

# Master Services Agreement:

## Preamble v8.0.0



This **Preamble v8.0.0** replaces all previously signed Preamble version(s) (if any) and forms part of the **Master Services Agreement** and its provisions, together with all annexures incorporated by reference, are an integral part of the Master Services Agreement. Where signed electronically and contained within a digital envelope or PDF, signature hereof binds the signer to all annexures and provisions contained within the same digital envelope or PDF.

<b>Company, individual, CC or Partnership</b>		<b>('Counterpart')</b>	
Company Registration or ID Number		Vat Number	
Physical Address			
Postal Address			
Tel Number		Fax Number	
<b>Technical Contact name</b>		Email Address	
Telephone Number		Mobile Number	

<b>Administrative Contact name</b>		Email Address	
Telephone Number		Mobile Number	
<b>Billing Contact name</b>		Email Address	
Telephone Number		Mobile Number	

<b>Bank Account name</b>	<b>('The Account')</b>		
Bank / Institution		Branch	
Account Number		Branch Code	
<b>Threshold Values</b>	Gross Asset Value:		Annual Turnover:

Schedule name	The annexures specified as "Included" below, are incorporated by reference:				
	Service Schedule	Version	Service Fees Schedule	Version	Included/Excluded
Master Services	Annexure A	V8.0.0	NA		Included
Hosted Messaging Services	Annexure B	V8.0.0	Annexure A1		
Hosted Backup Services	Annexure C	V8.0.0	Annexure A1		
Hosted Virtual Server Services	Annexure D	V8.0.0	Annexure A1		
Hosted Website Services	Annexure E	V8.0.0	Annexure B1		
Connectivity Services	Annexure F	V8.0.0	Annexure B1		
Cloud PBX Services	Annexure G	V8.0.0	Annexure B1		Included
Telkom LTE Services	Annexure H	V8.0.0	Annexure B1		
Debit order mandate	Annexure I	V8.0.0	NA		
Voice Rates	Annexure J	V8.0.0	Annexure J		
Personal Surety	Annexure K	V8.0.0	NA		

I acknowledge that I have reviewed and understood the contents of all annexures designated as "Included" above. I accept their incorporation by reference into this Master Services Agreement.

**Counterpart Signer Initial here:**

<b>For and on behalf of Counterpart</b> (who warrants his or her authority)		<b>For and on behalf of Service Provider</b>	
Signature		Signature	
Printed Name		Printed Name	
Designation		Designation	
Place		Place	

**Master Services Agreement:**  
General conditions v7.0.0



Date		Date	
------	--	------	--

# Master Services Agreement:

## General Conditions v8.0.0



These **General conditions v8.0.0** replace all previously signed / incorporated version(s) of the General Conditions (if any) and form part of the **Master Services Agreement** and its provisions are an integral part of the Master Services Agreement. Words and phrases shall have the following meanings unless the context otherwise requires:

### 1. Interpretation

- 1.1. The clause headings contained herein are for reference purposes only and shall not be used in the interpretation of this agreement. Words which denote any one gender include the other gender, the singular includes the plural and vice versa, a reference to any person shall include natural persons, artificial persons and unincorporated entities and their successors-in-title and assigns. Any reference to a number of days excludes weekends and public holidays and shall be reckoned exclusively of the first and inclusively of the last day. Anything which is required to be done, performed or recorded in or reduced to writing (including but not limited to written requests, consents, directions and matters to be in writing) may be done, performed or reduce to writing provided by way of a data message, including but not limited to emails, telefax, and/or the DocuSign Process. In this Master Services Agreement, the following words and phrases shall have the following meanings unless the context otherwise requires:
- 1.2. **"Authorised person"** means:
  - 1.2.1. in the case of SP, **Dion Carter**, or such other persons nominated by them in a written notice to the Counterpart from time to time;
  - 1.2.2. in the case of Counterpart, the individual(s) identified by the Counterpart as their Technical Contact and Administrative Contact in the preamble of this Master Services Agreement;
  - 1.2.3. **"Change"** means amendment, variation or supplementing of or the addition to this Master Services Agreement and **"Changed"** shall have the corresponding meaning;
  - 1.2.4. **"Commitment Period"** shall have the meaning ascribed to that term in the Reseller Appointment (if any).
- 1.3. **"Confidential Information"** means all proprietary and confidential information (whether written or oral) of the parties, including, without limitation, trade secrets, technical information, business information, know-how, methods, techniques, formulae, data, processes and other trade secrets.
- 1.4. **"Content"** means data, information, video, graphics, sound, music, photographs, software including independent software vendor applications and any other materials (in whatever form) or services which may be made available.
- 1.5. **"Customer"** means the person to whom the Services are provided, either (i) by a reseller pursuant to an agreement concluded between the reseller and the end customer or (ii) by SP pursuant to an agreement concluded between the SP and the customer.
- 1.6. **"Customer Information"** means data, information, video, graphics, sound, music, photographs, software and any other materials (in whatever form) published or otherwise made available on the Customer equipment (directly or indirectly) by or on behalf of the Customer by using the Service. Customer Information may include information about the Customer (including individual employees or its representatives) or the Customer's users, which may include personal information.
- 1.7. **"DocuSign Process"** means the process by which this Master Services Agreement may be electronically reviewed and signed by the Parties through [www.docusign.net](http://www.docusign.net) and by way of a digital envelope bearing a unique number which digital envelope has been created by the SP for the Counterpart.
- 1.8. **"Electronically Signed"** means affixing an electronic initial and an electronic signature to this Master Services Agreement by way of the DocuSign Process or Order Porter Process and **"Electronic Signature"** shall have a corresponding meaning.
- 1.9. **"Intellectual Property Rights"** means (i) copyright, patents, know-how, confidential information, database rights, and rights in trademarks and designs (whether registered or unregistered), (ii) applications for registration, and the right to apply for registration, for any of the same, and (iii) all other intellectual property rights and equivalent or similar forms of protection existing anywhere in the world.

