



Master Service Agreement

1. INTERPRETATION

In this MSA, unless the context clearly indicates a contrary intention, the words herein below defined shall have the meanings assigned to them, and cognate expressions shall bear corresponding meanings-

- 1.1 “Approved Service Order” means the Certificate sent by FirstWord to the Customer confirming that FirstWord is in a position to provide the services as set out in this MSA and/or the Service Order/s. A specimen of the Approved Service Order is annexed hereto as Annexure “B”;
- 1.2 “Best Endeavours” shall be construed as being a more onerous obligation than “reasonable endeavours” and shall include doing everything known to be usual, necessary and proper for ensuring the expeditious success of the endeavour while prioritising the interest of the person to whom the obligation is owed. It requires pursuing all courses of action which have the greatest chance of achieving the required obligations. It does not imply that a Party should put itself in a commercially detrimental position, but it does, however, require that everything that can be done should be done;
- 1.3 “Customer” means the party to this MSA and any subsequent Service Order which may be signed by the Customer and/or the Customer’s duly authorised representative;
- 1.4 “Charges” means the connection charges, monthly service charges, usage charges and any other charges pertaining to the provision of the Services and any other service(s) provided to the Subscriber in terms of the MSA;
- 1.5 “Commissioning of the Services” means the completion of installation and tests by installation technicians confirming that the service is operational;
- 1.6 “CPA” means the Consumer Protection Act No. 68 of 2008;
- 1.7 “Days” means Monday to Friday, unless the particular context indicates otherwise;
- 1.8 “Delegated Service Provider ” means any Reseller who has been appointed by the FirstWord and who performs credit vetting, approves credit, concludes MSAs, and directly bills the Subscriber or the end user for the Services;
- 1.9 “Effective Date” means the date stated as effective date on the Approved Service Order, failing which immediately following FirstWord acceptance of the Service Order.



- 1.10 "EFT" means Electronic Fund Transfer;
- 1.11 "FirstWord" means FirstWord Proprietary Limited with registration number 2017/437720/07, a company duly incorporated in terms of the Companies Act No. 71 of 2008;
- 1.12 "FirstWord Service Centre" means any Service Centre of FirstWord in South Africa;
- 1.13 "Hosted PABX Services Solution" means a hosted PBX (Private Branch Exchange) delivered as an Application;
- 1.14 "Initial Period" means the period as indicated and as set out in the Service Order/s, signed from time to time by the Customer;
- 1.15 "In writing " includes signing a Service Order, sending a letter by registered post, sending an e-mail to the applicable/correct e-mail address, and, in the case of an e-mail being sent by the Customer to FirstWord, in writing shall only be achieved when FirstWord and/or the target addressee has acknowledged receipt of the e-mail, and, any other form of tangible or printable communication which FirstWord deems suitable and which is totally in the sole discretion of FirstWord;
- 1.16 "Intellectual Property" shall have its ordinary meaning in law and shall include, without limitation, all patents, trademarks, designs, design rights, copyright (including all copyright in any designs and computer software), source codes, proprietary material, know-how, ideas, concepts, trade secrets, methods, techniques, rights in databases. Confidential information and all other intellectual property rights and rights in databases. Confidential Information and all other intellectual property rights and rights of a similar character whether registered or capable of registration and all applications and rights to apply for protection of any of the same;
- 1.17 "MSA" means this Master Services Agreement, the Subscriber Application Form, together with any annexures annexed thereto;
- 1.18 "Mobile Access Numbers" means the mobile access number(s), IP address(es), unique user name(s) or subscription number(s) used to identify Subscribers having access to the Services;
- 1.19 "Network Operator" means the party has granted FirstWord authorisation to make the Services available to the Subscriber;
- 1.20 "Normal Business Hours" means the hours between 08h00 and 17h00 Monday to Friday, excluding public holidays in the Republic of South Africa;



- 1.21 “Parties” means FirstWord and the Customer and “Party ” refers to either one of them as so determined by context;
- 1.22 “Premise” means the physical location at which the Customer requires Services to be provided;
- 1.23 “Remote support ” includes telephonic support, e-mail support, remote access to all links and all other support, except on-site support;
- 1.24 “Reseller” means a third party appointed by FirstWord for the providing of services to any third party;
- 1.25 “Service Order” means an order placed by a Subscriber and/or Customer with FirstWord for the provision of Services as set out in that Service Order.
- 1.26 “Service Provider” means Delegated Service Provider;
- 1.27 “Services” means the Hosted PABX Service Solutions that will be provided by FirstWord to the Customer and/or Subscriber;
- 1.28 “Signature Date” means the date of the last signing of the parties to the Service Order;
- 1.29 “Software” means the software required in order to give effected to the Services;
- 1.30 “Subscriber” means any party to whom the Services are made available in terms of this MSA, including a Delegated Service Provider who on-sells the Services and bills an end user directly;
- 1.31 “Subscriber Application Form” means the service order and the application form;
- 1.32 “Time to Respond” means the time that would lapse between the Customer logging the service ticket and the Remote/On-Site Response;
- 1.33 “Uptime Service” means the time that the Customer’s hosted servers are live and operational;
and
- 1.34 “VAT” means the Value Added Tax as provided in the Value Added Tax Act 89 of 1991.
- 1.35 If any provision in a definition is a substantive provision conferring rights and imposing obligations on any party notwithstanding that it appears only in this interpretation clause, effect shall be given to it as if it were a substantive provision of this MSA;



- 1.36 Any reference in this MSA to an enactment is to that enactment as at the signature date and as amended or re-enacted from time to time;
- 1.37 A reference to a party includes a party's successors-in-title and permitted assigns;
- 1.38 The expiration or termination of this MSA shall not affect such of the provisions of this MSA as 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;
- 1.39 This MSA shall be binding on and enforceable by the estates, heirs, executors, administrators, trustees, permitted assigns or liquidators of the Parties as fully and effectually as if they had signed this MSA in the first instance and reference to any party shall be deemed to include any such party's estates, heirs, executors, administrators, trustees, permitted assigns or liquidators, as the case may be;
- 1.40 Unless inconsistent with the context, an expression which denotes -
- 1.40.1 any one gender includes the other gender;
 - 1.40.2 a natural person includes a juristic and/or artificial person and *vice versa*;
 - 1.40.3 The singular includes the plural and *vice versa*;
 - 1.40.4 "Days" shall refer to calendar days, not Business Days;
- 1.41 Notwithstanding clause 1.7 when any number of days is prescribed in this MSA, unless stated otherwise, same shall be reckoned exclusively of the first and inclusively of the last unless the last day falls on a day which is not a Business Day in which case the last day shall then be the next succeeding Business Day;
- 1.42 The headings in this MSA are for reference purposes only and shall not affect interpretation;
- 1.43 The use of the word "including" followed by a specific example/s shall not be construed as limiting the meaning of the general wording preceding it and the *eiusdem generis* rule shall not be applied in the interpretation of such general wording or such specific example(s).



