

STANDARD TERMS AND CONDITIONS

1. DEFINITIONS

- 1.1 In this Agreement capitalised terms bear the definitions assigned to them this clause 1.
- 1.2 Where a term is defined within a clause of this Agreement or a Service Schedule, unless it is clear that the defined term applies only to that clause, the definition will apply throughout this Agreement or that Service Schedule, as the case may be.
- 1.3 Where a term is defined in this Agreement or a Service Schedule, related expressions within this Agreement or that Service Schedule bear corresponding meanings.
- 1.4 If a term is not defined, it bears its ordinary grammatical meaning in the context in which it is used.
- 1.5 The words "**clause**" or "**clauses**" refers to the clauses of this Agreement or the Service Schedule, as the case may be.
- 1.6 The word "**Schedule**" refers to service schedules concluded between the Parties from time to time under the provisions of this Agreement, and which shall form part of, and be governed by, this Agreement.
- 1.7 "**Addressee**" means the Party to whom any notice is given and/or any payment is made;
- 1.8 "**Affiliate**" means any entity over which the Customer exercises Control or with which the Customer is under common control;
- 1.9 "**Agreement**" means this entire Master Services Agreement together with its various Service Schedules (as concluded and substituted from time to time in terms of the provisions of clause 3.6);
- 1.10 "**Announcement**" means any press or other public announcements about the Services, the Agreement or the transactions related to the Agreement and Service Schedules;
- 1.11 "**Applicable Law**" means the laws of any jurisdiction to which either of the Parties or the use of the Services may be subject.
- 1.12 "**Business Day**" means any day other than Saturday, Sunday or a public holiday officially recognized as such in the Republic of South Africa;
- 1.13 "**Business Hours**" means the hours between 08h00 and 17h00 on any Business Day. Any reference to time shall be based upon South African Standard Time;
- 1.14 "**Charges**" means MRC, NRC, usage fees and any other charges payable under this Agreement and Service Schedules;
- 1.15 "**Companies Act**" means the Companies Act, 2008 (Act 71 of 2008), as amended from time to time;
- 1.16 "**Confidential Information**" means any information or data in whatever form or medium whether tangible or intangible, oral or in writing, including but not limited to, documents, materials or data which by its nature or content is or should reasonably be identifiable as confidential and/or proprietary to the Disclosing Party or which is provided or disclosed in confidence or is marked as confidential information by the Disclosing Party, and of which the Receiving Party may obtain knowledge through or as a result of the relationship created in terms of this Agreement, access to the Disclosing Party and/or the Disclosing Party's premises, or communications with the Disclosing Party's employees, representatives or independent contractors. Without limiting the generality of the foregoing, "Confidential Information" shall include, but is not be limited to, ideas, concepts, business plans, strategies, financial statements, pricing data, operations, inventions, discoveries, formulae, processes, designs, specifications, drawings, prototypes, sample, improvements, developments, applications, marketing data, Customer names, projections, trademarks, trade names, and trade secrets, any commercial, financial, technical or strategic information, whether or not the same are or may be patented, registered, or otherwise publicly protected;
- 1.17 "**Control**" means Control; as defined in the Companies Act, as amended from time to time;
- 1.18 "**CPA**" means the Consumer Protection Act, Act Number 68 of 2008, as amended from time to time;
- 1.19 "**Customer**" means [Click or tap here to enter text.](#), whose full credentials are set out in the Customer Information page, attached hereto as Schedule 1;
- 1.20 "**Data**" means any information, including Personal Information disclosed to The Service Provider by the Customer for the purpose of providing the Services;
- 1.21 "**Disclosing Party**" means the party who discloses Confidential Information to the Receiving Party;
- 1.22 "**Documentation**" means any and all documentation that the Service Provider provides to the Customer relating to the Services and which may include technical and user documentation (including user manuals, technical manuals, computer operation manuals, installation and operating standards, specifications and training materials);

