



MASTER SERVICES AGREEMENT

between

Liquid Telecommunications South Africa (Pty) Ltd
t/a
Liquid Intelligent Technologies
("Liquid")

and

Customer

1. INTRODUCTION

- 1.1. The Customer wishes to procure Services from Liquid.
- 1.2. The Parties agree to the provision of Services by Liquid to the Customer on the terms and conditions of this MSA.

2. DEFINITIONS AND INTERPRETATIONS

- 3.1. Unless the context otherwise indicates, the following words and expressions has the meanings given to them and cognate expressions bear corresponding meanings:
 - 3.1.1. "**Act**" means the Electronic Communications Act, 2005;
 - 3.1.2. "**Affiliate**" means in relation to any party; (a) any entity Controlled, directly or indirectly by that party; or (c) any entity under common Control;
 - 3.1.3. "**MSA**" means this Master Services Agreement, including all schedules and annexures attached from time to time;
 - 3.1.4. "**Business Day**" means any day other than Saturday, Sunday or a public holiday officially recognized as such in the Republic of South Africa;
 - 3.1.5. "**Charges**" means all amounts payable by the Customer to Liquid under this MSA;
 - 3.1.6. "**COF**" means the Customer Order Form setting out the details of the Service requested including quantities and Charges payable;
 - 3.1.7. "**Confidential Information**" means any information disclosed by one Party ("**Disclosing Party**") to the other ("**Recipient**"), including (a) methods of doing business, trade secrets, know-how, information of commercial value, or any research or development; (b) any information disclosed or provided to the Recipient or which may be learned or acquired during any examination of information or during discussions; and (c) any other information of a confidential nature or which by virtue of its nature could reasonably be considered confidential;



- 3.1.8. “**Contract Term**” means the term for which the applicable Services are provided by Liquid as set out in the relevant COF, calculated from the date on which the Service Handover Form is signed;
- 3.1.9. “**Control**” means the power to direct or cause the direction of the management and policies of an entity as defined in the Companies Act, 2008;
- 3.1.10. “**Customer Device**” means equipment used to access the Services which is either leased or purchased from Liquid;
- 3.1.11. “**Customer Premises**” means the sites or premises of the Customer, or designated by the Customer, where Liquid will install and/or provide the Services as set out in the COF;
- 3.1.12. “**Customer Site Requirements Specification**” or “**CSRS**” means the document setting out the design, environmental, technical and/or operational specifications required by Liquid at the applicable Customer Premises to enable Liquid to deliver the Service in question;
- 3.1.13. “**Customer Specific Services**” means any service (a) where the Customer has imposed any specific requirements that result in an increase to Liquid of the cost of providing such Services, including the medium of connectivity, delivery route, technology specifications, non-standard service levels or a third party that Liquid is obliged to use; (b) that originates from and/or terminates at an international location; (c) that forms part of a group of services used by the Customer and linked to Liquid’s Services ; and/or (d) which is classified as 'non-standard' in the relevant COF;
- 3.1.14. “**Delivery Planning Phase**” means the phase/period during which the project scope and costs are determined and any extraordinary requirements, special conditions or unique solution-based deliveries or the like, specific to the provision of the Services as advised by the Customer and recorded in the COF, necessary to meet the Service Commencement Date and the timeous issue of the Service Handover Form;
- 3.1.15. “**Due Date**” means the date specified in the relevant invoice, or if no such date is specified, 30 days from the date of the invoice;
- 3.1.16. “**Intellectual Property Rights**” means and includes:
- a) rights relating 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, whether registered or not, 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; and
 - b) all other intellectual property rights and forms of protection of a similar nature or having equivalent or similar effect and which may exist anywhere in the world;
- 3.1.17. “**License**” means the electronic communications service and electronic communications network service licences issued by Independent Communications Authority of South Africa (“**ICASA**”) to Liquid and any renewal, amendment, re-issue or equivalent thereof authorising Liquid to provide the Services;



- 3.1.18. “**Liquid Equipment**” means all hardware, network facilities and/or telecommunication facilities, which Liquid uses to provide the Services, including Customer Devices leased by the Customer;
- 3.1.19. “**Losses**” means all losses, liabilities, damages and claims, and all related costs and expenses suffered by either Party (including legal fees on the scale as between attorney and client, tracing and collection charges, costs of investigation, interest and penalties);
- 3.1.20. “**MRC**” or “**Monthly Recurring Charge**” means the monthly fees for the Services as set out in the applicable COF;
- 3.1.21. “**Network**” means the communication network, components and network equipment owned and/or operated by Liquid, including points of presence, but does not include Customer Devices, Customer Premises equipment (modems, routers etc.), or any networks or network equipment not owned or controlled by Liquid;
- 3.1.22. “**NRC**” or “**Non-Recurring Charge**” means the once-off implementation fee for the Services as set out in applicable COF;
- 3.1.23. “**Party**” means either Liquid or the Customer; and “**Parties**” means both of them, as the context indicates;
- 3.1.24. “**Services**” means any Liquid products and/or services provided to the Customer, the description and details of which are recorded in the relevant COF and/or Service Schedule;
- 3.1.25. “**Service Commencement Date**” means the date of signature of the Service Handover Form, irrespective of the signature date of this MSA and/or any COF;
- 3.1.26. “**Service Credits**” means, where applicable, credits due to the Customer for unscheduled Service Downtime as set out in the relevant Service Schedule;
- 3.1.27. “**Service Downtime**” means the period for which the Services may not be available to the Customer, calculated in accordance with the relevant Service Schedule;
- 3.1.28. “**Service Handover Form**” means the Service Handover Form provided by Liquid to the Customer after Liquid has completed installation and testing of the Service, or any variation to a Service, as the case may be;
- 3.1.29. “**Service Levels**” means the levels of service provided by Liquid in relation to the Services;
- 3.1.30. “**Service Schedule**” means a schedule containing the nature and type of the applicable Service and Service Levels, where applicable;
- 3.1.31. “**Termination Date**” means the effective date of termination for the applicable Terminating Services; and
- 3.1.32. “**Terminating Services**” means those Services that *either* Party terminates.
- 3.2. Headings are for convenience only and do not affect the interpretation of this MSA.
- 3.3. Unless the context indicates otherwise, an expression which indicates: (i) any gender includes the other gender; (ii) a natural person includes a juristic person and *vice versa*; and (iii) the singular includes the plural and *vice versa*.
- 3.4. Any substantive provision, conferring rights or imposing obligations on a Party and appearing in any of the definitions



or elsewhere in this MSA, is given effect to as if it were a substantive provision in the body of the MSA.

