes to Services * Charges and other financial matters related to the Services | * Service Level report and action plan * Issues and updates for the Executive Committee * Agreed changes to service scope * Minutes and action points from the meeting | Monthly |

1. **ISSUE ESCALATION AND DISPUTE RESOLUTION**

The Parties ordinarily will attempt to resolve any dispute, controversy or claim arising under or in connection with this Managed Services Order (a “**Dispute**”) informally, in accordance with the procedures set forth below but each Party reserves the right at any time to dispense with the Dispute resolution procedure of this Section 4 and instead to seek resolution under the procedures of the Master Agreement.

* 1. **Escalation Process.**
     1. First, the Authorized Buyer Account Manager and the Service Provider Delivery Manager will meet as often and as promptly as the Parties deem necessary (including through the Management Committee) to discuss the Dispute and negotiate in good faith in an effort to resolve the Dispute.
     2. If the Authorized Buyer Account Manager and the Service Provider Delivery Manager are unable to resolve the Dispute within thirty (30) days after the referral of the Dispute to them for resolution, the Dispute will be referred to the Executive Committee. The Executive Committee will use reasonable efforts to resolve such Dispute or, if appropriate, to negotiate a modification or amendment to this Managed Services Order. The Executive Committee will meet as often, and as promptly as the Parties deem necessary to discuss the Dispute and negotiate in good faith in an effort to resolve the Dispute.
  2. **Sharing Information.** The Party requesting escalation of an issue or Dispute for resolution will be responsible for preparing a short memorandum containing a summary statement of the issue(s) for escalation and shall promptly submit such summary to the non-requesting Party.
  3. **Expedited Dispute Resolution Process.** Either Party, on a good faith basis, may designate a Dispute as one requiring expedited resolution. A Dispute may require an expedited resolution if, based upon the nature or significance of the Dispute, a delayed resolution may have significant financial and/or operational consequences to one or both of the Parties. In such case each Party will use its commercially reasonable efforts to make the applicable executives available to discuss and resolve the issues underlying the Dispute within the shortened timeframes.

1. **REPORTING**
   1. **Annual Reviews.** On an annual cadence with such timing as may be agreed by Authorized Buyer and Service Provider from time to time, the Executive Committee shall meet in person at a mutually convenient time and place to review jointly the overall performance of the Managed Services (the “**Annual Review**”).
      1. **Preparation for Annual Reviews**. In preparing for the Annual Review, Service Provider shall:
         1. Collate Service Level performance data and other relevant data and reports relating to the previous twelve (12) months; and
         2. Prepare an outlook of the Managed Services for the next twelve (12) months including its plans to enhance Service Level performance and/or reduce costs.
      2. **Requirements for Conducting Annual Reviews**. As part of the Annual Review, the Parties will review:
         1. Whether the Managed Services continue to meet Authorized Buyer’s strategic IT and business requirements;
         2. Billing and inventory management performance over the year;
         3. The effectiveness of governance Committee Meetings;
         4. Service Provider’s contributions to the continuous improvement of the Managed Services, including the initiatives and progress of any initiatives discussed at any Quarterly Review;
         5. Compliance with Authorized Buyer Compliance Directives and Policies;
         6. Review of Service Level attainment, including: (i) Service Level performance and any Service Level Credits that were due during the previous one (1) year period; and (ii) any adjustments to be made to the Service Levels in accordance the Service Level Agreement;
         7. Any Disputes arising during the previous twelve (12) months, including any outstanding issues, and identify any appropriate future improvements;
         8. Identification, testing, review and implementation of improvements to the performance of Managed Services and providing of Deliverables, including any technology or other innovations or introductions planned by Service Provider; and
         9. any other matters reasonably requested by either Party.
      3. **Other Requirements.**
         1. Service Provider shall provide such additional reports and information (and Authorized Buyer will provide such additional information) as may reasonably be required for the Parties to carry out the Annual Review.
         2. Within fourteen (14) days following the Annual Review, Service Provider (or Authorized Buyer, if Authorized Buyer so elects) shall prepare a report of the results of the Annual Review. The other Party’s reasonable comments and changes shall be incorporated into such report and the final report shall be subject to the other Party’s approval (not to be unreasonably withheld).
   2. **Quarterly Review**. The Executive Committee shall meet quarterly at a mutually convenient time and place (which may be by telephone or video conference) to review Managed Services improvement, technology advances, operational efficiency and innovation opportunities (the “**Quarterly Review**”). The Quarterly Review shall include the following areas of focus:
      * 1. Review of Service Level attainment, including: (i) Service Level performance and any Service Level Credits that were due during the previous fiscal quarter; and (ii) any adjustments to be made to the Service Levels in accordance with the Service Level Agreement;
        2. Review of all minutes of the Performance Committee and the Management Committee; and
        3. Review of compliance with the Governance Procedures, and any proposed amendments thereto.
   3. **Monthly Reviews**. The Performance Committee shall meet monthly to review performance under this Managed Services Order, including the following areas of focus:
      * 1. Review of Service Level program activity, including: (i) Service Level performance and any Service Level Credits that were due during the previous month; and (ii) any adjustments to be made to the Service Levels in accordance with the Service Level Agreement;
        2. Discussion of any issues relating to Service Provider’s performance in providing Managed Services, including costs, operational issues, performance concerns and delivery successes;
        3. Discussion of any issues relating to Service Provider’s provision of Managed Services that needs immediate management attention;
        4. Discussion of the status of any projects in progress and any new projects under Authorized Buyer consideration that may impact Service Provider or the delivery of Managed Services or Deliverables under this Managed Services Order; and
        5. Discussion of any personnel-related issues affecting the relationship between Authorized Buyer and Service Provider or the delivery of the Managed Services.