- 1.10. **“Internet”** means the global data network comprising interconnected networks using TCP/IP (“Transmission Control Protocol/Internet Protocol”).
- 1.11. **“Master Services Agreement”** means collectively, the Preamble, these General Conditions, the Master Services Schedule, the Service Schedule(s), the Service Fee Schedule(s) and any Reseller Appointment(s) as changed in accordance with clause 13 from time to time.
- 1.12. **“Master Services Schedule”** means any service schedule forming part of this Master Services Agreement and which governs the provisions of Services by SP to the Counterpart.
- 1.13. **“Microsoft Online Services”** means any service provided by SP to Customer by means of the Microsoft Cloud Solution Provider (‘CSP’) Program including (but not limited to) Microsoft Office 365, Microsoft Intune, Microsoft Enterprise Mobility Suite, Microsoft Azure and Microsoft CRM Online.
- 1.14. **“Operational Service Date”** means the date when the Service described in the Service Schedule(s) is available for use by the Counterpart, as contemplated in clause 2.2.
- 1.15. **“Order”** means an order for a Service through the Portal. An Order may include multiple Subscriptions to a Service.
- 1.16. **“Order Porter Process”** means the process by which this Master Services Agreement and/or Orders may be electronically reviewed and accepted by Counterpart through <http://www.orderporter.com> and by way of a PDF that has been created by the SP for the Counterpart.
- 1.17. **“Parties”** means SP and the Counterpart and **“Party”** shall, as the context requires, mean any one of them.
- 1.18. **“Partner of Record”** or **“POR”** means an SP approved third party (who has concluded a separate Advisor Agreement with SP), selected by Customer, to be “tied” or “connected” to Customer’s account. POR acts as an advisor to Customers and assists with subscribing and selecting Services. Assigning a Partner of Record to Customer Services has no impact on Subscription Fees, support or Services Customer receives from SP. Additionally, it does not provide the POR with access to Customer Information.
- 1.19. **“Portable Document Format”** or **“PDF”** is a file format, created by Adobe Systems Incorporate, used to present documents in a manner independent of application software, hardware, and operating systems.
- 1.20. **“Portal”** means the SP Portal accessible from SP website <http://www.onlinedirect.co.za> or at an alternate website identified by SP where Order(s) may be placed.
- 1.21. **“Reseller”** shall have the meaning ascribed to that term in the Reseller Appointment (if any) unless the Master Services Agreement is been concluded directly between the Customer and SP, in which case Reseller shall have the same meaning as SP.
- 1.22. **“Service”** means the service or, where appropriate, the services or part of the service described in each of the Service Schedule(s) which is(are) applicable to this Master Services Agreement from time to time.
- 1.23. **“Service Schedule”** means any service schedule forming part of this Master Services Agreement as at the Signature Date or which forms part of this Master Services Agreement in accordance with clause 13 and which governs the provision of any particular Service by SP to the Counterpart.
- 1.24. **“Service Schedule Fees”** means the Subscription Fees applicable to the provision of Services by SP to the Counterpart as reflected in the Service Fee Schedule forming part of the relevant Service Schedule.
- 1.25. **“Service Provider or SP”** means **Online Direct (Pty) Ltd registration number 2007/015654/07**, including its authorised sub-contractors and agents.
- 1.26. **“Showcase Functionality”** means elements of the Service which provide additional enhancement to the Service. Showcase Functionality is used by SP to perform real-world testing and evaluate the suitability of formal inclusion into the Service.
- 1.27. **“Signature Date”** means the date of the signature of the last Party signing this Master Services Agreement.
- 1.28. **“SKU”** means the stock keeping unit which SP uses to track the features and/or editions associated with a Subscription. SP may append a SKU suffix to further track characteristics of the SKU including but not limited to Subscription Period.
- 1.29. **“Subscription”** means the temporary arrangement per Customer, for Counterpart to pay for and Customer to receive use of a specific Service ordered or consumed for each Customer. There are 3 classifications of Subscriptions:
- 1.29.1. **“Committed Subscription”** means a commitment in advance to pay based on a specific quantity of a Service during a Subscription Period.

- 1.29.2. **“Consumption Subscription”** means a commitment to pay based on actual usage of a Service in the preceding month with no upfront commitment for the Subscription Period.
- 1.29.3. **“Combination Subscription”** means a Subscription that is a combination of a Committed Subscription and a Consumption Subscription.
- 1.30. **“Subscription Period”** means the specific period of time (or duration) for which a Subscription is valid.
- 1.31. **“Third Party Information”** means data, information, video, graphics, sound, music, photographs, software and any other materials (in whatever form) not owned or generated by or on behalf of the Customer, published or otherwise made available through the Service.
- 1.32. **“Working Day”** means 07:30am to 6:00pm weekdays and 9:00am to 1:00pm Saturdays and Public holidays (South Africa local time).

