



# Master Services Agreement

GENERAL CONDITIONS

These **General Conditions V10-12** replace all previously signed/incorporated version(s) of the General Conditions (if any) and form part of the **Master Services Agreement** and its provisions, which 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, 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 reduced to writing provided by way of a data message, including but not limited to emails, the DocuSign Process or RSign 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, **JJ Milner, Bradley Bernstein**, 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, or as may otherwise be advised in writing from time to time.
- 1.2.3. "**Anniversary**" means the annual recurrence of the date marking the start of a Subscription.
- 1.2.4. "**Change**" means amendment, variation or supplementing of or the addition to this Master Services Agreement and "**Changed**" shall have the corresponding meaning.
- 1.2.5. "**Commitment Period**" shall have the meaning ascribed to that term in the Reseller Appointment (if any).
- 1.3. "**Content**" means data, information, video, graphics, sound, music, photographs, software, independent software vendor applications, and any other materials (in whatever form) or services that may be made available.
- 1.4. "**Corrupt Practice**" means the offering, giving, receiving, or soliciting of anything of value to influence the action of a public official in the procurement process or the execution of this Master Services Agreement.
- 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. "**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 the SP has created a digital envelope for the Counterpart.

- 1.7. **"Electronically Signed"** means affixing an electronic initial and an electronic signature to this Master Services Agreement through the DocuSign Process; the RSign Process or Order Porter Process and **"Electronic Signature"** or Marketplace Process shall have a corresponding meaning.
- 1.8. **"Fraudulent Practice"** means a misrepresentation of facts to influence a procurement process or the execution of a contract to the detriment of any bidder. It includes collusive practice among bidders (before or after bid submission) designed to establish bid prices at artificial non-competitive levels and to deprive the bidder of the benefits of free and open competition.
- 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. **"Marketplace Process"** means the process by which this Master Services Agreement and Orders may be electronically reviewed and accepted by Counterpart through Microsoft's Azure Marketplace (<https://azuremarketplace.microsoft.com/>).
- 1.12. **"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 per clause 13 from time to time.
- 1.13. **"Master Services Schedule"** means any service schedule forming part of this Master Services Agreement that governs the provision of Services by SP to the Counterpart.
- 1.14. **"Microsoft Online Services"** means any service provided by SP to the Customer utilising 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.
- 1.15. **"Month-to-Month Rate"** or **"MMR"** means (1) the amount specified on the Order Form, or (2) the amount specified in the Service Fee Schedule in respect of Subscription Periods of 1 (one) month, whichever is greater.
- 1.16. **"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.
- 1.17. **"Order"** means an order for a Service through the Portal. An Order may include multiple Subscriptions to a Service.
- 1.18. **"Order Porter Process"** means the process by which this Master Services Agreement and Orders may be electronically reviewed and accepted by Counterpart through [www.orderporter.com](http://www.orderporter.com) and by way of a PDF created by the SP for the Counterpart.
- 1.19. **"Parties"** means SP, and the Counterpart and **"Party"** shall, as the context requires, mean any of them.
- 1.20. **"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 does not impact Subscription Fees, support or Services the Customer receives from SP. Additionally, it does not provide the POR with access to Customer Data.
- 1.21. **"Portable Document Format"** or **"PDF"** is a file format created by Adobe Systems Incorporated. It allows documents to be presented independently of application software, hardware, and operating systems.
- 1.22. **"Portal"** means the SP Portal accessible from the SP website <http://www.globalmicro.co.za> or at an alternate website identified by SP where Order(s) may be placed.
- 1.23. **"Reseller"** shall have the meaning ascribed to that term in the Reseller Appointment (if any) unless the Master Services Agreement is being concluded directly between the Customer and SP, in which case the Reseller shall have the same meaning as SP.
- 1.24. **"RSign Process"** means the process by which this Master Services Agreement may be electronically reviewed and signed by the Parties through [www.rsign.com](http://www.rsign.com) and a digital envelope bearing a unique number created by the SP for the Counterpart.
- 1.25. **"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.