- 1.23 "**Due Date**" means the date specified in the relevant invoice, or if no such date is specified, thirty (30) calendar days from the date of the invoice;
- 1.24 "**ECA**" means the Electronic Communications Act, Act Number 36 of 2005, as amended from time to time;
- 1.25 "**ECNS**" means an Electronic Communications Network Service, as defined in section 1 of the ECA
- 1.26 "**Effective Date**" means Click or tap here to enter text., being the date on which this Agreement will be deemed to be of full force and effect notwithstanding the date of signature by the Party signing last in time;
- 1.27 "**Equipment**" means all information and communications technology that is required in order for the Customer to be able to utilise the Services.
- 1.28 "**Initial Period**" means the period identified in a Service Schedule for which the Services described in that Service Schedule will be provided by the Service Provider to the Customer and on the terms and conditions of this Agreement and that Service Schedule.
- 1.29 "**Intellectual Property**" means any form of knowledge or information that is capable of protection under Applicable Law and includes things such as patents, inventions, copyrights, moral rights, design rights, trademarks, trade names, business names, service marks, logos, graphics, multimedia works, service names, trade secrets, know-how, domain names and database rights.
- 1.30 "**Licences**" means the electronic communications service and electronic communications network service licences issued to the Service Provider on 15 January 2009, and any renewal, amendment, re-issue or equivalent thereof authorising the Service Provider to provide the Services;
- 1.31 "**Losses**" means all losses, liabilities, damages and claims, and all related costs and expenses suffered by either Party (including legal fees on the scale as between attorney and client, tracing and collection charges, costs of investigation, interest and penalties);
- 1.32 "**MRC**" or "Monthly Recurring Charge" means the monthly charges for the Services as set out in the applicable Services Schedule;
- 1.33 "**Network**" means the telecommunications network operated by The Service Provider or its Third-Party Supplier and used in connection with providing the Services and all facilities and associated equipment used in, or in connection with, that network, but excluding the Equipment;
- 1.34 "**NRC**" or "Non-Recurring Charge" means the installation fee for the Services as set out in applicable Services Schedule;
- 1.35 "**Parties**" means the Service Provider and Customer and include their respective successors and permitted assigns, who individually may be referred to as "Party";
- 1.36 "**Personal Information**" means any information provided by the Customer to the Service Provider that is an identifying number, symbol, e-mail address, physical address, telephone number or similar assignment relating to the Customer or any customer of the Customer, which is subject to protection in terms of any statute in South Africa which imposes data protection requirements from time to time;
- 1.37 "**PSTN**" (Public Switched Telephone Network) is the interconnected voice-oriented public telephone networks, both commercial and government-owned;
- 1.38 "**Receiving Party**" means the party that receives Confidential Information from the Disclosing Party;
- 1.39 "**Services**" means those various services to be provided by the Service Provider to the Customer from time to time and as described in the applicable Service Schedule(s);
- 1.40 "**Service Description**" means the detailed description of the nature and type of the applicable Service as described in the Service specific terms;
- 1.41 "**Service Provider**" means FirstNet Technology Services (Pty) Ltd, registration number: 2006/031608/07, a private company duly incorporated in terms of the laws of the Republic of South Africa with its registered address being 26 Augrabies Road, Waterfall Office Park, Midrand, Johannesburg 1682;
- 1.42 "**Service Schedule**" means a schedule for Services containing the Service Description of the applicable Service, concluded between the Parties from time to time under the provisions of this Agreement and the Parties will enter into separate Schedules for each Service provided by the Service Provider to the Customer and each separate Schedule shall be governed by, and form part of, this Agreement
- 1.43 "**Service Commencement Date**" means the date when the relevant FirstNet services were successfully provisioned / installed/ configured and handed over to the Customer;
- 1.44 "**Service Handover Form**" or "**SHF**" means the form provided by The Service Provider to the Customer after the Service Provider has completed installation and testing of the Service;
- 1.45 "**Termination Date**" means the date upon which this Agreement, or the applicable terminating Service Schedule, as the case may be, terminates for any reason whatsoever;
- 1.46 "**User**" means a natural person who has access to, or makes use of, the Services;

- 1.47 "VAT" means value added tax levied in terms of the VAT Act; and
1.48 "VAT Act" means the Value Added Tax Act, 1991 (Act 88 of 1991).

2. INTERPRETATION

- 2.1 The Agreement and Service Schedules may, in various places, use the terms "**include**" and "**including**". Where these terms are used, it means that the matters being referred to are not the only ones in question and are used only as examples of what is being referred to.
- 2.2 In the Agreement and Service Schedules, certain clauses are given titles. Those titles are provided for purposes of convenience only and may not be used to interpret or change the language and meaning of the clause.
- 2.3 If this Agreement or a Service Schedule refers to any law, it means that law as it stands as at the time that this Agreement and/or Service Schedule (as the case may be) is signed by the Parties and as amended from time to time. If a law is replaced altogether, then the new law that replaces the old law will apply.
- 2.4 If the Agreement and Service Schedules refer to a period of time expressed as a number of days, then the first day is not counted but the last day is counted. Saturdays, Sundays and public holidays in the Republic of South Africa are never counted.
- 2.5 Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail. Expressions defined in this Agreement shall bear the same meanings in schedules or annexures to this Agreement which do not themselves contain their own conflicting definitions.
- 2.6 The use of any expression in this Agreement covering a process available under South African Law, such as a winding-up (without limitation to the *eiusdem generis* rule) shall, if any of the Parties to this Agreement is subject to the law of any other jurisdiction, be construed as including any equivalent or analogous proceedings under the law of such defined jurisdiction.
- 2.7 If any term is defined within the context of any particular clause in this Agreement, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this Agreement, notwithstanding that that term has not been defined in the interpretation clause.
- 2.8 The expiration or termination of this Agreement shall not affect such of the provisions of this Agreement that expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.
- 2.9 The rule of construction that a contract shall be interpreted against the party responsible for the drafting or preparation of the contract, shall not apply.
- 2.10 Any reference in this Agreement to a Party shall include a reference to that Party's assigns or successors-in-title expressly permitted under this Agreement and, if such Party is liquidated or sequestrated, be applicable also to and binding upon that Party's liquidator or trustee, as the case may be.
- 2.11 Any reference in this Agreement to any other agreement or document shall be construed as a reference to such other agreement or document as the same may have been, or may from time to time be, amended, varied, novated or supplemented.
- 2.12 All provisions and the various clauses of this Agreement are, notwithstanding the manner in which they have been grouped together or linked grammatically, severable from each other. Any provision or clause of this Agreement which is or becomes unenforceable in any jurisdiction, whether due to voidness, invalidity, illegality, unlawfulness or for any other reason whatsoever, shall, in such jurisdiction only, and only to the extent that it is so unenforceable, be treated as *pro non scripto* and the remaining provisions and clauses of this Agreement shall remain of full force and effect. The Parties declare that it is their intention that this Agreement would be executed without such unenforceable provision if they were aware of such unenforceability at the time of execution hereof.
- 2.13 Where the consent of any Party is required for any purpose, the same shall, unless the context indicates otherwise:
- 2.13.1 refer to the prior written consent of such Party (the "**grantor**"); and
- 2.13.2 the consent shall not be unreasonably withheld.

2.14 In the event of the refusal or withholding of such consent, the onus shall be on the Party seeking same (the “grantee”), to prove that the refusal or withholding of the consent was reasonable in the circumstances.

2.15 No provision of this Agreement shall (unless otherwise stipulated) constitute a stipulation for the benefit of any person (*stipulatio alteri*) who is not a party to this Agreement.

3. AGREEMENT AND SERVICE SCHEDULE

3.1 This Agreement sets out the general terms and conditions regulating the relationship between the Service Provider and the Customer in relation to the provision of the Services.