## 2. Effective date and duration

- 2.1. This Master Services Agreement commences on the Signature Date and shall have a ‘Minimum Term’ of 36 (thirty-six) months. Subject to clause 12, this Master Services Agreement shall endure while any Subscription, Service Schedule, Service Fees Schedule or Reseller Appointment remains in force.
- 2.1.1. Notwithstanding the Minimum Term for this Master Services Agreement, each Subscription will have a Subscription Period selected in accordance with clause 17.
- 2.2. Any Changes to this Master Services Agreement will be effective as of and commence on the date determined in accordance with clause 14.3, 14.5 or 14.7 (as appropriate), provided such Change is made in accordance with clause 13.

## 3. Provision of Service

- 3.1. SP will provide the Counterpart with the Service on the terms and subject to the conditions detailed in this Master Services Agreement.
- 3.2. SP will use reasonable endeavours to provide the Service by the date agreed with the Counterpart but all dates are estimates and SP shall have no liability for any failure to meet any date, except as expressly provided in the Service Schedule(s). SP will provide the Service with the reasonable skill and care of a competent service provider and will use reasonable efforts to provide uninterrupted Service but from time to time faults may occur, which SP will repair in accordance with the fault repair service as set out in the Service Schedule(s).
- 3.3. SP shall be entitled:
- 3.3.1. For operational reasons to change the technical specification of the Service, provided that any change to the technical specification does not materially affect the performance of the Service;
- 3.3.1.1. Notwithstanding the fact Showcase feature(s) may be described in the Service Schedules, they are temporary and do not form part of the technical specification of the Service, and may be removed by the SP (in its sole discretion), without notice.
- 3.3.2. To give the Counterpart reasonable instructions which it believes are necessary for reasons of health, safety or the quality of any Service provided by SP to the Counterpart or any other person and the Counterpart undertakes to comply with such reasonable instructions;
- 3.3.3. Subject to reasonable notice, to suspend the Service for operational reasons including, without limitation, repair, maintenance or improvement provided that the Service shall be restored as soon as possible;
- 3.3.4. To suspend the Service with immediate effect in the event of an emergency provided that the Service shall be restored as soon as reasonably possible.
- 3.4. With the exception of the hardware, software and communications services described as being provided by SP in the Service Schedule(s), the Counterpart is responsible for providing suitable computer hardware, software and telecommunications equipment and services necessary to access and use the Service, specifications for which, the SP will provide, upon written request by Counterpart.
- 3.5. The Service provided by SP in terms of this Master Services Agreement does not include the provision of telecommunications services (including without limitation access to the Internet) necessary to connect to the Service.

- 3.6. Notwithstanding any other provision of this Master Service Agreement, SP shall have no liability in respect of any interruption, change of technical specification, implementation of instructions provided by SP to the Counterpart or suspension of the Service.

#### 4. Resale of the Service

- 4.1. The Counterpart shall be required to conclude a Reseller Appointment annexure in order to be entitled to re-sell the Service.  
4.2. The Counterpart acknowledges and agrees that SP provides the Service to the Counterpart on a non-exclusive basis.

#### 5. Connection of equipment to Service

- 5.1. The Counterpart must ensure that any equipment connected to or used with the Service must be connected and used in accordance with any applicable instructions, safety and security procedures.  
5.2. The Counterpart must ensure that any equipment which is attached (directly or indirectly) to the Service must be technically compatible with the Service and approved for that purpose under any relevant legislation.

#### 6. Intellectual property rights

- 6.1. Any specifications, descriptive matter, drawings and other documents, which may be furnished by SP to the Counterpart from time to time (1) Do not form part of the Service and may not be relied upon unless otherwise agreed in writing by both parties hereto, and (2) Shall remain the property of SP and shall be deemed to have been imparted by it in confidence to the Counterpart for the sole use of the Counterpart.  
6.2. Nothing contained in this Master Services Agreement or in any of the documentation exchanged between SP and the Counterpart confers or shall be deemed to confer on any party any rights in or licence to use any Intellectual Property Rights of the other Party except and insofar as is necessary to provide the Service in terms of this Master Services Agreement.