**EXHIBIT B**

**SERVICE LEVEL AGREEMENT**

**Service Level Methodology**

### **OVERVIEW**

This Exhibit sets forth Service Provider’s obligations for the achievement of Service Levels in the performance of the Managed Services during the Order Term and the methodology to be used by the Parties in managing such Service Levels.

### **DEFINITIONS**

Any capitalized term used in this **Exhibit B** and not otherwise defined shall have the meaning ascribed to such term in this Managed Services Order (including this **Exhibit B**), and, if not defined in this Managed Services Order, in the Master Agreement. The following terms shall have the following meanings:

“**At Risk Amount**” means the At Risk Percentage multiplied by the sum of all At Risk Charges payable by Authorized Buyer with respect to the applicable Measurement Period.

“**At Risk Charges**” means the aggregate of all Charges payable by Authorized Buyer under this Managed Services Order with respect to the applicable Measurement Period.

“**At Risk Percentage**” means ten percent (10%).

“**Commencement Date**” means, for each Service Level, the date on which Service Provider becomes responsible for achieving such Service Level. The Commencement Date is the Order Effective Date. New applications will be included in the determination of the Service Level performance sixty (60) days after the steady state start date for New Applications as agreed by Authorized Buyer and Service Provider prior to the implementation of such new applications.

“**Committed Level**” means, for an applicable Service Level, the standard of performance required to be achieved by Service Provider with respect to such Service Level, as identified in the Service Level Matrix.

“**CPI**” means a Critical Performance Indicator as designated in the Service Level Matrix.

“**KPI**” means Key Performance Indicator as designated in the Service Level Matrix

“**Measurement Period**” means, for an applicable Service Level, the recurring period of time (for example, monthly, quarterly or annually) over which Service Provider’s performance is to be measured, as set forth in the Service Level Matrix.

“**Pool Percentage Available for Allocation**” means one hundred (100) Service Points, which represents the total number of Service Points available to be allocated by Authorized Buyer in the Service Level Matrix to Service Levels during a Measurement Period.

“**Service Level**” means a committed level of performance with respect to a particular Service or function that is designated as a “Service Level” in the Service Level Matrix, for which a Service Level Credit shall be payable in the event of a Service Level Default. Service Levels are defined in ***Attachment B-1 (Service Level Definitions)***.

**“Service Level Credit”** means a monetary credit payable to Authorized Buyer by Service Provider as a result of a Service Level Default.

“**Service Level Default**” means, for an applicable Service Level, Service Provider’s failure to achieve the Committed Level during an applicable Measurement Period.

“**Service Level Matrix**” means the matrix set forth as ***Attachment B-2 (Service Level Matrix)*** that identifies the Service Levels, their respective Committed Levels, and the details for calculating Service Provider’s performance for each Service Level.

“**Service Point**” means one (1%) percent.

### **PERFORMANCE, MEASUREMENT AND REPORTING**

#### **Performance.**

* + 1. In addition to any other standards of performance required under this Managed Services Order, for each Service Level, beginning on the Commencement Date for such Service Level, Service Provider shall provide the Managed Services at levels of performance so as to meet or exceed such Service Level.
    2. Service Provider shall meet or exceed Service Levels even when doing so is dependent on the provision of Managed Services by subcontractors, non-Service Provider Resources or third Parties, unless Service Provider is otherwise excused from performance in accordance with the terms of this Exhibit B or this Managed Services Order.
    3. Service Provider’s failure to implement the measurement processes for a Service Level on or prior to its respective Commencement Date shall constitute a Service Level Default for each Measurement Period until such measurement processes are properly implemented; provided, however, that if Service Provider’s failure is due to Authorized Buyer’s delay in providing reasonable cooperation in implementing such measurement processes, Service Provider’s failure shall be excused and the Commencement Date for each Service Level shall be delayed until the first Measurement Period thereafter by which Service Provider has (or should have with reasonable diligence) completed implementation of such measurement processes.