3.2 The provision of Services will be contracted for between the Parties by the execution of a Service Schedule by the Parties. Such Service Schedule will contain the Service Description of the Services required by the Customer and any terms and conditions relating to the provision of those Services in addition to the terms and conditions contained in this Agreement.

3.3 This Agreement shall commence on the Effective Date and shall endure indefinitely unless and until terminated by either Party giving the other not less than 90 (ninety) days prior written notice of its intention to terminate;

3.3.1 For the sake of clarity, it is agreed that, notwithstanding termination of this Agreement, this Agreement shall continue to govern all Services provided under a valid Service Schedule until all valid existing Service Schedules have been terminated.

3.4 The Services shall commence on the Service Commencement Date and shall remain in force for the Initial Period and where after the applicable Service Schedule shall automatically renew for subsequent 12 (twelve) month periods unless and until terminated by either Party giving the other not less than 30 (thirty) days prior written notice of its intention to terminate, and at all times subject to the early termination charges set out in clause 18 below and any increase in the Charges.

3.4.1 For the avoidance of doubt, neither Party shall be entitled to terminate a Service Schedule prior to the expiration of the Initial Period except as provided for in clause 16 below.

3.5 The Service Provider is not obliged to provide any services except those provided for under a Service Schedule. The Customer is not obliged to pay for any services, except as provided for under a Service Schedule.

3.6 In the event of there being any legal conflict between the Service Schedule and the terms of this Agreement, the provisions of this Agreement will prevail and in the event of there being a non-legal conflict between the Service Schedule and the terms of this Agreement the terms of the Service Schedule will take precedence. A Service Schedule concluded for the provision of a Service may be substituted from time to time with a replacement Service Schedule by means of the Parties signing a replacement Service Schedule which has a sequential version number and which indicates upon the face of it the Service Commencement Date on which that replacement Service Schedule will be deemed to have replaced the previous version of the Service Schedule concerned.

4. SERVICES

4.1 Services provided to the Customer under the Agreement and Service Schedules are only provided to the Customer and the Customer is not authorised to permit any Affiliate of the Customer to in any way (whether directly or indirectly) access, make use of or receive the benefit of the Services or any part of the Services, except to the extent expressly permitted in the Service Schedule relating to those Services.

4.2 The Customer's right to use the Services is limited to the purpose for which those Services are provided as described in the Service Schedule relating to those Services. Any use of the Services outside of that purpose will be unauthorised use of the Services.

4.3 The Customer's right to use a Service may be limited to use within a territory described in the applicable Service Schedule. Any use of that Service outside such described territory will be unauthorised use of that Service. For the purposes of this clause 4.3, unauthorised use includes any accessing of the Service by any person or system located outside of the described territory.

4.4 The Customer's right to use a Service may be subject to certain restrictions described in the applicable Service Schedule. The Customer acknowledges and agrees that the use of a Service in contravention of such restrictions will constitute a material breach of the Agreement and Service Schedules which will entitle the Service Provider, at its election, either discontinue that specific Service or to discontinue all Services. Further, upon such material breach, the Service Provider may, without prejudice to its other rights, elect to cancel the applicable Service Schedule or to cancel the Agreement and Service Schedules in their entirety.

5. INTELLECTUAL PROPERTY

To the extent that the Service Provider makes any Intellectual Property available to the Customer, whether as part of the Services or in order to enable the Customer to make full use of the Services, the Customer may not (directly or indirectly, in whole or in part) except to the extent permitted under the terms of the Service Schedule under which such Intellectual Property is made available to the Customer; (a) make any copies of the Intellectual Property, (b) cause or permit any reverse engineering, decompilation, modification, translation or disassembly of any Intellectual Property (c) sell, rent, sublicense, distribute, disclose, publish, assign, commercially share or otherwise transfer any rights in any such Intellectual Property without the Service Provider's prior written consent; (d) permit any third party to access any such Intellectual Property; and (e) will not, and will not permit to be done, anything which might negatively affect the Service Provider's right, title and interest in or to that Intellectual Property.

6. ACCEPTANCE OF TERMS AND CONDITIONS

- 6.1 Use of a Service constitutes acceptance of the Agreement and Service Schedules by the Customer and reflect its willingness to be bound by this Agreement and Service Schedules.
- 6.2 The Customer acknowledges that the Service Provider may have built into any or all of the Services disabling mechanisms that the Service Provider is capable of activating in the event of the Customer contravening any of the terms of the Agreement and Service Schedules. The Customer further agrees that the Service Provider will be entitled to activate such disabling mechanisms, on 14 (fourteen) days prior written notice, in the event of the Customer contravening any of the terms of the Agreement and Service Schedules, or failing to pay any amounts when due in terms of the Agreement and Service Schedules and that in the event of the Service Provider so doing, the Customer will have no claim against the Service Provider.

7. INSTALLATION AND IMPLEMENTATION

- 7.1 The Customer acknowledges that, except to the extent otherwise stated in the applicable Service Schedule, the Agreement and Service Schedules do not impose upon the Service Provider any obligation to assist the Customer with the installation or configuration of anything and that should the Customer require any services from the Service Provider in that regard, such will be the subject of an independent agreement concluded between the Customer and the Service Provider.
- 7.2 To the extent that a Service Schedule provides that the Service Provider will install or configure anything as part of the Services; (a) the Service Provider will notify the Customer of the anticipated date and time of such installation and/or configuration, (b) if so required by the Service Provider, the Customer will grant the Service Provider reasonable access to the Customer's premises and all of the Equipment to enable the Service Provider or its agents, as the case may be, to effect such installation and/or configuration and (c) the Customer will ensure that suitably qualified personnel are available at its premises at the specified date and time on which the installation and/or configuration is to commence in order to provide the Service Provider or its agents with all such assistance as they may reasonably require in respect of such installation and/or configuration.