- 3.5. In the event of ambiguity or conflict, and unless stated explicitly otherwise in the relevant clause, the order of precedence in the interpretation of the MSA is in the following order: (a) this MSA; thereafter, (b) the Service Schedule/s; and thereafter, (c) the COF/s.
- 3.6. Reference to a Party includes its directors, shareholders, employees, agents, representatives, liquidators, business rescue practitioners, permitted assigns, substitutes in title, cessionaries and the like. This MSA is for the benefit of, and is binding on, these persons.
- 3.7. When any number of days is prescribed in this MSA, same is calculated by excluding the first day and including the last day. If the last day is not a Business Day, the next succeeding Business Day will apply.
- 3.8. The expiration or termination of this MSA does not affect those provisions of this MSA that expressly provide that they will operate after any such expiration or termination, or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.
- 3.9. The rule of construction, that this MSA be interpreted against the party responsible for the drafting or preparation of this MSA, does not apply.

4. APPOINTMENT

- 4.1. The Customer hereby appoints Liquid to provide the Services with effect from last date of signature to this MSA. Liquid hereby accepts such appointment in accordance with the terms and conditions contained herein.
- 4.2. Liquid is entitled to appoint any of its Affiliates to provide the Services, provided that Liquid remains liable with such appointee for the due and proper performance of all of its duties, functions and obligations under this MSA.

5. DURATION

- 5.1. This MSA commences on the Signature Date and remains in force until termination or expiry of the last COF.
- 5.2. The Services commence on the Service Commencement Date, irrespective of the date on which the COF is signed, indicating that the Services are active and have been successfully implemented.
- 5.3. Billing will commence from the Service Commencement Date.
- 5.4. The Services remains in force for the Contract Term.
- 5.5. The Parties may agree to renew the Services for a further Contract Term in a subsequent COF ("**COF Renewal Period**"). The Customer must notify Liquid in writing at least 2 months prior to the expiry of the relevant Contract Term (or the expiry of any subsequent COF Renewal Period, as the case may be) of its intention to renew or terminate the Services.
- 5.6. Should the Customer fail to notify Liquid of its intention to renew or terminate the Services, the Services will continue unless terminated on 60 days prior written notice.



6. SERVICES

- 6.1. Liquid is not obliged to supply any Services until a COF and the corresponding Service Schedule has been signed by the Customer. Each COF constitutes an agreement between the Parties subject to and regulated by this MSA.
- 6.2. Liquid reserves the right to utilise any technology which it has available and which it considers, in its discretion, the most suitable to render Services unless the applicable Service Schedule expressly states otherwise.
- 6.3. Liquid reserves the right to utilise any spare transmission capacity provided that such use of spare capacity does not have an adverse effect on the provision of the Services to the Customer.
- 6.4. Liquid reserves the right to provide the Services through Liquid, any of its Affiliates and/or third party service providers.
- 6.5. The Services may only be used by the Customer in accordance with the terms and conditions of this MSA, COFs and Service Schedules.
- 6.6. For complex or solution-based deliveries with dependencies, the Customer must inform the Liquid key account manager, in writing, of delays or circumstances, that is “**Customer Dependencies**”, that may lead to delays during the Delivery Planning Phase. Customer Dependencies include:
- 6.6.1. solution-based delivery – i.e. where multiple sites need to be delivered at the same time; and/or
- 6.6.2. transition based delivery - i.e. where the Customer can only accept Services from Liquid once the current service provider contract has been terminated; and/or
- 6.6.3. awaiting Customer equipment readiness – i.e. where the CPE and/or the Customer is not ready to receive the Services.
- 6.7. Should the Customer fail, for whatever reason, to notify Liquid in writing of any delays as a result of Customer Dependencies either before or during the Delivery Planning Phase, the Services will be deemed to go-live from the Service Commencement Date. Notwithstanding notification of any such delays, all costs incurred by Liquid for Services rendered will borne by the Customer.
- 6.8. Liquid’s non-performance of any obligation or Services will be excused if, and to the extent, that such non-performance results from any unfulfilled Customer Dependencies and/or any responsibilities of the Customer and/or as a result of the Customer’s breach of or failure to perform its obligations.
- 6.9. The Customer must ensure that its users use the Services in accordance with this MSA, the COF and the applicable Service Schedules.

7. CHARGES

- 7.1. The Customer will pay to Liquid all Charges agreed between the Parties in terms of each COF on or before the Due Date without any set off or other deduction, including the costs incurred by Liquid in respect of installation, pre-installation, planning and Services delivered prior to and during the Delivery Planning Phase, and any third party service provider costs (where applicable), plus any taxes.
- 7.2. The Charges are payable by electronic funds transfer into a banking account specified by Liquid in writing.



7.3. Liquid is entitled to adjust the Charges on notice to the Customer (a) annually, or (b) at any time if any regulatory, or government-imposed factors impact on such fees and charges.

7.4. Liquid is entitled to amend the Charges for Session Initiation Protocol (SIP), Primary Rate Interface (PRI) and/or any other Telco voice carrier-class Services from time to time and will provide 30 days written notice to that effect.