- 1.26. **"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.
- 1.27. **"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.
- 1.28. **"Service Provider or SP"** means **Global Micro Solutions (Pty) Ltd, Registration number 1995/05280/07**, including its authorised sub-contractors and agents.
- 1.29. **"SP Address"** means **5th Floor, 28 Sturdee Avenue, Rosebank, Johannesburg, South Africa**.
- 1.30. **"SP Email Address"** means **legal@globalmicro.co.za**.
- 1.31. **"Showcase Functionality" or "Preview Functionality"** means the Service's elements that provide additional enhancement. SP uses showcase Functionality to perform real-world testing and evaluate the suitability of formal inclusion into the Service.
- 1.32. **"Signature Date"** means the date of the last Party's signature on this Master Services Agreement.
- 1.33. **"SKU"** means the stock-keeping unit SP uses to track the features and editions associated with a Subscription. SP may append an SKU suffix to track the SKU characteristics, including but not limited to the Subscription Period.
- 1.34. **"SLA Liability Limit"** means the Service Level Agreement Liability Limit defined in the Master Services Schedule.
- 1.35. **"Symantec Products"** means the Symantec software product licenses in object code, including (related user documentation, service description, user manual and release notes provided for the Symantec Solution, accompanying the Symantec Solution, or published on a Symantec website), and any content updates or software version upgrades provided under maintenance. Symantec Products" also includes media to the extent ordered.
- 1.36. **"Symantec Services"** means Symantec's commercially available services, including authentication and cloud services.
- 1.37. **"Symantec Solutions"** means any commercially available Symantec Products, Symantec Services, or Hardware provided by SP to Customer by means of the Symantec Service Provider Program, Cloud Service Provider Program, Broadcom Incorporated (including its subsidiaries) partner programs or distribution channels.
- 1.38. **"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 three (3) classifications of Subscriptions:
- 1.38.1. **"Committed Subscription"** means a commitment in advance to pay based on a specific quantity of a Service during a Subscription Period.
- 1.38.2. **"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.
- 1.38.3. **"Combination Subscription"** means a Subscription that is a combination of a Committed Subscription and a Consumption Subscription.
- 1.39. **"Subscription Period"** means the specific period (or duration) for which a Subscription is valid.
- 1.40. **"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.
- 1.41. **"Working Day"** means 08:00 am to 5:00 pm (South Africa local time), Monday to Friday, excluding public holidays in the Republic of South Africa.

## 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 clauses 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 make reasonable endeavours to provide the Service by the date agreed upon with the Counterpart. Still, 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 use reasonable efforts to provide uninterrupted Service. Still, 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, 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. Even though Showcase feature(s) may be described in the Service Schedules, they are temporary, do not form part of the Service's technical specification, 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, 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 immediately in an emergency provided that the Service shall be restored as soon as reasonably possible.
- 3.4. Except for 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 the Counterpart.
- 3.5. The Service provided by the SP in terms of this Master Services Agreement does not include the provision of telecommunications services (including access to the Internet) necessary to connect to the Service without limitation.
- 3.6. Except where expressly provided in clauses 10.1 through 10.6 in this Master Service Agreement, SP shall have no liability for 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 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 is connected and used in accordance with applicable instructions and safety and security procedures.
- 5.2. The Counterpart must ensure that any equipment attached (directly or indirectly) to the Service must be technically compatible with the Service and approved for that purpose under any relevant legislation.

### 6. Security, Data Protection and Confidentiality

#### 6.1. Customer Data

- 6.1.1. "Customer Data" means data provided by the Customer for processing via the Services, including, without limitation, the contents of files, emails or messages sent by or to a Permitted User. Customer Data does not include any data processed via the Services that is reasonably identified to be malicious, including, without limitation, data which may perpetuate data breaches, malware infections, cyberattacks or other threat activity (collectively, "Threat Data"). "Permitted User" means an

individual employed by or otherwise under Customer's control). The country where Customer Data will be stored (the "Hosting Jurisdiction") will be noted on the relevant Order or in the Supplemental Terms where applicable. The Hosting Jurisdiction may differ in accordance with the Services provided.

## 6.2. **Data Protection Laws**

6.2.1. As required by law or as otherwise agreed by the parties, additional data protection terms may be outlined in a separate data processing agreement between the parties (referred to herein as "Data Processing Terms"). The Data Processing Terms shall be incorporated into and form an addendum to these General Conditions. If there is any conflict between Sections 6.1.16.2 of these General Conditions and the Data Processing Terms, the Data Processing Terms shall prevail. With respect to Customer Data that relates to an identified or identifiable natural person ("Personal Data"), the Customer shall act as the accountable organisation or the data controller, and SP shall act as the service provider or the data processor. Except as may be required by Applicable Data Protection Law, SP will process the Personal Data solely in accordance with Customer's Instructions. The "Instructions" are embodied in this Master Services Agreement and may be additionally communicated by Customer to SP in writing from time to time. SP will process Personal Data in compliance with Applicable Data Protection Law. For purposes of this Section 6.2, "Applicable Data Protection Law" means one or more of the following data protection laws or regulations as applicable to the Processing of Personal Data by SP under this Agreement: (i) Regulation 2016/679 of the European Parliament and of the Council of 27 April 2016 ("GDPR"); (ii) the United Kingdom ("UK") Data Protection Act 2018 and the UK General Data Protection Regulation ("UK GDPR"); (iii) the (Singapore) Personal Data Protection Act 2012 (the "PDPA"); (iv) the data protection regulations of the United States, including but not limited to, California Consumer Privacy Act of 2018 as amended by the California Privacy Rights Act of 2020 ("CCPA"); (v) the South Africa Protection of Personal Information Act ("POPIA"); (vi) the Australia Privacy Act No. 119 1988 (as amended); (vii) Canadian Personal Information Protection and Electronic Documents Act ("PIPEDA"); and (viii) any relevant law, statute, regulation, legislative enactment, order or other binding instrument, that implements, supplements, or amends the foregoing. Where permitted by a lawful basis, SP may process Personal Data in the United States or other countries or jurisdictions outside of the country where it was collected, as described on the Trust Center. The Customer will comply with its obligations under all laws applicable to it as the accountable organisation and/or data controller, including the responsibility for providing any requisite notices and obtaining any consents for such collection, processing, and transfer of Personal Data, including international transfers.