2. APPOINTMENT

As of the Signature Date, the Customer hereby appoints FirstWord for provision of services in respect of the maintenance and support of the Customer's Hosted PABX Services Solution as detailed in terms of this MSA, and the Approved Service Order/s, which, such appointment FirstWord accepts.

3. INCORPORATION OF TERMS

3.1 Each signed Service Order shall form part of this MSA and the contents thereof shall be read as if specifically incorporated herein.

3.2 Upon the Client's signing of the Service Order, the Client agrees to be bound to the terms this MSA.

4. MINIMUM REQUIREMENTS UNDERTAKING

4.1 The Client hereby undertakes to ensure that its equipment, which it intends to utilise in conjunction with Firstword's services comply with the following minimum operational standards:

4.1.1 Windows 7 or later;

4.1.2 Minimum memory of 2 gigabytes;

4.1.3 Minimum of a dual core CPU (Central Processing Unit);

4.1.4 Latest version of Chrome (which the Customer undertakes to update as an when required by Chrome;

4.1.5 Consistent Internet connection at Premises suitable for the functioning of the Services.

5. COMMENCEMENT AND DURATION

5.1 This MSA shall commence on the Signature Date, and, shall continue until such time as the parties terminate this MSA in terms of the Termination clause.

5.2 The Approved Service Order shall commence on the Effective Date and endure for a term as specified in the Service Order in terms of the Initial Period.



- 5.3 The Service Order/s submitted by the Subscriber or Customer shall be deemed an irrevocable offer made to FirstWord, and, it is within the sole discretion of FirstWord whether to accept such Service Order. Upon FirstWord's confirmation of acceptance of the Service Order, such Service Order shall be deemed an Approved Service Order.
- 5.4 Should FirstWord fail to respond to the Subscriber or Customer within 5 days of submitting an offer in terms of 5.3, such offer shall lapse, and FirstWord shall not be obliged to perform services in terms of the Service Order.
- 5.5 Upon acceptance of a Service Order by FirstWord, the delivery of services and a subsequently Approved Service Order is solely within the discretion of FirstWord. The contents of clause 5.2 shall not apply to a Customer and/or Subscriber in the event of FirstWord already providing the services so requested by the Customer and/or Subscriber in their Service Order/s.

6. WARRANTIES

6.1 Each of the Parties hereby warrants, represents and undertakes that –

- 6.1.1 this Agreement shall, when executed constitute valid and binding obligations on it;
- 6.1.2 this Agreement is executed by a duly authorised signatory; and
- 6.1.3 it is not aware of anything which might or shall adversely affect its ability to perform its obligations under this Agreement.

6.2 FirstWord hereby warrants, represents and undertakes that –

- 6.2.1 it shall ensure that all information in respect of its services in terms of the Approved Service Order supplied to the Customer or the Subscriber is true, accurate and complete in all respects;
- 6.2.2 it shall render the Services in accordance with the Approved Service Order and otherwise as is required by this Agreement;
- 6.2.3 it possesses the requisite level of skill, expertise and experience in rendering services of a similar scope, complexity, size and sophistication as the Services;
- 6.2.4 it shall at all times render the Services in accordance with Best Industry Practice;



- 6.2.5 it shall only ever assign appropriately experienced, qualified and trained FirstWord Personnel to perform the Services;
 - 6.2.6 all FirstWord Personnel shall at all times perform the Services with all due skill, care and diligence;
 - 6.2.7 it has obtained and shall maintain in force all consents if any required by it to enter into this Agreement and to render the Services;
 - 6.2.8 The performance of its obligations under this Agreement shall fully comply with applicable laws;
 - 6.2.9 The Services shall not wilfully infringe the Intellectual Property rights of any Third Party;
- 6.3 The Subscriber and/ or the Customer hereby warrants and undertakes in favour of FirstWord that the Subscriber and/ or the Customer:
- 6.3.1 shall not use or allow the Services to be used for any improper or unlawful purpose, or in any way which may cause injury or damage to persons, property and/or an impairment or interruption of the Services;
 - 6.3.2 shall comply with relevant legislation and regulations imposed by any competent authority and all directives issued by FirstWord relating to the use of Services;
 - 6.3.3 recognises that no right, title or interest in the software shall be issued to or vested with the Subscriber; and
 - 6.3.4 shall not itself, or through any third party reverse engineer, decompile, modify or tamper with the software and/ or hardware upon which the Services are reliant.

7. CO-OPERATION AND GOOD FAITH

- 7.1 Each party, to the extent that the same lies within such party's power, undertakes to do and to procure the doing by other persons and to refrain and procure that other persons will refrain from doing, all such acts as may be required to give effect to the import or intent of this Agreement.



- 7.2 The Parties shall act with good faith in carrying out their obligations and duties in terms of this Agreement.
- 7.3 The Customer may not at any time use the service in contravention of any South African law. In particular, the Customer undertakes to familiarise 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 FirstWord has no obligation to assist the Customer in this regard.
- 7.4 THE CUSTOMER SHALL:
- 7.4.1 ensure that it uses reasonable efforts to inform FirstWord timeously of any malfunction, damage of the Software so that FirstWord may use its best efforts to advise on, repair and/or minimise damage to the relevant software.
- 7.4.2 undertake to use Services in terms of the Approved Service Order only for the purpose for which it is intended and to ensure that its employees, agents and/or sub-contractors comply with the instructions and recommendations of FirstWord.
- 7.5 Upon delivery of the Services to the Customer of the software enabling the Services as the case may be, risk in the same shall pass to the Customer who shall then be responsible for:
- 7.5.1 keeping the Software and services in its possession and control, protected against loss and damage from whatsoever cause; free from any judicial attachment, hypothec or any other legal charge or process and shall not encumber the Software;
- 7.5.2 providing clean power to its own equipment upon which FirstWord's Services are provided;
- 7.5.3 exercising due care and diligence in respect of the use of the Services;
- 7.5.4 obtaining adequate insurance for its own equipment reliant on the Services;
- 7.5.5 The Customer furthermore agrees to ensure that Services remain in good working order by performing required updates as per Firstword's instruction and taking steps to avoid an minimise exposure to any malware, ransomware, malicious websites or other advanced online threats.



