

STANDARD TERMS AND CONDITIONS

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement, the words hereunder will have the meanings assigned to them below:-

1.1.1 **"Affiliate"** with respect to Stellar Technologies means any other entity which (i) is a subsidiary or holding company or a subsidiary of the holding company of Stellar Technologies and shall include any foreign entity which falls within the ambit of such term; and/or (ii) controls, is controlled by or is under common control with Stellar Technologies; and/or (iii) in which Stellar Technologies or any Affiliate of Stellar Technologies has a direct or indirect equity interest;

1.1.2 **"Agreement"** means these written terms and conditions which constitute the agreement forming part of the MSA;

1.1.3 **"Applicable Laws"** means whenever updated –

1.1.3.1 all national, provincial, local and municipal legislation or subordinate legislation, ordinances, regulations or by-laws;

1.1.3.2 policies, directives, rules or other instructions of any relevant agency, tribunal, commission, regulator, self-regulatory body or other similar body;

1.1.3.3 any instrument having the force of law;

1.1.3.4 the Data Protection Laws;

1.1.3.5 the common law, judgement, order or decree,

1.1.3.6 all as connected with the Parties and their obligations under the MSA;

1.1.4 **"AUP"** means the Stellar Technologies' Acceptable Use Policy, as same may be amended from time to time, such amendment being notified to the Customer by the publication of such revised policy on the Internet web site of Stellar Technologies;

1.1.5 **"Confidential Information"** means any information or Data which by its nature or content is identifiable as confidential and/or proprietary to either Party and/or any third party, or which is provided or disclosed in confidence, and which a Party or any person acting on its behalf may disclose or provide to the other Party or which may come to the knowledge of the other Party by whatsoever means;

1.1.6 **"Customer"** means the Party identified as such on the Order Form;

1.1.7 **“Data”** means a representation of information in any form, including information relating to an Order Form, information in respect of the Parties and any other third party data (including Personal Information as amplified by the Data Protection Laws);

1.1.8 **“Data Protection Laws”** means the Protection of Personal Information Act 4 of 2013 and any other Applicable Laws relating to the protection of Data;

1.1.9 **“Early Termination Fee”** means the fee calculated on the outstanding fees and charges for each Service as at the date of early termination thereof determined as follows:

1.1.9.1 In the event that a Service is terminated prior to the Service Commencement Date thereof, the Customer shall be liable for a pre-commencement cancellation fee equal to the higher of the documented actual costs incurred by Stellar Technologies in fulfilment of the applicable Service or the NRC plus 1 (one) month of the MRC for the applicable Service;

1.1.9.2 In the event that a Service is terminated subsequent to the Service Commencement Date thereof and the remaining term set out in the Order Form for the applicable Service is 12 (twelve) months or less, 50% of the fees and charges for remaining months in the term for the applicable Service;

1.1.9.3 In the event that a Service is terminated subsequent to the Service Commencement Date thereof and the remaining term of the Order Form term for the applicable Services is greater than 12 (twelve) months, 100% of the fees and charges for the applicable Service for the remaining months in the first 12 (twelve) months, and 50% of the fees and charges for the applicable Service for each month thereafter,

the amounts referred to in above shall be in addition to all Service Fees and Taxes for any other Services that continue unchanged, as at the effective date of termination;

1.1.10 **“Effective Date”** means the date by the last signatory hereto;

1.1.11 **“Force Majeure”** means impediments beyond the control of each of the Parties, namely:

1.1.11.1 events which, despite the exercise of diligent efforts, such Party was unable to prevent, limit or minimise, including, but not limited to, war, whether declared or not, revolution, riot, strikes, insurrection, civil commotion, invasion, armed conflict, hostile act of foreign enemy, act of terrorism, act of God, plague, officially declared state of emergency, embargoes, sanctions, restrictions or sanctions imposed by any government or governmental authority (including the United Nations organisations); and

- 1.1.11.2 acts and omissions of any third-party telecommunications provider or any utility provider, other than where such party is a subcontractor, agent, contracted party or affiliated company;
- 1.1.12 **“Industry Best Practice”** means the exercise of such skill, diligence, prudence, foresight and judgement that would be expected from a skilled, experienced and reputed person engaged in the provision of services similar to the Services at world-class level;
- 1.1.13 **“Initial Term”** means the initial length of term for the Services as indicated on the Order Form;
- 1.1.14 **“Intellectual Property Rights”** means and includes:
- 1.1.14.1 rights in and in relation to any patent, design, trade mark, trade or business name (including all goodwill associated with any trade mark, or any trade or business name), copyright, database, domain name, circuit topography design, and/or utility model, and including the benefit of all registrations or applications to register and the right to apply for registration of any of the foregoing items and all rights in the nature of any of the foregoing items, each for their full term (including any extensions or renewals thereof) and wherever in the world enforceable;
- 1.1.14.2 all other intellectual property rights and forms of protection of a similar nature or having equivalent or similar effect and which may subsist anywhere in the world;
- 1.1.15 **“Licence”** means the Telecommunications license issued to Stellar Technologies and any renewal, amendment, re-issue or equivalent thereof authorising Stellar Technologies to provide the Services;
- 1.1.16 **“STELLAR / Stellar Technologies”** means Stellar Technologies Telecoms (Proprietary) Limited;
- 1.1.17 **“Stellar Technologies Network”** means the telecommunication network and network components owned and operated by Stellar Technologies or its Affiliates, including points of presence (“PoP”), but does not include customer equipment (modems, routers etc) unless such customer equipment is provided by Stellar Technologies and management thereof is specified as a Service, or any networks or network equipment not owned or controlled by such Stellar Technologies Network;
- 1.1.18 **“MRC”** means Monthly Recurring Charge, being the monthly charges for the Services as set out in applicable Order Form;
- 1.1.19 **“MSA”** means the entire Master Service Agreement between Stellar Technologies and the Customer for provision of the Service, consisting of this Agreement, one or more Order Form/s, the SLA (if any) and any schedules or addenda hereto;