## 6.3. **Confidentiality**

6.3.1. "Confidential Information" means information designated by the party disclosing such information ("Disclosing Party") as "confidential" or "proprietary" or that a reasonable person would understand to be confidential given the nature of the information and the circumstances of the disclosure and includes information in whatever form (including written, oral, visual, or electronic form). If information is disclosed orally or visually, it must be identified by the Disclosing Party as confidential at the time of disclosure.

6.3.2. Customer's Confidential Information includes, but is not limited to, Customer Data.

6.3.3. SP's Confidential Information includes but is not limited to, all information related to the performance, functionality, and reliability of the Services.

6.3.4. Confidential Information does not include information that: (i) is or becomes generally known to the public through no fault of the party that receives such information ("Receiving Party") from the Disclosing Party; (ii) is in the Receiving Party's possession prior to receipt from the Disclosing Party; (iii) is acquired by the Receiving Party from a third party without breach of any confidentiality obligation to Disclosing Party; or (iv) is independently developed by Receiving Party without reference to the Disclosing Party's Confidential Information.

6.3.5. Confidential Information is and will remain the exclusive property of the Disclosing Party. Receiving Party will, in addition to any other obligations outlined in 6.3 herein: (i) use Disclosing Party's Confidential Information solely for the performance of the activities contemplated by this Agreement; (ii) disclose such information only to its employees, agents, and contractors who are bound by obligations of confidentiality at least as strict as those contained in this Section 6.3; and (iii) protect Disclosing Party's Confidential Information against unauthorised use or disclosure using the same degree of care it uses for its

own Confidential Information, which in no event will be less than reasonable care. Notwithstanding any provision herein, if lawfully required by judicial or administrative order or otherwise, the Receiving Party may disclose Confidential Information of the Disclosing Party, provided, where lawfully permitted, the Receiving Party provides reasonable prior written notice to the Disclosing Party to permit Disclosing Party to seek a protective order. The Receiving Party will reasonably cooperate in the Disclosing Party's activities in seeking such order at the Disclosing Party's expense. The Receiving Party will disclose only that information that is reasonably necessary to meet the applicable legal order or requirement.

- 6.3.6. Notwithstanding anything to the contrary, either party may seek equitable, injunctive, or declaratory relief to enforce any of its intellectual property rights or rights in the Confidential Information.

## **7. Intellectual property rights**

- 7.1. Any specifications, descriptive matter, drawings and other documents which SP may furnish 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.
- 7.2. Nothing contained in this Master Services Agreement or 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.

## **8. Intellectual property rights indemnities**

- 8.1. The Counterpart hereby indemnifies SP against such claims and proceedings arising from an infringement of any SP's Intellectual Property Rights because the Counterpart breached SP's or Original Equipment Manufacturer's software licence conditions as informed by SP for Customer's utilisation of the Service.
- 8.2. 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.
- 8.3. Subject to clause 8.4, SP 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 8.2. If an Intellectual Property Claim is notified to or instituted against the Counterpart, the Counterpart shall immediately give written notice to SP. It shall provide SP with all such information and documentation as SP may reasonably require concerning 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.
- 8.4. SP shall have no obligation to indemnify Counterpart under clause 8.3 in respect of any liability arising under, or in connection with, any Intellectual Property Claim to the extent that such liability would not have arisen but for the breach of this Agreement by the Counterpart.
- 8.5. Each Party's rights and obligations under this paragraph 8 shall survive the termination of the Master Services.