7.5. Taxes

7.5.1. The Customer will pay Liquid the Charges specified in any COF, plus:

- a) value added tax;
- b) where applicable, any other tax (including withholding taxes, penalties and interest on tax) which Liquid becomes obligated to pay arising directly out of this MSA. The Customer agrees that if any such taxes, penalties and interest are applicable, the amount to be paid to Liquid will be grossed up so that Liquid receives a net amount equal to that which it is entitled to under this MSA prior to the imposition of such taxes, penalties or interest; and
- c) import or customs duties and charges, including extraordinary duties and charges which are in excess of, or are subsequently imposed on current duties and charges as reflected in any COF or Service Schedule.

7.5.2. Should the Customer be required to pay any withholding taxes directly to the relevant government, statutory or regulatory body in the country that the Customer receives the Services, the Customer will submit to Liquid copies of all documentation submitted to, and received from, such government, statutory or regulatory body, relating to each payment made by the Customer in terms of this MSA to enable Liquid to apply for a foreign tax credit from Liquid's relevant government, statutory or regulatory body.

7.5.3. In the event that Liquid's relevant government, statutory or regulatory body refuses any claim from Liquid for foreign tax credits to which Liquid is entitled under this MSA, as a result of the foreign tax credit not being claimable or the failure by the Customer to comply with clause 7.5.2, Liquid will invoice the Customer for the full value of the relevant claim and the Customer is obliged to make immediate payment thereof to Liquid.

7.5.4. The benefit of any reduction in any of the taxes or duties will be passed on to the Customer.

7.6. Exchange Rate Fluctuations

7.6.1. Where Charges are based on an exchange rate, that rate will be quoted in the relevant Service Schedule or COF. If the COF does not stipulate the exchange rate, then the exchange rate downloaded by Liquid from Reuters on the morning of the date of the invoice will apply.

7.6.2. Liquid is entitled to adjust the Charges if the variance of the exchange rate recorded in the COF is greater than 5% when compared against the exchange rate downloaded from Reuters on the morning of the date that the relevant invoice is generated.

7.7. Regulatory approval



7.7.1. To the extent that approval is required from the South African Reserve Bank for payment to Liquid in a currency other than South African Rand, the Customer will provide the necessary documents, information and assistance to obtain such approval.

7.8. Billing Disputes / Credit Note Claims

7.8.1. The Customer may raise a dispute, in writing, relating to billing or invoicing within 30 days from the date of invoice, failing which the invoice will be deemed to be correct.

8. INVOICING

8.1. Liquid will invoice the Customer for the Services detailing all amounts due and payable as follows:

8.1.1. the NRC will be invoiced following the Service Commencement Date;

8.1.2. the MRC will be invoiced in advance of the month to which they relate; and

8.1.3. all usage-based fees will be invoiced in arrears, as set out in the COF.

8.2. Liquid shall provide the Customer with a detailed monthly statement of account (together with all related tax invoices) setting out the amount due and payable by the Customer.

8.3. If any undisputed amount is overdue, the Customer will pay interest on the overdue amount at Nedbank's prevailing prime overdraft rate of interest plus 2%, compounded monthly in arrears, and calculated on a 365 day year from the due date of payment until payment has been received in full (together with any applicable interest).

8.4. If the Customer fails to make payment of the fees, in whole or in part, Liquid is not obligated to provide any Services until such time as all Charges have been paid in full.

9. SERVICE VARIATIONS

9.1. If either of the Parties wishes to make a change, modification or adjustment to any element of any Service, the following procedure will apply:

9.1.1. the Party requesting the change will forward a change request to the other Party, setting out the details of the change request;

9.1.2. Liquid will investigate the feasibility, cost implications and impact of the change request on the Services and notify the Customer of the results of this impact study;

9.1.3. if the Customer wishes to proceed with the change request, it must notify Liquid in writing; and

9.1.4. the agreed change will be incorporated into a new COF.

9.2. If the Parties cannot agree upon the necessary amendments or if an updated COF is not signed by both Parties, the change request will not be implemented.

9.3. To the extent applicable, where emergency changes, variations or change management issues are required by Liquid,



for example to accommodate changes to the Network or Liquid's Equipment ("**Emergency Change Request**"), and which may impact the Services, such Emergency Changes Request will be discussed with the Customer and detailed in the schedule ("**Emergency Change Request Schedule**") prior to implementation.

10. LIQUID'S OBLIGATIONS

- 10.1. Liquid will use all reasonable commercial and security measures to avoid damage or material interference with the normal operation of the Customer's network.
- 10.2. Liquid warrants that it has obtained all necessary approvals and licences from ICASA or the applicable authority required in relation to provision of the Services.

11. CUSTOMER'S OBLIGATIONS

- 11.1. The Customer warrants, represents and undertakes, at all times, that:
- 11.1.1. it has the requisite authority, power and capacity, and, to the extent necessary, obtained all necessary approvals required to enter into and perform in terms of this MSA, and will provide a copy of same upon request;
- 11.1.2. if it procures "electronic communications network services", as defined in the Act, for use by parties other than the Customer, the Customer must:
- a) obtain the requisite license under the Act to use and/or supply same or is exempted from the licensing requirements;
 - b) ensure that such license is valid and of full force and effect for the duration of this MSA, and it will provide a copy thereof upon request; and
 - c) ensure that it, its employees, customers and/or any other persons permitted by the Customer to make use of the Services, do not by any act, or omission, damage, interfere with or impede the operation of the Licenses, the Service or Network provided by Liquid,
- 11.1.3. it will comply with all applicable laws;
- 11.1.4. it will comply with all requirements contained in the Customer Site Requirement Specification as signed by the Customer prior to the installation of any Customer Device or Liquid Equipment at a Customer Premises;
- 11.1.5. it will comply with Liquid's policies and procedures, as updated from time to time, and will ensure that its employees, agents, directors, customers and other persons permitted by the Customer and/or Liquid to make use of the Services also comply. In particular, the Customer and its employees, customers and any other persons permitted by the Customer to make use of the Services, will comply with the Acceptable Use Policy located at <https://liquid.tech/f/legal>;
- 11.1.6. it will not do anything or omit to do anything that could weaken, damage be detrimental to or in any way impair the Licenses and/or Services and/or Intellectual Property Rights of Liquid, or reputation and goodwill associated with the Services.