- 1.1.20 **"NRC"** means Non-Recurring Charge, being the installation and other related fee for the Services and any applicable deposit as set out in the applicable Order Form;
- 1.1.21 **"Order Form"** means the order form which constitutes part of the MSA, through which the Customer makes application for Services, setting out the details of the Services requested such as quantities, Service Fees and charges payable;
- 1.1.22 **"Party"** means either Stellar Technologies or the Customer and "Parties" means both of them collectively and shall be deemed to mean and include their respective successors and permitted assigns;
- 1.1.23 **"Personal Information"** means information relating to an identifiable natural or juristic person, as defined by the Data Protection Laws or equivalent legislation of the jurisdiction(s) applicable to the Parties and/or the MSA;
- 1.1.24 **"Process"** means any operation or activity or any set of operations, whether or not by automatic means, including –
- 1.1.24.1 collecting, receipt, recording;
 - 1.1.24.2 organising, collating, storing, merging, linking;
 - 1.1.24.3 updating, modifying, alteration, consultation;
 - 1.1.24.4 blocking, degradation, ensure, destruction;
 - 1.1.24.5 retrieval, testing, use, dissemination or distribution,
- and **"Processed"** shall have a corresponding meaning;
- 1.1.25 **"Renewal Term"** means a subsequent length of term for the Services after completion of the Initial Term;
- 1.1.26 **"Service Commencement Date"** means the earlier date on which:
- 1.1.26.1 Stellar Technologies deems that the Service is available for Customer's use at either the Stellar Technologies defined demonstration point or last available test point; or
 - 1.1.26.2 Customer first uses the Service or the Stellar Technologies Network under the MSA;
- 1.1.27 **"Service Fees"** means the service fees and other charges payable by the Customer to Stellar Technologies in respect of the Services, as set out in the Order Form;
- 1.1.28 **"Service(s)"** means the services to be provided by Stellar Technologies under the MSA, being the telecommunication and related services described in the Order Form;

- 1.1.29 **"SLA"** means a comprehensive service level agreement in respect of the provision of the Services and all or any other service level agreement in respect of additional services which the Parties may enter into and a copy of which will form an additional Schedule to the MSA;
- 1.1.30 **"Taxes"** means all taxes arising in any jurisdiction, including without limitation all: sales, use, excise, gross receipts, value added, access, bypass, franchise, telecommunications, property (for co-location customers), consumption, or other taxes, fees, duties, charges or surcharges (however designated) which are imposed on or based on the provision, sale or use of the Service(s), including such taxes imposed directly on Stellar Technologies or for which Stellar Technologies is permitted to invoice Customer in connection with Stellar Technologies' performance under the CSA. Taxes do not include Stellar Technologies' income taxes.

Interpretation

- 1.2 In the MSA and in the annexes to the MSA –
- 1.2.1 clause headings are for convenience and are not to be used in its interpretation;
- 1.2.2 unless the context indicates a contrary intention an expression which denotes –
- 1.2.2.1 any gender includes the other genders;
- 1.2.2.2 a natural person includes a juristic person and vice versa;
- 1.2.2.3 the singular includes the plural and vice versa.
- 1.2.3 Words and expressions defined in any clause shall, for the purposes of that clause, bear the meaning assigned to such words and expressions in such clause.
- 1.2.4 If any provision is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that it is only in the definition clause, effect will be given to it as if it were a substantive provision in the body of the MSA.
- 1.2.5 In the MSA and the annexes the word **"MSA"** refers to the MSA and the words **"clause"** or **"clauses"** or **"annexe"** or **"annexes"** refer to clauses of or annexes to the MSA.
- 1.2.6 Any reference to **"days"** shall be construed as being a reference to calendar days unless qualified by the word **"business"** in which instance a **"business day"** shall be any day other than a Sunday and/or a public holiday in the Republic of South Africa from time to time. Any reference to **"business hours"** shall be construed as being the hours between 08h30 and 17h00 on any business day.
- 1.2.7 The words **"include"**, **"includes"**, and **"including"** means **"include without limitation"**, **"includes without limitation"**, and **"including without limitation"**. 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.