#### **Measurement and Reporting.**

* + 1. Service Provider shall begin measurement and reporting of Service Levels on the Commencement Date for each applicable Service Level. Service Provider shall measure and report on Service Levels using data sources, measurement and reporting tools, procedures and methodologies defined in Attachment B-1 (Service Level Definitions), or otherwise approved by Authorized Buyer. Service Provider’s measurement and reporting of Service Level performance shall be at a level of detail sufficient to permit Authorized Buyer to verify compliance with the Service Levels, and shall be subject to audit by Authorized Buyer pursuant to the Master Agreement.
    2. For each Measurement Period throughout the Order Term, Service Provider shall track its performance with respect to each Service Level and report the results to Authorized Buyer in a report, the format and structure of which shall be as mutually agreed by Authorized Buyer and Service Provider. Service Provider shall deliver such report within fifteen (15) calendar days after the last day of each Measurement Period. Service Provider shall provide Authorized Buyer with reasonable access to the data used by Service Provider to calculate its performance against the Service Levels and the measurement and monitoring tools and procedures utilized by Service Provider to generate such data for purposes of audit and verification.

### **SERVICE LEVEL DEFAULTS; SERVICE LEVEL CREDITS**

#### **Service Level Defaults; Excused Performance.**

* + 1. If Service Provider incurs Service Level Credits over two (2) consecutive Measurement Periods or any three (3) Measurement Periods in any period of 12 consecutive months, Service Provider shall (after restoring service or otherwise resolving any immediate problem): (i) promptly investigate and report to Authorized Buyer on the root causes of the problems associated with the Service Level Credits; (ii) promptly correct the problems; (iii) advise Authorized Buyer of the status of remedial efforts being undertaken with respect to such problems; and (iv) demonstrate to Authorized Buyer’s reasonable satisfaction that the causes of such problems have been corrected. In all circumstances, Service Provider shall reasonably coordinate the correction of the problems with Authorized Buyer and third parties regardless of whether Service Provider has responsibility for the cause of the problems.
    2. A failure to achieve a Service Level shall constitute a Service Level Default unless the Service Level Default is excused with Authorized Buyer’s approval. If Service Provider fails to achieve a Service Level in each Measurement Period and demonstrates to Authorized Buyer’s reasonable satisfaction that such failure is directly caused by Authorized Buyer’s material breach of, or failure to meet its obligations under, this Managed Services Order, then Service Provider’s failure to achieve such Service Level is excused and shall not constitute a Service Level Default for that Measurement Period

#### **Calculation and Payment of Service Level Credits**.

* + 1. In the event of a Service Level Default, Authorized Buyer shall be entitled to receive a Service Level Credit against the Charges under this Managed Services Order, which Service Level Credit shall be credited by Service Provider on the first invoice for the Managed Services under this Managed Services Order that is issued after the report for the Measurement Period in which such Service Level Default occurred.
    2. If Authorized Buyer becomes entitled to a Service Level Credit, Service Provider’s report for the applicable Measurement Period shall so indicate, specifying each affected Service Level and the amount of the Service Level Credit that Authorized Buyer is entitled to receive, calculated in accordance with the following formula:

Service Level Credit = A x B x C

Where “A” is the applicable At Risk Charges;

Where “B” is the At Risk Percentage; and

Where “C” is the number of Service Points for that Service Level (expressed as a percentage).

* + 1. If more than one Service Level Default occurs in a single Measurement Period, the sum of the corresponding Service Level Credits shall be creditable to Authorized Buyer; provided, however, that in no event shall the total amount of Service Level Credits creditable to Authorized Buyer for a single Measurement Period exceed the At Risk Amount for that Measurement Period.
    2. Service Provider recognizes that Authorized Buyer is paying Service Provider to deliver the Managed Services in a manner that meets or exceeds the Service Levels. The Parties agree that the Service Level Credits reflect a price adjustment as a result of any Service Provider failure to provide the Managed Services in accordance with the Service Levels, and accordingly, Service Level Credits shall not be construed as a penalty or as liquidated damages for a Service Level Default, and they shall not be deemed to constitute Authorized Buyer’s remedy, exclusive or otherwise, for any damages caused by or otherwise arising from a Service Level Default. Service Provider hereby irrevocably waives any claim or defense that Service Level Credits are not enforceable or that they constitute a sole and exclusive remedy of Authorized Buyer with respect to a Service Level Default.

### **CHANGES TO SERVICE LEVELS; REALLOCATION OF SERVICE POINTS**

#### **Changes to Service Levels.**

* + 1. Addition or Modification of Service Levels. The Parties may elect to add new Service Levels or to modify any Service Level upon mutual agreement of the Parties in writing pursuant to a Change Order
    2. Deletion of Service Levels. Authorized Buyer has the right to delete Service Levels by sending written notice to Service Provider, and no Service Provider consent shall be required.