- 11.2. The Customer will, at no cost to Liquid, provide Liquid with adequate access to, and space within, the Customer Premises, data processing and communication facilities as is required for delivery of the Services. If the Customer is not the owner of the building/property where such access and/or space is required, the Customer must obtain the written approval of the owner thereof before Liquid is able to undertake any such activities.
- 11.3. Where the Customer is or becomes aware of any violation or contravention of its obligations and/or any provision of this MSA, it will co-operate and provide Liquid with the necessary information to assist in identifying, preventing, remedying or rectifying such violation or contravention.

12. EQUIPMENT

12.1. The Customer is responsible for ensuring that all equipment or devices, including any Customer Device provided to access or make use of the Services, are kept in a secure location taking all practical steps to restrict access to the security and configuration parameters of all such equipment to only those individuals who are actively involved in activities for which use of the equipment is required.

12.2. Customer Devices

- 12.2.1. Liquid may provide Customer Devices on a purchase or lease basis, as set out in the relevant COF and/or Service Schedule.
- 12.2.2. The Customer acknowledges and agrees that until such time as the full purchase price of such Customer Device has been received by Liquid, ownership in and to the Customer Devices remains vested in Liquid and clause 12.3 (*Liquid Equipment*) will apply.
- 12.2.3. The Customer undertakes to, at all times, ensure that it and its authorized representatives use the correct configurations and specifications on the Customer Devices and other devices used to access the Network, as required by Liquid from time to time. Any configuration parameters provided to the Customer must be kept confidential.

12.3. Liquid Equipment

- 12.3.1. All Liquid Equipment is and remains the property of Liquid.
- 12.3.2. Where Liquid Equipment is in the possession or under the control of the Customer, the Customer agrees:
- a) not to remove or allow the Liquid Equipment to be removed from the Customer Premises without Liquid's consent;
 - b) to keep the Liquid Equipment in good condition, fair wear and tear accepted, and not to misuse, abuse or otherwise damage the Liquid Equipment;
 - c) not to allow the Liquid Equipment to be encumbered by operation of law or otherwise, including any landlord's hypothec, lien or similar legal right;
 - d) to allow Liquid to inspect the Liquid Equipment at any time;



- e) to take reasonable steps to protect the Liquid Equipment from loss or damage, including comprehensively insuring the Liquid Equipment with a reputable insurance company against risk of loss, theft and damage, and to produce proof thereof upon Liquid's request; and
- f) to return the Liquid Equipment to Liquid on termination or expiry of the Contract Term for the applicable Services. Alternatively, to replace such Liquid Equipment with new equipment of the same or better standard, quality and specification. Failing such return or replacement, Liquid is entitled to purchase new equipment and recover such costs from the Customer.

13. THIRD PARTY SERVICE PROVIDERS

- 13.1. Liquid may from time to time procure the services from third party service providers, provide access to services which are provided by, or for and on behalf of, a third-party service provider to the Customer together with the Services provided by Liquid.
- 13.2. The Customer undertakes to comply with all terms and conditions, policies and procedures as may be required by third party service providers, for example terms and conditions required by Microsoft for any Microsoft product.
- 13.3. Any links to other websites, extranets or portals via any service provided by Liquid does not constitute an endorsement or warranty by Liquid in relation to the content thereof. The Customer uses and accesses third party services and links at its own risk.

14. RESALE OF SERVICES

- 14.1. Unless agreed in writing between the Parties, the Customer will not resell any of the Services provided under this MSA. For the avoidance of doubt, the use of the Services within the Customer's own network to carry internet traffic of end users with the Customer's products and services will not constitute resale of such Services.
- 14.2. The Customer may permit its Affiliate to use and MSA the Services on the following basis:
 - 14.2.1. the Customer must ensure compliance with this MSA and every COF and Service Schedule by each Affiliate. References to "Customer" includes such Affiliates
 - 14.2.2. the Customer will remain liable to Liquid for the performance of all relevant obligations under this MSA and for the acts or omissions, negligence, use, misuse and/or abuse by such Affiliates. Accordingly, loss or damage suffered or incurred by Liquid caused or contributed by an Affiliate will be treated as if it had been caused or contributed to by the Customer;
 - 14.2.3. claims may only be made by the Customer or Liquid. The Customer must ensure that its Affiliates do not make any claims against Liquid;
 - 14.2.4. the Customer and its Affiliates are responsible for compliance with the laws of the jurisdiction in which it resides and/or receives and/or uses the Services;
 - 14.2.5. the Customer indemnifies Liquid against any Loss or damages incurred by Liquid in connection with the use of and access to the Services by its Affiliates and/or a claim instituted by an Affiliate against Liquid. Accordingly, the Customer is responsible to pay any claims by such Affiliates against Liquid;



- 14.2.6. where Affiliates reside or receive Services outside of the Republic of South Africa, the South African Customer will, at all times, remain responsible for the payment of Charges for Services provided to Affiliates; and
- 14.2.7. unless otherwise agreed in writing by Liquid, the right for the Affiliate to receive the Services will end if the Affiliate is no longer part of the Customer's group of companies.
- 14.3. For the avoidance of doubt, Affiliates do not include third parties who are: (a) not a member of the Customer's group of companies; and (b) the Customer's clients. Accordingly, any third parties and clients of the Customer may not use the Services without the prior written consent of Liquid.

15. SAFETY AND SECURITY

- 15.1. The Parties will each at their own cost and expense take whatever steps as are necessary to discharge their respective obligations in terms of this MSA and applicable laws to ensure the health and safety of their own employees, agents, directors, subcontractors and members of the public while on their respective premises. For the avoidance of doubt, Liquid will not be liable for any health and safety related incidents for the employees, agents, directors and subcontractors of the Customer.