- 1.2.8 Terms other than those defined within the MSA will be given their plain English meaning, and those terms, acronyms, and phrases known in the information technology and telecommunications industries will be interpreted in accordance with their generally accepted meanings.
- 1.2.9 Defined terms appearing in the MSA in title case shall be given their meaning as defined, while the same terms appearing in lower case shall be interpreted in accordance with their ordinary meaning as qualified by clause 26 and shall, unless the context otherwise indicates, include the term as defined.
- 1.2.10 In the event of ambiguity or conflict between any of the constituent parts of the MSA, the order of precedence in the interpretation of the MSA shall be:
- 1.2.10.1 the Order Form;
 - 1.2.10.2 this Agreement;
 - 1.2.10.3 the SLA (if any); and
 - 1.2.10.4 any further Schedules and Annexes hereto.
- 1.2.11 The terms of this Agreement having been negotiated, the rule of construction that a contract shall be interpreted against the Party responsible for the drafting and preparation of the contract, shall not apply.
- 1.2.12 Any reference to an enactment is to that enactment as at the Signature Date and as amended or re-enacted from time to time.
- 1.2.13 If any provision in a definition is a substantive provision imposing rights or obligations on any Party effect shall be given to it as if it were a substantive provision in the body of the MSA.
- 1.2.14 When any number of days is prescribed in the MSA, same shall be reckoned exclusive of the first day and inclusive of the last day unless the last day does not fall on a Business Day, in which case the last day shall be the next succeeding Business Day.
- 1.2.15 Reference to day/s, month/s or year/s shall be construed as Gregorian calendar day/s, month/s or year/s.
- 1.2.16 A law shall be construed as any law (including common law) or statute, constitution, decree, judgment, treaty, regulation, directive, by-law, order or any legislative measure of any government, local government, statutory or regulatory body or court.

2. SERVICES

- 2.1 Pursuant to the MSA, Stellar Technologies will provide the Services to the Customer for the Service Fees. The Customer's signature on the Order Form/s or use of the Service or the Stellar Technologies Network constitutes its acknowledgement of the terms and conditions of the MSA and its agreement to be bound by the MSA.
- 2.2 The MSA consists of these Standard Terms and Conditions, one or more Order forms, any schedules, or addenda as well as any SLA documents where applicable. These other documents will all be signed separately.

- 2.3 The Customer may order additional Services or locations through additional Order Forms, which will be governed by this MSA. The Customer's account must be current in order to make changes to Services or order additional Services.
- 2.4 Stellar Technologies shall be entitled to appoint any of its Affiliates to provide the Services, provided that Stellar Technologies shall be and remain liable with such appointee for the due and proper performance by it of all of its duties, functions and obligations under the MSA.
- 2.5 Stellar Technologies shall not be committed to provide any Services and the Customer shall not be committed to order, or to be charged for, or to pay for any Services until the Customer has signed an Order Form in respect of the required Services.

3. DURATION

- 3.1 The MSA shall commence on the Effective Date and shall continue while any Order Form is in place, subject to the remaining provisions of the MSA.
- 3.2 Each Service's initial term is indicated on the applicable Order Form and begins as of the service commencement date unless another date is stipulated on the order form. At the end of the initial term the Services will continue on a month-to-month basis until an official termination notice is given. Both parties can renew any or all Services at the end of the initial term by signing an applicable renewal order form for an agreed further term.
- 3.3 Termination of one Service shall not affect the term of any other Order Form, or the MSA, which shall continue, in full force and effect.

4. PROVISION OF SERVICES

- 4.1 In providing the Services to the Customer, Stellar Technologies shall utilise technology to provide the Services which is professionally acceptable, and which is in accordance with Industry Best Practice, unless where a specific technology is specified in the Order Form.
- 4.2 The Customer shall use the Services and the Stellar Technologies Network in accordance with the terms and conditions of the MSA as well as Stellar Technologies' AUP.
- 4.3 The Customer shall endeavour to ensure that the Services are not used in a manner which constitutes an infringement of any rights of Stellar Technologies or any third party, or for any illegal, fraudulent or unauthorised activities and shall further endeavour to ensure that it, its employees and its customers do not by any act or omission, damage, interfere with or impede the operation of the Service or the Stellar Technologies Network. The Customer shall do this, inter alia, by exercising appropriate control over Customer's employees and customers, including by inserting a clause to this effect in any MSAs that the Customer concludes with its customers in terms of which the Customer on-sells the Services provided by Stellar Technologies to its customers, on the basis contemplated in clause 28.
- 4.4 Where the Customer is aware that there is any violation or contravention contemplated in this clause 3, it will co-operate and provide Stellar Technologies with the necessary information to assist in identifying, preventing, remedying or rectifying such violation or contravention.