Upon any addition, modification or deletion of Service Levels, Authorized Buyer shall reallocate Service Points as provided in Section 5.2 **(Reallocation of Service Points)** below upon mutual agreement of the Parties in writing pursuant to a Change Order.

* 1. Reallocation of Service Points. Not more than once every 120 days, Authorized Buyer has the right, upon written notice to Service Provider, to increase or decrease the then-current Service Points assigned to one or more Service Levels; provided that the sum of all Service Points assigned across all Service Levels shall not exceed the total Pool Percentage Available for Allocation. Such reallocation shall become effective as of the first day of the next Measurement Period that starts at least thirty (30) days after the notice date.

### **TERMINATION.**

The occurrence of either of the following circumstances shall be deemed a material breach of this Managed Services Order that gives rise to the right of Authorized Buyer to exercise a right to terminate this Managed Services Order in whole or in part, without any right for Service Provider to cure such material breach: (a) the amount of Service Level Credits that Service Provider is obligated to credit to Authorized Buyer in any rolling six (6) consecutive month period exceeds fifty percent (50%) of the cumulative At-Risk Amount during such rolling six (6) consecutive month period; or (b) if there are Service Level Defaults for three (3) consecutive months with respect to the same individual Service Level during the twelve (12) consecutive months prior to such notice.

### **SERVICE LEVEL EXCEPTIONS.**

If any events or periods that are measured as part of a Service Level are not successfully achieved in accordance with the relevant performance standard specified in the Service Level Agreements and the Service Provider demonstrates that such failure is directly caused by any factors described in this section, then such events or periods shall be disregarded for the purpose of calculating the relevant Service Level Performance results and shall be excluded from both the numerator and the denominator for the purposes of calculating whether the Service Level has been achieved.

* Periods of time during which Service Provider is unable to perform its services as a result of components or facilities (hardware, software, process, data, interface, network or maintenance) for which Service Provider does not have responsibility or is only a coordination point;
* Service Level failures to the extent caused by planned changes and enhancements developed by Service Provider and introduced into production that cause disruptions to the production environment because of existing system defects as determined by RCA;
* Periods of time during which Service Provider is unable to perform as a result of Authorized Buyer-approved downtime;
* Periods of time during which Service Provider is unable to perform as a result of Authorized Buyer’s or its representative’s or 3rd party agent’s (other than Service Provider) failure to perform its responsibilities;
* Service Level misses in relation to Service Provider’s support obligations for anything which are “end of life” or “end of service”;
* Incorrect assignment of tickets to Service Provider’s queue;
* Rerun job duration or data refresh process exceeds SLA time;
* Incidents resulting directly from new changes done by the development team(s) of Authorized Buyer or its third-party service provider, within the contracted warranty support period for the applicable application.

Additionally, the following principles also shall be applicable to the calculation of Service Credits:

* **Low Volume:** There shall be no service credits for any Measurement Period in which the number of measured events is ten or less
* **No Volume:** Service Provider shall be deemed to have met the Expected Service Level for a particular Service Level if there is no volume for such Service Level.

***Attachment B-1 (Service Level Definitions)***

### **GENERAL SERVICE LEVEL DEFINITIONS.**

“**Incident**” means an unplanned interruption to, or a reduction in the quality of operation of, an information technology service, platform or application managed by Service Provider. Failure of a configuration item that has not yet affected service is also an Incident.

“**Incident Resolution**” means, with respect to an Incident, the point in time when (i) the defect causing the Incident is repaired and the defective system component or service, if applicable, is returned to normal service and, if the scope of the applicable Managed Service, obligates Service Provider to restore data integrity, restoration of data integrity has been achieved, or (ii) a backup component is placed into service so that functionality and normal service is restored to the affected system component or service and, if the scope of the Managed Services obligates Service Provider to restore data integrity, restoration of data integrity has been achieved, or (iii) if the Managed Services anticipate escalation of resolution efforts to Authorized Buyer or other Authorized Buyer suppliers in appropriate circumstances, proper escalation has occurred in accordance with agreed guidelines and Service Provider has communicated to the second level support team all facts necessary to allow second level or advanced support resources to efficiently commence their own Incident Resolution Efforts.

“**Incident Resolution Efforts**” means all of the following elements:

* 1. Call back or other contact with the affected user(s) and commencement of resolution efforts in the form of technician arrival or on-site or remote commencement of diagnostic activity,
  2. After the occurrence of item (i) above, reporting commencement of resolution efforts in the Ticket Management System,
  3. On-going reporting on the status of the Incident until the Incident Resolution has been achieved, in accordance with the reporting intervals in the table below, and

|  |  |
| --- | --- |
| **Severity Level** | **Reporting Interval** |
| S1 | Every 1 hour |
| S2 | Every 1 hour |
| S3 (High Urgency) | Every 1 hour |
| S3 | Every 8 hours |
| S4 | Once every day |
| S5 | Once every day |

* 1. In the case of a Major Incident, prompt identification of a Major Incident manager to serve as the single point of contact for Incident Resolution efforts and related communications, and a Major Incident Problem manager to focus on delivery of a Problem root cause analysis after Incident Resolution is achieved.