16. INFORMATION SECURITY

- 16.1. Each Party agrees:
 - 16.1.1. not to knowingly suffer or permit its staff or other third party under its direction to knowingly introduce into the other Party's systems any harmful code (such as malware, virus, disabling device or code, worm, Trojan timebomb or other harmful or destructive code); and
 - 16.1.2. that if any such harmful code is introduced, it will promptly report this to the other Party, and take all reasonable steps to eliminate the harmful code from its own server.

17. FORCE MAJEURE

- 17.1. A failure or delay by a Party to perform any of the obligations in terms of this MSA constitutes a "**Force Majeure Event**", including:
 - 17.1.1. war, whether declared or not, terrorism, civil war, civil violence, riots, insurrection and revolutions, acts of piracy, acts of sabotage;
 - 17.1.2. elements of nature or acts of god, disasters such as violent storms, cyclones, earthquakes, floods, fires, destruction by lightning, pandemic, epidemic;
 - 17.1.3. mandatory quarantine, acts of the government, declaration of national disaster, governmental embargoes; and/or
 - 17.1.4. acts and omissions of any other electronic communications provider or any utility provider, discontinuation of electricity supply through no fault of a Party, utility failures or shortages, including but not limited to electricity 'load-shedding' activities, power surges, network attacks (including denial of service or distributed denial of service).
- 17.2. To the extent that it becomes impossible for a Party ("**Affected Party**") to perform any obligations (other than payment obligations) in terms of this MSA because of a Force Majeure Event, the Affected Party must:



- 17.2.1. notify the other Party within 5 Business Days of the nature and extent of the Force Majeure Event and its likely duration;
- 17.2.2. take all commercially reasonable action to remedy or minimise the consequences and report to the other Party regularly on the status of such event; and
- 17.2.3. notify the other Party when performance of its obligations become possible again.
- 17.3. To the extent that the Services (or part thereof) are declared essential services ("**Essential Services**") within the prescripts of the Disaster Management Act, 2002, or similar legislation but Liquid is prevented from executing such Essential Services (or part thereof) due to a Force Majeure Event, then Liquid is relieved of its obligations to provide the Essential Services (or part thereof) to the Customer. Liquid will, however, endeavour to continue to perform its obligations under the MSA so far as is reasonably practicable.
- 17.4. Where the impediment ceases and the obligation to perform resumes, the Contract Term will automatically extend by a period of time equal to the period of interruption caused by the Force Majeure Event. Alternatively, Liquid may, in its discretion and to the extent possible, consider an accelerated process to render the outstanding but interrupted obligations within the original duration of the Contract Term.
- 17.5. Performance of the Affected Party's obligations is suspended for as long as the Force Majeure Event continues. However, if the Force Majeure Event continues for a period exceeding 90 days, either Party may cancel this MSA on written notice. Early Termination Costs will not apply for termination in this instance.

18. INDEMNITY

- 18.1. The Customer indemnifies and holds Liquid harmless against any claims for Loss, damage, expense or other costs incurred as a result of the Customer's misuse and/or abuse of the Service, sale of the Services to a third party without Liquid's prior written consent, not having taken adequate security measures to guard against a cybersecurity risk, or any negligence or wilful misconduct, and/or non-compliance with any applicable laws in relation to the Customer's procurement, use and/or access to any products and/or services of Liquid and/or breach of this MSA.

19. LIMITATION OF LIABILITY

- 19.1. Liquid's total liability for any and all claims and/or Losses arising from or in connection with this MSA howsoever arising (whether in contract, delict, negligence, breach or statutory duty or otherwise) is limited to direct damages equivalent to the total fees paid by the Customer in the preceding 12 months from the date on which the claims arose. Unless prohibited by law, Liquid will not be liable for indirect, special, incidental, consequential, punitive or exemplary damages.
- 19.2. Liquid will not be liable to the Customer for:
 - 19.2.1. failure to supply and/or deliver any Services and/or provide install, implement and/or configure any equipment on a specified date, unless such date has been agreed to in writing and such failure is solely attributable to Liquid. Where the date has been specified, the recourse available to the Customer will be limited to specific performance or Service Credits, where applicable;
 - 19.2.2. any costs arising from unauthorised access to and/or use of the Services, any equipment or devices, including Customer Devices, used by the Customer to access the Services; and/or



19.2.3. Losses or damages due to lost, damaged or corrupted data for reasons that are not solely attributable to Liquid's acts or omissions.

19.3. Nothing contained in this clause limits the Customer's liability in respect of Charges incurred for Services.

20. SUSPENSION OF SERVICES

20.1. Liquid may, on 7 days' notice, suspend or withdraw all or part of any Service at any time until further notice to the Customer if, in Liquid's discretion, the continued provision of the Service will cause Liquid to breach an applicable law, or be in contravention of its Licences, or the Customer is in breach of this MSA, and/or any overdue invoice for Charges remains unpaid.

20.2. Liquid's right hereunder is without prejudice to any other remedy available under the MSA or in law and does not constitute a waiver of Liquid's right to subsequently terminate the MSA or any COF pertaining to the Services or any part thereof.

20.3. Where Liquid has suspended the Services and the Customer has remedied the breach to the reasonable satisfaction of Liquid, Liquid will reconnect the Services, subject to a reconnection fee payable by the Customer calculated at the time of reconnection together with any other conditions of service being complied with by the Customer prior to such reconnection.