- 4.5 Where the Customer (or the Customer's customer) has a service requirement that is not covered by an existing Order Form, the additional or alternate requirement/s will be addressed on a case-by-case basis, provided that this requirement is brought to the attention of Stellar Technologies promptly.
- 4.6 Stellar Technologies warrants that it has obtained all the necessary permits, licenses and authorisations required in terms of applicable legislation and regulations, to render the Services to the Customer in terms of this agreement and Stellar Technologies indemnifies the Customer against any loss, injury, damage, penalties and/or claims of whatsoever nature and howsoever arising in terms of Stellar Technologies' breach in terms of this clause.

5. FEES AND CHARGES

- 5.1 The Customer shall pay to Stellar Technologies the Service Fees, Taxes and/or other charges, including NRCs and MRCs agreed between the Parties in each Order Form on or before the due date for such payment, as specified in the relevant Order Form.
- 5.2 The Service Fees shall be subject to price increases and decreases at any time by Stellar Technologies in its sole discretion, provided that in each such case Stellar Technologies shall notify the Customer of such adjustment no less than 30 days in advance of such adjustment.
- 5.3 Stellar Technologies may make general credit reference enquiries about the Customer during the period of this Agreement, including checking the correctness of the information supplied by the Customer when applying for a Service. Stellar Technologies reserves the right to refuse to provide a Service if the Customer does not pass the credit vetting procedure and shall also be entitled to furnish any information relating to the Customer's account and its compliance (or non-compliance) with the terms of this Agreement, including but not limited to the payment of the Service Fees, to any credit bureau.
- 5.4 Should the Customer cancel or modify an order specified in an Order Form, with the result that Stellar Technologies incurs costs relating to such cancellation or modification, the Customer will be liable for such reasonable costs, which shall be payable by the Customer within 10 (ten) business days of receipt of written demand therefor from Stellar Technologies.
- 5.5 Stellar Technologies shall install the Service, as requested by the Customer against payment of the relevant NRC.
- 5.6 The Customer agrees that its obligation to pay the Service Fees and Taxes under the MSA (and as may be specified in any Order Form) for Services rendered prior to the termination of the MSA, shall survive the termination of the MSA.
- 5.7 Usage independent charges are invoiced monthly in advance; usage-dependent charges are invoiced monthly in arrears and Stellar Technologies will invoice the Customer for each Service provided under the MSA from the Service Commencement Date.
- 5.8 The Customer may request a detailed monthly statement of account (together with all related tax invoices valid for VAT) setting out the amount due and payable by the Customer, however payment shall not be conditional on receipt of such statement.
- 5.9 Stellar Technologies may include on any invoice, where necessary and on an episodic basis but not as a routine billing practice, any amount not previously billed for calendar months prior to the current month.

- 5.10 All tax invoices issued by Stellar Technologies shall be due on presentation and shall be payable by the Customer within thirty (30) days of the date of such invoice, which payment shall be made by electronic funds transfer into the following banking account or any other bank account specified by Stellar Technologies in writing by a director of Stellar Technologies, accompanied by a bank account confirmation letter issued by the relevant financial institution:

ACCOUNT NAME: **Stellar Technology Solutions Proprietary Limited**

BANK: **Standard Bank**

ACCOUNT NUMBER: **06 249 336 1**

BRANCH CODE: **4305**

- 5.11 If any previously invoiced amount is overdue, the Customer shall pay interest on the overdue amount on a monthly compounded basis at a rate equal to the prime lending rate charged by Stellar Technologies' bankers to its most favoured customers from time to time, as indicated by a certificate from a manager of such bank, whose appointment need not be proven plus two percent (2%), such interest to run from the date upon which payment of the relevant amount became due until payment thereof has been made in full (together with interest).
- 5.12 Invoices shall be provided electronically to the Customer on the same date as the invoice date, or the next following Business Day.

6. RETAINED RESPONSIBILITIES

- 6.1 In connection with any Services provided by Stellar Technologies under the MSA and the Order Form, the Customer undertakes to provide to Stellar Technologies or retain responsibility for, as applicable, any Customer obligations and requirements detailed in the Order Form ("**Customer Retained Responsibilities**").
- 6.2 In circumstances where Stellar Technologies' performance of any particular obligation under the MSA is dependent upon the fulfilment by the customer of any Customer Retained Responsibilities, then Stellar Technologies' non-performance of such particular obligation under the MSA shall be excused pending the performance by the Customer of the Customer Retained Responsibilities.
- 6.3 In circumstances where the Customer's performance of any particular obligation under the MSA is dependent upon the provision of the Services by Stellar Technologies, then the Customer's non-performance of such particular Customer obligation under the MSA shall be excused pending the performance by Stellar Technologies of the Services.
- 6.4 In addition to the Customer Retained Responsibilities, the Customer shall:
- 6.4.1 where the Customer is not the owner of any one or more of the premises where the Service is to be provided, obtain any permission from the owner of such premises that may be required;
 - 6.4.2 at own cost, ensure the provision of suitable electrical power supply, accommodation and air-conditioning should this be required for the proper functioning of the Service;
 - 6.4.3 allow Stellar Technologies reasonable access to its premises during reasonable hours to install, inspect, maintain or remove telecommunication facilities or equipment,

and the Customer hereby indemnifies and holds Stellar Technologies harmless in respect of all damages, claims, costs or expenses that may be incurred or suffered by Stellar Technologies pursuant to the Customer's failure to comply with the provisions of this clause 6.4.

