

STANDARD TERMS AND CONDITIONS & MASTER SERVICES AGREEMENT

between

REFLEX SOLUTIONS PROPRIETARY LIMITED

(“Reflex”)

And

**THE PARTY THAT HAS AGREED TO RECEIVE PRODUCTS AND/OR SERVICES FROM
REFLEX**

(“Customer”)

These Standard Terms and Conditions and Master Services Agreement consists of (i) this cover sheet, (ii) the attached terms and conditions; and (iii) any and/or all schedules, purchase orders, accepted quotes, other documents executed between the parties and/or accepted by the Customer which are deemed annexures attached to this cover sheet (“Agreement”). By accepting any of the aforesaid documents and/or products and/or services from Reflex the Customer represents and warrants that it has read, confirmed, and familiarised itself with and agrees to be bound by this Agreement.

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MASTER SERVICES AGREEMENT

IT IS AGREED AS FOLLOWS:

1. AGREEMENT

- 1.1. This Agreement is to be construed together with annexures "A" - "B" attached hereto as well as any Service Schedules that may be included from time to time on agreement between the Parties.
- 1.2. All defined terms in this Agreement are defined in Annexure "A" attached hereto.

2. APPOINTMENT

- 2.1. The Customer hereby appoints Reflex to render the Services and provide certain Products.
- 2.2. Reflex accepts the appointment of providing the Services and Products to the Customer.
- 2.3. During the term of this Agreement, Reflex shall be the exclusive provider of the Products and Services.

3. DURATION

- 3.1. This Agreement shall commence on the Signature Date and shall endure for an indefinite period unless terminated in accordance with the provisions of this Agreement.
- 3.2. Notwithstanding anything to the contrary in this Agreement, both Parties shall have the right to terminate this Agreement on sixty (60) days written notice.
- 3.3. In the event that a Party terminates this Agreement, such termination shall be in accordance with clause 2323 below.

4. SERVICES

- 4.1. Reflex shall provide Services to the Customer in accordance with a Service Schedule. Any applicable Service Schedule shall form part of this Agreement and the contents thereof shall be read as if specifically incorporated herein.
- 4.2. Reflex is entitled to cancel or amend details and/or terms of any Services detailed in a Service Schedule, including *inter alia* the following:

- 4.2.1. The cost of any third party services required for the Service change from those used in Reflex's initial cost calculation prior to signature of the Service Schedule;
 - 4.2.2. A change in the delivery time of any third party services which is out of Reflex's control;
 - 4.2.3. A change in the expected delivery or start date of the Services;
 - 4.2.4. any change to the provisions and/or terms of a third party subcontractor agreement have a resultant effect on the Services under this Agreement and/or Service Schedule; or
 - 4.2.5. The Service supplied is subject to a survey and such survey results reveals information that was unknown to Reflex at the time of quoting and/or acceptance of a request for Service and which could affect the availability, performance, delivery timeframes and/or Fees quoted.
- 4.3. In the event that Reflex amends a Service Schedule in accordance with clause 4.2 above, Reflex shall notify the Customer detailing the affected Service and the resultant effect of such amendment.
- 4.4. All Equipment and/or Products supplied by Reflex, its agents or subcontractors, notwithstanding installation thereof at the Customer's premises, is considered movable property and unless the Parties agree otherwise, in writing, shall at all times remain the property of Reflex and Reflex shall have the right to inspect, maintain, upgrade and/or remove the Equipment and/or Products at all reasonable times during the subsistence and in accordance with the terms of this Agreement. The Customer undertakes to notify the landlord of the premises where the Equipment is to be installed of Reflex's ownership thereto.

5. PAYMENT

- 5.1. The Customer acknowledges that it is subject to Reflex's vetting procedures. At any given time, Reflex may request the Customer to pay a deposit or provide a guarantee as security for payment of current and/or future indebtedness to Reflex.
- 5.2. In consideration for Reflex rendering the Services, the Customer shall pay Reflex the Fees and/or costs as set out in the respective Service Schedule(s).

- 5.3. Reflex may provide the Customer with written Invoices on the 25th day of each month or such other date as may be stipulated in the relevant Service Schedule(s). Issued Invoices shall be due and payable by the Customer within 7 (seven) days of receipt thereof, unless otherwise agreed to in writing by the Parties in a Service Schedule.
- 5.4. Reflex may submit electronic Invoices to the Customer at the Customers indicated email address detailed on the Service Schedule(s).
- 5.5. The Service Schedule(s) shall indicate whether any additional charges shall be invoiced by Reflex to Customer as well as the relevant terms of such additional charges.
- 5.6. All amounts specified in any applicable Service Schedules and/or any quote shall be exclusive of VAT or any other taxes or duties.
- 5.7. The Customer shall be responsible for all charges incurred in respect of the Services, notwithstanding any charges incurred as a result of fraudulent, unauthorised or improper use of the Services.
- 5.8. The Customer may not defer, adjust, set-off or withhold payment due to Reflex in terms of this Agreement and/or any Service Schedule(s).
- 5.9. Payment of the Fees by the Customer to Reflex shall be effected via electronic funds transfer directly into Reflex's Nominated Bank Account. The Customer shall provide remittance advice to Reflex.
- 5.10. Where Customer wishes to pay in a currency other than South African Rand, Customer shall indicate such intended currency to Reflex on the Signature Date of this Agreement, which Reflex shall determine whether such currency is accepted.
- 5.11. Payment of the Fees may be made in the currency indicated on the Invoice. Where Customer wishes to pay in a currency other than South African Rand, the exchange rate of such currency against the South African Rand shall be as at the date Reflex issues the Invoice to the Customer. In the event that the Customer wishes to pay in a currency other than South African Rand, Reflex shall provide the applicable bank details to accept such foreign currency.
- 5.12. Should the Customer dispute any amount appearing on an Invoice, the Customer shall, within 7 (seven) Days of receipt thereof, notify Reflex in writing of such dispute specifying the –