7.5.6 The Customer agrees that any Services supplied by FirstWord pursuant to this Agreement is movable property and that notwithstanding any installation thereof at the Customer's premises, the Software, shall at all times remain the property of FirstWord and/or its service providers, as the case may be, who shall have the right to inspect the Software, at all reasonable times during the currency of this Agreement and to remove the Software on termination of the Agreement for any reason. Accordingly, the Customer undertakes forthwith upon the installation of the Software to notify the landlord of the premises where the Software is to be installed that the ownership of the Software rests with FirstWord.

7.6 The Subscriber acknowledges that FirstWord may, from time to time, have to change and/or alter the Software in order to ensure that FirstWord can provide its Services effectively. Notwithstanding, the FirstWord shall inform the Customer in reasonable time prior to performing intended updates, and provide further details on the down time to be expected by the Customer. FirstWord shall not be held liable for non-delivery of services in terms of the Approved Service Order during this time, an accordingly, the Customer may not place FirstWord in breach on this basis.

8. GENERAL SERVICE EXCEPTIONS

8.1 FirstWord has no obligation to support the following:

8.1.1 backups of the specified Software unless otherwise offered by FirstWord in terms of Service Order/s. Additional databases and components linked to Firstword Services are specifically excluded from this MSA and will be the responsibility of the Customer;

8.1.2 Software problems or any defect resulting from unauthorised changes made by Customer to the Software in such a way that the Software becomes inconsistent with the environment for which the Services were meant to be applicable. These changes could include the type of computer hardware, version of operating system, version of compilers, application software not compliant with the minimum standards as set out in this Agreement;

8.1.3 Software problems or any defect caused by the negligence of Customer including, but not limited to unauthorised activities in the managed environment, more specifically where the Customer fails to inform FirstWord of any intended changes or alterations to the



parameters of Software, and, further fails to follow a systematic approach to managing all changes made to a Service or Software;

- 8.1.4 Software problems or failures occasioned by virus infection whether or not virus protection software has been installed. The Customer will be solely responsible for ensuring that recommended anti-virus software is both installed and maintained with the latest versions.

9. CHARGES AND PAYMENT TERMS

- 9.1 In consideration for the provision of the Services, by FirstWord to the Customer, the Customer shall effect payment to FirstWord of the applicable charges, as detailed in this MSA and attached Service Orders whether or not the Services have been, or are being utilised by the Customer.
- 9.2 Unless otherwise agreed to by FirstWord in writing, the Customer shall effect payment to FirstWord:
- 9.2.1 for once-off services (e.g. installation charges) on presentation of invoice and upon confirmed access to the Hosted PABX Service Solution granted to the Customer;
- 9.2.2 for monthly service charges made monthly in advance within 7 (seven) days from the date of receipt of any relevant invoice;
- 9.2.3 via a debit order where the Customer shall have discharged its obligations only upon payment being received by FirstWord.
- 9.3 In the event that FirstWord requires payment for the services provided to the Customer to be made by EFT/ Debit Order, the Customer will commit a breach of this MSA if the Customer:
- 9.3.1 Fails to honour the payment without the written consent of FirstWord; and /or
- 9.3.2 Provides FirstWord with an incorrect payment amount.
- 9.4 The monthly statement shall be sent by FirstWord to the Customer to the e-mail address supplied by the Customer in this MSA. The onus shall be on the Customer to check the statement in order to ensure that its contents are correct. Unless a query is raised in respect of the contents of the statement within seven days from the date thereof, the contents of the statement shall be deemed to be correct.



- 9.5 For the duration of this MSA, any migration from one service to another shall be subject to FirstWord's approval in its discretion and the Service Provider shall be entitled to levy fees for migrations, but which fees may not exceed the amounts approved or fixed by the responsible regulatory authority from time to time.
- 9.6 In the event of a dispute in terms of this Agreement, Approved Service Order or an invoice, the Customer shall be obliged to continue making payments in terms of undisputed invoices for services that continue to be rendered following the dispute. The Customer shall not be entitled to withhold, set off or deny payments in relation to any existing dispute.
- 9.7 In the event of the Subscriber failing to effect payment of any amount owing by them to FirstWord on due date, then without derogating from FirstWord's rights in terms of clause 10, the Subscriber shall be liable to pay interest to FirstWord on the amount so owing at the prime interest rate based on the average of the four dominant banks in operation within the Republic of South Africa, plus 2% (percent), from due date to date of payment.
- 9.8 Should the Customer wish to dispute any invoice ("disputed invoice"), such disputed invoice shall be lodged with Firstword within 5 business days of receipt thereof.
- 9.8.1 The Customer may not withhold amounts due in terms of valid invoices on the basis of disputed invoices.
- 9.9 Unless specifically stated otherwise, all prices and charges set out in the MSA and/or any price list are exclusive of VAT and any other applicable tax or duty, the cost of which shall vest with the Subscriber.
- 9.10 An invoice, statement or demand in the possession of any Manager of FirstWord certifying the sum of any amount owing by the Subscriber to FirstWord shall be prima facie proof of its contents and sufficient proof for the purposes of enabling FirstWord to obtain any judgment or order against the Subscriber.
- 9.11 Should the Subscriber be placed under administration, sequestration or liquidation proceedings, or suffer any other legal disability which will negatively affect the Subscriber's ability to make payment to FirstWord, the Subscriber is required to notify FirstWord in writing within fifteen days of occurrence of the afore-mentioned events.



10. BREACH

10.1 In the event that either Party (“defaulting party”) commits a breach of any of the terms and conditions herein, or, to any Service Order, then, in such event and in the event of the defaulting party remaining in breach for a period of 14 (fourteen) days after receipt of written notice (“notice of breach”) from t h e other Party (“the aggrieved party”) calling for such breach to be remedied, the aggrieved party shall be entitled, without prejudice to any other rights or remedies it may have hereunder or in law including the right to claim damages, to –

10.1.1 claim specific performance, and/or

10.1.2 cancel this MSA, and/or

10.1.3 claim damages.

10.2 Notwithstanding the contents of clause 10.1, FirstWord shall be entitled to without notice to the Subscriber and in any manner whatsoever, suspend the Subscriber’s access to the Services in the event that if the Subscriber fails to perform any of their obligations, or breaches any terms of the MSA, FirstWord may also suspend the Subscriber’s use of the services.

10.3 FirstWord reserves the right to require the Subscriber to effect payment of any applicable reconnection charges pursuant to restoration of Services suspended in the circumstances contemplated in clause 10.2.