#### 7. Intellectual property rights indemnities

- 7.1. The Counterpart hereby indemnifies SP against such claims and proceedings arising from infringement of any SP's Intellectual Property Rights as a result of the Counterpart's breach of SP's or Original Equipment Manufacturer's software licence conditions as informed by SP for Customer's utilisation of the Service.  
7.2. SP warrants to the Counterpart that SP is lawfully entitled to use any intellectual property utilised by SP in the provision of the Services to Counterpart under this Master Services Agreement.  
7.3. Subject to clause 7.4, SP hereby indemnifies Counterpart against any claim (an "Intellectual Property Claim") brought against Counterpart by a third party arising from a breach by SP of the warranty provided under clause 7.2. In the event that an Intellectual Property Claim is notified to, or instituted against, Counterpart then Counterpart shall immediately give written notice thereof to SP and shall provide to SP all such information and documentation as SP may reasonably require in relation to such Intellectual Property Claim. SP shall be entitled, on written notice to Counterpart, to assume control of any legal proceedings pertaining to an Intellectual Property Claim provided that SP shall be liable for all reasonable costs and expenses incurred by Counterpart in relation to such legal proceedings. Notwithstanding any other provision of this Master Services Agreement (including, without limitation, clause 13), in the event of an Intellectual Property Claim SP shall be entitled, on written notice to Counterpart, to vary the provision of Services to Counterpart which Service was adversely affected by the Intellectual Property Claim in such manner as SP reasonably deems necessary to reduce or eliminate any potential liability under such Intellectual Property Claim.  
7.4. SP shall have no obligation to indemnify Counterpart under clause **Error! Reference source not found.** in respect of any liability arising under, or in connection with, an Intellectual Property Claim to the extent that such liability would not have arisen but for the breach of this Agreement by the Counterpart.

## 8. Confidentiality

- 8.1. The Parties will keep in confidence any Confidential Information obtained under this Master Services Agreement and will not disclose Confidential Information to any person (other than their employees or professional advisers without prior written consent of the other party).
- 8.2. This paragraph 8 will not apply to:
  - 8.2.1. Any information, which has been placed in the public domain other than through a breach of this Master Services Agreement;
  - 8.2.2. Information lawfully in the possession of the recipient before the disclosure under this Master Services Agreement took place;
  - 8.2.3. Information obtained from a third party who is free to disclose it; and
  - 8.2.4. Information which a party is required by law to disclose;
- 8.2.4.1. For the avoidance of doubt, no provision of this Master Services Agreement shall be construed in such a way that the disclosing party is deemed to have granted its consent to the receiving party to disclose the whole or any part of the Confidential Information in terms of the provisions of the Promotion of Access to Information Act, No 2 of 2000, as amended ('the Act');
- 8.3. Each Party's rights and obligations under this paragraph 8 shall survive the termination of the Master Services Agreement.

## 9. Service Schedule Fees

- 9.1. All fees are exclusive of Value Added Tax (VAT).
- 9.2. All fees will be billed in accordance with a signed Service Fee Schedule for each Service. The fees due and payable by the Counterpart to SP may be subject to discounts as may be agreed between the Parties from time to time provided that any discounts shall only be of force and effect to the extent that they are expressly recorded in a writing.
- 9.3. The Counterpart's liability for Service Schedule Fees will commence on the date contemplated in clause 2.2 read with clause 14. Service Schedule Fees will be calculated with reference to the applicable Service Fee Schedule, the type of Subscription(s) and SP's data in respect of usage and provisioned resources and that this data will be set out in statements and/or invoices and/or reports furnished by SP to the Counterpart. The Service Schedule Fees shall not be subject to deduction or set-off of any amount of whatsoever nature or for whatsoever reason.
- 9.4. For Subscription Periods of 12 (twelve) months or more:
  - 9.4.1. On the anniversary of each Subscription, SP may increase the Service Schedule Fees by the greater of 5% (five percent) or the year-on-year percentage change in the Consumer Price Index (as published in the government gazette) on 30 days written notice to the Counterpart or such other period as may be stated in the relevant Service Schedule.
- 9.5. For Subscription Periods of less than 12 (twelve) months or where no Subscription Period has been specified:
  - 9.5.1. SP may increase the Service Schedule on 30 days written notice to the Counterpart or such other period as may be stated in the relevant Service Schedule.
- 9.6. SP will invoice the Counterpart monthly (the "Billing Period") as follows:
  - 9.6.1. The setup fees, if any, and the first Billing Period's recurring Service Schedule Fees up to 30 days in advance of the Operational Service Date;
  - 9.6.2. Subsequent Service Schedule Fees monthly in advance of the Billing Period.
- 9.7. The Counterpart will pay the Service Schedule Fees according to its prevailing payment terms with SP. Any amount falling due for payment by the Counterpart to SP in terms of or pursuant to this Master Services Agreement which is not paid on its due date, may, at the discretion of the SP, bear interest calculated from the invoice date until date of payment, at a rate of 2% above the standard prime overdraft rate as determined by SP's bank, from time to time, monthly in arrears. Additionally, SP reserves the right to suspend the provision of the Service to the Counterpart immediately if the Counterpart is in default of payment. Such suspension is without prejudice to the rights of SP, which have accrued prior to the date of reinstatement.
- 9.8. All Service Schedule Fees will be invoiced and paid in South African Rand unless otherwise stated in the Service Schedule Fees. Value Added Tax or any other applicable country sales or use tax or like charge in a country where the Service is provided which is payable by the Counterpart will be added to SP' invoices as appropriate.
- 9.9. The Counterpart acknowledges that the SP shall be entitled to generate and delivery invoices electronically.