8. INVOICING AND PAYMENT

- 8.1 The Charges in respect of each Service (the "Charges") are described in the Service Schedule relating to that Service.
- 8.2 All amounts described in the Agreement and Service Schedules are exclusive of VAT.
- 8.3 The Charges described in a Service Schedule do not include the provision of any services or the performance of any activities or the provision of anything by the Service Provider, except as specifically described in the Service Schedule in question.
- 8.4 In the event of any increase by an/any upstream service provider and partner of the Service Provider, of its tariffs relating to any service provided to the Customer by the Service Provider;
- 8.4.1 The Service Provider shall provide the Customer with 30 (thirty) days period notice of such increases; and
- 8.4.2 The Service Provider shall thereafter be entitled to increase its Charges accordingly.
- 8.5 The Service Provider reserves the right, without liability and on 30 (thirty) days prior written notice to the Customer, to vary the Charges and terms and conditions of this Agreement and Service Schedule, at its sole discretion, should it become necessary as a direct result any Applicable Law. The Service Provider shall notify Customer of any such variation in writing.
- 8.6 The Customer is responsible for, and agrees to pay to the Service Provider, all Charges as specified in the applicable Service Schedule in South African currency (ZAR), without deduction or set-off of any amount of whatsoever nature or for whatsoever reason.
- 8.7 All prices specified in the Service Schedule exclude PSTN provider service fees, for which Customer agrees to make payment directly to the PSTN provider on such terms as are agreed to between the PSTN provider and Customer, and shall at all times be the responsibility of the Customer.
- 8.8 EXCHANGE RATE FLUCTUATIONS**
- 8.8.1 Where any of the Charges are based on an exchange rate, that rate shall be quoted in the relevant Service Schedule to this Agreement;
- 8.8.2 The Customer accepts and agrees that it shall bear the risk in any variation/fluctuation in the exchange rate of the South African Rand against the applicable foreign currency, and that the Service Provider shall be entitled to increase or reduce any amount due by the Customer in respect of the applicable Service accordingly.
- 8.9 All Charges will, unless otherwise stated in the Service Schedule in question, be invoiced by the Service Provider monthly in advance and are payable by the Customer no later than 30 (thirty) days from the date of invoice, free of deduction or set-off.
- 8.10 The Service Provider shall be entitled on 30 (thirty) days prior written notice to the Customer to increase the Charges referred to in any applicable Service Schedule, after the Initial Period.
- 8.11 Overdue amounts will bear interest at the prime overdraft rate as charged by the Service Provider's bank and will be calculated for the period between the date that payment was due and the date on which payment is actually affected. The prime overdraft rate may be proved by a certificate signed by any manager of that bank, whose appointment it shall not be necessary for the Service Provider to prove and which certificate will constitute prima facie evidence of its contents.

9. TECHNICAL SPECIFICATION

- 9.1 The Service Provider will from time to time advise the Customer of the required technical specifications for its Equipment that may be necessary in order for the Customer to be able to properly and successfully use the Services. The Customer acknowledges and agrees that such technical specifications (a) may, but will not necessarily be, described in the applicable Service Schedule and (b) will, out of necessity, change over time as a consequence of technological evolution. The Customer further acknowledges that non-compliance with such technical specifications may result in the Customer not being able to make proper and full use of the Services. The Service Provider will not have any liability to the Customer in respect of any Services that do not operate correctly where such Services are not used with Equipment complying with the technical specifications prescribed by the Service Provider from time to time.
- 9.2 The Customer acknowledges that the manner in which the Customer operates its Equipment may impact on the performance and functionality of the Services. The Customer undertakes to confirm with its third-party service

providers that the recommendations made by the Service Provider as to the technical specifications relating to the Equipment are in fact compatible with, and appropriate for, the Customer. Furthermore, and without limiting the generality of the foregoing, the Customer will confirm that its existing Equipment will not negatively or otherwise affect the functionality of or be affected by, any applicable Service. The Customer also warrants that all third-party Intellectual Property used by the Customer is and shall for the duration of this Agreement be lawfully used by the Customer under an appropriate licence concluded with the licensor of such Intellectual Property.

- 9.3 The Customer acknowledges that; (a) the Service Provider may effect changes to the Services (including by way of releasing release updates and upgrades) from time to time which may require the Customer to upgrade its Equipment in order to be able to properly and fully use the Services as updated or upgraded; and (b) any required upgrade of Equipment shall be solely the responsibility of the Customer.
- 9.4 The Customer acknowledges that the Service Provider may not provide support in respect of versions of Services as they stood prior to any such update or upgrade and that the Customer will have no claim against the Service Provider should the Service Provider not provide such support.
- 9.5 The Customer acknowledges that a failure to implement updates or upgrades of the Services as and when they are made available by the Service Provider may result in the Customer not being able to use the Services fully or at all and that in that event the Customer will have no claim against the Service Provider.

10. DOCUMENTATION

- 10.1 Any specifications, descriptive matter, drawings and other documents which may be furnished by the Service Provider to the Customer from time to time:
- 10.1.1 do not form part of this Agreement and may not be relied upon, unless agreed to in writing by both parties hereto to form part of this Agreement; and
- 10.1.2 shall remain the property of the Service Provider and shall be deemed to have been imparted by it in trust to the Customer for the sole use of Customer. All copyright in such documents vests in the Service Provider. Such documents shall be returned to the Service Provider on demand.

11. SUPPORT

Support for a Service will be provided by the Service Provider to the Customer to the extent set out in the Service Schedule relating to that Service.