10.4 In the event that the Subscriber’s access to the Network is suspended, the Subscriber shall still be liable for the monthly service charges during any such period of suspension.

10.5 Notwithstanding the provision of Services to the Subscriber, all Software shall remain the property of FirstWord.

10.6 Indulgences: If either party at any time breaches any of that party’s obligations under the MSA, the other party (“aggrieved party”):

10.6.1 May at any time after that breach exercise any right that became exercisable directly or indirectly as a result of the breach, unless the aggrieved party has expressly elected in writing of a clear and unambiguous conduct, amounting to more than mere delay, not to exercise the right. In particular, acceptance of late performance shall for a reasonable



period after performance be provisional only, and the aggrieved party may still exercise that right during that period.

10.6.2 Shall not be stopped (prevented) from exercising its rights arising out of a breach, despite the fact that the aggrieved party may have elected or agreed on one or more previous occasions not to exercise the rights arising out of any same/similar breach or breaches.

10.7 FirstWord may, without prejudice to any other rights which it may have under the MSA or at law notify credit bureaus of the Subscriber's default.

11. NON-SOLICITATION

11.1 Neither party shall without the prior written consent of the other, either during, or within 18 (eighteen) months of the termination of this Agreement, engage, employ or otherwise solicit for employment whether directly or indirectly, any person who during the term of this Agreement was a member of the other party's staff involved in the acquisition, management or operation of the Services. To the extent that a party ("hereinafter the consenting party") –

11.1.1 consents to any such employment, the recruiting Party ("Recruiting Party") shall pay the Consenting Party a recruitment fee equal to 25% (twenty five percent) of the gross annual package (including any qualifiable bonuses or incentives and annualised if necessary) paid by the Consenting Party to the member of Personnel concerned ("Gross Package"); or

11.1.2 does not consent to any such employment the Recruiting Party shall on written demand from the Affected Party pay the Affected Party a recruitment fee equal to 100% (one hundred percent) the Gross Package of the personnel member concerned.

11.2 The Parties acknowledges and agree that any amount to be paid under clause 11.1 shall be payable within 30 (thirty) days of commencement of such members of appointment by the Recruiting Party.

12. LIMITATION OF LIABILITY

12.1 This MSA shall govern the enforcement of the/any Approved Service Order, and confirm the appointment of FirstWord in respect of any/the Approved Service Order. This MSA shall not create any other binding rights or obligations as between the Parties and accordingly, neither



Party shall be held liable to the other on the basis of this MSA alone. Liability shall only arise out of or relate to a particular Approved Service Order and the terms and conditions of this MSA shall, unless expressly stated otherwise in this clause, only have relevance and application in the context of a Approved Service Order.

- 12.2 FirstWord shall not be held liable to the Customer for any consequential or penalties suffered as a result of the Customer's illegal use of goods and/or services offered by FirstWord. FirstWord reserves its right to invoke the Breach provisions in terms of this MSA should it discover illegal use by the Customer of its services and/or goods.

13. DISPUTE RESOLUTION

- 13.1 Notwithstanding the provisions of this Clause in the event that there is a dispute arising pursuant to this MSA, the signatories hereto undertake to meet prior to resorting to the provisions of this clause to ascertain whether it would be possible to resolve any such dispute amicably.

- 13.2 In the event that the parties meet and are unable to agree a solution to the dispute, the provisions of this Clause will prevail.

- 13.3 In the event of the matter not being resolved in terms of clause 13.1, then, any dispute relating to the terms of this MSA and/or should any dispute (other than a dispute contemplated in a specific clause to this MSA which provides for a dispute resolution mechanism in terms of that clause) arise between the parties in respect to this MSA or in relation to the conduct of the business of the Customer, without limiting the generality of the foregoing, any dispute relating to:

13.3.1 the interpretation or performance of any of the terms;

13.3.2 any of the parties' rights and obligations; or

13.3.3 any procedure to be followed; or

13.3.4 the termination or cancellation of this MSA; or

13.3.5 the rectification of this MSA; or

13.3.6 claim for damages by FirstWord.



then that dispute or difference may be submitted to the two parties' Chief Executives for resolution.

13.4 Should the Chief Executives fail to resolve dispute within 7 (seven) working days, the dispute may be referred to arbitration in accordance with the following provisions:

13.4.1 the arbitration proceedings shall be conducted in accordance with the rules of the Arbitration Foundation of South Africa ("AFSA") or if AFSA shall not be in existence, in accordance with the formalities and procedures settled by the arbitrator, which shall be in an informal and summary manner, that is, it shall not be necessary to observe or carry out either the usual formalities or procedure or the strict rules of evidence, and otherwise subject as aforesaid of The Arbitration Act, 1965 of the RSA and any statutory modification or re-enactment thereof;

13.4.2 the arbitration proceedings shall be held on an informal basis, it being the intention that a decision should be reached as expeditiously and as inexpensively as possible, subject only to the due observance of the principles of justice;

13.4.3 each party to the dispute shall be entitled to be represented at the arbitration proceedings by a legal representative or representatives or any other expert or specialist retained by that party;

13.5 the arbitrator shall:

13.5.1 if the matter in dispute is primarily a legal matter, be a practicing counsel of not less than 10 (ten) years' experience as such, to be agreed upon between the parties, and failing agreement, to be nominated by the Arbitration Foundation of South Africa (AFSA);

13.5.2 if the matter in dispute is primarily an accounting matter, the arbitrator shall be a chartered accountant of not less than 10 (ten) years' experience as such to be agreed upon between the parties, and failing agreement, to be nominated by the chairman for the time being of the Public Accountants and Auditors Board;

13.5.3 if the matter in dispute relates to any matter not accounting matter, or if the parties are unable to agree on the nature of the matter of being primarily a legal and/or



dispute, be such other person having an appropriate knowledge, as may be agreed upon between the parties, and failing agreement, nominated by AFSA;

13.5.4 the decision of the arbitrator shall be final and binding upon the parties and capable of being made an order of a competent court on application by any party;

13.5.5 the terms of this MSA shall not preclude any party from applying to a competent court for a temporary interdict or other relief of an urgent and temporary nature, pending the award of the arbitrator;

13.5.6 the costs of and incidental to any arbitration proceedings shall be in the discretion of the arbitrator who shall be entitled to direct that the costs be determined as between party-and-party, between attorney-and-client, or as between attorney-and-own-client.