“**Incident Resolution Time within Prescribed Timeframe**” means the percentage of Incidents where the Resolution Time is less than the time limit set out for the applicable Severity Level in the Service Level Matrix, which percentage shall be calculated as follows:

(No. Incident Tickets closed due to Incident Resolution during the Measurement Period

where the Incident Resolution Time is less than the applicable limit in the Service Level Matrix)

x 100

(Total No. of Incident Tickets closed during the Measurement Period)

“**Incident Response Time within Prescribed Timeframe**” means the percentage of Incidents where the Response Time is less than the time limit set out for the applicable Severity Level in the Service Level Matrix, which percentage shall be calculated as follows:

(No. Incident Tickets as to which Service Provider has commenced Incident Resolution Efforts during the Measurement Period where the Response Time is less than the applicable limit in the Service Level Matrix)

x 100

(Total No. of Incident Tickets as to which Service Provider has commenced Resolution Efforts during the Measurement Period)

“**Information Request**” means a formal written request to provide information or a proposal that is not related to an Incident or a Service Request.

“**Major Incident**” means a Severity Level 1 or Severity Level 2 Incident that Authorized Buyer designates as a major incident requiring identification of (i) a Major Incident manager to serve as the single point of contact for Incident Resolution efforts and related communications, and (ii) a Major Incident Problem manager to focus on delivery of a Problem root cause analysis after Incident Resolution is achieved.

**“Major Incident Root Cause Analysis within Prescribed Timeframe”** means delivery of a root cause analysis within five (5) business days after Incident Resolution is achieved with respect to a Major Incident, which root cause analysis must contain: (i) a brief description of the Incident, (ii) the duration of the Incident, (iii) the effect of the Incident in terms of Service Level compliance, (iv) a brief summary of actions taken to resolve the Incident, (v) how Service Provider achieved Incident Resolution, (vi) identification of the Problem that was the root cause of the Major Incident, and either (vii) if the root cause of the Problem that caused the Major Incident was within the control of Service Provider as part of Service Provider’s provision of products, software or services to Authorized Buyer, a list of specific actions and a proposed timeline for Service Provider to resolve the Problem, or (vii) if the root cause of the Problem that caused the Major Incident was not within the control of Service Provider as part of Service Provider’s provision of products, software or services to Authorized Buyer, a list of specific recommendations for Authorized Buyer to implement to resolve the Problem.

“**Customer Satisfaction with Quality of Service**” means the average performance rating of Service Provider’s Managed Services as reported by a group of at least five (5) of Authorized Buyer’s designated employees in response to a satisfaction survey, which survey shall ask each respondent to rate the following service measures on a scale of 0 (lowest) through 100 (highest): (i) effectiveness/correctness, (ii) speed, (iii) reliability, (iv) communication, (v) proactivity, (vi) innovation, and (vii) alignment with Authorized Buyer practices. Each respondent’s scores shall be averaged, and then the average scores of all respondents shall be averaged. Authorized Buyer employees who do not respond to a survey shall be disregarded for purposes of the percentage calculation. The survey will be sent out for every incident and service requests that are logged and closed in the Ticket Management System. Authorized Buyer will enable the Ticket Management System to operationalize the Customer Satisfaction Survey.

**“Percentage of System Failure, Performance and Capacity Incidents First Reported by Service Provider”** means, with respect to all information technology platforms and applications that are in-scope for active performance monitoring by Service Provider, the percentage of system failure, performance and capacity Incidents that are first reported by Service Provider Resources, calculated as follows:

(No. of Tickets created by Service Provider Resources in response to such Incidents)

x 100 (Total No. of such Incident Tickets)

The numerator and denominator in the above calculation may include Tickets created automatically by Service Provider’s monitoring tools.

“**Problem**” means the cause of one or more Incidents.

**“Repeat Incident”** means an Incident that is reasonably reported by Authorized Buyer to be a repeat of an Incident for which Incident Resolution had been previously reported by Service Provider. For the avoidance of doubt, until Incident Resolution is finally achieved with respect to a Repeat Incident, only one (1) Repeat Incident will be counted even if multiple Incidents are reported with respect thereto.

“**Resolution Time**” means the period of time commencing when the Ticket Creator first creates a Ticket in the Ticket Management System and ending when the Ticket Owner reports Incident Resolution or Service Request Fulfillment, as applicable.