## **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 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 regarding usage and provisioned resources. This data will be set out in statements, invoices, 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. SP is entitled to charge the Month-to-Month Rate for any usage or consumption over and above the amounts or capacity specified in the Order Form or Subscription.
- 9.5. SP is entitled to charge the Month-to-Month Rate for any Subscription that is not renewed and remains available for use by the Customer or is utilised by the Customer beyond the end of the Subscription Period.
- 9.6. For Subscription Periods of 12 (twelve) months or more:
  - 9.6.1. On the earlier of the start of SP's financial year or the anniversary of each Subscription, SP may increase the Service Schedule Fees by the greater of 7% (seven per cent) or the year-on-year percentage change in the CPI on 30 days written notice to the Counterpart or such other period as may be stated in the relevant Service Schedule. To avoid doubt, SP shall be entitled to delay applying Service Schedule Fees increase(s) and apply the increases at a future date.
- 9.7. For Subscription Periods of less than 12 (twelve) months or where no Subscription Period has been specified:
  - 9.7.1. SP may increase the Service Schedule on 30 days written notice to the Counterpart or such other period as stated in the relevant Service Schedule.
- 9.8. SP will invoice the Counterpart monthly (the "Billing Period") as follows:
  - 9.8.1. The setup fees, if any, and the first Billing Period's recurring Service Schedule Fees up to 30 days before the Operational Service Date.
  - 9.8.2. Subsequent Service Schedule Fees will be invoiced monthly in advance of the Billing Period.
  - 9.8.3. Upgrades, downgrades and over-use will be invoiced monthly in arrears of the Billing Period.
- 9.9. The Counterpart will pay the Service Schedule Fees per 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 the 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 defaults on payment. Such suspension is without prejudice to SP's rights, which have accrued before reinstatement.
- 9.10. All Service Schedule Fees will be invoiced and paid in Regional Currency unless 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, payable by the Counterpart, will be added to SP's invoices as appropriate.
- 9.11. The Counterpart acknowledges that the SP shall be entitled to generate and deliver invoices electronically.
- 9.12. The Counterpart acknowledges that it may be subject to SP's credit vetting procedures and that SP may, at any time, require it to pay a deposit or provide a guarantee as security for payment of future bills.
  - 9.12.1. In addition, for all Services billed in arrears or subject to variability, SP requires the customer to Pre-Fund the Customer's Account. The Pre-Funding amount is held as a deposit for the duration of the Master Services Agreement.
  - 9.12.2. The Customer agrees to be bound by SP's credit vetting procedures. SP may require that the Customer increase the Pre-Funding amount.
- 9.13. Where SP has provided any service, equipment or infrastructure dedicated to Counterpart for Counterpart's exclusive use, 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 the Counterpart has paid all outstanding amounts to SP in full.
- 9.14. Notwithstanding anything to the contrary contained herein, any charge increases from third parties payable in respect of Services rendered by SP under the Master Services Agreement may be passed on to the Counterpart upon 30 days prior written notice. Upon written request by Counterpart, SP will provide a declaration from SP's auditors that the increase was 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 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. Should the annual escalation exceed Fifteen Percent (15%) because of increases in Service Schedule Fees from third parties payable in terms of

this Master Services Agreement and not because of the Effect of the Exchange Rate, the Counterpart may terminate this Master Services Agreement by way of 60 days written notice to SP.

- 9.15. Payments are Free of Withholding. If there is a deduction or withholding required by law from a payment made pursuant to this Agreement, the sum due from the Counterpart shall be increased to the extent necessary to ensure that, after the making of any deduction or withholding, SP receives a sum equal to the sum it would have received had no deduction or withholding been made.

## 10. Limitation of liability

- 10.1. Notwithstanding any other provision of this Master Services Agreement (save for 10.2 and 10.3 below), in no event will SP, its members, directors, officers, employees, contractors, agents, and 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) 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, 10.4, 10.5 and 10.6 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 a breach of the Service Level Agreement ('**SLA Breach**') is limited to the SLA Liability Limit (as specified in the Master Services Schedule). Services are subject to a Bronze Service Level Agreement (Bronze SLA') unless otherwise specified.
- 10.3. Subject to clauses 10.1, 10.4, 10.5 and 10.6, save for a claim related to an SLA Breach, which shall be governed by the provisions of clause 10.2, SP's liability to the Counterpart in contract or delict or otherwise in respect of a claim ('**Relevant Claim**') 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 shall be limited to the lesser of (i) the indemnity limit applicable to such Relevant Claim under SP's professional indemnity insurance policy ('**PI Policy**'), and (ii) the amount ('**Indemnity Amount**') actually paid to SP by the underwriter ('**Underwriter**') of the PI Policy in respect of such Relevant Claim, provided that SP undertakes in favour of the Counterpart to (a) utilise its reasonable commercial endeavours to ensure timeous compliance by SP with all procedural obligations imposed on SP by the PI Policy in relation to the Relevant Claim including, without limitation, timeous notification to the Underwriter of the Relevant Claim, and (b) effect payment to the Counterpart of an amount equivalent to any Indemnity Amount paid to SP by Underwriter in respect of such Relevant Claim within 10 days of receipt by SP of the relevant Indemnity Amount.
- 10.4. 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).
- 10.5. 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.
- 10.6. The Counterpart hereby indemnifies SP and holds SP harmless against all third-party 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. With the exception of the Customer's payment obligations hereunder, if either Party is prevented either directly or indirectly from carrying out all or any of its obligations under this Master Services Agreement due to any cause or event outside its reasonable control, including acts of God, civil or military authority, acts of war, cyber warfare, pandemics, accidents, third-



party computer or communications failures, natural disasters or catastrophes, strikes or other work stoppages or any other cause beyond the reasonable control of the affected party ('Force Majeure'), the Party so affected shall be relieved of its obligations hereunder during the period that such Force Majeure event and its consequences continue but only to the extent so prevented. The affected Party shall not be liable for any delay or failure in the performance of any obligations hereunder, provided that written notice shall forthwith be given of any such inability to perform by the affected Party. Notwithstanding the aforesaid, unless otherwise directed by the Counterpart in writing, SP shall continue to perform its obligations under this Master Services Agreement as far as is reasonably practical and shall seek all reasonable alternative means for performance not prevented by the Force Majeure event.