7. SAFETY AND SECURITY

- 7.1 Each Party agrees to comply with the other Party's safety and security procedures as notified to them by the other Party in writing.
- 7.2 The Parties shall each at their own cost and expense take whatever steps as are necessary to procure and discharge their respective obligation and rights in terms of the MSA and Applicable Laws to ensure the health and safety of the other Parties' employees, agents, directors, sub-contractors and members of the public.

8. DELIVERY

- 8.1 Stellar Technologies shall use its best endeavours to meet all required delivery dates. Stellar Technologies specifically notes that delivery dates are dependent on obtaining permissions from relevant authorities and the Customer's compliance with the provisions of clause 6. Stellar Technologies shall not incur any liability in respect of delays occasioned by such authorities regarding such permissions or by the Customer's failure to comply with the provisions of clause 6, except if such delay is as a result of the misconduct of Stellar Technologies.
- 8.2 Stellar as a material term of this Agreement shall fulfil the Services in terms of this agreement in accordance with Industry Best Practice and in compliance with all relevant laws and regulations.

9. FORCE MAJEURE

- 9.1 A Party shall not be liable for a failure to perform any of its obligations in terms of the MSA in so far as it is able to prove that:
- 9.1.1 such failure was due to an impediment beyond its reasonable control;
 - 9.1.2 it could not reasonably have been expected to have taken such impediment and its effects upon such Party's ability to perform into account at the time of conclusion of the MSA;
 - 9.1.3 it did all reasonably possible to mitigate the adverse impact on the other Party; and
 - 9.1.4 it could not reasonably have avoided or overcome the impediment or at least its effects and, for purposes of this clause 9.1, the following events contained in the definition of Force Majeure (which enumeration is not exhaustive).
- 9.2 Release from liability for non-performance by reason of the provisions of this clause 8 shall commence on the date on which the Party seeking release ("**Defaulting Party**") gives written and detailed notice of the impediment relied upon to the other Party and shall terminate upon the date on which such impediment ceases to exist, provided that if the impediment continues for a period of more than 10 (ten) consecutive days, the other Party shall be entitled, at its option, to terminate the MSA by written notice to the Defaulting Party without any penalty or early termination fees or other recourse, and the Defaulting Party shall do all reasonably possible to assist the other Party in procuring substitute Services.

10. LIMITATION OF LIABILITY

- 10.1 Neither Party shall be liable to the other for any direct, indirect or incidental damages of whatsoever nature or howsoever arising, except where such harm or damage arises from the gross negligence and/or wilful default of the Party causing the harm or damage.

11. SUSPENSION OF SERVICES

- 11.1 Subject to Clauses 12 and 15, Stellar Technologies may:

11.1.1 immediately, upon written notice to the Customer specifying the details of a breach by the Customer of the provisions of Clause 11.1.2.1.; and/or

11.1.2 upon no less than one (1) Business Day's written notice to the Customer in the case of a breach by the Customer of the provisions of Clauses 11.1.2.2. and 11.1.2.3, and where a request for Arbitration has not been made by either Party, Stellar Technologies may lawfully suspend or withdraw all or part of any Service under any Order Form at any time until further notice to the Customer if, in Stellar Technologies' reasonable discretion:

11.1.2.1 the continued provision of the Service will cause Stellar Technologies to breach any Applicable Laws or violate a contravention of its licence;

11.1.2.2 the Customer is in material and continuing breach of any of the provisions of the MSA including, without limitation, due to any delay or failure by the Customer to make any payment in terms of the MSA; and

11.1.2.3 any overdue tax invoice for charges billed by Stellar Technologies to the Customer remains unpaid.

- 11.2 The exercise of Stellar Technologies' right to suspend the Services under this clause 10 is without prejudice to any other remedy available to Stellar Technologies under the MSA and does not constitute a waiver of Stellar Technologies' right to subsequently terminate the MSA.

- 11.3 Where Stellar Technologies has suspended the Services in terms of clause 11.1, Stellar Technologies may:

11.3.1 refuse to reconnect the Services unless precluded from doing so by any law or order of court; and

11.3.2 if it agrees to reconnect the Services, require the Customer to pay Stellar Technologies' usual reconnection fee in advance as a pre-condition to making the Services available again or require the payment of a reasonable deposit or other security for payments;

11.3.3 credit the Customer with all charges for the period during which any Service/s have been suspended, should it transpire that the suspension of the Customer was erroneous.