“**Response Time**” means (a) the period of time commencing when the Ticket Creator first creates a Ticket in the Ticket Management System and ending when the Ticket Owner reports commencement of Incident Resolution Efforts or Service Request Fulfillment Efforts, or (b) in the case of an Information Request, the period of time commencing when the Information Request is delivered in writing and ending when the Service Provider provides in writing all information and proposals requested in the Information Request.

“**Restoration of Data Integrity**” means that Service Provider is able to demonstrate, after performing remediation of an Incident, that any data elements that have been corrupted or were not being processed as intended by the affected system or service components specifically related to the Incident (but not data in ancillary or dependent systems) can be reprocessed successfully.

“**Service Provider-Caused Downtime Incident**” means an Incident in which the relevant platform or application or service is not available, or performance is severely degraded due to Service Provider’s action or failure to take a required action within the scope of the Managed Services under this Managed Services Order. Planned outages or events caused by Authorized Buyer or other parties outside the reasonable control of Service Provider will not be counted as Service Provider Caused Downtime Incidents.

“**Service Request**” means a formal request in the Ticket Management System to complete a task that is not related to an Incident, such as a configuration change, re-setting a password, or providing information.

“**Service Request Fulfillment**” means completion of all elements of the task identified in a Service Request.

“**Service Request Fulfillment Efforts**” means all of the following elements:

1. Call back or other contact with the affected user(s), or on-site or remote commencement of fulfillment activity,
2. After the occurrence of item (i) above, reporting commencement of fulfillment efforts in the Ticket Management System, and
3. On-going reporting on the status of fulfillment activities until Service Request Fulfillment has been achieved, in accordance with the following reporting intervals:

|  |  |
| --- | --- |
| **Severity Level** | **Reporting Interval** |
| S3 | Once every day or at the end of the task |
| S4 | Once every day |
| S5 | Once every day |

“**Service Request Resolution Time within Prescribed Timeframe**” means the percentage of Service Requests where the Resolution Time is less than the time limit set out for the applicable Severity Level in the Service Level Matrix, which percentage shall be calculated as follows:

(No. Service Request Tickets closed due to Service Request Fulfillment during the Measurement Period where the Resolution Time is less than the applicable limit in the Service Level Matrix)

x 100

(Total No. of Service Request Tickets closed during the Measurement Period)

“**Service Request Response Time within Prescribed Timeframe**” means the percentage of Service Requests where the Response Time is less than the time limit set out for the applicable Severity Level in the Service Level Matrix, which percentage shall be calculated as follows:

(No. Service Request Tickets as to which Service Provider has commenced Service Request Fulfillment Efforts during the Measurement Period and where the Response Time is less than the applicable limit in the Service Level Matrix)

x 100

(Total No. of Service Request Tickets as to which Service Provider has commenced Fulfillment Efforts during the Measurement Period)

“**Severity Level**” means the relative severity of an Incident or Service Request, as designated by Authorized Buyer in accordance with Section 2 (Severity Levels) of this ***Attachment B-1 (Service Level Definitions)***. Service Provider acknowledges and agrees that Authorized Buyer is best able to judge impact and urgency and, therefore, Authorized Buyer’s designation of Severity Level shall not be subject to challenge by Service Provider.

“**Ticket**” means a formal request for resolution of an Incident or fulfillment of a Service Request, as recorded in the Ticket Management System.

“**Ticket Creator**” means the Authorized Buyer employee or Service Provider or the Service Provider Resource who first creates a Ticket in the Ticket Management System.

“**Ticket Management System**” means Authorized Buyer’s implementation of the ServiceNow ticket management application, or such other ticket management application as Authorized Buyer may designate from time to time upon reasonable prior written notice to Service Provider.

“**Ticket Owner**” means the Service Provider employee or Service Provider to whom responsibility for Incident Resolution or Service Request Fulfillment, as applicable, has been assigned.

“**Ticket Requestor**” means the Authorized Buyer employee or Service Provider or Service Provider employee or Service Provider who requests resolution of an Incident or fulfillment of a Service Request, as recorded in the Ticket Management System.

“**Time to Respond to Information Request**” means the percentage of Information Requests where the Response Time is less than the time limit set out in the Information Request, which percentage shall be calculated as follows:

(Number of Information Requests for which a response is due during the Measurement Period where the Response Time is less than the time limit set out in the Information Request)

x 100

(Total No. of Information Requests for which a response is due during the Measurement Period)

### **INCIDENT SEVERITY LEVELS.**

Purchaser shall report Incidents and Service Requests to Service Provider through Purchaser’s implementation of the Ticket Management System. Purchaser shall assign a Severity Level to each Ticket based on urgency and impact in accordance with the following Severity Level matrix and definitions:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  | | **Impact** | | |
| **High** | **Medium** | **Low** |
| **Urgency** | High | S1\* | S2\* | S3 |
| Medium | S2\* | S3 | S4 |
| Low | S3 | S4 | S5 |

\*May be designated as Major Incidents by Purchaser.