- 11.2. If legal or regulatory restrictions prevent SP 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 on the anniversary of the Subscription.
- 11.4. To avoid doubt, SP shall not be liable for damages or termination for default if and to the extent that its delay in performance or other failures to perform its obligations under the Master Services Agreement result from an event of Force Majeure.

## **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 the Judgement Threshold to remain unsatisfied for 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 an 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.
  - 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 Parties in accordance with 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 undermentioned 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 clause 13, this Master Services Agreement and any Changes hereto may be either physically signed or Electronically Signed. 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 or RSign Process is followed by an Authorised Person of each Party.
  - 14.2.2. Will be valid and binding if the Order Porter 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. It will be effective as of and commence on the date on which it was 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 the date of the earlier signature, save to the extent expressly agreed otherwise by the Parties in writing (Operational Service Date), provided the process in clause 13 has been complied with.

## 15. Termination of Subscription(s) by notice

15.1. To terminate a Subscription, the Counterpart must send the request to SP's Cancellation Desk at **cancellations@globalmicro.co.za**.

15.1.1. No termination will be in force or effect unless the SP's cancellation desk approves the termination. To ensure that termination is completed at the end of the Subscription cycle, SP may start to decommission the service up to 1 week before the end of the Subscription cycle.

### 15.2. Data return and deletion

15.2.1. SP shall have no obligation to retain Counterpart's data beyond the Subscription Period and may delete Counterpart's data.

15.2.2. If SP (in its sole discretion) permits retention of Counterpart's data beyond the Subscription Period or termination date ('Retention Period'), Counterpart shall remain responsible for all Service Schedules Fees (to be charged at the Month-to-Month Rate) during this Retention Period.

15.2.3. Counterpart agrees that unless Counterpart has specifically concluded and paid SP for (i) a data export Subscription or (ii) a data migration Subscription, SP has no additional obligation to continue to hold, export or return Counterpart's data and that SP shall have no liability whatsoever for deletion of Counterpart's data pursuant to clause 15.2.1.

### 15.3. For Subscriptions with a 1 (one) month term:

15.3.1. Counterpart may terminate the Subscription subject to the following:

15.3.2. The provisions of paragraphs 15.5 through 15.7;

15.3.2.1. A minimum of **1 (one) calendar month's** written notice to SP's cancellation desk before the end of the Subscription Period.

15.3.2.2. Payment for (i) the period up to and including the date when the Subscription will terminate, and (ii) all outstanding amounts due to SP must reflect in SP's bank account a minimum of **30 (thirty) days** before the date when the Subscription will terminate.

15.3.2.3. Termination will be effective at the end of the monthly Subscription cycle.

### 15.4. For Subscriptions with 1 (one) to 5 (five) year terms:

15.4.1. Customerpart may request termination of a Subscription to be effective the last day before the Anniversary of the Subscription subject to:

15.4.2. The provisions of paragraphs 15.5 through 15.7;

15.4.2.1. A minimum of **3 (three) calendar months'** written notice to SP's cancellation desk before the end of the Subscription Period.

15.4.2.2. Payment for (i) the period up to and including the date when the Subscription will terminate, (ii) all outstanding amounts due to SP, and (iii) any applicable Cancellation Fee described in 15.4.2.3 must reflect in SP's bank account a minimum of **30 (thirty) days** before the date when the Subscription will terminate;

15.4.2.3. An early termination Cancellation Fee will apply when the termination date is not the end of the Subscription Period, according to the table below:

Subscription Term	Cancellation Fee
1 (one) Year	Early termination is not permitted
2 (two) Years	2 (two) x monthly Subscription fees
3 (three) Years	3 (three) x monthly Subscription fees
4 (four) Years	4 (four) x monthly Subscription fees
5 (five) Years	5 (five) x monthly Subscription fees

**By way of example:** If the monthly Subscription fee is 1000 (one thousand) and, the Subscription Period is 2 (two) years, and a Subscription is cancelled at the end of the first year, a Cancellation Fee of 2000 (two thousand) will be charged.

**For all Subscriptions with 1 (one) month or 1 (one) to 5 (five) year terms**

- 15.5. Counterparty may not terminate a Subscription:
  - 15.5.1.1. Outside of notice periods specified in 15.3.2.1 and 15.4.2.1 or elsewhere in this Agreement; or
  - 15.5.1.2. Any time after termination of this Agreement; or
  - 15.5.2. Any time where Counterparty is in breach of this Agreement or has been placed on notice of breach any time during this Agreement; or

**15.6. Exclusions to early termination of Subscriptions by Customer**

- 15.6.1. Counterparty may not terminate a Subscription early, i.e., before the end of the Subscription Period where a Subscription includes:
  - 15.6.1.1. Subscriptions with a 1 (one) month or 1 (one) year Subscription Period
  - 15.6.1.2. Equipment rental.
  - 15.6.1.3. Hardware dedicated to the Counterparty.
  - 15.6.1.4. Professional services and setup fees,
  - 15.6.1.5. Discounted Service Schedule Fees or
  - 15.6.1.6. 3<sup>rd</sup> party services which do not permit early termination or
  - 15.6.1.7. Any Service, including but not limited to Microsoft Online Services, Symantec Solutions, Amazon Web Services or AvePoint Services, where the Customer seeks to re-subscribe to the Service via an entity other than SP. The early termination mechanism is intended to assist the Counterparty in matching its Subscriptions with its capacity requirements. It is not intended to be a mechanism to switch service providers.