- 9.10. The Counterpart acknowledges that the Counterpart may be subject to SP' credit vetting procedures and that SP may, at any time, require the Counterpart to pay a deposit or provide a guarantee as security for payment of future bills.
- 9.11. The Counterpart acknowledges that in the event of SP being in possession of any of the Counterpart's Property, and in the event of any monies being outstanding by the Counterpart to SP at any time, SP shall have a bona fide lien over such property and shall have the right to retain same until such time that all outstanding amounts have been paid by the Counterpart to SP in full.
- 9.12. Notwithstanding anything to the contrary contained herein, any increase in charges from third parties payable in respect of Services rendered by SP under the Master Services Agreement may be passed on to the Counterpart. Upon written request by Counterpart, SP will provide a declaration from SP's auditors that the increase was applied in a manner consistent with the increase in third party charges. Said increases in Service Schedule Fees shall never exceed a Fifteen Percent (15%) annual escalation excluding the effect of the Rand-Dollar exchange rate which shall not be limited to Fifteen Percent (15%) and may be passed on to the Counterpart as and when those Service Schedule Fees become effective.

## **10. Limitation of liability**

- 10.1. Notwithstanding any other provision of this Master Services Agreement, in no event will SP, its members, directors, officers, employees, contractors, agents and/or invitees be liable to the Counterpart for any indirect or consequential damages (including without limitation, loss of goodwill, profit, revenue, savings or interruption of business) caused by, arising from or in any way connected with the provisions of this Master Services Agreement (including breach thereof) and/or any act or omission performed or omitted to be performed by SP in connection with the Master Services Agreement.
- 10.2. Subject to clauses 10.1, 10.3, 10.4 and any provision of this Master Services Agreement expressly limiting the liability of SP, SP's liability to the Counterpart in contract or delict or otherwise in relation to this Master Services Agreement is limited to one month's Service Schedule Fees calculated as the average Service Schedule Fees paid by the Counterpart to SP under this Master Services Agreement over any continuous period of 3 (three) months.
- 10.3. SP shall not have any liability whatsoever in respect of any claim arising from or in any way connected with Counterpart Information, Third Party Information, or any other material which can be accessed or acquired using the Service and is not responsible in any way for any goods (including without limitation Products and software) or services provided, promoted, advertised, sold or otherwise acquired by means of the Service or on the Internet.
- 10.4. SP shall not be liable to the Counterpart whether in contract or delict or otherwise in respect of any claim caused by, arising from or is in any way connected with the act or omission of any other provider of telecommunications or Internet services (including domain registration authorities) or for the faults in or failures of their equipment).
- 10.5. The Counterpart hereby indemnifies SP and holds SP harmless against all claims of whatsoever nature and howsoever arising (and whether founded in contract, delict, statute or otherwise) caused by, arising from or in any way connected with the provision of the Service by the SP to Counterpart including, without limitation, any cessation, delay or defect in the provision of the Service by the Counterpart.

## **11. Matters beyond either Party's reasonable control**

- 11.1. If either Party is prevented or restricted directly or indirectly from carrying out all or any of its obligations under this Master Services Agreement by reason of any event or circumstance beyond that Party's reasonable control including, without limitation, lightning, flood, exceptionally severe weather, fire, explosion, war, civil disorder, industrial disputes (whether or not involving employees of either Party) or acts of local or central government or other competent authorities, or event beyond the reasonable control of suppliers to either Party, the Party so affected shall be relieved of its obligations hereunder during the period that such event and its consequences continue but only to the extent so prevented and the affected Party shall not be liable for any delay or failure in the performance of any obligations hereunder, provided always that written notice shall forthwith be given of any such inability to perform by the affected Party.
- 11.2. If SP is prevented by restrictions of a legal or regulatory nature from supplying the Service, SP will have no liability to the Counterpart for failure to supply the Service.



- 11.3. If any of the events detailed in clauses 11.1 or 11.2 continue for more than 3 (three) months, either Party may serve notice on the other terminating this Master Services Agreement.

## **12. Breach**

- 12.1. Either Party may cancel this Master Services Agreement immediately on notice, if the other:
- 12.1.1. Commits a material breach of this Master Services Agreement, which is capable of remedy, and fails to remedy the breach within 14 (fourteen) days of written notice to do so; or
  - 12.1.2. commits a material breach of this Master Services Agreement which cannot be remedied; or
  - 12.1.3. commits an act of insolvency; or
  - 12.1.4. allows any judgement against it in excess of R50 000 (Fifty Thousand Rand) to remain unsatisfied for a period of 14 (fourteen) days or more after it comes to the notice, or ought reasonably to have come to the notice, of the board of directors of the defaulting Party without taking steps to have the judgement rescinded or taken on appeal or review as appropriate;
  - 12.1.5. or is placed in liquidation or under judicial management (in either case, whether provisionally or finally) or, being and individual, his estate is sequestrated or voluntarily surrendered
- 12.2. Where SP has cancelled this Master Services Agreement in terms of this clause 12, the Counterpart shall, without prejudice, or limitation to any other remedy that SP may have in law, be liable for all Service Schedule Fees that would have been due and payable by the Counterpart under this Master Services Agreement but for the cancellation.