13.6 The arbitration shall be held under the provisions as set out by AFSA, and, it is specifically agreed that the chosen arbitrator can, where need be, set out the procedure and rules to be followed by the parties in order to expedite the matter, provided that the arbitration shall be held:

13.6.1 in Johannesburg ;

13.6.2 in accordance with such formalities and/or procedures as may be settled by the arbitrator and may be held in an informal and summary manner, on the basis that it shall not be necessary to observe or carry out the usual formalities of procedure, pleadings and/or discovery or respect rules of evidence.

13.6.3 The arbitration shall be held as quickly as possible after it is requested, with a view to it being completed within 30 (thirty) calendar days after it has been so requested or such other period as agreed to between the parties in writing.

13.6.4 Notwithstanding the contents of this clause, it is specifically agreed that the FirstWord has the absolute and sole discretion to decide whether it intends to proceed with an action and/or summons and/or any other legal process through a Court having competent jurisdiction or whether it will proceed with arbitration. For clarity purposes, the FirstWord shall not be bound to the arbitration clause and has the sole election whether to proceed with the arbitration clause, alternatively, to proceed to a Court holding jurisdiction for any and all matters pertaining to this MSA not just those of an



urgent nature. It is compulsory upon the Customer and/or Subscriber to proceed through the arbitration process.

14. CONFIDENTIALITY

- 14.1 Each Party (the “Disclosing Party”) will provide to the other (the “Receiving Party”), such Confidential Information as is necessary or expedient to enable the Receiving Party to carry out its obligations in terms of this MSA.
- 14.2 The Receiving Party acknowledges that any Confidential Information is a valuable asset of the Disclosing party and that any unauthorised disclosure or use of the Confidential Information would result in financial or other harm which may be irreparable.
- 14.3 Either during the term of this MSA, or thereafter, the Receiving Party undertakes to the Disclosing Party that it will not, whether directly or indirectly disclose or divulge, any Confidential Information to any third party for any reason or purpose whatsoever, without the express prior written consent of the Disclosing Party.
- 14.4 The Receiving Party further undertakes to protect the Confidential Information using the high degree of care it applies to protecting its own proprietary, secret or confidential information.
- 14.5 All Confidential Information disclosed to the Receiving Party is the property of the Disclosing Party and such disclosure does not confer any rights in or to the Confidential Information on the Receiving Party.
- 14.6 The Receiving Party will only disclose the Confidential Information to its employees and professional advisors on a need-to-know basis and then strictly in relation to the efficient conduct of its obligations in terms of this MSA. The Receiving Party warrants that it will ensure that all such persons to whom confidential Information has been disclosed shall abide by the terms and conditions of this MSA, and more specifically, this clause 14.
- 14.7 The Receiving Party undertakes not to use, exploit, or in any other manner apply the Confidential Information disclosed to it for any purpose other than the purpose for which it was disclosed.
- 14.8 The Receiving Party shall, upon expiration or earlier termination of this MSA for any reason whatsoever:



14.8.1 forthwith return to the disclosing Party all Confidential Information in its or its employees' possession or under its or its employees' control;

14.8.2 not retain or withhold any copies of such Confidential Information.

14.9 The provision of this clause shall survive any termination or expiration of this MSA for a period of 10 (ten) years from the date of termination of the MSA.

15. INTELLECTUAL PROPERTY

15.1 A Party is only entitled to use the other Party's name, logo, brand, product names, registered designs, patents or other similar registered or unregistered rights, having obtained written permission by the counterparty.

15.2 Each Party shall promptly inform the other Party of actual or suspected infringement of his right to a name, logo, trademark or other right as mentioned in 15.1 above. In cases where the counterpart wants to defend such rights, the defending Party shall bear any cost for such defence.

15.3 Each Party is responsible to ensure that meeting its obligations under this Agreement does not infringe on the intellectual property rights of any Third Party and shall hold the other Party harmless for any damages that may arise from infringement for which Party is responsible.

15.4 After termination of this Agreement, neither Party may use the rights, as detailed in 15.1 above, of the other Party.

15.5 The Customer acknowledges and agrees that except for the rights and licenses expressly granted to the Customer in this Agreement, as between the Customer and FirstWord. FirstWord shall retain the right, title and interest in and to the , Trademarks and any derivatives of the foregoing; and nothing contained in this Agreement shall be construed as conferring upon Service Provider by implication, operation of law, estoppel, or otherwise, any other license or right. the Customer SHALL NOT: (i) use, reproduce, distribute, or permit others to use, reproduce, or distribute any intellectual property for any purpose other than as specified in this Agreement, (ii) make intellectual property available to unauthorized third parties; (iii) rent, electronically distribute, timeshare, or market intellectual property by interactive cable, remote processing services, service bureau or otherwise; or, (iv) directly or indirectly modify, reverse engineer, decompile, disassemble, or derive source code from any intellectual property.



16. CONSENT/AUTHORITY

- 16.1 The Subscriber hereby consents/authorises FirstWord to disclose the Subscriber's name, address and personal details to any party whenever it is reasonably necessary for FirstWord to properly perform its functions or protect its interests, or for the purpose of enabling the Network Operator or FirstWord to provide emergency Services to the Subscriber, or directory or repair services and information to Network users generally.
- 16.2 The Subscriber hereby consents/authorises FirstWord at any time, without notice to the Subscriber to obtain information about the Subscriber's profile from any authorised and registered credit reference agency in the Republic of South Africa.
- 16.3 The Subscriber consents/authorises FirstWord to provide regular reports in respect of Subscriber's payment conduct to any authorised and registered credit reference agency in the Republic of South Africa.

17. DOMICILIUM

- 17.1 The Parties choose as their domicilium citandi et executandi ("domicilium") for the delivery of all notices arising out of this MSA or its termination or cancellation, these addresses:

17.1.1 First Word:

Address: 58 Concorde East Road
Bedfordview
Email: legal@firstword.co
Attention: Gilbert Grant

17.1.2 Client: As per Subscriber Agreement

Address: As per Subscriber Agreement
Email: As per Subscriber Agreement
Attention: As per Subscriber Agreement



- 17.2 Both of the Parties shall be entitled from time to time, by written notice to the other, to vary their domicilium to any other address within the Republic of South Africa which is not a post office box or post restante.
- 17.3 Any notice required or permitted to be given in terms of this MSA shall be valid and effective only if in writing and signed by or on behalf of the duly authorised representative of the notifying party. For the purposes of this clause, notices shall include any notice in the form of a data message as defined in the Electronic communications and Transactions Act, 25 of 2002.
- 17.4 All notices made by any Party to the other (“the addressee”) which:
- 17.5 is delivered by hand during the Normal Business Hours of the addressee at the addressee’s domicilium shall be deemed, unless the contrary is proven by the addressee, to have been received by the addressee at the time of delivery;
- 17.6 is posted by prepaid registered post from an address within the Republic of South Africa to the addressee at the addressee’s domicilium shall be deemed, unless the contrary is proven by the addressee, to have been received by the addressee on the 10th day after the date of posting;
- 17.7 Notwithstanding anything contained to the contrary in this MSA, any notice written or otherwise actually received by one Party from the other Party shall be adequate notice to such Party, unless otherwise required by any provision of this MSA.
- 17.8 The Customer hereby consents in the event of any legal action being instituted by FirstWord against it, it hereby consents to the jurisdiction of the Magistrate’s Court holding jurisdiction despite the fact that the amount claimed exceeds the jurisdiction of the Magistrate’s Court. Notwithstanding the contents of this clause FirstWord and Subscriber can, if it deems necessary, approach the High Court holding jurisdiction for any urgent application and also has the discretion to institute action out any High Court holding jurisdiction.