**15.7. Exclusions to early termination of Subscriptions by Resellers who have concluded a Reseller Agreement**

- 15.7.1. Counterparty may not terminate a Subscription:
  - 15.7.1.1. Any time after 6 (six) months prior to the end of any Commitment Period or
  - 15.7.1.2. Any time after the expiry of any Commitment Period.

**15.8. Restricted Party Screening**

- 15.8.1. The parties acknowledge that SP, on a regular basis, conducts a review of its customers to determine whether restrictions or sanctions apply with regard to transacting with them, including but not limited to the regulations of the **United States Department of Commerce and the United States Export Administration Act**, (“**Restricted Party Screening**” or “**RPS**”). If SP considers, in its sole discretion, but acting reasonably based on its standard RPS process, that the results of the RPS in relation to Customer are unsatisfactory, SP may terminate this Agreement and any Services Order related hereto with immediate effect upon written notice to Customer. Upon termination pursuant to clause 15.8.1, SP shall have no further obligations to Customer hereunder.

## 16. Subscription(s) Renewal

- 16.1. Unless terminated by notice per 15 or 16.2, all Subscriptions (other than Trial Subscriptions) automatically renew, as specified in the table below.

Subscription Term	Automatic Renewal before the end of the Subscription Period
1 (one) Month	1 (one) Calendar month
1 (one) to 5 (five) Years	3 (three) Calendar months

- 16.2. SP may, during the Subscription period, elect to:

- 16.2.1. Not to renew a Subscription upon expiration by providing at least **30 (thirty)** days prior written notice.
- 16.2.2. Renew a Subscription at the Month-to-Month rate by providing at least **30 (thirty)** days prior written notice.
- 16.2.2.1. The Subscription Period after renewal will be 1 (one) month.
- 16.2.2.2. The Service Schedule Fees will increase to the prevailing charges associated with a 1 (one) month Subscription.
- 16.3. The quantity of Services in the Subscription is automatically renewed at the time of renewal.

## 17. Selection of Subscription and Subscription Periods

- 17.1. Service Schedule Fees for different Subscription Periods are specified in the Service Fees Schedule(s) and 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 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 desires to do so.

## 18. Subscription Upgrades and Downgrades

- 18.1. To increase resources within a Subscription ('Subscription Upgrade'), the Counterpart must follow the process on the Portal or contact the SP Help Desk. Unless otherwise specified, Subscription Upgrades via the Portal do not extend the Subscription Period or constitute a Subscription Renewal.
- 18.2. To reduce resources in a Subscription ('Subscription Downgrade'), the Counterpart must send the request to SP's Cancellation Desk at [cancellations@globalmicro.co.za](mailto:cancellations@globalmicro.co.za).
- 18.2.1. No Subscription Downgrade will be in force of effect unless the SP's cancellation desk approves the downgrade. To ensure that the downgrade is completed at the end of the Subscription cycle, SP may start to downgrade the service up to 1 week before the end of the Subscription cycle.
- 18.3. **Data return and deletion**
  - 18.3.1. SP shall have no obligation to retain Counterpart's data after a Subscription Downgrade and may delete Counterpart's data.
  - 18.3.2. If SP (in its sole discretion) permits retention of Counterpart's data beyond the Downgrade date ('Retention Period'), Counterpart shall remain responsible for all Service Schedules Fees (to be charged at the Month-to-Month Rate) during this Retention Period.
  - 18.3.3. Counterpart agrees that unless Counterpart has specifically concluded and paid SP for (i) a data export Subscription or (ii) a data migration Subscription, SP has no additional obligation to continue to hold, export or return Counterpart's data and that SP shall have no liability whatsoever for deletion of Counterpart's data pursuant to clause 18.3.1
- 18.4. **For Subscriptions with a 1 (one) month term:**
  - 18.4.1. Counterpart may request a Subscription Downgrade subject to the following:
    - 18.4.2. The provisions of paragraphs 18.6 through 18.8;
      - 18.4.2.1. A minimum of **1 (one) calendar month's** written notice to SP's cancellation desk before the end of the Subscription Period.
      - 18.4.2.2. Payment for (i) the period up to and including the date when the Subscription will downgrade, and (ii) all outstanding amounts due to SP must reflect in SP's bank account a minimum of **30 (thirty) days** before the date when the Subscription will downgrade.
    - 18.4.2.3. The Subscription downgrade will be effective in the next monthly Subscription cycle.