As used in the preceding Severity Level matrix, “urgency” is a measure of how quickly Service Provider is required to respond to and resolve an Incident or Service Request. The following table sets out Purchaser’s standard urgency definitions:

|  |  |
| --- | --- |
| **Urgency** | **Definition** |
| High | Service requires continuous availability, though short breaks in service are not catastrophic. Immediate availability is required for effective business operation. No or limited workaround is available.  High Urgency can be identified as:   * Immediate action is required because the impact of the Incident or Service Request has the potential to cause significant damage or is increasing rapidly. * A single user with VIP status is affected |
| Medium | Service is not required to be continuously available for business operations. Limited workaround is available. |
| Low | Service failures are undesirable but can be tolerated. An acceptable workaround is in place. The damage caused by the Incident or Service Request only marginally increases over time. Work that cannot be completed by  Authorized Buyer staff is not time sensitive. |

As used in the preceding Severity Level matrix, “impact” is a measure of the extent of an Incident’s effects and the potential size of the Incident’s financial effect on the business. The following table sets out Purchaser’s standard impact definitions:

|  |  |
| --- | --- |
| **Impact** | **Definition** |
| High | A business disruption that is significant as a result of one or more of the following:   * Large numbers of users or customers not able to perform key functions * Core infrastructure service disruption to a site or business unit * Localized outage or degradation impacting customers or consumers * Critical application impacted |
| Medium | Medium Business disruption as a result of one or more of the following:   * An outage or degradation impacting a minimal number of users, customers, or consumers * Operational application impacted * Impact to internal workflow with limited risk to systems or processes |
| Low | Low Business disruption as a result of one or more of the following:   * An outage or degradation impacting a single user, customer, or consumer * An issue that occurs outside core business hours * Failure where service continues to be provided via an alternate solution or link * Pre-production disruptions outside of critical times |

***Attachment B-2 (Service Level Matrix)***

|  |  |
| --- | --- |
| **At Risk Percentage** | 10% |
| **Pool Percentage Available for Allocation (Service Points)** | 100 Points |

**Service Level Agreements**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service Levels** | | **CPI / KPI** | **Measurement Window** | **Service**  **Points** | **Expected Service Level** | **Measurement Criteria** |
| **Incident Resolution** | | | | | | | |
|  | Severity Level 1 & 2 Incidents Resolved Within Prescribed Timeframes | CPI | Monthly | 20 | <=4 hrs. | 95% |
|  | Severity Level 3 Incidents Resolved Within Prescribed Timeframes | CPI | Monthly | 10 | <=6 hrs. | 95% |
|  | Severity Level 4 Incidents Resolved Within Prescribed Timeframes | CPI | Monthly | 10 | <=36 hrs. | 90% |
|  | Severity Level 5 Incidents Resolved Within Prescribed Timeframes | CPI | Monthly | 10 | <=48 hrs. | 90% |
| **Time to Respond** | | | | | | | |
|  | Severity 1 & 2 Incident Response | CPI | Monthly | 20 | <= 15 min | 97% |
|  | Severity 3 Incident Response | CPI | Monthly | 10 | <= 2 hrs. | 97% |
|  | Severity 4 Incident Response | CPI | Monthly | 10 | <= 24 hrs. | 90% |
|  | Severity 5 Incident Response | CPI | Monthly | 10 | <= 48 hrs. | 90% |
|  | Service Request Response Time | KPI | Monthly | 0 | 95% | 95% |

**\*** SLA clock for Incident Response and Resolution starts only after the ticket is assigned to Service Provider support team and they are made aware of the incident. For Severity Level 1 & 2 Incidents, Frontline Support shall call Service Provider Support team as soon as the ticket is created.

**EXHIBIT C**

CHARGES AND INVOICING

1. **Charges*.*** The charges for the leadership roles performed by Resources on Service Provider’s Managed Service team as contemplated by **Part II** of this **Exhibit C** include the Charges for the services to be provided by such Resources in managing the Managed Services.
2. **Charges for Managed Services**:

**CLAUSE FOR HOURLY RATE MANAGED SERVICES ORDER**

Authorized Buyer shall pay Service Provider a monthly payment for the Managed Services based on actual service hours provided by Service Provider’s Resources under this Managed Services Order during each such month in the Order Term calculated in accordance with the rate card established under the Master Agreement with any adjustments contemplated by **Appendix I** **“Adjustments to Master Agreement Rate Card**” to this **Exhibit C**.  The “**Not-to Exceed Cap” f**or each month in the Order Term and for the entire Order Term are as set forth on **Appendix II** “**Staffing Plan for Managed Services Order”** and are calculated by applying the rate card in effect for this Managed Services Order to the hours anticipated to be provided by Service Provider’s Resources as presented on **Appendix II** “**Staffing Plan for Managed Services Order**” to this **Exhibit C**.