## **13. Changes to this Master Services Agreement and adding to this Master Services Agreement with additional Service Schedule(s)**

- 13.1. Save as expressly provided in this Master Services Agreement, no Change to, or consensual cancellation of this Master Services Agreement shall be of any force or effect unless in writing and signed by or on behalf of the Parties by an Authorised Person of each of the Parties in accordance with this clause 13.
- 13.2. Subject to clause 13.1, if either Party wishes to Change this Master Services Agreement the procedure detailed in this clause 13.2 shall be followed:
- 13.2.1. The requesting Party must give written notification to the other Party providing particularity of the proposed Change (including but not limited to adding additional Service Schedule(s) to this Master Services Agreement) and the reason therefore.
  - 13.2.2. The Parties will discuss the proposed Change.
  - 13.2.3. Within a reasonable time of receipt of written notification from the requesting Party of a proposed Change, the other Party will notify the requesting Party in writing whether the proposed Change is feasible and the likely financial, contractual, technical and other effects and the terms and conditions of the proposed Change (Change Notice). If the proposed Change relates to a Service Schedule(s), the terms and conditions of such Change (including the Service Schedule Fees applicable to that Service Schedule) will be those set out in the relevant Service Schedule(s) attached to this Master Services Agreement unless specifically agreed otherwise by each of the Parties in writing.
  - 13.2.4. Within a reasonable time of receipt of the Change Notice the requesting Party will advise the other Party in writing whether it unconditionally accepts the Change and wishes this Master Services Agreement to be amended to incorporate the Change as contemplated in the Change Notice.
  - 13.2.5. Where the Parties agree to Change this Master Services Agreement, such Change must be recorded in writing and signed by an Authorised Person of both of the Parties in accordance with the provisions of clause 14.
- 13.3. Notwithstanding the provisions of clause 13.1, SP shall be entitled to amend this Master Services Agreement in accordance with the under mentioned procedure:
- 13.3.1. SP shall give the Counterpart 60 (sixty) days written notice of its intention to amend the Master Services Agreement provided that the aforesaid notice shall provide the Counterpart with full particularity of the proposed amendment;
  - 13.3.2. The proposed amendment shall be effected on the 60<sup>th</sup> (sixtieth) day following receipt by the Counterpart of the written notice referred to in clause 13.3.1 unless the Counterpart is able to demonstrate that the proposed amendment reasonably

results in the terms and conditions of the Master Services Agreement becoming materially commercially more onerous for the Counterpart, in which event the proposed amendment shall not be effected.

## **14. Signature of this Master Services Agreement and signature of Changes to this Agreement**

- 14.1. Without prejudice to the provisions of clause 13, this Master Services Agreement and/or any Changes hereto may be either physically signed or Electronically Signed and one form of signature will not preclude the other form of signature.
- 14.2. To the extent this Master Services Agreement is Electronically Signed, such Electronic Signature:
  - 14.2.1. will be valid and binding if the DocuSign Process has been followed by an Authorised Person of each Party;
  - 14.2.2. will be valid and binding if the Order Portal Process has been followed by an Authorised Person of each Party;
  - 14.2.3. will be effective as of and commence on the Signature Date save to the extent expressly agreed otherwise by the Parties in writing (as contemplated in clause 2.1);
- 14.3. To the extent a Change in this Master Services Agreement is Electronically Signed such Electronic Signature:
  - 14.3.1. will be valid and binding if the process contemplated in clause 13 has been complied with and has been Electronically Signed by an Authorised Person; and
  - 14.3.2. will be effective as of and commence on the date on which the other Party receives the written notice of unconditional acceptance referred to in clause 13.2.5, save to the extent expressly agreed otherwise by the Parties in writing (Operational Service Date).
- 14.4. To the extent this Master Services Agreement is signed physically, such physical signature:
  - 14.4.1. will be valid and binding if signed by an Authorised Person of each of the Parties; and
  - 14.4.2. will be effective as of and commence on the Signature Date, save to the extent expressly agreed otherwise by the Parties (in writing as contemplated in clause 2.1);
- 14.5. To the extent a Change to this Master Services Agreement is signed physically, such physical signature:
  - 14.5.1. will be valid and binding if the process contemplated in clause 13 has been complied with and has been signed by an Authorised Person; and
  - 14.5.2. will be effective as of and commence on the date on which it is last signed, save to the extent expressly agreed otherwise by the Parties (in writing (Operational Service Date).
- 14.6. To the extent that this Master Services Agreement is both physically signed and Electronically signed, this Master Services Agreement:
  - 14.6.1. will be valid and binding if signed by an Authorised Person of each of the Parties; and
  - 14.6.2. will be effective as of and commence on the earlier Signature Date, save to the extent expressly agreed otherwise by the Parties in writing.
- 14.7. To the extent a Change to this Master Services Agreement is both physically signed and Electronically Signed, the Change:
  - 14.7.1. will be valid and binding if the process contemplated in clause 13 has been complied with and has been signed by an Authorised Person; and
  - 14.7.2. will be effective as of and commence on date of the earlier signature, save to the extent expressly agreed otherwise by the Parties in writing (Operational Service Date), provided the process in this clause 13 has been complied with.

## **15. Termination of Subscription(s) by Notice**

- 15.1. Subject to 15.2.4, Counterpart may terminate a Subscription, during its Subscription Period, by providing at least 30 (thirty) days prior written notice.
  - 15.1.1. A termination will be effective at the end of the monthly Subscription cycle having regard for the notice period requirement.
  - 15.1.2. Counterpart must pay for the period up to and including the end of the monthly Subscription cycle.
- 15.2. For Committed Subscriptions and Combined Subscriptions, the following applies:
  - 15.2.1. A Subscription with a one-month Subscription Period or less may be terminated without any additional cancellation fee.