- 5.12.1. Affected Invoice;
 - 5.12.2. Specific amount and/or line item in dispute; and
 - 5.12.3. Alleged reasons or grounds for dispute.
- 5.13. Any amount disputed in terms of clause 5.12 shall not be regarded as payable in terms of this clause 5 and should the Parties be unable to resolve such dispute within 7 (seven) Days of being notified of such disputed invoice, such dispute shall be referred to the financial managers of the Customer and Reflex or their authorised representatives for determination. In the event that the dispute remains unresolved after a period of 10 (ten) Days of being referred to the financial managers, the Parties shall undertake to resolve the dispute through the Dispute Resolution clause in this Agreement. All other undisputed invoices and/or undisputed items on the Affected Invoice shall remain due, owing and payable by the Customer.
- 5.14. Should the Customer fail to make full or timeous payment of any charges and/or Fees due in terms of this Agreement and/or its Service Schedule(s), on the due date, Reflex shall be entitled to charge interest on the outstanding amount at the prevailing prime interest rate charged by four major banks in the Republic, plus 4% (four percent) from date of issuance of the invoice.
- 5.15. Any change of banking details of either Party shall be provided to the other Party along with a bank confirmation letter. Any change in banking details is required to be confirmed via telephonic discussion between the Parties to ensure the authenticity of such banking details. The change to bank details shall only be effective after 5 (five) Days after receipt thereof.

6. SERVICE SUSPENSION

- 6.1. Reflex may, at its sole discretion and without prejudice to any right it may have, immediately suspend or withhold the provision of a Service or a part thereof should:
- 6.1.1. Reflex have reasonable grounds on which to terminate the Services and/or this Agreement; or
 - 6.1.2. The Customer fails to make payment or portion of a payment in terms of this Agreement and/or Service Schedule(s) subject to clauses 5.12 and 5.13; or

- 6.1.3. Reflex is obliged to comply with an order, instruction or request of Court, government agency, emergency service organisation or other administrative or regulatory authority; or
- 6.1.4. Reflex have reasonable grounds on which to suspect that the Services being provided to the Customer may be under threat or a potential threat of hacking.
- 6.2. Should Reflex suspend the Services or any part thereof in accordance with clause 6.1.3, it shall provide prior notice of such Service suspension to the Customer indicating the grounds for the suspension and its expected duration. Reflex shall use reasonable endeavours to resume the Services as soon as is practically possible in the circumstances.
- 6.3. In the event that the Service or any part thereof is suspended as a result of a breach, fault, act or omission of the Customer, the Customer shall pay Reflex all reasonable costs and/or expenses incurred by Reflex in the implementation of such suspension and/or recommencement of the provision of the Services.
- 6.4. Reflex shall not be liable for any loss, damage or inconvenience suffered by the Customer as a result of any Service suspension except to the extent that such suspension is directly attributable to Reflex's gross negligence.

7. FAULT LOGGING & ESCALATION

Reflex shall provide the relevant support structures in place for the Customer to log faults, incidents and escalate same in accordance with the applicable Service Schedule and the Customer shall follow such procedures indicated therein.

8. PRICING CHANGES

- 8.1. Reflex is entitled to adjust the pricing of the applicable Service Schedule(s).
- 8.2. Such adjustments shall be based on *inter alia* the following:
 - 8.2.1. Any changes to current exchange rate above the agreed upon pricing indicated in the Service Schedule(s);
 - 8.2.2. Changes to Customer product requirements and usage;
 - 8.2.3. Changes as a result of government-imposed regulations and/or tariffs; and/or

- 8.2.4. Following receipt notice from a third party and/or in respect of any other third party associated costs.
- 8.3. Reflex shall adjust pricing and effect same on its Invoices immediately to the Customer of the required adjustment.
- 8.4. In respect of prices for the Services, Reflex shall be entitled to increase pricing for the Services as further detailed in the applicable Service Schedule(s).
- 8.5. Should the Customer wish to dispute a price adjustment, the Customer shall notify Reflex in writing of such dispute within 7 (seven) days of issuance of the price adjustment from Reflex. The Customer's notice shall specify the following:
 - 8.5.1. The disputed Service subject to the pricing adjustment; and
 - 8.5.2. Grounds for dispute based on good faith.
- 8.6. Upon receipt of the Customer's notice in terms of clause 8.5 above, Reflex shall consider same and shall provide the Customer with notification indicating whether Reflex is proceeding with the price adjustment or whether Reflex proposes a new price adjustment.

9. CUSTOMER OBLIGATIONS

- 9.1. The Customer shall have the following obligations to Reflex:
 - 9.1.1. Ensure that Reflex and its personnel have secure access to all relevant products, service-related systems, and Equipment to enable Reflex to effect support services. Failing provision of secure access, Reflex shall use reasonable means to secure access and such costs shall be borne by the Customer;
 - 9.1.2. Timeously inform Reflex of any malfunction, theft, damage, or impending damage to or loss of the use of the Products, Equipment and Services;
 - 9.1.3. Utilise the Products and Services in terms of the Service Schedule only for the purpose for which it is intended and to ensure that its employees, agents and/or sub-contractors comply with the instructions and recommendations of Reflex;

- 9.1.4. not resell any of Reflex's Products and/or Services without express written consent from Reflex and not without entering into the appropriate reseller agreement with Reflex;
- 9.1.5. not use any equipment, technologies, or methods of operation that interfere in any way with or adversely affect the Reflex Network or the use thereof;
- 9.1.6. take all reasonable precautions against, and shall assume liability for any damage caused by the Customer to the Reflex Network;
- 9.1.7. not cause or permit any part of the Products and Services to become encumbered and/or subject to any lien or landlord's hypothec, whether by operation of law or otherwise;
- 9.1.8. upon delivery or collection of Products and/or Services, the Customer shall:
 - 9.1.8.1. keep the Products and Services, in its possession and control, protected against loss and damage, notwithstanding reasonable wear and tear, free from any lien, hypothec, attachment, or encumbrerment;
 - 9.1.8.2. provide clean power to Equipment;
 - 9.1.8.3. protect all relevant Equipment against lightning strikes by installing lightning protection;
 - 9.1.8.4. obtain adequate insurance for the Products and Services;
 - 9.1.8.5. maintain the Equipment and Products in clean, serviceable, and working order; and
 - 9.1.8.6. generally, take all reasonably necessary steps to protect the Equipment from risk, harm and/or or loss and ensure adequate insurance cover is taken out and maintained over the Equipment in relation to the aforesaid for the duration of the Agreement and/or Service Schedule and agrees to indemnify and hold Reflex harmless from any loss, harm and/or claim arising out of or in relation to the Equipment.