21. BREACH AND TERMINATION

21.1. Without prejudice to any rights and remedies that may have accrued, either Party may terminate this MSA with immediate effect upon written notice if the other Party:

21.1.1. is placed under liquidation, winding up, judicial management, business rescue (voluntary or compulsory, final or provisional) or takes steps to commence any of these proceedings, or the equivalent of these in any jurisdiction; provided that should the Customer be subject to any such proceedings, this MSA will continue, and the Customer must continue to make full payment of all Charges;

21.1.2. any representation or warranty or undertaking or document submitted to Liquid is found to be untrue, false or materially incorrect;

21.1.3. is unable to pay its debts or attempts to compromise with its creditors or commits an act of insolvency as defined in the Insolvency Act, 1936;

21.1.4. any of the Customer's assets are attached pursuant to a writ of execution; and/or

21.1.5. ceases to trade, takes steps to deregister itself or is deregistered.

21.2. Should a Party commit any other breach of this MSA ("**Defaulting Party**") and fail to remedy such breach within 30 days of written notice requiring the breach to be remedied, then the other Party will be entitled, at its option, without prejudice to any rights and remedies that may have accrued under this MSA or at law, to:

21.2.1. claim immediate specific performance of the Defaulting Party's obligations, with or without claiming damages; or

21.2.2. terminate this MSA, with or without claiming damages, on 10 days written notice.



- 21.3. A Party will otherwise be entitled to terminate the MSA or any COF on 60 days' prior written notice.
- 21.4. Termination of any COF will not affect any other COF and/or Service Schedule, which will continue in full force and effect.
- 21.5. This MSA will remain in full force and effect until the expiry or termination of the last COF.
- 21.6. Termination of this MSA or any COF will be subject to the early termination charges set out in clause 22 (*Early Termination Costs*).
- 21.7. In the event that the Customer has not provided Liquid with the countersigned Customer Site Requirements Specification granting permission for Liquid to trench, install and/or to mount the required infrastructure at the Customer Premises within 14 days from the date of receipt of the drawings of the planned route and/or mounting position in question, Liquid will be entitled to terminate the COF in question with immediate effect. All Services terminated in terms of this clause will be subject to the early termination charges set out in clause 22 (*Early Termination Costs*).
- 21.8. Termination of this MSA or a COF for any cause will not release the Customer from any liability which at the time of termination has already accrued or which thereafter may accrue in respect of the Services provided by Liquid.

22. EARLY TERMINATION COSTS

- 22.1. Unless stated to the contrary in the relevant COF, the costs of terminating the Services prior to the expiry of the Contract Term or any renewal thereof ("**Early Termination Costs**") is calculated on the outstanding Charges for each of the Terminating Services as at the Termination Date thereof as follows:
- 22.1.1. if the Terminating Services are terminated prior to the Service Commencement Date, an amount equal to the NRC, plus 3 months of the MRC;
- 22.1.2. if the Contract Term for the Terminating Service is 12 months or less, 100% of the MRC for the remainder of that Contract Term;
- 22.1.3. if the Contract Term for the Terminating Service is greater than 12 months, 100% of the MRC for the Terminating Service for the remainder of the first 12 months (if any), and 50% of the MRC for the Terminating Service for each month thereafter for the remainder of the Contract Term; and
- 22.1.4. if the Terminating Service is terminated subsequent to the COF Renewal Period, 50% of the MRC for the Terminating Service for each month for the remainder of such COF Renewal Period.
- 22.2. The Early Termination Costs for Customer Specific Services or where the Service either originates from or terminates at an international location calculated as at the Termination Date and is equal to 100% of the MRC, and any outstanding NRC, for the remainder of the Contract Term thereof.
- 22.3. The Early Termination Costs are payable by the Customer for the Terminating Services as at the Termination Date, in addition to any other outstanding Charges due and payable for such Terminating Services.
- 22.4. In addition to the Early Termination Costs and to the extent that certain Terminating Services are provided by Liquid's off-net service provider, the Customer will reimburse Liquid the MRC which Liquid becomes liable to pay to its off-net service provider for the remainder for the term of the contract with such off-net service provider.



23. DISPUTE RESOLUTION

- 23.1. In the event of any dispute arising between the Parties under this MSA or any Service, the Parties will act in good faith to attempt to settle the dispute through discussions between senior representatives of the Parties within 30 days of a Party giving the other Party notice of the issue in dispute.
- 23.2. Any dispute which cannot be resolved by the Parties within the 30 day period, will be resolved by either Party approaching a court of competent jurisdiction to seek the appropriate relief.

24. CONFIDENTIALITY

- 24.1. The Parties acknowledge that Confidential Information of the other Party is not in the public domain and is a valuable asset proprietary to the Disclosing Party. If Confidential Information is disclosed without the Disclosing Party's consent or used by a competitor, this will cause the Disclosing Party to suffer material harm and cause the value of its know-how and proprietary interest therein to be diminished.
- 24.2. The Recipient undertakes:
- 24.2.1. to keep and maintain the confidentiality of any and all Confidential Information or any dispute relating to or arising from this MSA;
- 24.2.2. not to use Confidential Information for its own or anyone else's benefit and not in competition with the Disclosing Party or Liquid's business, Liquid's intellectual property or that is in any way detrimental to Liquid or so as to procure a commercial advantage over Liquid;
- 24.2.3. to exercise no lesser security measures and degrees of care than those which it applies to its own confidential information to prevent the disclosure and unauthorised access thereto; and
- 24.2.4. to return, destroy or expunge from any storage device all documents and information, in whatever form, received or procured for the purposes of this MSA on termination, it being the intention that such information remains the property of the Disclosing Party. Where required, the Recipient will confirm in writing that all documents and information has been destroyed and expunged.
- 24.3. Confidential Information may be disclosed to employees, directors, officers, professional advisors and any other person authorised to receive Confidential Information ("**Permitted Recipients**"); provided that Permitted Recipients are bound by these or stricter confidentiality obligations. The Parties and its Permitted Recipients will not, directly or indirectly, use Confidential Information other than for the purpose for which it was disclosed in connection with the Services and in accordance with the provisions of this MSA.
- 24.4. The Recipient will not acquire any rights in respect of Confidential Information of the Disclosing Party.
- 24.5. If the Recipient becomes aware that Confidential Information has been disclosed by it or its Permitted Recipients contrary to the obligations herein, the Recipient must immediately inform the Disclosing Party, in writing, specifying how and to whom the disclosure occurred, when the unauthorised disclosure took place and steps taken to retrieve the Confidential Information and to prevent future unauthorised disclosures. The Recipient undertakes to co-operate with the Disclosing Party, bearing its own costs, in taking steps to retrieve Confidential Information from unauthorised persons and to prevent further disclosures.