- 15.2.2. A Subscription with a Subscription Period greater than one month, may not be terminated without settlement of all fees relating to the entire contract period.
- 15.2.3. To terminate a Subscription, the Counterpart must follow the process on the Portal or as otherwise direct by SP Help Desk.
- 15.2.4. Subscriptions may not be terminated:
  - 15.2.4.1. Any time after 6 (six) months prior to the end of any Commitment Period, or;
  - 15.2.4.2. Any time after expiry of any Commitment Period; or
  - 15.2.4.3. Any time after expiry of this Agreement; or
  - 15.2.4.4. Any time where Counterpart is in breach of this Agreement or has been placed on notice of breach;
  - 15.2.4.5. Any time where a Subscription includes equipment rental; or
  - 15.2.4.6. Any time where a Subscription includes a 3<sup>rd</sup> party service which does not permit early termination other than for breach;
  - 15.2.4.7. Any time where a Subscription includes Microsoft Online Services, where the Customer is seeking to re-subscribe, via an entity other than SP, to one or more Microsoft Online Services whether by means of a Microsoft Cloud Agreement, any other licensing program or mechanism.

## 16. Subscription(s) Renewal

- 16.1. Committed Subscriptions, automatically renew for the same contract period signed for, 3 calendar months' notice prior to the contract end date must be submitted by Counterpart advising that they would like to cancel the services should they no longer require the services.
- 16.2. Cancellations must be submitted in writing on counterpart letterhead via email to [operations.support@onlinedirect.co.za](mailto:operations.support@onlinedirect.co.za), should you not receive confirmation of cancellation of services within 24 hours a follow up phone call to the operations support desk advising of your cancellation.
  - 16.2.1. By Default, all Committed Subscriptions automatically renew upon expiration of the Subscription Period.
    - 16.2.2. The quantity of Services in the Subscription at the time of renewal, is automatically renewed.
      - 16.2.2.1. For Consumption Subscriptions, renewal is unnecessary because Counterpart's ability to use the Service will continue until the applicable Service is discontinued;
      - 16.2.2.2. Trial Subscriptions cannot be renewed.

## 17. Selection of Subscription and Subscriptions Periods

- 17.1. Service Schedule Fees for different Subscription Periods are specified in the Service Fees Schedule(s) and/or the Portal.
  - 17.1.1. Counterpart will be required to select a Subscription Period when placing an Order, failing which any Service provisioned without specifying a Subscription Period will be deemed to be Committed Subscriptions with a Subscription Period of 1 (one) month.
  - 17.1.2. SP will be entitled to populate the Portal with 'dummy' Order information to facilitate the provisions of 17.1.1. The Counterpart will be required to specifically Order a Consumption Subscription if a Consumption Subscription is available and the Counterpart so desires.

## 18. Subscription Upgrades and Downgrades

- 18.1.1. To increase resources within a Subscription ('Subscription Upgrade'), the Counterpart must follow the process on the Portal or as otherwise contact SP Help Desk. Unless otherwise specified, Subscription Upgrades via the Portal do not extend the Subscription Period and do not constitute a Subscription Renewal.
- 18.2. Any reduction in resources within a Subscription ('Subscription Downgrade'), requires prior approval from SP.

## 19. Solicitation of Employees

- 19.1. The Counterpart undertakes that, for the duration of this Master Services Agreement and for a period of 36 (thirty six) months after the termination of this Master Services Agreement, the Counterpart and any person or entity in which the Counterpart is

directly or indirectly associated, engaged, concerned or interested, whether financially or otherwise, shall not (i) solicit the employment of or employ any person employed by SP during the term of this Master Services Agreement or (ii) procure or receive Services from any person who acted as a service provider to, or sub-contract of, SP in relation to the performance by SP of its obligations under this Master Services Agreement. The Counterpart acknowledges and agrees that the restraint imposed upon it in terms of this clause is reasonable as to subject matter, period and territorial limitation and is not more than is reasonable and necessarily required by SP to maintain its legitimate business interests. Each Party's rights and obligations under this clause shall survive the termination of this Master Services Agreement.

- 19.2. The SP undertakes that, for the duration of this Master Services Agreement and for a period of 36 (thirty six) months after the termination of this Master Services Agreement, the SP and any person or entity in which the SP is directly or indirectly associated, engaged, concerned or interested, whether financially or otherwise, shall not solicit the employment of or employ any person employed by Counterpart during the term of this Master Services Agreement. The SP acknowledges and agrees that the restraint imposed upon it in terms of this clause is reasonable as to subject matter, period and territorial limitation and is not more than is reasonable and necessarily required by Counterpart to maintain its legitimate business interests.
- 19.3. Each Party's rights and obligations under these clauses 19.1 and 19.2 shall survive the termination of this Master Services Agreement.

## 20. Assignment

- 20.1. The Counterpart may not, without the prior written consent, which shall not be unreasonably withheld, cede its rights or delegate its obligations under this Master Services Agreement to any other person.
- 20.2. SP shall be entitled to cede any of its rights and delegate any of its obligations under this Master Services Agreement to any third party.

## 21. Entire agreement

- 21.1. This Master Services Agreement contains the whole agreement between the Parties and supersedes all previous written or oral agreements relating to its subject matter.
- 21.2. The Parties acknowledge and agree that they have not been induced to enter into this agreement by any representation, warranty or other assurance not expressly incorporated into it; and neither Party shall be bound by any express or implied representation, warranty, promise or the like not recorded herein.