**18.5. For Subscriptions with 1 (one) to 5 (five) year terms:**

- 18.5.1. Counterpart may request a Subscription Downgrade to be effective the day after the Anniversary of the Subscription subject to:
  - 18.5.2. The provisions of paragraphs 18.6 through 18.8;
  - 18.5.2.1. A minimum of **3 (three) calendar months'** written notice to SP's cancellation desk before the Subscription's Anniversary.
  - 18.5.2.2. Payment for (i) the period up to and including the date when the Subscription will downgrade, (ii) all outstanding amounts due to SP, and (iii) any applicable Cancellation Fee described in 18.5.2.3 must reflect in SP's bank account a minimum of **30 (thirty) days** before the date when the Subscription will terminate;
  - 18.5.2.3. An early downgrade Cancellation Fee will apply when the termination date is not the end of the Subscription Period, according to the table below:

<b>Subscription Term</b>	<b>Cancellation Fee</b>
1 (one) Month	Reduction in resources is not permitted
1 (one) Year	Reduction in resources is not permitted
2 (two) Years	2 (two) x monthly reduction in Subscription fees
3 (three) Years	3 (three) x monthly reduction in Subscription fees
4 (four) Years	4 (four) x monthly reduction in Subscription fees

**By way of example:** If a monthly Subscription fee of 1000 (one thousand) is downgraded to 500 (five hundred) and, the Subscription Period is 2 (two) years, and a Subscription is reduced at the end of the first year, a Cancellation Fee of 1000 (one thousand) will be charged.

**For all Subscriptions with 1 (one) month or 1 (one) to 5 (five) year terms**

- 18.6. Counterpart may not terminate a Subscription:
  - 18.6.1.1. Outside of notice periods specified in 18.4.2.1 and 18.5.2.1 or elsewhere in this Agreement or
  - 18.6.1.2. Any time after termination of this Agreement; or
  - 18.6.2. Any time where Counterpart is in breach of this Agreement or has been placed on notice of breach any time during this Agreement; or

**18.7. Exclusions to downgrades of Subscriptions by Customer**

- 18.7.1. Counterpart may not downgrade a Subscription early, i.e., before the end of the Subscription Period where a Subscription includes:
  - 18.7.1.1. Subscriptions with a 1 (one) month or 1 (one) year Subscription Period
  - 18.7.1.2. Equipment rental.
  - 18.7.1.3. Hardware dedicated to the Counterpart.
  - 18.7.1.4. Professional services and setup fees,
  - 18.7.1.5. Discounted Service Schedule Fees or
  - 18.7.1.6. 3<sup>rd</sup> party services which do not permit downgrades or
  - 18.7.1.7. Any Service, including but not limited to Microsoft Online Services, Symantec Solutions, Amazon Web Services or AvePoint Services, where the Customer seeks to re-subscribe to the Service via an entity other than SP. The downgrade mechanism is intended to assist the Counterpart in matching its Subscriptions with its capacity requirements. It is not intended to be a mechanism to switch service providers.

**18.8. Exclusions to downgrades of Subscriptions by Resellers who have concluded a Reseller Agreement**

- 18.8.1. Counterpart may not downgrade a Subscription:
  - 18.8.1.1. Any time after 6 (six) months prior to the end of any Commitment Period or
  - 18.8.1.2. Any time after the expiry of any Commitment Period.

## 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 with 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 with 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 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 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 relating to 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: SP Address and Facsimile reflected in clause 1.29 or the SP Email Address reflected in clause 1.30
- 22.1.1.2. Attention: SP Authorised person reflected in clause 1.2.1.
- 22.1.2. **The Counterpart:**
- 22.1.2.1. The physical address or email address of any Administrative Contact, Technical Contact or Billing Contact of the Counterpart reflected in (i) the Master Services Agreement, (ii) these General Conditions, (iii) the Order, the Order Porter Process, (iv) or the Portal.
- 22.1.2.2. For the attention of the signatory of the Counterpart to these General Conditions.
- 22.2. The Parties hereby choose domicilia citandi et executandi for all purposes of and relating to this Agreement at:
- 22.2.1. The addresses set out in clause 22.1 above.

- 22.2.2. The email addresses where email is sent via a registered email service including but not limited to RSign, an RPost™ service.
- 22.3. Any Party may, by written notice to the other party, change its chosen address for purposes of this clause to another address, 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 Authority

- 23.1. The Counterpart hereby authorises SP to utilise 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 determined and agreed in terms of the Service Schedules with SP on the 1<sup>st</sup> day of each month or the 15<sup>th</sup> day (depending on the billing cycle selected by the SP) 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 9.12, Counterpart may request a waiver of 23.1 and settle Service Schedule Fees by electronic bank transfer, provided that the Counterpart pays a deposit over to SP, equal to three (3) months Service Schedule Fees or alternatively provides a bank guarantee acceptable to SP.