24.6. Confidential Information excludes information which is generally available to the public other than by negligence or breach of this MSA; is or becomes available to the Recipient from a source other than the Disclosing Party other than by breach of similar confidentiality obligations as evidenced by written records of such disclosure; or is disclosed by operation of law, regulation, court order or as a consequence of any judicial proceedings. The onus to establish whether the Confidential Information falls within these exclusions rests on the Recipient.

24.7. If the Recipient is required to disclose Confidential Information by operation of law, the Recipient must notify the Disclosing Party in writing immediately, take steps to limit the disclosure to the minimum extent required or that it lawfully and reasonably can, and comply with the Disclosing Party's request as to the manner and terms of disclosure, including the opportunity to intervene in proceedings.

24.8. This clause survives termination of this MSA.

25. PUBLICITY

25.1. Neither Party may publish any announcement or public statement relating to this MSA, the Services and/or any disputes arising out of or in connection with this MSA or of any other nature through any media without the prior written consent of the other Party, save for announcements required to be made by law or the rules of any recognised securities exchange.

25.2. Any technical information, documentation or records, including copies thereof, relating to Confidential Information which comes into the Recipient's possession will not be published or circulated or otherwise made available to the public or any media, without the Disclosing Party's prior written consent.

26. INTELLECTUAL PROPERTY

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

26.2. All Intellectual Property Rights in and to any materials, training materials and other documentation provided by Liquid and/or its third party service providers will remain vested in Liquid at all times.

26.3. The Customer must not, directly or indirectly, at any time:

26.3.1. under any circumstances whatsoever reproduce, copy, remanufacture, distribute, translate, convert, modify, reverse engineer, decompile, disassemble or in any way duplicate all or any part of, publish, disclose or communicate to any third party, the documents or security procedures pertaining thereto, or use the Services or materials and/or equipment provided by Liquid outside the scope of this MSA without Liquid's prior written consent;

26.3.2. contest the validity of, or prejudice any of Liquid's Intellectual Property Rights and/or the validity and/or intellectual property rights of any third party service provider; and/or

26.3.3. transfer, deliver possession of any hardware, equipment and/or software and related documents to any person, or create or incur any lien, charge or encumbrance against any such hardware, equipment and/or software of Liquid relating to the Services.

27. DATA PROTECTION



- 27.1. For the purposes of this clause, “**personal information**”, “**information regulator**”, “**process**”, “**operator**”, “**responsible party**”, and terms not specifically defined herein has the meaning ascribed to them in terms of Protection of Personal Information Act 4 of 2013 (“**POPI**”).
- 27.2. Liquid may, from time to time collect personal information with regard to the Customer from and disclose personal information to other service providers of Liquid and/or its Affiliates and third parties in order to perform in terms of this MSA, banks (to process transactions), research companies (that assist Liquid to understand market trends), and collection agencies (for the collection of outstanding accounts). The Customer consents to the collection and/or disclosure of its personal information for the purpose of performing in terms of this MSA.
- 27.3. Each Party is solely responsible for compliance with the necessary privacy and data protection laws in the Republic of South Africa, and any privacy and data protection legislation in any other jurisdiction where personal information may be processed, and determining and monitoring its compliance with privacy and data protection laws as it applies to them
- 27.4. The Parties will adopt adequate technical and organizational security measures to avoid a security compromise or data breach relating to personal information in accordance with Data Protection Laws.
- 27.5. The Parties agree that Liquid may transmit personal information out of the Republic of South Africa to a country or entity with equal or higher protections as prescribed under POPI. By submitting its personal information to Liquid, the Customer consents to the transfer, processing and/or storage of its personal information outside of the Republic of South Africa.
- 27.6. The Customer must ensure that it obtains any consents necessary for the disclosure of personal information to Liquid for the purposes of this MSA. Accordingly, the Customer must ensure that their data subjects have been informed that it may be necessary for their personal information to be disclosed to an external organisation in order to provide services to such data subject. Liquid will rely on this undertaking without the need to verify or procure such consents.
- 27.7. The Parties will provide reasonable assistance when requested to enable compliance with POPI and as required by the Information Regulator or any other data protection regulator.
- 27.8. The Customer will promptly notify Liquid if there is any change to its personal information or to correct any errors.

28. ANTI-BRIBERY AND CORRUPTION

- 28.1. The Parties undertake to perform their obligations and conduct their respective business affairs under this MSA in strict compliance with ethical practices, including anti-corruption and anti-money laundering practices, and good governance in relation to the environment and sustainability applicable to their business as regulated by the laws and acts in the Republic of South Africa or such international laws and conventions to which the Republic of South Africa is a signatory to.
- 28.2. The Parties will at all times
- 28.2.1. comply with all laws relating to anti-bribery and anti-corruption, including the South African Prevention and Combating of Corrupt Activities Act, 2004) and international laws (such as the UK Bribery Act, 2010, African Union Convention Against Corruption, 2003 and the United Nations Convention Against Corruption (“**ABC Requirements**”));