- 9.1.9. in terms of electronic waste disposal of the Products, the Customer shall have the following obligations to Reflex:
- 9.1.9.1. shall provide written notice to Reflex of any and/or all Products or parts thereof that it no longer requires, uses, are damaged, defective, obsolete, and/or are to be discarded by the Customer for whatsoever reason (“**E-Waste**”);
 - 9.1.9.2. shall deliver any and/or all E-Waste to Reflex offices and/or a location specified by Reflex and at a date and time as agreed between the Parties;
 - 9.1.9.3. shall be responsible for any and/or all costs associated in the delivery of the E-Waste to Reflex offices and/or location specified by Reflex;
 - 9.1.9.4. shall not dispose of any Products in any other manner or form other than providing such E-Waste and/or Products to Reflex in accordance with the terms and conditions of this Agreement; and
 - 9.1.9.5. acknowledges and agrees that proper electronic waste disposal practices shall be followed by the Parties.

10. WARRANTIES

10.1. Reflex hereby warrants, represents, and undertakes that-

- 10.1.1. It and its personnel possess the requisite level of skill, expertise, and experience in rendering the Services and services of a similar scope, complexity, and size;
- 10.1.2. It shall render the Services in accordance with Best Industry Practice, all Applicable Laws and regulations as may be applicable from time to time;
- 10.1.3. it shall only assign appropriately experienced, qualified, and trained personnel to perform the Services;
- 10.1.4. it has obtained and shall maintain in force all accreditations; certifications; licenses and consents, as may be required, to enter into this Agreement and to render the Services; and

10.1.5. the Services shall not wilfully infringe the Intellectual Property rights of any third party.

10.2. The Customer hereby warrants, represents, and undertakes that-

10.2.1. this Agreement shall, when executed, constitute legal, valid, and binding obligations on the Customer;

10.2.2. this Agreement is executed by a duly authorised signatory of the Customer;

10.2.3. it is not aware of anything which might or shall adversely affect its ability to perform its obligations under this Agreement;

10.2.4. it shall ensure that all information supplied to Reflex is true, accurate and complete in all respects;

10.2.5. it is not aware of any circumstances which may result in the Customer commencing business rescue proceedings;

10.2.6. it shall notify Reflex in writing, immediately upon the occurrence of any of the following events:

10.2.6.1. when the Customer becomes aware that it is financially distressed, as defined in the Companies Act, No. 71 of 2008; or

10.2.6.2. when the Customer contemplates, considers, discusses, or agrees to any business rescue or proposes to do any of these things; or

10.2.6.3. when the Customer becomes aware of any person proposing to take, or taking, any steps to apply to court or actually applying to court for the business rescue of the Customer.

11. BREACH AND CANCELLATION

11.1. The Parties to this Agreement acknowledge that this Agreement is based on good faith and, in the event of a disagreement or dispute arising between the Parties (whether having arisen out of a breach of this Agreement or otherwise), the Parties shall endeavour to resolve the issues between them by means of consultation and negotiation in terms of clause 12 below.

- 11.2. In the event of a breach of any of the provisions of this Agreement, and the Parties are unable to resolve same in accordance with clause 11.1 above, then either Party (“**the aggrieved party**”) shall give the other Party (“**the defaulting party**”) 10 (ten) Days written notice to remedy the breach. Should the defaulting party fail to comply with such notice, the aggrieved party shall be entitled to terminate this Agreement by providing the defaulting party with written notification of termination, which termination shall be on no less than 1 (one) months' notice.
- 11.3. Notwithstanding the above clause, in the event that the Customer has failed to pay any amount and/or Invoice due to Reflex after 5 (five) Days have elapsed from the due date of the applicable Invoice, and such unpaid amount and/or Invoice is not subject to a dispute in terms of clauses 5.12 and 5.13, Reflex shall be entitled, in its sole discretion, to cancel this Agreement and/or any applicable Service Schedule(s) on 5 (five) Days written notice to the Customer and demand payment of any and/or all outstanding amounts.
- 11.4. In the event that the Customer has breached this Agreement and such breach has remained unresolved after written notice to Customer, Customer shall be liable for and shall pay Reflex a breach penalty charge calculated as the Fees and charges that would have become due and payable by Customer to Reflex under this Agreement and/or Service Schedule for the remainder of the duration of this Agreement and/or Service Schedule, as the case may be.
- 11.5. The aforesaid relief is without prejudice to any other rights which either Party may have in law.
- 11.6. The defaulting party, in the case of a breach, shall pay the aggrieved party's legal costs and disbursements on the scale as between attorney and own client.

12. DISPUTES AND ARBITRATION

- 12.1. If there shall be any dispute, controversy, or claim (a “**Dispute**”) between the Parties arising out of, relating to, or connected with this Agreement, the breach, termination, or invalidity hereof, or the provisions contained herein or omitted herefrom, the Parties will promptly meet in order to attempt to negotiate and settle such Dispute. Such meeting will take place in good faith at such time and place as agreed to by the Parties, or failing agreement, within 7 (seven) Days after the Parties have become aware of such Dispute, at Reflex's *domicilium*.