12. TERMINATION

- 12.1 Either Party may terminate a Service at the end of an Initial Term or Renewal Term by providing the other Party with at least 30 (thirty) days prior written notice. Either Party may terminate this MSA once all Services have expired or been terminated and there are no outstanding Order Forms, by providing the other Party with at least 30 (thirty) days prior written notice.
- 12.2 Either party may terminate this Agreement in the event of a breach by the other party. To be effective, the party seeking termination must give to the other party written notice of the breach and its intent to terminate. If the breaching party does not entirely cure the breach within 15 (fifteen) days of the date of the notice, then the non-breaching party may terminate this Agreement at any time thereafter by giving a written notice of termination.
- 12.3 For the avoidance of any doubt, should the Customer terminate the Agreement in terms of clause 12.2 *supra*, the Customer shall not be liable for the payment of the Early Termination Fee unless the breach is disputed by Stellar Technologies and the parties agree, or a competent court decides otherwise.
- 12.4 Notwithstanding the above the Customer may terminate a Service or this MSA by providing Stellar Technologies with at least 30 (thirty) days prior written notice. The Customer shall be liable to pay to Stellar Technologies the Early Termination Fee in addition to any outstanding Service Fees and/or other charges.
- 12.5 Without prejudice to any rights and remedies that may have accrued, either Party may (without prejudice to such rights as the aggrieved Party may have at law, including the right to claim damages or to enforce the relevant provisions of the MSA) immediately terminate the MSA on written notice, if the other Party suffers any of the following (or any local legal equivalent):
- 12.5.1 ceases to trade (either in whole, or as to any part involved in the performance of the MSA);
 - 12.5.2 becomes insolvent, has a receiver, administrator, manager or business rescue practitioner appointed over the whole or any part of its assets or business; or
 - 12.5.3 makes any compromise or arrangement with its creditors, takes or suffers any similar action in consequence of debt, is deemed unable to pay its debts under any Applicable Laws relating to bankruptcy or the relief of debtors.
- 12.6 Save in the event of a breach by Stellar Technologies, without prejudice to any rights and remedies that may have accrued, Stellar Technologies may (without prejudice to such rights as Stellar Technologies may have at law, including the right to claim damages from the Customer or to enforce the relevant provisions of the MSA) immediately terminate the MSA on written notice to the Customer, if Stellar Technologies has suspended the provision of the Services on the basis contemplated in clause 10.1 for a period in excess of 30 days and the Customer has during such period, failed to remedy the cause of Stellar Technologies complaint.
- 12.7 If a Service is terminated prior to the Service Commencement Date, the Customer shall pay Stellar Technologies the Early Termination Fee as provided for in 1.1.9.1 *supra*.
- 12.8 Customer acknowledges that because actual damages to Stellar Technologies caused by early termination of an Order Form are uncertain and would be difficult to determine, the Early Termination Fee is a reasonable Stellar Technologies related damage and is not a penalty.

13. SERVICE VARIATIONS

- 13.1 If the Customer wishes to make a change, modification or adjustment to any element of any Service, the following procedure will apply:
 - 13.1.1 Customer will forward a change request to Stellar Technologies, setting out the details of the change request;
 - 13.1.2 Stellar Technologies will investigate the feasibility, cost implications and impact of the change request on the Services and provide such study to the Customer (“**Impact Study**”).
- 13.2 If the Customer makes a decision to proceed with the change request after considering the Impact Study, the Customer shall give Stellar Technologies a written instruction to proceed with that change on the basis set out in the Impact Study. That instruction shall be binding on the Parties and the MSA shall be deemed to be amended accordingly.
- 13.3 If the Parties cannot agree upon the necessary amendments, the change request will not be implemented.

14. DATA PROTECTION

- 14.1 The Parties acknowledge and agree that all Data provided by one Party to the other Party or to which the Parties may be exposed, shall constitute Confidential Information.
- 14.2 The Parties hereby warrant, represent and undertake in favour of each other that they shall at all times strictly comply with all Applicable Laws.
- 14.3 The Parties hereby warrant, represent and undertake that they shall not, at any time Process Data for any purpose other than with the express prior written consent of the disclosing party, and to the extent necessary to fulfil their obligations in terms of the MSA.
- 14.4 The Parties further warrant, represent and undertake that they shall ensure that all their systems and operations which they use to fulfil their obligations in terms of the MSA, including all systems on which Data is Processed, shall at all times be of a minimum standard required by all Applicable Laws for the protection, control and use of Data.
- 14.5 The Parties shall take appropriate and reasonable technical and organisational measures to prevent the loss of, damage to or unauthorised destruction of Data and the unlawful access to or Processing of Data. The measures taken must at all times be of a minimum standard required by all Applicable Laws for the protection, control and use of Data.
- 14.6 The Parties shall take reasonable steps to identify all reasonably foreseeable internal and external risks posed to Data under either Party’s possession or control and establish and maintain appropriate safeguards against any risks identified. The Parties shall regularly verify that the safeguards are effectively implemented and keep a record of such verification. The safeguards shall be updated continually in response to new risks or deficiencies in previously implemented safeguards.
- 14.7 The Parties shall immediately notify each other (i) of any risk posed to Data that it has identified; (ii) of the safeguards established by the Party to mitigate the impact of the risk; and (iii) that the

safeguards have been effectively implemented, in so far as it is applicable to the Data shared in accordance with the MSA.