## 22. Addresses and Domicilium

- 22.1. Each Party chooses the address set out opposite its name below as its address to which any written notice in connection with this Master Services Agreement (save for operational notices as contemplated in the Master Services Schedule may be addressed);
- 22.1.1. **SP:**
- 22.1.1.1. **Address: 61 Bosbok Rd, Randburg, Johannesburg, 2194**  
**Telefax: [(011) 317-1801]**  
**Attention: Managing Director**
- 22.1.2. **The Counterpart: (As Per Preamble)**  
The physical address and Telefax of the Counterpart reflected in these General Conditions.  
For the attention of the signatory of the Counterpart to these General Conditions.
- 22.2. Any notice or communication required or permitted to be given in terms of clause 22.1 shall be valid and effective in writing but it shall be competent to give notice by Telefax.
- 22.3. The Parties hereby choose domicilia citandi et executandi for all purposes of and in connection with this Agreement at the addresses set out in clause 22.1 above.

- 22.4. Any Party may by written notice to the other party change its chosen address and/or Telefax number for purposes of this clause to another address and/or Telefax number, provided that the change shall become effective on the 14<sup>th</sup> (fourteenth) day after receipt of the notice by the addressee.

## 23. Debit Order Authority

- 23.1. The Counterpart hereby authorizes SP utilizing the services of SP's banker or authorised POR, to draw against The Account or any other bank or branch to which the Counterpart may transfer its account, an amount as per the outstanding balance on statement supplied by the Service Provider in terms of the Service Schedules with SP and any additional fees for voice or data usage and support fees on the **25<sup>th</sup> day of each** and every month commencing after the Operational Start Date until termination of the Service Schedule(s) by either Party.
- 23.2. Subject to the provisions of 9.10, Counterpart may request a waiver of 23.1, and settle Service Schedule Fees by way of electronic bank transfer, provided that the Counterpart pays a deposit over to SP, equal to three (3) months Service Schedule Fees.

## 24. General

- 24.1. This agreement is governed by and shall be construed in accordance with the laws of South Africa.
- 24.2. The Parties hereby irrevocably and unconditionally consent to the non-exclusive jurisdiction of the South Gauteng High Court, Johannesburg in regard to all matter arising from this Master Services Agreement.
- 24.3. Either Party shall be liable for all costs incurred by the other in the recovery of any amounts or the enforcement of any rights which it has hereunder, including collection fees and costs as between attorney and own client scale, whether incurred prior to or during the institution of legal proceedings or if judgement has been granted, in connection with the satisfaction or enforcement of such judgement.
- 24.4. No indulgence by a Party to another or failure strictly to enforce the terms of any of the provisions of this Master Service Agreement or any document issued or executed pursuant to or in terms of this Master Services Agreement shall be construed as a waiver or be capable of founding an estoppel.
- 24.5. Each provision of this Master Services Agreement is severable from all others, notwithstanding the manner in which they are linked together or grouped grammatically and if, in terms of any judgement or order, any provision, phrase, sentence, paragraph or clause is found to be defective or unenforceable for any reason, the remaining provisions, phrases, sentences, paragraphs and clauses shall nevertheless continue to be of full force and effect.

## 25. Consumer Protection Act ('CPA')

- 25.1. A transaction (as defined in the CPA) between the Counterpart and SP may or may not fall under the provisions of the CPA depending upon whether certain values set out in clause 25.2 in respect of the Counterpart ("Threshold Values") are below a certain value at the time the transaction is entered into.
- 25.2. The Threshold Values are the Counterpart'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.
- 25.3. SP's duties towards the Counterpart may vary depending upon whether the transaction in question is subject to the CPA, and SP will act upon the information given to it by the Counterpart in this regard. Consequently:
- 25.3.1. The Counterpart warrants that any statement made to SP in respect of its Threshold Values is accurate.
- 25.3.2. If the Counterpart claims that all the Threshold Values are below the relevant value, or otherwise that the CPA applies to the transaction in question, SP may at its instance require the Counterpart to provide it with financial statements as proof thereof.
- 25.3.3. If the Counterpart misstates the Threshold Values in such a way that SP considers for a period that the transaction is subject to the CPA when it is not, all provisions of this Agreement that do not apply to transactions subject to the CPA shall retroactively apply to the transaction in question, and the Counterpart shall be liable for any damage sustained by SP resulting from such misstatement.

- 25.3.4. The Signatory to this agreement confirms that Counterpart is not currently subject to a debt review or re-arrangement order or agreement as contemplated by the National Credit Act, nor to business rescue proceedings as contemplated by the Companies Act.

## **26. Hardware Warranty**

- 26.1. Hardware supplied by SP carries a 1 year warranty unless a 3 year next business day warranty is included in the proposal.
- 26.2. SP reserve the right to charge a collection and delivery fee to assist with hardware warranty claims.
- 26.3. "Out of box failure" hardware must be returned with all packaging
- 26.4. "Out of box failure" is a term used for hardware that is delivered and fails immediately.
- 26.5. Any hardware installed at counterparts premises on a rental basis directly from SP remains the property of SP and must be returned when the contract has been terminated.