- 12.2. If the Parties are unable to resolve the Dispute referred to herein within 30 (thirty) days after a Party giving written notice of a Dispute to the other Party, such Dispute shall be finally settled by an arbitrator appointed by the Parties within 10 (ten) Days of either Party notifying the other of a Dispute. To the extent that the Parties cannot reach agreement on such appointment, the arbitrator shall be appointed and shall proceed in accordance with the Commercial Rules of Arbitration (the “**Rules**”) of the Arbitration Foundation of Southern Africa (the “**AFSA**”) in force at the time of such Dispute as the exclusive means of resolving such Dispute. All submissions and awards in relation to arbitration under this Agreement, all arbitration proceedings and all pleadings shall be made in English. Arbitration shall be held in Johannesburg, South Africa, unless another location is selected by mutual agreement of the Parties.
- 12.3. The decision of the arbitrator shall include a statement of the reasons for such decision and shall be final and conclusively binding upon the Parties and shall be enforceable against them in any court having jurisdiction over them or any of their assets. The Parties further agree to preserve the confidentiality of the entire arbitration and any award made in respect of the Dispute.
- 12.4. Nothing in this clause 12 shall prevent Reflex from approaching a court of competent jurisdiction for the relevant relief in the event that Customer has failed to make payment of any amounts due in terms of this Agreement.

13. DATA PROTECTION

- 13.1. The Parties acknowledge and agree that all Data provided by either of the Parties, or to which the Parties may be exposed, shall constitute Confidential Information and where applicable, Intellectual Property belonging to the Party disclosing such Data.
- 13.2. The Parties hereby warrant, represent, and undertake in favour of each other that:
- 13.2.1. they shall at all times strictly comply with all Applicable Laws and with all the provisions and requirements of any of Reflex’s data protection policies and procedures which may be in force from time to time; and
- 13.2.2. Reflex shall not, at any time process Data for any purpose other than with the express prior written consent of the Customer, and to the extent necessary to provide the Services to Customer; and it shall

ensure that all its systems and operations which it uses to provide the Services, including all systems on which Data is processed as part of providing the Services, shall at all times be of a minimum standard required by all Applicable Laws and be of a standard no less than the standards which are in compliance with the Best Industry Practice for the protection, control and use of Data.

- 13.3. The Parties shall take appropriate and reasonable technical and organisational measures to prevent the loss of, damage to, or unauthorised destruction of Data and the unlawful access to or processing of Data. The measures taken must at all times be of a minimum standard required by all Applicable Laws and be of a standard no less than the standards which are in compliance with Best Industry Practice for the protection, control, and use of Data.
- 13.4. Reflex shall take reasonable steps to identify all reasonably foreseeable internal and external risks posed to Data under Reflex's possession or control and establish and maintain appropriate safeguards against any risks identified. Reflex shall regularly verify that the safeguards are effectively implemented and keep a record of such verification. The safeguards shall be updated continually in response to new risks or deficiencies in previously implemented safeguards. Records kept must be available for inspection on 10 (ten) Days' notice, upon notice in writing from the Customer.
- 13.5. A Party shall immediately notify the other Party (i) of any risks posed to Data that it has identified; (ii) of the safeguards established by it to mitigate the impact of the risks; and (iii) that the safeguards have been effectively implemented.
- 13.6. A Party shall notify the other Party of any security compromises or suspected security compromises of which it becomes aware or suspects, immediately on becoming so aware or forming such a suspicion.
- 13.7. The Parties acknowledge and agree that the retention and destruction of records shall be in accordance with Applicable Laws.
- 13.8. The Customer shall defend, indemnify and hold harmless Reflex, its subsidiaries, affiliates and their respective officers, directors, employees, agents, successors and permitted assigns (each, an "**Indemnitee**") from and against all claims, losses, data breaches, damages, liabilities, deficiencies, actions or judgements, arising out of or resulting from any third party claim

against any Indemnitee arising out of or from the Customer's failure to comply with any of its obligations under this clause 13.

13.9. The Parties further acknowledge and agree that any breach of its obligations under this clause 13 shall be deemed a material breach of this Agreement.

14. INTELLECTUAL PROPERTY

14.1. Other than is provided for in this Agreement, all Intellectual Property rights belonging to Reflex shall remain the property of Reflex and the Customer will not acquire any right, title, or interest in and to such Intellectual Property.

14.2. Reflex (or its third party licensors) shall retain all rights, titles, and interests in and to its Intellectual Property supplied to the Customer in the rendering of Services.

14.3. The Customer may, as permitted by Reflex in writing, have access to and use Reflex's Intellectual Property as is necessary, solely for the purpose of the Customer utilising the Services and such use by the Customer must be in accordance with the provisions of this Agreement.

14.4. Should this Agreement be terminated and the Customer has in its possession any documents, diagrams, notes, memoranda, data, Intellectual Property or other records relating to the Confidential Information of Reflex and in any media whatsoever, including but not limited to a hardcopy, disc, back up tape and/or download onto the Customer's computer systems, the Customer undertakes to immediately return such documents, diagrams, notes, memoranda, data, Intellectual Property or other records to Reflex and shall not retain any copies or backups thereof or any extracts therefrom.

14.5. The obligations contained in clause 14.4 above shall be complied with within 7 (seven) days of termination of this Agreement.

15. FORCE MAJEURE

15.1. If any Force Majeure occurs in relation to either Party which affects or may affect the performance of any of the Customer or Reflex's obligations under this Agreement, it shall forthwith notify the other Party as to the nature and extent of the circumstances in question.

15.2. Neither Party shall be deemed to be in breach of this Agreement, or shall otherwise be liable to the other, by reason of any delay in performance, or the

non-performance, of any of the Customer or Reflex's obligations under this Agreement and (other than as to payment) to the extent that the delay or non-performance is due to any Force Majeure of which it has notified the other Party, the time for performance of that obligation shall be extended accordingly.

15.3. If the performance by either Party of any of its obligations under this Agreement is prevented or delayed by Force Majeure for a continuous period in excess of 30 (thirty) days the Parties shall enter into discussions with a view to agreeing upon such alternative arrangements as may be fair and reasonable.

16. NATURE OF RELATIONSHIP

16.1. This Agreement does not create a partnership, joint venture, or agency between the Parties.

16.2. Under no circumstances whatsoever shall either Party be liable for the debts of the other Party, howsoever incurred.