18. CESSION AND DELEGATION

Save as expressly provided elsewhere the Parties shall not be entitled to cede their rights or assign their rights and obligations hereunder to any third party without the prior consent of the other, which consent shall not be withheld unreasonably.

19. HANDLING OF PERSONAL DATA



19.1 For purposes of this clause, the following words shall have the meanings detailed below:

19.1.1 **“Data”** shall mean any data about either Party, either Party’s customers, either Party’s suppliers or employees, including but not limited to data records, traffic data, location data, billing information, financial information and/or personal information as defined in applicable data protection legislation, including the South African Protection of Personal Information Act, 2013 (Act No. 4 of 2013), as may be amended from time to time;

19.1.2 **“Data Subject”** means Data Subject as defined in Act No.4 of 2013;

19.1.3 **“Law Enforcement Authority”** means a law enforcement authority, Governmental agency and other authority responsible for safeguarding national security, defence or the prevention, investigation, detection and prosecution of crimes;

19.1.4 **“Operator”** means an operator as defined in Act No. 4 of 2013 and, more specifically, The FirstWord;

19.1.5 **“Privacy Authority”** means the relevant supervisory authority with responsibility for privacy or data protection matters appointed by a Party;

19.1.6 **“Responsible Party”** means a responsible party as defined in Act No. 4 of 2013 and, more specifically, the Customer;

19.1.7 **“Security Breach”** means (i) any accidental, unauthorized or unlawful destruction, loss, alteration or disclosure of, or access to Data; (ii) any act or omission that compromises either the security, confidentiality or integrity of personal information or the physical, technical, administrative or organizational safeguards put in place by either Party, that relate to the protection of the security, confidentiality or integrity of Data; or (iii) receipt of a complaint in relation to the privacy practices of either Party or a breach or alleged breach of this MSA relating to such privacy practices.

19.2 FirstWord warrants and undertakes to the Customer, in respect of all of the Customer’s Data that it may process on behalf of the Customer, that FirstWord shall at all times:

19.2.1 only process the Customer’s Data for the purposes necessary and as detailed in this MSA. In particular, FirstWord shall not itself exercise, control or transfer or purport to exercise, control or transfer the Customer’s Data, to a third party, except as it may be



specifically instructed to do by the Customer or as may be agreed between the Parties in writing;

19.2.2 keep the Customer's Data separate to data processed on behalf of any third party;

19.2.3 not process, apply or use Customer's Data for any purpose other than as required for purposes of this MSA; and

19.2.4 maintain and continue to maintain appropriate and sufficient technical and organisational security measures to protect the Customer's Data against accidental or unlawful destruction or accidental loss, damage, alteration, unauthorised disclosure or access, in particular where the processing of the Customer's Data involves the transmission of such Data over a network.

19.3 FirstWord may, subject to the Customer's consent, which shall not be unreasonably withheld, sub-contract or outsource the processing of the Customer's Data under this MSA to any other person or entity ("Sub-Processor"); provided that it imposes on the Sub-Processor legally binding contract terms substantially similar to those contained in this clause.

19.4 The Customer acknowledges and agrees that FirstWord may receive legally binding demands from a Law Enforcement Authority for the disclosure of, or other assistance in respect of, the Customer's Data or be required by law, court order, warrant, subpoena or other legal judicial process to disclose any of the Customer's Data to another person and that the disclosing Party shall not be in breach of this clause for complying with such obligations to the extent legally bound. FirstWord shall notify the other in writing as soon as reasonably possible of any such demand, unless otherwise prohibited, such as a prohibition under criminal law to preserve the confidentiality of a law enforcement investigation.

19.5 The Customer shall take reasonable, appropriate technical and organisational steps to prevent:

19.5.1 Loss of, damage to or unauthorised destruction of personal information; and

19.5.2 Unlawful access of processing personal information;

19.6 The Customer shall take reasonable steps to:

19.6.1 Identify external and internal risk to personal information in its possession or under its control;

19.6.2 Formulate appropriate guidelines against the risks identified in terms of clause 19.6.1.



- 19.7 The Customer shall have due regard to generally accepted information security practices and procedures which may apply to it generally or be required in terms of specific industry or professional rules and regulations.
- 19.8 If personal information is collected by the Customer, The Customer shall take reasonable steps to inform and ensure that the data subject, the source from which the personal information came from is aware of:
- 19.8.1 What type of information is being collected;
 - 19.8.2 Consequences of failing to provide such information;
 - 19.8.3 The data subjects' right to access and rectify the information collected;
 - 19.8.4 The right to lodge complaint in the event that personal information is not being dealt with according to the Applicable Laws.
- 19.9 FirstWord shall use its Best Endeavours to ensure that:
- 19.9.1 safeguards are continually updated in response to new risks and or deficiencies to or within the Services in terms of the Approved Service Schedule;
 - 19.9.2 safeguards are effectively implemented in respect of the Services in terms of the Approved Service Schedule.
 - 19.9.3 In the event of a data breach, FirstWord shall inform the Customer as soon as practicably as possible and shall use its best efforts to mitigate the damage as a result of such a breach.
- 19.10 The Parties undertake to do all things necessary as and when Act No.4 of 2013 comes in full operation in order to become fully compliant with such requirements in as far as protection of the Customer's data is concerned.

Audit

- 19.11 FirstWord shall, upon 30 days written notice be entitled to annually audit the Customer to ensure compliance with the provisions of this clause and the Customer shall grant Firstword, and/or its appointed privacy authority (where such authority has the legal right to carry out an audit of the Customer's processing activities), such reasonable access to its premises, computer and other information systems and records as may be reasonably required to enable the same to satisfy themselves that the Customer is complying with its obligations under this clause, subject to appropriate safeguards to protect the confidentiality and privacy of the Customer's



or third party data and information.