14.8 The Parties shall notify each other of any security compromises or suspected security compromises of which they become aware or suspect, immediately on becoming so aware or forming such a suspicion, in so far as such security compromises or suspected security compromises is in respect of the Data shared in accordance with this Agreement.

14.9 Neither Party shall have a lien over the other Party's Data.

15. DISPUTE RESOLUTION

15.1 In the event of any dispute arising between the Parties under the MSA or any Order Form ("**Dispute**"), the Parties will act in good faith to attempt to settle the Dispute through discussions between senior representatives (which shall to the extent reasonably possible include the respective CEO's or equivalent office bearers) of the Parties within 30 (thirty) days of a Party giving the other Party notice of the issue in dispute.

15.2 Any Dispute, which cannot be resolved under clause 15.1 above, shall be referred by either Party for resolution by binding arbitration, by an arbitrator or arbitrators to be agreed by the Parties. Should the Parties fail to agree to the identity of the arbitrator or arbitrators, then an arbitrator shall be appointed by the Arbitration Foundation of South Africa ("**AFSA**"), or its successor body to the extent that AFSA is no longer in existence. The arbitration shall be conducted in accordance with the rules of AFSA ("**Rules**"), in the English language and all documents relevant to it shall be in English.

15.3 The relevant arbitrators appointed to resolve the dispute shall have the applicable industry and subject matter background or experience relevant to the nature of the Dispute.

15.4 Each Party shall pay its own fees and expenses with regard to the Arbitration and the Parties shall share equally the fees and expenses of the arbitrator/s unless and to the extent the Rules allow for the arbitrator/s to order the fees of the winning Party to be paid by the losing Party. In such case, the losing Party shall pay the fees and expenses of the winning Party, if and as the same may be mandated or apportioned in the discretion of the arbitrator/s.

15.5 The provisions of this clause 15 shall not preclude any Party from access to an appropriate court of law for interim relief in respect of urgent matters by way of an interdict, or mandamus pending finalisation of this dispute resolution process for which purpose the Parties irrevocably submit to the jurisdiction of a division of the High Court of the Republic of South Africa.

15.6 The Parties irrevocably agree that the decision in arbitration proceedings:

15.6.1 shall be final and binding upon the Parties;

15.6.2 shall not be subject to appeal;

15.6.3 shall be carried into effect by the Parties; and

15.6.4 may be made an order of any court of competent jurisdiction.

16. CONFIDENTIALITY

16.1 Subject to clauses 16.2 to 16.4, each Party must:

16.1.1 use the other Party's Confidential Information only for the purposes of the MSA and must keep confidential and not disclose to any person the other Party's Confidential Information; and

16.1.2 not make press or other public announcements or issue press releases about the other Party, the Services, the MSA or the transactions related to it without the written approval of the other Party ("**Announcement**").

16.2 Clause 16.1.1 does not apply to Confidential Information that is in the public domain other than such information that has entered the public domain as a result of a breach of the MSA or any other obligation of confidence.

16.3 A Party may disclose the Confidential Information of the other Party if that disclosure is to the employees, contractors or professional advisers of that Party or its Affiliates who have a need to know that information in relation to provision of the Services and who have agreed in writing to keep it confidential.

16.4 A Party may disclose Confidential Information of the other Party or make an Announcement that is required by any Applicable Laws.

17. INTELLECTUAL PROPERTY RIGHTS

17.1 Nothing contained in the MSA shall be construed to confer or be deemed to confer on either Party the Intellectual Property Rights of the other Party.

18. NOTICES AND DOMICILE

18.1 The Parties choose as their respective domicile for the purpose of legal proceedings and for the purposes of giving or sending any notice provided for or necessary in terms of the MSA, the addresses set out on the Order Form. A Party may change its domicile to any other physical address and its address for the purposes of notices to any other physical address or electronic mail address by written notice to the other Party to that effect. Such change of address will be effective seven days after receipt of notice of the change of domicile.

18.2 All notices to be given in terms of the MSA will –

18.2.1 be given in writing;

18.2.2 be delivered or sent by hand delivery or by electronic mail;

18.2.3 if delivered by hand, be presumed to have been received on the date of delivery;

18.2.4 if sent by electronic mail, be presumed to have been received on the first business day following the date of sending of the electronic mail unless the contrary is proved.

18.3 Notwithstanding the above, any notice actually received by the Party to whom the notice is addressed will be deemed to have been properly given and received, notwithstanding that such notice has not been given in accordance with the provisions of this clause 18.3.

19. CESSION, ASSIGNMENT AND SUB-CONTRACTING

19.1 The MSA shall be binding on the Parties hereto and their respective successors and assigns. Neither Party shall be entitled to assign or otherwise transfer the benefit or burden of all or any part of the MSA without the prior written consent of the other Party except that Stellar Technologies may assign its rights and obligations under the MSA without the approval of the Customer to an Affiliate provided that in no event shall such assignment relieve Stellar Technologies of its obligations under the MSA.