17. GENERAL WARRANTIES

17.1. Each of the Parties hereby warrants to and in favour of the other that:

17.1.1. it has the legal capacity and has taken all necessary corporate action required to empower and authorise it to enter into this Agreement;

17.1.2. this Agreement constitutes an agreement that is valid and binding on it and enforceable against it in accordance with its terms;

17.1.3. the execution of this Agreement and the performance of its obligations hereunder does not and shall not:

17.1.3.1. contravene any law or regulation to which that Party is subject;

17.1.3.2. contravene any provision of that Party's constitutional documents; or

17.1.3.3. conflict with or constitute a breach of any of the provisions of any other agreement, obligation, restriction or undertaking which is binding on it; and

17.1.3.4. to the best of its knowledge and belief, it is not aware of the existence of any fact or circumstance that may impair

its ability to comply with all of its obligations in terms of this Agreement;

17.1.4. it is entering into this Agreement as principal (and not as agent or in any other capacity);

17.1.5. the natural person who signs and executes this Agreement on its behalf is validly and duly authorised to do so; and

17.1.6. it is not relying upon any statement or representation by or on behalf of any other Party, except those expressly set forth in this Agreement.

17.2. Each of the representations and warranties given by the Parties in terms of clause 17.1 shall:

17.2.1. be a separate warranty and will in no way be limited or restricted by inference from the terms of any other warranty or by any other words in this Agreement;

17.2.2. continue and remain in force notwithstanding the completion of any or all the transactions contemplated in this Agreement; and

17.2.3. *prima facie* be deemed to be material and to be a material representation inducing the other Party to enter into this Agreement.

18. CHANGE OF CONTROL

In the event that the Customer undergoes a change of control of its shareholders by more than 20% (twenty percent), the Customer shall provide written notice of such change of control to Reflex and shall do all such things that may be necessary to ensure the continuity of this Agreement and the Service Schedule(s).

19. SUB-CONTRACTS

19.1. Reflex is entitled to utilise subcontractors to meet its obligations under this Agreement as well as any Annexures and/or Service Schedule(s) that may be applicable. Should Reflex utilise a subcontractor for the fulfilment of its obligations or a portion thereof, Reflex shall be responsible for the subcontractor's work and same shall be viewed as if Reflex had attended to same.

19.2. Reflex shall ensure that the subcontractors are subject to the same confidentiality undertakings as contained in this Agreement.

19.3. The Customer shall not be required to interact with the subcontractor unless otherwise agreed between the Parties.

20. INTERCEPTION OF COMMUNICATIONS

20.1. Reflex reserves the right to intercept, block, filter, copy, read, use, retain and/or monitor all communications directed at any of Reflex's personnel.

20.2. The Customer indemnifies and holds Reflex harmless against any costs, liabilities and damages that may result from a claim that a communication in terms of this clause was illegally intercepted, blocked, filtered, copied, read, used, retained and/or monitored.

21. LIMITATION OF LIABILITY

21.1. Nothing in this Agreement shall exclude or limit either Party's liability in relation to:

21.1.1. death or personal injury caused by negligence or wilful or reckless misconduct of that Party;

21.1.2. any Loss suffered as a result of any fraud (including without limitation any fraudulent misrepresentation) and/or any other criminal act which is committed by that Party;

21.1.3. any liability which cannot be excluded by law by that Party; and/or

21.1.4. clauses 13 (*Data Protection*), 14 (*Intellectual Property*), 22 (*Indemnity*), and 24 (*Confidentiality*).

21.2. Subject to clause 21.1, the Parties shall not be liable to each other for any indirect or consequential loss or damage, including loss of profit, revenue, anticipated savings, business transactions or goodwill or other contracts whether arising from negligence or breach of contract.

21.3. Notwithstanding the aforesaid, Reflex's liability in terms of this Agreement and/ or its Service Schedules shall be limited to an aggregated sum of Fees invoiced in the 4 (four) months preceding a date of loss and/or damage caused by Reflex to the Customer.

22. INDEMNITY

The Customer indemnifies, holds harmless and defends Reflex, its officers, employees, agents and representatives, from and against any claim, liability, loss or expense arising from any injury, loss or damage (including without limitation injury, loss or damage incurred by the Customer, its officers, employees, agents or representatives) arising directly through the acts or omissions of Reflex in relation to the Services to be provided in terms of this Agreement and its Service Schedules, save for those arising from gross negligence and/or intentional acts of Reflex.

23. TERMINATION

23.1. Either Party shall be entitled to give written notice to the other Party to terminate this Agreement with immediate effect, such termination to be effective upon receipt of such notice, in the event that the other Party:

23.1.1. commits a breach of any of the terms of this Agreement and, in the event that a breach is remediable, fails to remedy that breach within 10 (ten) Days of that Party being notified in writing of the breach;

23.1.2. takes steps to place itself, or is placed in liquidation, whether voluntary or compulsory and whether provisionally or finally;

23.1.3. takes steps to deregister itself or is deregistered;

23.1.4. ceases or threatens to cease to carry on business;

23.1.5. commits an act which would be an act of insolvency as defined by the Insolvency Act, No. 24 of 1936 if committed by a natural person; or

23.1.6. is subject to a *Force Majeure* event giving rise to a right to terminate this Agreement in accordance with clause 15; or

23.1.7. Reflex discovers illegal use by the Customer of its Services.

23.2. Either Party shall be entitled to give notice to terminate any Service Schedule and/or this Agreement summarily on the following basis:

23.2.1. Subject to the provisions of a Service Schedule and/or unless specified otherwise in the applicable Service Schedule, on 60 (sixty) days' written notice; or