12. CUSTOMER OBLIGATIONS

- 12.1 At all times it shall be the responsibility of the Customer to have adequate disaster recovery and data back-up systems in place and to maintain these systems. The Service Provider shall not be liable for any loss or damage, from whatsoever cause and howsoever arising, suffered by the Customer as a result of the Customer's failure to maintain adequate disaster recovery and data back-up systems.
- 12.2 At all times it shall be the responsibility of the Customer to have adequate security and anti-virus systems in place and to maintain these systems. The Service Provider shall not be liable for any loss or damage, from whatsoever cause and howsoever arising, suffered by the Customer as a result of the Customer's failure to maintain adequate security and anti-virus systems, including but not limited to, cyber-attacks caused by (i) Malware - such as adware, botnets, ransomware, rootkits, spyware, trojan horse, viruses/worm; (ii) Social engineering – such as phishing, deceptive phishing, pharming, spear phishing, whaling, vishing, pretexting, baiting, quid pro quo; (iii) Password attacks – such as guessing attacks, brute force attacks, dictionary attacks, rainbow attacks, stealing attacks, hybrid password attacks, birthday attack; (iv) Denial-of-Service – such as distributed denial-of-service attacks, denial-of-service attacks; (v) Data breaches – such as data breaches caused by negligence, lost/stolen devices, hacked infrastructure and/or services due to insecure configurations and/or unpatched vulnerabilities; (vi)

Missing/incomplete documentation (policies, processes, procedures); (vii) Lack of existing user education/training/awareness.

- 12.3 At all times it shall be the responsibility of the Customer to ensure compliance with its own internal policies and procedures (including, but not limited to, corporate governance, due diligence, risk management, framework assessments, infrastructure assessments, self-assessments, audit compliance, and compliance reports) as well as any Applicable Laws applicable to the Customer. Should the Customer require assistance in this regard, the Service Provider may (at its discretion) provide such assistance at the sole cost and expense of the Customer.
- 12.4 The Customer shall not commit nor attempt to commit any act or omission which directly or indirectly:
- 12.4.1 damages in any way the Service Provider's technical infrastructure or any part thereof;
 - 12.4.2 impairs or precludes the Service Provider from being able to provide the Service/s in a reasonable and business-like manner;
 - 12.4.3 constitutes an abuse or malicious misuse of the Service/s; or
 - 12.4.4 is calculated to have the abovementioned effect. In such an event, should the Service Provider incur expenses to remedy the situation, the Service Provider reserves the right to charge the Customer the amount necessary to cover the Service Provider's additional expenditure. Notwithstanding the above, the Service Provider reserves the right to take any other appropriate action it may deem necessary to remedy the situation.
- 12.5 The Customer may not, without the Service Providers prior written consent, modify any equipment supplied and/or configured by the Service Provider (including but not limited to; router equipment) and utilized by the Customer to receive any of the Service/s, in anyway whatsoever, including the changing of any of the settings of such equipment.
- 12.6 The Customer may not, at any time, use the Service in contravention of any South African law. In particular, the Customer undertakes to familiarize itself and ensure that it is kept continuously appraised of all South African law in force from time to time, which has any bearing on the Service and/or its use. The Customer acknowledges that the Service Provider has no obligation to assist Customer in this regard.

13. CONFIDENTIALITY

- 13.1 Each Party shall keep confidential all Confidential Information concerning the other Party and any of the other Party's subsidiaries, agents, assigns or representatives, their business activities, subscribers, business, operation systems, software and any other information.
- 13.2 The Receiving Party shall not disclose, and shall ensure that their employees, sub-contractors, subsidiaries, agents or representatives do not disclose, the Confidential Information referred to in clause 13.1, without the prior written consent of the Disclosing Party.
- 13.3 The Receiving Party shall ensure that each of its employees, sub-contractors and agents and any other person involved in the performance of this Agreement will comply with the terms of this clause 14 as if they were parties thereto and the Receiving Party shall be responsible for any breach of this clause 13.3 by any of its employees, sub-contractors and agents and any other person involved in the performance of this Agreement as if such breach were committed by such party.
- 13.4 The Receiving Party undertake to procure that each sub-contractor executes an undertaking to be bound by provisions substantially the same as those contained in this clause 13.
- 13.5 The obligations of confidentiality under this clause shall not apply to –
- 13.5.1 information disclosed to employees, shareholders, auditors, consultants, attorneys, professional advisors, banks or other lenders, agents and sub-contractors on a need-to-know basis, provided that the Receiving Party shall take all reasonable precautions necessary (for example, by executing an appropriate nondisclosure undertaking) to safeguard the confidentiality of the information (in the same standard as it protects its own confidential information and if such standard falls short of best industry practice, at standards conforming to best industry practice);
 - 13.5.2 information which is required to be disclosed in compliance with any regulation, Law, court order or direction of competent authorities;
 - 13.5.3 information already placed in the public domain prior to disclosure or obtained from an independent third party without confidentiality obligation known to the Receiving Party;

- 13.5.4 is developed by the Receiving Party or its related companies independent of any confidentiality undertaking;
- 13.5.5 is approved for release by the Disclosing Party.
- 13.5.6 is required to be disclosed pursuant to a court order
- 13.6 Each Party indemnifies the other and its subsidiaries against all loss (including reasonable legal costs) or liability directly or indirectly incurred or suffered as a result of any breach of this clause 13 by itself or any of its subsidiaries, employees, representatives, sub-contractors or agents, without limitation.

14. WARRANTY

The Service Provider warrants to the Customer that for so long as the Customer makes use of a Service, that Service will function in accordance with the Service Provider's functional and technical specifications for the Services. The foregoing warranty shall not apply to any Services that have been modified by any person other than the Service Provider, or that have been improperly installed or configured, by any person other than the Service Provider, or used in a manner that does not comply with the intended use of the Services or the terms of this Agreement and Service Schedules. The Customer's sole and exclusive remedy under any warranty shall be limited, at the Service Provider's discretion, to support or replacement of the Services or to a refund of any amounts paid by the Customer in respect of any Services that do not meet the Service Provider's functional and technical specifications for that Service.