## 24. General

- 24.1. 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 a judgement has been granted, in connection with the satisfaction or enforcement of such judgement.
- 24.2. 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.
- 24.3. 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 judgment 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. Regional Terms

- 25.1. **South Africa:** These terms apply if SP is **Global Micro Solutions (Pty) Ltd:**
- 25.1.1. **Governing Law (Republic of South Africa):**
- 25.1.1.1. This agreement is governed by and shall be construed in accordance with the laws of South Africa.
- 25.1.1.2. The Parties hereby irrevocably and unconditionally consent to the non-exclusive jurisdiction of the South Gauteng High Court, Johannesburg, regarding all matters arising from this Master Services Agreement.
- 25.1.2. **"Effect of the Exchange Rate"** means changes in the Rand-Dollar exchange rate.
- 25.1.3. **"CPI"** means the Consumer Price Index published in the Government Gazette of South Africa.
- 25.1.4. **"Regional Currency"** means the South African Rand.
- 25.1.5. **"Judgement Threshold"** means R50 000 (Fifty Thousand Rand).



25.1.6. **Consumer Protection Act:**

- 25.1.6.1. 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 25.1.6.2 in respect of the Counterpart ("Threshold Values") are below a specific value at the time the transaction is entered into.
- 25.1.6.2. The Threshold Values are the Counterpart's asset value or annual turnover, and the value against which they are measured is determined by the Minister of Trade and Industry by publication in the Government Gazette from time to time.
- 25.1.6.3. 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.
- 25.1.6.4. The Counterpart warrants that any statement made to SP regarding its Threshold Values is accurate.
- 25.1.6.5. 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.
- 25.1.6.6. 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. The Counterpart shall be liable for any damage sustained by SP resulting from such misstatement.
- 25.1.6.7. The Signatory to this agreement confirms that the 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.

25.2. **United Kingdom:** These terms apply if SP is **Global Micro Solutions UK Limited**:

25.2.1. **Governing Law (United Kingdom)**

- 25.2.1.1. This agreement is governed by and shall be construed in accordance with the laws of England and Wales and held in England.
- 25.2.1.2. With regard to any dispute, action or claim arising from this Agreement any Customer in any Middle East territory, if the United Kingdom courts refuse jurisdiction, the parties agree that such dispute shall be subject to the exclusive jurisdiction of the court of the Dubai International Financial Centre ("DIFC"). Where such a dispute relates to a claim for a sum within the limits specified by the DIFC Small Claims Tribunal, then the dispute may be referred to the said Tribunal.
- 25.2.1.3. The parties irrevocably agree that the courts of the Republic of Ireland shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

25.2.2. **"Effect of the Exchange Rate"** means changes in the Pound-Dollar exchange rate.

25.2.3. **"CPI"** means the Consumer Price Index published by the Office of National Statistics ('ONS').

25.2.4. **"Regional Currency"** means the Pound.

25.2.5. **"Judgement Threshold"** means £5 000 (Five Thousand Pound).

25.3. **United States:** These terms apply if SP is **Global Micro Solutions IT Solutions Inc:**

25.3.1. **Governing Law (United States)**

25.3.1.1. This agreement is governed by the laws of the state of Delaware, without regard to its principles of choice of law. Except for a payment dispute between the parties, a party must bring and maintain any action within the legal jurisdiction of the state of Delaware.

25.3.2. **Collection Costs**

25.3.2.1. Customer hereby agrees that all invoices due to SP will be paid on-time on the due date specified on the invoice. In the absence of a due date specified on the invoice, all invoices will be paid on-time on net 30 days from the date of invoice. Customer also agrees to pay to SP any/all incurred reasonable attorney's fees and 3rd-party collection expenses, as well as accrued interest resulting from any past-due indebtedness beyond the due date. It shall not be necessary to first institute suit, nor to pursue or exhaust its remedies due to any payment delinquency in order to unconditionally entitle SP to the full and total obligation owed by the Customer and/or the undersigned guarantor.

25.3.3. **Payment Disputes**

25.3.3.1. In the event of a payment dispute between the Parties, they will mutually endeavour to resolve the matter informally by way of discussions and negotiations between themselves, and/or between their respective legal counsel or other 3rd party mediator. In the event the Parties are unable to reach an accord and legal remedies are indicated, such an action shall be enforceable in any U.S. state, city or county jurisdictional venue, at SP's discretion.

25.3.3.2. 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.

25.3.3.3. 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.

25.3.4. **"Effect of the Exchange Rate"** means changes in the Euro-Dollar exchange rate.

25.3.5. **"CPI"** means the Consumer Price Index published by the Bureau of Labour Statistics ('BLS').

25.3.6. **"Regional Currency"** means the US Dollar.

25.3.7. **"Judgement Threshold"** means \$5 000 (Five Thousand US Dollars).

25.4. **All other Regions:** These terms apply if SP is **Global Micro IT Technology Solutions Limited:**

25.4.1. **Governing Law (All other regions including EU)**

25.4.1.1. This agreement is governed by and shall be construed in accordance with the laws of the Republic of Ireland.

25.4.1.2. The parties irrevocably agree that the courts of the Republic of Ireland shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

25.4.2. **“Effect of the Exchange Rate”** means changes in the Euro-Dollar exchange rate.

25.4.3. **“CPI”** means the Harmonized Index of Consumer Prices (**‘HICP’**) published by Eurostat, the statistical office of the European Union.

25.4.4. **“Regional Currency”** means the Euro.

25.4.5. **“Judgement Threshold”** means €5 000 (Five Thousand Euro).