- 23.2.2. Immediately by written notice if a suspension of a Service has continued for a period of at least 2 (two) consecutive months.
- 23.3. Should the Customer terminate this Agreement and/or any Service Schedule(s) prior to the lapsing of the applicable duration as detailed in the relevant Service Schedule(s), the Customer shall be liable for and shall pay Reflex an early termination fee equal to 100% (one hundred percent) of the sum of the Fees and charges that would have become due and payable by Customer to Reflex under the applicable Service Schedule(s) for the remaining duration of the Service Schedule(s), unless otherwise indicated in the applicable Service Schedule(s). The Customer shall pay the early termination fees to Reflex immediately upon termination of the applicable Service Schedule(s).
- 23.4. Without prejudice to any rights or obligations, upon termination of a Service Schedule and/or this Agreement:
 - 23.4.1. All accompanying Services in respect of such Service Schedule shall terminate immediately; and
 - 23.4.2. All Fees not yet invoiced shall become due and Invoices shall be issued and payable by Customer immediately upon receipt of Invoice.
- 23.5. The Parties acknowledge and agree that in the event a Party exercises a right to terminate a Service Schedule or this Agreement, the terminating Party shall use its best endeavours to mitigate any losses that it may suffer as a result of early termination.
- 23.6. On termination:
 - 23.6.1. The Parties shall promptly return all and any property of the other Party including *inter alia* Intellectual Property and Confidential Information, belonging to the other Party;
 - 23.6.2. the Customer will return any and/or all Products to Reflex Offices in accordance with the E-Waste disposal obligations as set out in clause 9.1.9;
 - 23.6.3. Reflex shall use its best endeavours to permanently delete from all computer and/or electronic media all Confidential Information belonging to the Customer in its possession or under its control, unless otherwise required in order to comply with its obligations in

law and/or for the purpose for which the information was obtained and/or excluded in terms of clause 24.2, and shall provide the Customer with a certificate confirming that it has not retained any Confidential Information; and

- 23.6.4. any rights of the Parties that arose or accrued prior to termination of this Agreement shall survive and continue in full force and effect but all other rights and obligations of the Parties shall cease immediately.
- 23.7. Termination of this Agreement shall not relieve a Party of obligations imposed upon such Party by statute or regulation or by this Agreement prior to its termination.
- 23.8. The exercise of any termination right by a Party shall be without prejudice to the Party's other rights and remedies under this Agreement.
- 23.9. Termination of a Service Schedule shall not affect any other Service Schedule then in existence or this Agreement unless such termination notice expressly states the termination of all Service Schedules in existence at the time of such notice.

24. CONFIDENTIALITY

- 24.1. To the extent of their right to do so, and as is required for each to perform their obligations hereunder, the Parties may exchange proprietary and Confidential Information. The following terms and conditions shall apply thereto:
 - 24.1.1. Confidential Information originated by the disclosing Party, not previously published or otherwise disclosed to the general public, not previously available to the receiving Party without restriction, not normally furnished to others without compensation, and which the disclosing Party desires to protect against unrestricted disclosure or competitive use, and which is furnished in writing pursuant to this Agreement;
 - 24.1.2. Confidential Information that is exchanged may be used only by the receiving Party in connection with the subject matter of this Agreement or in the performance of any contract award hereunder;
 - 24.1.3. the Parties shall not use or divulge to any person or office for any purpose not connected in this Agreement, any proprietary or Confidential Information disclosed to Reflex by the other Party in

connection with the performance of this Agreement, other than appropriate Client representatives;

24.1.4. the standard of care for protecting such Confidential Information, imposed on the Party receiving such information, will be that degree of care the receiving Party uses to prevent disclosure, publication, or dissemination of its own proprietary or confidential information;

24.1.5. no Party shall be liable for the inadvertent or accidental disclosure of proprietary or Confidential Information if such disclosure occurs despite the exercise of the same degree of care as such Party normally takes to preserve its own such data or information; and

24.1.6. the obligations of non-disclosure and non-use of proprietary or confidential Information imposed in the preceding clauses shall terminate 3 (three) years after termination of this Agreement.

24.2. Clause 24.1 is not applicable to:

24.2.1. Confidential Information which is or becomes lawfully known or available to the receiving Party from a source other than the disclosing Party, or which is or becomes in the public domain, and without breach of this Agreement by the recipient; or

24.2.2. information developed independently by the receiving Party without use of or reference to Confidential Information disclosed to it hereunder.

24.3. Nothing contained in this Clause 24 shall restrict any of the Parties from disclosing any portion of such Confidential Information on a restricted basis pursuant to a judicial or other lawful order, but only to the extent of such order.

24.4. Upon termination or this Agreement term lapsing for whatsoever reason, the Parties shall return and/or destroy any Confidential Information of the other Party that they may be in possession of.

25. ADDRESSES AND NOTICES

25.1. For the purposes of this Agreement, including the giving of notices and the serving of legal process (as applicable), the Parties choose *domicilium citandi et executandi* ("**domicilium**") at its address provided for in the Service Schedule and/or any other document supplied by such Party to the other Party.

25.2. Any Party may, upon written notice to the other Parties, amend the physical address chosen as its *domicilium* to another physical address in the Republic.

26. COSTS

Except as otherwise specifically provided herein, each of the Parties hereto will bear and pay their own legal costs and expenses of and incidental to the negotiation, drafting, preparation and implementation of this Agreement.

27. SIGNATURE

27.1. This Agreement is entered into between the Parties on the Signature Date.

27.2. This Agreement shall be capable of execution in counterparts, all of which when read together shall constitute one and the same document as at the Signature Date.

27.3. The persons signing and/or accepting the Service Schedule and/or this Agreement in a representative capacity warrant their authority to do so.

27.4. The Parties record that it is not required for this Agreement to be valid and enforceable that a Party shall sign and/or initial the pages of this Agreement and/or have its signature of this Agreement verified by a witness.