15. LIMITATION OF LIABILITY

- 15.1 Notwithstanding anything to the contrary in this Agreement, in the event that the Service Provider is found to be liable for any loss or damages suffered by the Customer and/or any other person arising from the Agreement and Service Schedules and/or any use of the Services, such liability will, to the maximum extent permissible in law, be limited to an amount equal to the aggregate of all Charges in respect of the Services in question paid by the Customer to the Service Provider during the 12 (twelve) month period immediately preceding the date upon which the claim for such damages arose.
- 15.2 To the maximum extent permissible in law, the Service Provider will not be liable for any indirect, incidental or consequential damages whatsoever and howsoever incurred (including loss of profits, loss of business opportunity and/or loss of data)
- 15.3 Whilst every effort is made to eliminate any errors, the Customer acknowledges that no information and communications technology is error-free and that the Services are provided to the Customer "as is". As a consequence, the Customer agrees and undertakes to perform regular back-ups of all data, messages and other information generated, sent, received and/or stored, arising from, or in relation to, the Software and/or Service. The Customer acknowledges that the Service Provider shall not be liable for any loss or damage the Customer or its clients may suffer as a result of an error occurring in relation to the operation or use of the any of the Services. The Customer acknowledges and agrees that the Service Provider will have no liability to the Customer in the event of the Customer being unable to access or make use of any of the Services as a consequence of the failure of any information and communications technology systems, including third party communications systems.
- 15.4 The provisions of this clause 15 will survive the termination of this Agreement for any reason whatever.

16. BREACH

- 16.1 If either Party breaches a provision of the Agreement and Service Schedules and remains in breach 10 (ten) Business Days after the other Party has given written notice to the Party in breach calling upon them to correct that breach, then the other Party may give written notice to the Party in breach, either indicating its intention to cancel the Agreement and Service Schedules or in the case of the Service Provider its intention to suspend the provision of the Services to the Customer. In the event of the Agreement and Service Schedules being cancelled, the Party that cancels the Agreement and Service Schedules will nevertheless still be entitled to make such claims against the Party in breach as the law allows and will also, subject to the provisions of clause 15 (limitation of liability), be entitled to claim for such losses as it may have suffered in connection with that breach.

16.2 Should either Party (the “Defaulting Party”);

16.2.1 fail to pay any amount due by it in terms of this Agreement within a period of 10 (ten) Business Days after receipt of a notice from the Party not in default (the “Non-Defaulting Party”) to affect such payment;

- 16.2.2 commit any breach of any term of this Agreement and/or Service Schedule, whether such breach goes the root of this Agreement or not, and fail to remedy that breach within a period of 20 (twenty) Business Days after receipt of written notice to that effect from the Non-Defaulting Party; or
- 16.2.3 breach any of the terms of this Agreement on more than 4 (four) occasions within any period of 12 (twelve) months, and thereafter again breach any term of this Agreement (irrespective as to whether the breach relates to the same term as breached on the previous occasion, or otherwise);
- 16.2.4 then and in any of such events, the Non-Defaulting Party shall be entitled, without prejudice to any other rights or remedies to which it may be entitled at law or in terms of this Agreement to either terminate the Service in respect of which the breach occurred, demand specific performance or to remedy such breach and recover the total cost incurred in doing so from the Defaulting Party, who shall be obliged to pay the amount thereof forthwith on demand. The above rights are in addition to the Service Provider's right to suspend the provision of the Services to the Customer.

17. TERMINATION OF AGREEMENT

- 17.1 Upon the termination or expiration of a Service Schedule for any reason whatever, the Customer will be obliged to immediately desist from making further use of the Services under that Service Schedule and shall be obliged to uninstall and/or delete all copies of the Proprietary Information then present upon its information and communications technology systems. The Customer agrees to allow the Service Provider access to its premises and permits it to remove or uninstall the Proprietary Information then present upon the Customer's information and communications technology systems following the termination or expiry of a Service Schedule for any reason whatsoever.
- 17.2 further, even if this Agreement is terminated that termination will not affect those provisions of this Agreement and/or Service Schedule which are expressly or by necessity required to continue to be effective after the termination.

18. EARLY TERMINATION COSTS

- 18.1 Unless stated to the contrary in the relevant Service Schedule, the termination fee for all Services shall be calculated on the outstanding Charges for each of the Services being terminated as at the Termination Date thereof and will be determined as follows:
- 18.1.1 In the event that the Services are terminated prior to the Service Commencement Date thereof, the Customer shall be liable for an amount equal to the NRC, plus six (6) months of the MRC;
- 18.1.2 In the event that the Initial Period for the Service(s) being terminated is twelve (12) months or less, 100% of the MRC for the remainder of the Initial Term of the Service(s) being terminated;
- 18.1.3 In the event that the Initial Period for the Service(s) being terminated is greater than twelve (12) months, 100% of the MRC for the Service(s) being terminated for the remainder of the first twelve (12) months (if any), and 50% of the MRC for the Service(s) being terminated for each month thereafter; and
- 18.1.4 In the event that the Service(s) being terminated is terminated subsequent to the expiration of the Initial Period and the Service Schedule has been renewed automatically in accordance with clause 3.4, 50% (fifty percent) of the MRC for the Terminating Service for each month thereafter.
- 18.1.5 The amounts referred to in clauses 18.1 shall be in addition to all Charges payable in the ordinary course in respect of the applicable Service Schedule for the Service(s) being terminated, plus any other Services which continue unchanged, as at the Termination Date.

19. NOTICES AND DOMICILIUM

19.1 All notices and legal documents relating to the Agreement and Service Schedules may be given on the one hand, to the Service Provider and on the other hand, to the Customer, at the physical addresses set out at the beginning of this Agreement.

19.2 Both Parties may change their physical address set out at the beginning of this Agreement by means of a written notice given to the other Party.