- 28.2.2. not do or omit to do anything likely to cause the other Party to be in breach of any of the ABC Requirements;
- 28.2.3. not give, offer, promise, receive or request any bribes, including in relation to any public official or comparable benefits that are intended, or can be perceived, to be an attempt to influence a person or to otherwise gain an unfair advantage, financial or otherwise;
- 28.2.4. maintain adequate policies and procedures to ensure compliance and enforcement of the ABC Requirements to prevent and detect violations of any of the ABC Requirements;
- 28.2.5. ensure that it does not appear on any sanctions or watch lists of any country or jurisdiction or regime, regardless of the reason therefor;
- 28.2.6. ensure that it will, without delay and in writing, advise the other Party of any transgression or potential transgression of this clause, including any request or demand for, or offer of, any undue financial advantage of any kind (whether received or offered) or any other contravention of this clause;
- 28.2.7. if requested by the other Party and at its reasonable cost, provide the other Party with sufficient reasonable assistance to enable it to perform any actions required by any government or agency in any jurisdiction for the purpose of compliance with or in connection with any investigation relating to the ABC Requirements;
- 28.2.8. only pay and be paid for goods delivered or Services performed, by wire transfer or other traceable instrument to a bank account in that Party's name; and
- 28.2.9. promptly notify the other Party of any allegation of fraud, bribery or corrupt or unlawful practices made against it in court, arbitration or administrative proceedings, or if any investigation is commenced in respect of such allegations, at any time during the term of this MSA.
- 28.3. The Parties undertake to ensure that this commitment is employed by their employees, partners, subcontractors and suppliers, and to request adherence thereto. Any breach by any such persons, is considered to be a breach by the Party engaging such persons.
- 28.4. Each Party hereby indemnifies the other and its directors, officers, employees, agents and affiliates against all losses which the other may suffer as a result of a breach of this clause.
- 28.5. Liquid may terminate this MSA with immediate effect (without prejudice to any other rights in law or otherwise available to Liquid) should Liquid determine, in its sole and absolute discretion, that the Customer has contravened or may contravene this clause, if any allegations are posed against the Customer, or if continued association with the Customer is not in Liquid's best interests.
- 28.6. On termination of this MSA in terms of this clause, all COFs will terminate commensurately, and all Charges will become immediately due and payable up until the date of termination. Early Termination Costs will not apply.

29. NOTICES

- 29.1. Each Party chooses as their addresses to which any notice or correspondence may validly be served and delivered as set out in the cover page.



29.2. A Party may change its chosen address on written notice to the other Party, which change will be effective 5 Business Days after receipt of such notice.

29.3. Any notice given must be in English and in writing. Unless the contrary is proved, any notice is deemed, to be received:

29.3.1. if delivered by hand during the business hours, on the day of delivery;

29.3.2. if posted by courier, on the 8th day after the date of posting; and

29.3.3. if sent by email during business hours, on the date of successful transmission of the email.

29.4. A notice actually received by a Party is effective even if not sent to its chosen address.

30. CESSION AND ASSIGNMENT

30.1. The Customer may not cede, assign, transfer, convey or otherwise dispose of its rights, duties and/or obligations without the prior written consent of Liquid.

30.2. Liquid is entitled to cede, transfer and make over its right, title and interest in and to its rights and/or obligations hereunder, including any and all debts and receivables due and/or payable to Liquid under this MSA. The Customer hereby recognises and consents to such cession and/or transfer (including any splitting of claims that may arise).

31. GOVERNING LAW AND JURISDICTION

31.1. This MSA and any claim or dispute arising from or in connection with this [MSA](#) is governed by and construed in accordance with the laws of the Republic of South Africa.

31.2. The Parties consent and submits to the jurisdiction of courts of the Republic of South Africa having competent jurisdiction.

32. AUDIT

32.1. Liquid reserves the right to audit or investigate the Customer's compliance with this MSA from time to time. Such audit or investigation may be carried out by Liquid or its auditors or appointed third party advisers.

32.2. Should the Customer require an audit in respect of the provision of the Services, it must notify Liquid of its requirements in advance and in writing. Such audit cannot occur more than once annually and will be at the Customer's cost.

33. GENERAL

33.1. This MSA together with all COFs, schedules and other attachments attached from time to time, constitutes the entire agreement between the Parties.

33.2. This MSA supersedes any previous written or oral agreement between the Parties in relation to the subject matters hereof notwithstanding the date of signature of this MSA. All Services being provided under such previous agreements will hereinafter be governed by the terms and conditions of this MSA.



- 33.3. Nothing contained in this MSA is construed as creating a company, close corporation, joint venture, partnership or association of any kind. Neither Party (nor their respective agents) has the authority or right, nor will any Party hold itself out as having the authority or right, to assume, create or undertake any obligation of any kind whatsoever, express or implied, on behalf of or in the name of the other Party.
- 33.4. This MSA may not be amended, modified, varied or supplemented unless reduced to writing and signed by both Parties.
- 33.5. The Parties will at all times act in good faith towards each other and perform all acts necessary for and incidental to performance under this MSA.
- 33.6. No failure or delay on the part of either Party hereto, to exercise any right or remedy under this MSA will be construed as or operate as a waiver thereof, nor will it preclude a Party from thereafter enforcing strict and punctual performance with each and every provision of this MSA.
- 33.7. To the extent permissible by law, no Party will be bound by an express or implied term, representation, warranty or the like not recorded in this MSA.
- 33.8. Each provision is separable from all others. If the whole or part of a provision is found to be void, invalid, unenforceable or illegal, such provision or part thereof will be severed to the extent that it is void, invalid, unenforceable or illegal. The remainder of the MSA will continue in full force and effect.
- 33.9. Each Party will bear and pay its own legal costs and expenses of and incidental to the negotiation, drafting, preparation and implementation of this MSA.
- 33.10. All legal charges, disbursements and fees, including costs on an attorney and own client scale and counsel on brief, incurred by the Party successfully enforcing or defending any provision of this MSA is recoverable from the Defaulting Party.
- 33.11. No remedy conferred by this MSA or a COF is intended to be exclusive and is without prejudice to any other rights under this MSA or at law.
- 33.12. This MSA may be signed in any number of counterparts, each of which constitutes the original with the same effect as if the signatures were on the same document.

End