19.12 In the event of a Security Breach FirstWord shall use its Best Endeavours to inform the Customer of the Security Breach and details thereof as soon as reasonably possible. Further thereto, FirstWord shall use its Best Endeavours to take all necessary, reasonable steps to mitigate damage as a result of such a Security Breach.

20. APPLICATION OF THE CONSUMER PROTECTION ACT

20.1 A transaction (as defined in the CPA) between the Subscriber and FirstWord may or may not fall under the provisions of the CPA depending upon whether certain values set out in clause 20.2 in respect of the Customer (“Threshold Values”) are below a certain value at the time the transaction is entered into.

20.2 The Threshold Values are the Subscriber’s asset value or annual turnover, and the value against which they are measured is as determined by the Minister of Trade and Industry by publication in the Government Gazette from time to time.

20.3 FirstWord’s duties towards the Subscriber may vary depending upon whether the transaction in question is subject to the CPA, and FirstWord will act upon the information given to it by the Subscriber in this regard. Consequently:

20.3.1 The Subscriber warrants that any statement made to FirstWord in respect of its Threshold Values is accurate.

20.3.2 If the Subscriber claims that all the Threshold Values are below the relevant value, or otherwise that the CPA applies to the transaction in question, FirstWord may at its instance require the Subscriber to provide it with financial statements as proof thereof.

20.3.3 If the Subscriber misstates the Threshold Values in such a way that FirstWord considers for a period that the transaction is subject to the CPA when it is not, all provisions of this MSA that do not apply to transactions subject to the CPA shall retroactively apply to the transaction in question, and the Subscriber shall be liable for any damage sustained by Service Provide resulting from such misstatement.

20.4 To the extent that the provisions of the CPA are applicable to this MSA, in the event that the Subscriber alleges that there is a defect in the quality of the Services, the only remedy



that the Subscriber will have against FirstWord, is to require FirstWord to remedy the defect in the quality of the Services performed.

21. *FORCE MAJEURE*

Should either party fail to fulfil its obligations in terms of this MSA as a result of –

- 21.1 inability to secure labour, materials or supplies despite having taken reasonable steps to procure same;
- 21.2 any act of God, war, strike, lockout, or other labour dispute, fire, malicious computer code infection, power failure, terrorism, urban terror, flood, explosions, or legislation; or
- 21.3 any other cause beyond the reasonable control of the Party concerned (“Force Majeure Event”) then notwithstanding anything to the contrary contained or implied in this Agreement, the other Party shall not be entitled to terminate this Agreement prematurely, nor shall it have any claim for damages in whatsoever nature against the Party concerned.
- 21.4 The Parties agree that should the Force Majeure Event occur, no party shall be entitled to rely on *force majeure* unless it has given the other party written notice and proof by means of official certificates and/or attestations, legally authenticated, of the existence of such *force majeure* forthwith but not later than 60 (sixty) days of its existence first coming to such party's notice.
- 21.5 Once a party is affected by *force majeure*, and it has given the other party notice thereof in terms of clause 21.4 -
 - 21.5.1 all performance time limits set out in this agreement for compliance by such party of its obligations hereunder, shall be extended for such period as such *force majeure* affects such party; and
 - 21.5.2 such party shall use its best endeavours to obviate and remove such *force majeure* in the shortest practical time and shall not be excused from or be entitled to refrain from the performance of such obligations hereunder as may remain unaffected by the *force majeure*;



21.5.3 If and when the *force majeure* applicable terminates, the affected party shall as soon as is practicably possible, proceed with the performance of its obligations in terms of this agreement and neither party shall be liable to the other for losses suffered as a result of such *force majeure*.

21.5.4 In the event of the force majeure event persisting for period no less than 60 days, the parties shall be entitled to terminate the Approved Service Order without penalty.

22. TERMINATION

22.1 Notwithstanding anything contrary contained herein, either Party shall be entitled to give notice to terminate this MSA, summarily and claim damages upon the occurrence of the following events, –

22.1.1 If the other Party commits a material breach (including a repeated series which together are considered material of any of the terms of this MSA and (if such a breach is remediable) fails to remedy that breach within 14 (fourteen) Business Days of that Party being notified in writing of the breach;

22.1.2 a judgment against the Customer remains unsatisfied for a period of 14 (fourteen) days or more after it comes, or ought reasonably to have come, to the attention of the Customer;

22.1.3 the Customer commits any act of insolvency as set forth in Section 8 of the Insolvency Act 24 of 1936, as amended;

22.1.4 the Customer makes any arrangement or composition with its creditors generally or ceases or threatens to cease trading;

22.1.5 the Customer is, other than for the purposes of reconstruction or amalgamation, placed under voluntary or compulsory liquidation or under judicial management or under the equivalent of the foregoing;

22.1.6 the Customer or any of its directors, shareholders or members is convicted of a criminal offence, which in FirstWord's opinion would impact negatively upon FirstWord.

22.1.7 FirstWord's Licence is revoked, terminated or amended for any reason whatsoever.

22.2 Subject to clause 23.10 of this MSA, the Customer may terminate this MSA for convenience upon 14 (fourteen) days written notice to FirstWord.



22.3 In the event that no Approved Service Order is in existence, this MSA shall terminate provided that there are no active services and all costs associated with previous Approved Service Orders have been settled in full. Termination in terms of this clause shall take place within 14 days of written notice to the other party.

23. CONSEQUENCE OF TERMINATION

23.1 The Parties acknowledge and agree that where a Party exercises a right to terminate a Approved Service Order under this MSA that Party shall use Best Endeavours to mitigate any Losses it may suffer as a result of exercising its right to terminate.

23.2 On termination or expiry of this MSA, the Parties shall promptly return all and any property of the other, including but not limited to any Intellectual Property and Confidential Information, belonging to the other Party. In particular, FirstWord shall return to the Customer and permanently delete from all computer and/or electronic media all Confidential Information (including all copies thereof) belonging to the Customer in its possession or under its control at termination of the MSA and shall provide to the Customer a certificate signed by FirstWord authorised representative confirming that FirstWord has not retained any Confidential Information belonging to the Customer.

23.3 Any rights of the Parties that arose or accrued prior to the termination or expiry of this MSA shall survive and continue in full force and effect but all other rights and obligations of the Parties shall cease immediately.

23.4 Termination of this MSA shall not relieve a Party of obligations imposed upon such by any applicable laws or by this Agreement prior to its termination.