20. SEVERABILITY

20.1 Each provision of the MSA is severable from the other provisions. Should any provision be found by a court of competent jurisdiction to be invalid or unenforceable for any reason, the Parties will consult with one another in good faith in order to agree, if possible, an alternative provision in accordance with the intent and tenor of the MSA. The remaining provisions of the MSA shall nevertheless remain binding and continue with full force and effect.

21. BENEFIT OF THE MSA

21.1 The MSA will inure for the benefit of and be binding upon the successors in title and permitted assigns of the Parties hereto or either of them.

22. WHOLE MSA

22.1 The MSA constitutes the whole of the MSA between the Parties hereto relating to the matters dealt with in the MSA and save to the extent otherwise provided herein no representation, term or condition relating to the subject matter of the MSA not incorporated in the MSA shall be binding on any of the Parties.

22.2 No variation, addition, deletion, or cancellation will be of any force or effect unless reduced to writing and signed by the Parties hereto or their duly authorised representatives. Writing shall not include e-mail communication or a signature as defined in the Electronic Communication and Transactions Act no 25 of 2002.

23. WAIVER

23.1 No waiver of any of the terms and conditions of the MSA shall be binding or effectual for any purpose unless expressed in writing and signed by the Party hereto giving the same, and any such waiver shall be effective only in the specific instance and for the purpose given. No failure or delay on the part of either Party hereto in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege. Writing shall not include e-mail communication, or a signature as defined in the Electronic Communication and Transactions Act no 25 of 2002.

24. SURVIVAL

24.1 Any provision of the MSA, which contemplates performance or observance subsequent to any termination, or expiration of the applicable MSA shall survive any termination or expiration of the applicable MSA and continue in full force and effect.

25. COVENANT OF GOOD FAITH

25.1 Each Party agrees that it shall at all-time act in good faith, in its respective dealings with the other Party under or in connection with the MSA.

26. COSTS

26.1 Each Party shall bear its own costs of or incidental to the drafting and execution of the MSA.

27. RE-SELLING OF THE SERVICES BY CUSTOMER

27.1 The Customer is permitted to on-sell/resell the Services provided by Stellar Technologies in terms of this Agreement to its customers and it is agreed that in such circumstances, the end customer to whom the Services are provided shall remain the customer of the Customer. This Agreement shall remain of full force and effect as between Stellar Technologies and the Customer, irrespective of any on-selling of the Services by the Customer. In circumstances where the Customer has on-sold the Services to its end customer:

27.1.1 Stellar Technologies agrees that: (i) all engagements by Stellar Technologies in respect of the Services shall be done through the Customer; and (ii) it shall not be permitted to directly engage with the end customer unless specifically authorised to do so by the Customer;

27.1.2 Customer agrees that: (i) it shall be responsible for ensuring that its end customers' access to and use of the Services complies in all respects with the terms of this Agreement; and (ii) it shall at all times remain solely liable for the acts and omissions of its end customers as if those acts and omissions were the acts and omissions of Customer.

28. LIMITATION OF LIABILITY

28.1 The Parties shall not be liable to each other for any indirect or consequential loss or damage, including without limitation, loss of profit, revenue, anticipated savings, business transactions or goodwill or other contracts whether arising from negligence or breach of contract.

29. GENERAL

29.1 If there is any conflict or inconsistency between a term in the main part of this Agreement and a term in any of the SLA, an Order Form or Addenda or other documents referred to or otherwise incorporated into this Agreement, then the terms in the main part of this Agreement will take precedence, unless such other document which is incorporated into this Agreement is expressly stated to take precedence over the main part of this Agreement.

29.2 No indulgences granted by a Party shall constitute a waiver of that Party's rights under this Agreement; accordingly, that Party shall not be precluded, as a consequence of having granted such indulgence from exercising any such rights in future.

29.3 The failure of either Party to exercise any power given to it in terms of this Agreement or to insist upon strict compliance by the other Party with any obligation or condition hereof shall not constitute a waiver of any Parties' rights herein.

CUSTOMER	STELLAR TECHNOLOGY
<p>_____</p> <p><i>(signature)</i></p> <p>Name: _____</p> <p>Title: _____</p> <p>Place: _____</p> <p>Date: _____</p> <p><i>Who warrants that he/she is duly authorised</i></p>	<p>_____</p> <p><i>(signature)</i></p> <p>Name: _____</p> <p>Title: _____</p> <p>Place: _____</p> <p>Date: _____</p> <p><i>Who warrants that he/she is duly authorised</i></p>
<p>_____</p> <p><i>(Witness signature)</i></p> <p>Name: _____</p> <p>ID: _____</p>	<p>_____</p> <p><i>(Witness signature)</i></p> <p>Name: _____</p> <p>ID: _____</p>