20. FORCE MAJEURE

20.1 Force Majeure in respect of any Party means an event beyond the reasonable control of that Party, its contractors or sub-contractors without the fault or negligence of that Party and was not reasonably foreseeable and providing that such event materially and adversely affects the ability of such Party to perform its obligations under this Agreement, including but not limited to, war or civil war (whether declared or undeclared and including the serious threat of same) or armed conflict, invasion and acts of foreign enemies, riots, sabotage, blockage and embargos, civil unrest, commotion or rebellion, or any act or credible threat of terrorism, any act of God, earthquake, flood, extraordinary storm, nuclear, chemical or biological contamination or explosion, plague, epidemic, theft, malicious damage not caused by that Party, its contractors or sub-contractors, strikes not caused by that Party, its contractors or sub-contractors, lock-outs or other industrial action of general application; any act of any authority (including delaying or refusing of licenses, wayleaves and/or restriction on construction work), explosion and fire.

20.2 If a Force Majeure event prevents a Party ("Affected Party") from performing any of its obligations of the Agreement ("Force Majeure Event"), the Affected Party will be granted an extension to perform the relevant obligation.

20.3 The Affected Party is obliged to notify the other Party about the material adverse effect of a Force Majeure Event on the performance of obligations under the Agreement to the reasonable satisfaction of the other Party.

20.4 Upon the cessation of the Force Majeure Event, the Affected Party shall immediately notify the other Party of such cessation and resume performance of the affected obligations.

20.5 If, as a result of a Force Majeure Event, the performance by the Affected Party of some but not all of its obligations under the Agreement are affected, the Affected Party shall nevertheless remain liable for the performance of those obligations not affected by Force Majeure.

20.6 If the Customer is the Affected Party and a Force Majeure Event continuous for a period of 60 (sixty) days or longer, then the Customer may at the expiry of such period, provided the Force Majeure Event is still subsisting, give notice in writing to the Affected Party terminating the applicable Service but will still be liable to make payment of any amounts due to the Service Provider up to and including the Termination Date.

20.7 Where the Service Provider is the Affected Party and:

20.7.1 a Force Majeure Event continues for a period of 60 (sixty) days;

20.7.2 the Customer has not exercised its rights under clause 20.6;

20.7.3 the Force Majeure Event is subsisting;

the Service Provider may give a written notice to the Customer terminating this Agreement and/or any Service Schedule.

21. DISPUTE RESOLUTION

21.1 In the event of dispute, the Parties will attempt to resolve any such disputes through informal negotiation and discussion. Formal proceedings should not be commenced until such informal negotiations and discussions are concluded without resolution.

21.2 Should the Parties fail to resolve the dispute within 10 (ten) days from the date the dispute arose, such dispute shall be referred to their respective Chief Executive Officer, Head of Department or their nominees ("Representative");

21.3 Should the Representative's fail to resolve the dispute within 10 (ten) days of referral, then any Party ("the Referring Party") shall be entitled to refer a dispute to arbitration, in terms of the Arbitration clause below, by notifying the

other Parties to the dispute in writing of its intention to do so (“the Arbitration Notice”). The Arbitration Notice shall include the names of not less than 3 (three) natural persons whom the Referring Party proposes for appointment as arbitrator.

21.4 Any unresolved dispute, except those relating to non-payment of any amounts owing in terms of this Agreement, should be referred to a qualified independent arbitrator acceptable to both Parties. Should the Parties to the dispute fail to agree on an arbitrator within 5 (five) Business Days of the Arbitration Notice, the arbitrator shall be appointed, at the written request of any Party to the dispute (which request shall be copied to the other Parties to the dispute), by the Chairman for the time being of the Johannesburg Bar Council (or its successor); subject to the provision that the arbitrator so appointed by the said Chairman shall be a practising Senior Counsel of not less than 7 (seven) years standing or a retired judge;

21.5 The arbitration proceedings shall be held at Johannesburg, South Africa and shall be conducted under the expedited arbitration rules of the Arbitration Foundation of South Africa (“the Arbitration Rules”) with the proviso that the arbitrator will have no authority to award any damages that are excluded by the terms of this Agreement;

21.6 Nothing in this Arbitration clause shall preclude either Party from seeking interim and/or urgent relief or enforcing any of its rights and obligations from a court of competent jurisdiction within the Republic of South Africa.

21.7 Neither party may bring proceedings more than 6 (six) months after the actual event occurred except for proceedings for non-payment.

22. PERSONAL INFORMATION

22.1 The Customer:

22.1.1 understands and agrees that all “personal information”, as defined in the Protection of Personal Information Act 4 of 2013 (“POPI”), provided to the Service Provider by the Customer is accurate, complete and up to date and undertakes to advise the Service Provider as soon as reasonably possible of any change to his/her personal information;

22.1.2 consents that his/her personal information may be “processed”, as defined in POPI, by the Service Provider, and any of its affiliates and/or subsidiaries, in the Service Provider’s reasonable discretion, provided that such personal information is processed in a lawful and reasonable manner in accordance with the provisions of POPI;

22.1.3 consents to the Service Provider using the personal information of the Customer in any manner it deems necessary, in its reasonable discretion, in order to give effect to its rights and obligations in terms of this Agreement.

22.1.4 Consents to the Service Provider, from time to time, contacting the Customer on behalf of external business partners about a particular offering that may be of interest to the Customer. In those cases, the Customer’s unique personally identifiable information (e-mail, name, address, telephone number) is not transferred to the third party.

22.2 The Service Provider:

22.2.1 agrees that all such personal information collected and processed shall be used for the purposes of efficiently managing its client database and as may be required for the general business efficacy of the Service Provider, and any of its affiliates and/or subsidiaries, and subject to Clause 22.1.2, 22.1.3, and 22.1.4 above;

22.2.2 undertakes to ensure that any such personal information provided by the Customer shall be treated as confidential and further agrees to establish and maintain security safeguards in conformity with any relevant information security practices and industry specific rules that may be applicable from time to time;

22.2.3 agrees that should it cause any personal information to be processed by any “operator”, as defined in POPI, such operator will process such personal information in line with the relevant security measures outlined in clause 22.2.2 above;

22.2.4 reserves the right to refuse a Customer’s request for information on any ground that may be available in terms of POPI, the Protection of Access to Information Act 2 of 2000, The Electronic Communications and Transactions Act 25 of 2002, or the Regulation of interception of Communications and Provision of Communication-Related Information Act 70 of 2002.