**CLAUSE FOR FIXED FEE MANAGED SERVICES ORDER**

**Charges for Managed Services.** Authorized Buyer shall pay Service Provider in arrears fixed fees for the Managed Services in monthly milestones (the **“Milestone Payments”)** in accordance with the milestone table set forth in this Part II. The Milestone Payments are calculated by applying the rate card established under the Master Agreement with any adjustments contemplated by **Appendix I “Adjustments to Master Agreement Rate Card”** to this **Exhibit C** to the hours anticipated to be provided by Service Provider’s Resources as presented on **Appendix II** “**Staffing Plan for Managed Services Order**” to this **Exhibit C**. The Charge Total for the total Charges under this Managed Services Order during the Order Term is USD [zzTotal\_project\_cost|C,d0-b$].

**PLEASE INSERT MILESTONE TABLE PROVIDED BY INFOSYS**

|  |  |  |  |
| --- | --- | --- | --- |
| **#** | **Date** | **Name** | **Amount (USD)** |

|  |  |  |  |
| --- | --- | --- | --- |
| 1 | XX-Month-Year | \_\_\_\_\_\_ Milestone | $\_\_\_\_\_\_\_ |

|  |  |  |  |
| --- | --- | --- | --- |
| 2 | XX-Month-Year | \_\_\_\_\_\_ Milestone | $\_\_\_\_\_\_\_ |
| 3 | XX-Month-Year | \_\_\_\_\_\_ Milestone | $\_\_\_\_\_\_\_ |
| 4 | XX-Month-Year | \_\_\_\_\_\_ Milestone | $\_\_\_\_\_\_\_ |
| 5 | XX-Month-Year | \_\_\_\_\_\_ Milestone | $\_\_\_\_\_\_\_ |

|  |  |
| --- | --- |
| **Total** | **$\_\_\_\_\_\_\_\_** |

1. **Payment Terms.** The Charges provided for in this **Exhibit C** shall be invoiced in arrears within forty five (45) days following the last day of the month for which such invoice is issued, and NIKE shall pay such Charges under undisputed invoices within sixty (60) days from the date of receipt of invoice.
2. **Expenses**.  Unless approved by Authorized Buyer in writing in advance, Authorized Buyer will not reimburse Service Provider for any expenses related to the Managed Services.
3. Invoicing Protocols. All invoices under this Managed Services Order (a) shall be issued in compliance with the provisions of GST law, and all invoices shall reference the GST Identification Number (GSTIN) of the Service Provider, (b) shall conform to instructions on format and presentation provided by Authorized Buyer from time to time to Service Provider, (c) shall include Authorized Buyer's full name and address and (d) shall be addressed to Authorized Buyer at the invoicing address provided by Authorized Buyer from time to time to Service Provider.
4. **Invoice Notices.** The following are the Bill to and Ship to address to be used for Invoicing:

|  |  |
| --- | --- |
| **Bill To Party** | **Ship To Party** |
| NIKE, Inc  One Bowerman Drive  Beaverton, OR, 97005-6453, USA | NIKE, Inc.  One Bowerman Drive  Beaverton, OR 97005-6453, USA |

APPENDIX I

**ADJUSTMENTS TO MASTER AGREEMENT RATE CARD**

|  |  |
| --- | --- |
| **Role** | **Hourly Rate Adjustments** |
| Product Owner |  |
| ScrumMaster |  |
| Technical Lead |  |
| Business System Analyst |  |
| Senior Data Engineer |  |
| Data Engineer |  |
| System Architect |  |
| Product Owner |  |

**APPENDIX II**

**STAFFING PLAN FOR MANAGED SERVICES ORDER**

**SAMPLE DATA - NOT DYNAMIC YET**

|  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Role** | **# of Resources** | **Work Location** | **Hourly Rate Per Resource** | **Monthly hours** | | | | | **Total Hours** |
| **Jan-24** | **Feb-24** | **Mar-24** | **Apr-24** | **May-24** |
| Lead ML Engineer | 1 | USA | 139.86 | 168.00 | 168.00 | 168.00 | 168.00 | 168.00 | **840** |
| Senior ML Engineer | 10 | India | 40 | 183.75 | 183.75 | 183.75 | 183.75 | 183.75 | **918.75** |
| Senior Data Engineer | 1 | India | 38 | 183.75 | 183.75 | 183.75 | 183.75 | 183.75 | **918.75** |
| Project Manager | 1 | India | Wipro Investment | 183.75 | 183.75 | 183.75 | 183.75 | 183.75 | **918.75** |
| **TOTAL** | **13** | **--** | **--** | **719.25** | **719.25** | **719.25** | **719.25** | **719.25** | **3596.25** |

**EXHIBIT D**

**PRIOR AGREEMENTS**

[List existing orders and agreements to be superseded as described in Section 6.3]

or

None