ANNEXURE “A” – DEFINITIONS, INTERPRETATION & GENERAL CLAUSES

1. DEFINITIONS

- 1.1. "**Affected Invoice**" means an Invoice and/or line item on an Invoice which is disputed by the Customer;
- 1.2. "**Agreement**" means this Master Services Agreement and its annexures attached thereto;
- 1.3. "**Applicable Laws**" means all national, provincial, local and municipal legislation, regulations, statutes, by-laws, consents and/or other laws of any relevant governmental authority and any other instrument having the force of law as may be issued and in force from time to time relating to or connected with the activities contemplated under this Agreement;
- 1.4. "**Best Industry Practice**" means the exercise of such skill, diligence, prudence, foresight and judgement that would be expected from a highly skilled, experienced and reputed person engaged in the provision of services similar to the Services at a world-class level;
- 1.5. "**Confidential Information**" means all information (written, oral or electronic) disclosed by one Party to the other Party whether before or after the Signature Date and concerning the business affairs of the disclosing Party including any Data, information relating to that Party's operations, processes, plans, intentions, product information, know-how, designs, trade secrets, software, market opportunities, customers and shall include this Agreement;
- 1.6. "**Customer**" means the Customer detailed on the Service Schedule(s);
- 1.7. "**Data**" means any data about either Party, either Party's customers, either Party's suppliers or employees, including, billing information, financial information and/or Personal Information as defined in applicable data protection legislation, including the Protection of Personal Information Act, No. 4 of 2013, as may be amended from time to time;
- 1.8. "**Days**" means business days and is exclusive of public holidays, Saturdays and Sundays;
- 1.9. "**domicilium citandi et executandi**" means the address at which the parties agree to accept service of all notices, documents, accounts and legal process;

- 1.10. "**Equipment**" means any equipment belonging to Reflex, its subcontractors, agents or assigns required in terms of the provision of the relevant Service in terms of the relevant Service Schedule;
- 1.11. "**Fees**" means the fees to be paid by the Customer for the Services in accordance with this Agreement and as set out in the relevant Service Schedule(s);
- 1.12. "**Force Majeure**" shall include *vis major, casis fortuitus*, act of God, strikes, lock outs, accidents, lightning, earthquakes, fire, storms, perils of the sea, floods, radiation or chemical or nuclear contamination, ionising radiation, explosions, war (whether declared or not) or other armed conflicts, sabotage, terrorist acts, blockades, embargoes, insurrections, epidemics, pandemics, invasion, hostile acts of foreign enemy, industrial disputes, arrests and restraints and/or restrictions imposed by any governmental authorities, and any other cause or circumstance beyond the reasonable control of a party and which has not arisen as a result of negligence or wilful act of a party or any person for whose acts a party is responsible in law;
- 1.13. "**Intellectual Property**" means all trademarks, trade names, service marks, and trade dress, whether registered or unregistered, and all goodwill associated with such trademarks, trade names, service marks, and trade dress; patents and any designs or applications for the same; copyrights and copyrightable works (including drawings, designs, graphics, artworks, whether in physical form or in analogue or digital form, and all drafts or preliminary versions of any of the foregoing); rights protecting goodwill and reputation, know how, domain names and Universal Resource Locators (URLs); databases and database rights; graphics; schematics; marketing material and marketing data; sales and user data; topography rights; trade secrets, including confidential know-how, Confidential Information, inventions, specifications, and processes; moral rights; computer software programs (in both source and object code form, and including any programmers' or developers' notes, flow charts, memoranda and design documents); application programming interfaces; protocols; and any renewal, extension, reissue, continuation, applications and/or registrations (whether pending or not) for any of the foregoing; and all rights or forms of protection of a similar nature to any of the foregoing or having equivalent effect anywhere in the world;

- 1.14. "**Invoice**" means the original tax invoice prepared by Reflex reflecting the Fees to be paid by the Customer to Reflex and which invoice conforms to this Agreement and the provisions of the VAT Act;
- 1.15. "**month**" means a calendar month, specifically, in reference to a number of months from a specific date, a calendar month commencing on that date or the same date of any subsequent month and in any other context, one of the 12 (twelve) months of the calendar and "**monthly**" has the corresponding meaning;
- 1.16. "**Party/ies**" means Reflex and/or Customer, individually or collectively as the context may require;
- 1.17. "**Personal Information**" means information relating to an identifiable, natural or juristic person, including but not limited to, information relating to race, gender, sex, marital status, nationality, ethnic or social origin, colour, sexual orientation, age, physical or mental health, religion, belief, disability, language, birth, education, identity number, telephone number, email, postal or street address, biometric information and financial, criminal or employment history as well as correspondence that is implicitly or explicitly of a private or confidential nature or further correspondence that would reveal the contents of the original correspondence;
- 1.18. "**Products**" means Reflex products and/or third party products that may be provided and/or sold by Reflex to the Customer;
- 1.19. "**Reflex**" means Reflex Solutions Proprietary Limited with registration number: 2007/029828/07;
- 1.20. "**Reflex Network**" means the communications network owned and/or operated by Reflex, including all devices and Equipment provided by Reflex that are used to provide the Services, including, without limitation, infrastructure, all terminal and other equipment, wires, fibre optic cables, lines, circuits, transmission equipment ports, routers, switches, cabinets, racks, private rooms, facilities and the like, but shall not include any equipment or devices owned by Customer or made available by Customer itself;
- 1.21. "**Reflex's Nominated Bank Account**" means the following bank account:

Account Holder	Reflex Solutions Proprietary Limited
Bank	First National Bank

Account type	Enterprise Business Account
Account number	6201 7705 750
Branch code	255805
Branch Name	Hyde Park
Swift Code	FIRNZAJJ

- 1.22. "**Republic**" means the Republic of South Africa;
- 1.23. "**Services**" means the services rendered and/or to be rendered by Reflex to the Customer as set out in this Agreement and/or the Service Schedule(s), as may be applicable;
- 1.24. "**Service Schedule**" means a service schedule, accepted quote, accepted purchase order and/or any other document provided by Reflex to the Customer which records the material terms applicable to the Products to be supplied and/or Service(s) to be rendered by Reflex to the Customer, which shall be annexed hereto at Annexure "**B**";
- 1.25. "**Signature Date**" means the date on which the Customer has signed and/or accepted the Service Schedule;
- 1.26. "**VAT**" means Value-Added Tax in terms of the VAT Act;
- 1.27. "**VAT Act**" means the Value Added Tax Act, Act 89 of 1991 as amended, of the Republic of South Africa, and/or any equivalent legislation of the jurisdiction(s) where the Services are being provided and/or performed; and
- 1.28. "**year**" means a period of 12 (twelve) consecutive months, and "**yearly**" refers to a year commencing on the Signature Date or any anniversary of that date.