22.2.5 Acknowledges and accepts that the Customer is, and at all times shall remain, the sole owner and possesses all right, title, and interest in and to all Customer Data provided to it by the Customer and the Service Provider shall at

no point acquire any right, title, or interest to the Customer Data, but shall be entitled to use the Customer Data insofar as it is necessary for the Service Provider to perform its obligations in terms of this Agreement.

23. CONSUMER PROTECTION ACT

23.1 Any transaction (as defined in the CPA) between the Service Provider and the Customer will not fall within the ambit of the provisions of the CPA, in this regard the Customer confirms and warrants that its annual turnover exceeds the Threshold Value (as defined in the CPA) as determined by the Minister of Trade and Industry by publication in the Government Gazette from time to time.

23.2 The Service Providers obligations in respect of the Customer may vary depending on whether the transaction falls within the ambit of the CPA, and therefore the Service Provider will rely on the warranty provided to it by the Customer in terms of Clause 23.1 above and as such the Customer warrants;

23.3 That should its annual turnover be less than the Threshold Value, it will advise the Service Provider in writing of its actual turnover;

23.4 That any statement made to Service Provider in respect of its annual turnover (Threshold Values) is true and accurate;

23.5 That should any doubt exist as to its annual turnover (Threshold Value), the Customer will provide to the Service Provider, upon request, a copy of its latest audited financial statements;

23.6 That should it misrepresent its annual turnover (Threshold Value) such that the Service Provider is misled into thinking the transaction falls within the ambit of the CPA and it later transpires that it does not, then the Customer agrees that all provisions of this Agreement that do not apply to transactions subject to the CPA shall retroactively apply to the transaction in question, and the Customer shall be liable for any and all damages suffered by the Service Provider as a result of such misrepresentation.

24. AMENDMENTS

No amendment, interpretation or waiver of any of the provisions of this Agreement shall be effective unless reduced in writing and signed by all Parties.

25. SEVARABILITY

In the event of any one or more of the provisions of this Agreement being held for any reason to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision was not a part of this Agreement, and the Agreement shall be carried out as nearly as possible in accordance with its original terms and intent.

26. GOVERNING LAW

26.1 This Agreement and the relationship of the Parties in connection with the subject matter of this Agreement and each other shall be governed and determined in accordance with the laws of the Republic of South Africa.

27. CESSION OF AGREEMENT

27.1 The Customer may not cede, assign or otherwise transfer its rights and/or obligations under the Agreement and Service Schedules without the prior written consent of the Service Provider.

27.2 The Service Provider shall be entitled to assign, cede, transfer and dispose of in any other way any of its rights and/or obligations under the Agreement and Service Schedules to any third party upon written notice to the Customer.

28. CONSENT TO SUB-CONTRACT

28.1 The Customer consents to the Service Provider sub-contracting all or some of its services to be provided in terms of this Agreement or any Service Schedule to any entity forming part of its group of companies (as defined in the Companies Act No. 71 of 2008, as amended from time to time), provided that the Service Provider retains overall liability for the services provided by its sub-contractor.

29. GENERAL

29.1 No addition to or variation, consensual cancellation or novation of this Agreement and Service Schedules, and no waiver of any right arising from this Agreement and/or Service Schedules, or its breach or termination shall be of any force or effect unless reduced to writing and signed by the Parties or their duly authorised representatives with the exception that no written and signed amendment and/or variation shall be required by the Service Provider in the event of any increase by an/any upstream provider and partner of the Service Provider, of its tariffs relating to any service provided to the Customer by the Service Provider as envisioned by clause 8.4 above.

29.2 No latitude, extension of time or other indulgence which may be given of any obligation hereunder, and no delay or forbearance in the enforcement of any right of any Party arising from this Agreement and no single or partial exercise of any right by any Party under this Agreement, shall in any circumstances be construed to be an implied consent or election by such Party or operate as a waiver or a novation of or otherwise affect any of the Party's rights in terms of or arising from this Agreement or estop or preclude any such Party from enforcing at any time, and without notice, strict and punctual compliance with each and every provision or term hereof.

29.3 Notwithstanding anything to the contrary, and notwithstanding the termination of this Agreement and/or Service Schedule for any reason whatsoever, those provisions of this Agreement and Service Schedule which expressly or by their nature are intended to survive the termination of this Agreement, shall survive such termination and shall continue to be of force and effect.

29.4 Save as specifically provided for herein, nothing in this Agreement shall be construed as constituting a partnership, joint venture, agency or employment agreement between the Parties, and neither Party shall have the authority or power to bind, or contract in the name of, or to create a liability against, the other in any way for any purpose.

29.5 The Parties admit that no representations and/or warranties other than those included in this Agreement and Service Schedules have been made inducing either of the Parties to enter into this Agreement.

29.6 This document contains the entire agreement between the Parties with regard to the matters dealt with herein and no representations, terms, conditions or warranties not contained in this Agreement and/or Service Schedule shall be binding on any of the Parties, unless agreed to in writing by the Parties.

29.7 The invalidity, illegality or unenforceability of any of the provisions of this Agreement shall not affect the validity, legality and enforceability of the remaining provisions of this Agreement.

29.8 Each Party shall pay its own costs of and incidental to the preparation, drawing, finalising and execution of this Agreement, including incidental negotiations, consultations and attendances.

29.9 This Agreement may be signed in counterparts and the copies signed in counterpart shall constitute the Agreement. This shall include faxed and/or scanned copies of this document. Each Party hereto hereby waives any right which it may have to dispute the validity or enforceability of this Agreement by virtue of its failure to either initial each page of this Agreement and/or have its signatory's signature verified by a witness.