23.5 The exercise of any termination right set out in (*Termination Clause*) by a Party shall be without prejudice to the Party's other rights and remedies under this MSA.

23.6 On termination of this MSA, howsoever arising, each Service Order then in force at the date of such termination shall nevertheless continue in full force and effect for the remainder of the term of such Service Order, unless earlier terminated in accordance with the terms of such Service Order.



23.7 Termination of any Approved Service Order shall not affect any other Service Order or this Agreement.

23.8 Following the termination of a Service Order –

23.8.1 the Customer shall immediately pay to FirstWord all of FirstWord's outstanding unpaid invoices and interest and, in respect of Services that have been performed, but for which no invoice has been submitted, FirstWord may submit an invoice, which shall be payable immediately on receipt.

23.9 On termination of the MSA:

23.9.1 the accrued rights, remedies, obligations and liabilities of the Parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the MSA which existed at or before the date of termination; and

23.9.2 clauses which expressly or by implication have effect after termination shall continue in full force and effect, including: clause 1 (Interpretation), clause 22 and 23 (Termination and Consequences of Termination), clause 13 (Dispute Resolution), clause 12 (Limitation of liability), clause 17 (Notices and Domicillia).

23.10 In so far as the Customer does not fall within the ambit of the Consumer Protection Act 68 of 2008, the Customer acknowledges that FirstWord places specific reliance on the Approved Service Order agreed upon by the Parties, and, on this basis FirstWord invests time and resources in the Service Order(s) and incurs specific costs in order to facilitate the rendering of Services and provision of Products to the Customer in terms of the Service Order(s). Should the Customer terminate a Service Order prior to the conclusion of the Service Order term, the Customer agrees that an amount equivalent to the remaining value of the Service Order shall accrue to FirstWord and shall become due, owing and payable to FirstWord upon receipt of the Customer's notice to terminate the Service Order.

24. GENERAL CLAUSES

24.1 No waiver or indulgence which either Party may allow to the other Party shall be valid unless made in writing and such waiver or indulgence shall be strictly construed as applying only to the matter in respect of which it was allowed. Without limiting the generality of the foregoing, if the innocent Party has taken no action as a result of any breach such inaction shall in no way



prevent or stop such Party from exercising any rights which it may have which flow from the breach in question.

- 24.2 This MSA and annexures/schedules constitutes the whole MSA between the parties and no addition to, variation, modification or agreed cancellation of this MSA shall be of any force or effect unless recorded in a written document and signed by or on behalf of the duly authorised representatives of both parties. For the purposes hereof, a “written document” shall include any document that is in the form, either wholly or partly, of a data message as defined in the Electronic Communications and Transactions Act, 25 of 2002, and “signed” shall mean a signature executed by hand with a pen and/or any electronic process or intervention as directed by FirstWord.
- 24.3 FirstWord may change the terms and conditions of this MSA as a result of changes in taxes, laws, regulations, the terms and conditions of the license issued to the license holder, the terms and conditions of any MSA between the license holder and FirstWord or any circumstances or events similar to the foregoing. FirstWord shall notify the Subscriber of any changes as contemplated herein in writing.
- 24.4 The Parties hereto acknowledge that no warranties or representations of whatsoever nature were made by either Party to the other prior to entering into this MSA, save as may be recorded in this document.
- 24.5 This MSA supersedes and cancels any and all previous MSA entered into between FirstWord and the Customer relating to the subject matter hereof.
- 24.6 The Customer and/or Subscriber acknowledges that this MSA may in certain respects limit the risk and/or liability of FirstWord and/or may constitute an assumption of risk or liability by the Customer and/or Subscriber and/or impose an obligation on the Customer and/or Subscriber to indemnify FirstWord or any other person so mentioned in terms of the MSA. In such an event it is specifically recorded that the Customers and/or Subscribers attention has been drawn to these limitations and the Customer and/or Subscriber understands and accepts such limitations.
- 24.7 The Customer and/or Subscriber has in no way, manner, means or form been forced and/or induced to enter into this MSA and fully accepts the terms and conditions thereof.
- 24.8 In the event of it being found that any clause herein is void and/or unenforceable shall not result in this MSA or any other clause being void and/or unenforceable. Each clause is severable of the



other and in the event of it being found that a clause is void or unenforceable then only that clause shall be excluded and the remaining portion of the MSA shall survive.

25. WHOLE AGREEMENT

- 25.1 This document, as read with the schedules hereto, contains the entire Agreement between the Parties in regard to the subject matter hereof.
- 25.2 No variation, modification or consensual cancellation of this Agreement shall be of any force or effect unless reduced to writing and signed by the Parties.
- 25.3 No extension of time or waiver or relaxation of any of the terms or conditions of this Agreement shall be valid and binding unless recorded in a written document signed by the party granting such extension, waiver or relaxation. Any such extension, waiver or relaxation which is so given or made shall be strictly construed as relating only to the matter in respect whereof it was made or given.

26. INCORPORATION BY REFERENCE

This Agreement shall be read together with the applicable Service Order, and accordingly upon signature and acceptance of the Service Order, the terms herein shall be read together with the provisions of the Service Order as if specifically incorporated therein.

27. COUNTERPARTS

This Agreement may be signed in counterparts and the copies signed in counterpart shall constitute the Agreement. This shall include electronic forms of this this document as accepted in terms of the Electronic Communications and Transactions Act 25 of 2002.

28. NON-WAIVER

No party shall be regarded as having waived, or be precluded in any way from exercising, any right under or arising from this Agreement, whether for the enforcement or cancellation of the Agreement or any claim for damages arising from any breach thereof, nor give rise to any estoppel, by reason of such party having at any time granted any extension of time for, and/or having shown any indulgence to another party with reference to any payment or performance hereunder, and/or by having accepted payment or performance hereunder at a time when it



would otherwise have been legally entitled not to accept the payment or the performance, and/or by having delayed in the enforcement of any right of action against any other party.

29. COSTS

Each party shall bear and pay its own costs of and incidental to the negotiation, preparation and execution of this Agreement.

30. WARRANTY OF AUTHORITY

30.1 Each of the persons signing on behalf of the parties to this agreement warrants that each party has the full power, authority and legal right to execute, deliver and perform their obligations imposed on it in terms of this agreement and will be duly authorised by the necessary action of the party concerned and its officers and officials and that any obligations arising from this agreement are valid and binding on the party concerned.

30.2 The Client warrants by its signature to the Service Order that the Client has read and familiarised itself with the terms contained herein this MSA, and therefore agrees to be bound by same.