2. INTERPRETATION

- 2.1. Words in the singular include the plural and *vice versa*;
- 2.2. Words importing any one gender includes the other and the neuter;
- 2.3. The headings of clauses are intended for convenience only and shall not affect the interpretation of this Agreement;

- 2.4. Any reference to a "person" include a natural person, company, close corporation or any other juristic person or other corporate entity, a charity, trust, partnership, joint venture, syndicate, or any other association of persons;
- 2.5. Any reference to a party includes that party's successors, permitted assigns and any of its subsidiaries;
- 2.6. Any reference to a document includes an amendment and/or supplement thereto and replacement and/or novation of the document;
- 2.7. Any reference to an enactment is to that enactment as at the date of signature hereof and as amended or re-enacted from time to time.
- 2.8. Any reference to a statutory provision include any subordinate legislation made from time to time under that provision and includes that provision as modified or re-enacted from time to time;
- 2.9. Effect shall be given to any provision that is a substantive provision conferring rights or imposing obligations on any party, notwithstanding that it is only in the definitions clause, it as if it were a substantive provision in the body of the Agreement;
- 2.10. If a definition imposes substantive rights and obligations on a party, such rights and obligations shall be given effect to and shall be enforceable, notwithstanding that they are contained in a definition;
- 2.11. Where any word is defined within the context of any particular clause in this Agreement, that word, unless it is clear from the clause in question that that word has limited application only to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this Agreement, notwithstanding that that word has not been defined in clause 1 hereof;
- 2.12. Expressions defined in this Agreement shall bear the same meanings in schedules or annexures to this Agreement which do not themselves contain their own definitions;
- 2.13. Any provision in this Agreement which is or may become illegal, invalid or unenforceable in any jurisdiction affected by this Agreement shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability and shall be treated as having not been written (*pro non scripto*) and severed from the balance of this Agreement, without invalidating the remaining

provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction;

- 2.14. The use of any expression covering a process available under South African law (such as but not limited to a winding-up) shall, if any of the parties is subject to the law of any other jurisdiction, be interpreted as including any equivalent or analogous proceeding under the law of such other jurisdiction;
- 2.15. The rule of construction that if general words or terms are used in association with specific words or terms which are a species of a particular genus or class, the meaning of the general words or terms shall be restricted to that same class (the *eiusdem generis* rule) shall not apply, and whenever the word "including" is used followed by specific examples, such examples shall not be interpreted so as to limit the meaning of any word or term to the same genus or class as the examples given;
- 2.16. The expiration or termination of this Agreement shall not affect such of the provisions of this Agreement which are expressly provided to operate after any such expiration or termination, or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the relevant provisions themselves do not provide for this;
- 2.17. Each of the provisions of this Agreement has been negotiated by the parties and drafted for the benefit of the parties, and accordingly the rule of construction that the contract shall be interpreted against or to the disadvantage of the party responsible for the drafting or preparation of the Agreement (the *contra proferentem* rule), shall not apply;
- 2.18. When any number of days is prescribed in this Agreement, same shall reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or public holiday, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday;
- 2.19. Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail; and
- 2.20. This Agreement is to be construed together with its annexures attached hereto.

3. GENERAL CLAUSES

- 3.1. This Agreement constitutes the entire agreement entered into by the Parties, and the Parties acknowledge that no further warranties or undertakings or representations (save for those herein contained) have been given or made to induce their conclusion of this Agreement.
- 3.2. No variation, cancellation, addition or deletion of any provision or part of any provision of this Agreement shall be of force and effect unless reduced to writing and signed by all of the Parties hereto or their agents, duly empowered in writing.
- 3.3. Any relaxation, indulgence, extension or waiver which one Party may grant or extend to the other, shall in no way affect or prejudice the rights of the former under this Agreement or in any respect be regarded as a waiver or novation of the former's rights in terms of this Agreement.
- 3.4. The grant of any indulgence by a Party under this agreement shall not constitute a waiver of any right by the grantor or prevent or adversely affect the exercise by the grantor of any existing or future right of the grantor.
- 3.5. Neither Party shall be entitled to assign any of its rights and obligations, nor cede any of its rights, nor delegate any of its obligations, under this Agreement without the express prior written consent of the other Party.
- 3.6. Each of the Parties undertakes at all times to do all such things, perform all such acts and take all such steps, and to procure the doing of all such things, within its power and control, as may be open to it and necessary for and incidental to the putting into effect or maintenance of the terms, conditions and import of this Agreement.
- 3.7. This Agreement shall be governed by South African law.
- 3.8. Without precluding any right to institute action/motion proceedings in the High Court, the Parties hereby consent to the jurisdiction of the Magistrates Court for any action/motion proceedings that might arise from this agreement, even in the event of the claim exceeding the jurisdiction of the Magistrate's Court.
- 3.9. This Agreement shall be capable of execution in counterparts, all of which when read together shall constitute one and the same document.
- 3.10. Whenever possible, each provision of this Agreement shall be interpreted in a manner which makes it effective and valid under South African law, but if any provision of this Agreement is held to be illegal, invalid or unenforceable under

any South African law, that illegality, invalidity or unenforceability shall not affect the other provisions of this Agreement, all of which shall remain in full force.

- 3.11. Save as is expressly provided for in this Agreement, no provision of this Agreement constitutes a stipulation for the benefit of a third person (i.e. a *stipulatio alteri*) which, if accepted by the person, would bind any Party in favour of that person.
- 3.12. This Agreement shall not have the effect of bringing into existence a partnership or quasi partnership between the Parties.
- 3.13. This Agreement shall be binding on and endure for the benefit of the Parties successors in title as fully and effectually as if they were a party to this Agreement.
- 3.14. The expiration or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.

**ANNEXURE "B" – SERVICE SCHEDULE(S), QUOTES, REFLEX ACCEPTED
PURCHASE ORDERS AND/OR ANY OTHER DOCUMENT(S) SUPPLIED BY REFLEX
AND ACCEPTED BY CUSTOMER**