


MASTER AGREEMENT


entered into by and between

Fixed Mobile Telecommunications (Pty) Ltd ("FMT")

Description and Registration Number	a private company registered in accordance with the laws of South Africa with registration number 2008/004436/07		
Physical Address	Block I, Third Floor, Hertford Office Park, 90 Bekker Rd, Vorna Valley, Midrand, 1686		
Email	notices@fixedmobile.com		
Marked for the attention of:	HJP Jansen		
Signed at	Midrand	Date	
			
Name	HJP Jansen	who warrants that they are duly authorised to sign	
Designation	MD		

and

Circle Tel SA (Pty) Ltd ("the Customer")

Description and Registration Number	a private company registered in accordance with the laws of South Africa with registration number: 2008/026404/07		
Physical Address	Devcon Park West House, 7 Autumn Road, Rivonia, Gauteng, 2128		
Email	Legal Notices: ashwynw@newgengroup.co.za melvinw@newgengroup.co.za		
Marked for the attention of:	Contracts and Commercial Manager		
Signed at	Rivonia	Date	26 June 2023
			
Name	Melvin Watkins	who warrants that they are duly authorised to sign	
Designation	CEO		

IN TERMS OF WHICH THE PARTIES AGREE AS FOLLOWS:

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1 DEFINITIONS AND INTERPRETATION

In this Agreement the following terms shall have the meanings set out below:

- 1.1 **"AFSA"** means the Arbitration Foundation of Southern Africa, or its successors in title provided that should AFSA or a successor not be in existence at any time, any appointment required to be made by AFSA shall be made by the Chairman of the Johannesburg Bar Council;
- 1.2 **"Anti-Corruption Laws"** means any anti-bribery, fraud, kickback, or other similar anti-corruption law or regulation to which FMT is the subject in carrying out the Services. Where relevant this may include the UK Bribery Act 2010, the US Foreign Corrupt Practices Act 1977 and the SA Prevention and Combating of Corrupt Activities Act 2004;
- 1.3 **"Agreement"** means this agreement and all Annexures, Service Definitions and/or schedules thereto;
- 1.4 **"Applicable Law"** means any of the following, from time to time, to the extent same applies to a Party, any Goods and/or the Services (including the performance, delivery, receipt or use of the Goods and/or Services, as applicable and wherever occurring):
 - 1.4.1 any statute, regulation, policy, by-law, directive, notice or subordinate legislation (including treaties, multinational conventions and the like having the force of law);
 - 1.4.2 the common law;
 - 1.4.3 any binding court order, judgment or decree;
 - 1.4.4 any applicable industry code, policy or standard enforceable by law; or
 - 1.4.5 any applicable direction, policy or order that is given by a regulator;
- 1.5 **"Business Day"** means any day other than a Saturday, Sunday or public holiday within the meaning of the Public Holidays Act, 1994, in the Republic of South Africa;
- 1.6 **"Business Hours"** means from 08h00 to 17h00 on a Business Day;
- 1.7 **"Confidential Information"** means information or data, whether disclosed orally or in writing, that is identified as being confidential or proprietary at the time of disclosure or which by its nature would generally be deemed in the information technology or telecommunications industry to be of a confidential nature and includes, without limitation the terms and conditions of this Agreement and any information relating to a Party's:
 - 1.7.1 business, business policies, business plans, pricing models, rate cards, Schedule of Services and other business and commercial information; and
 - 1.7.2 know-how, trade secrets, specifications, drawings, sketches, models, samples, data, diagrams and flow charts, and
 - 1.7.3 potential customers, customer lists, sales, sales figures and products; and
 - 1.7.4 technical information, including use of technology, systems, hardware, software (and the incidence of any faults therein) and related material and documentation; and
 - 1.7.5 past, present and future research and development;
- 1.8 **"CPI"** means the Consumer Price Index (metropolitan areas, all items) published in the Statistical News Release compiled by Statistics South Africa, or, in the absence thereof, a similar index nominated or prepared by FMT's auditors.
- 1.9 **"Customer Input"** means the inputs reasonably required of the Customer in order to enable FMT to provide the Services to the Customer, as set out in clause 5 and which may be expanded upon in the Service Definitions;
- 1.10 **"Customer Third Party Contracts"** means contracts between the Customer and third parties and **"Customer Third Party Contractor"** shall refer to the third party with whom the Customer has contracted in terms of any Customer Third Party Contract;
- 1.11 **"Effective Date"** means the earlier of:
 - 1.11.1 the date of signature of this Agreement by the Party signing last in time;
 - 1.11.2 the date of signature by the Customer of the initial Schedule of Services;
 - 1.11.3 the date on which Services commenced in terms of this Agreement, as evidenced by an itemised invoice issued by FMT that was paid by the Customer;

- 1.12 **"Excusable Delay"** means:
- 1.12.1 a force majeure event relied on by the Customer as contemplated in clause 19; or
 - 1.12.2 a failure by the Customer, or its Staff, to provide Customer Input to FMT timeously or within a reasonable period stipulated by FMT in any written request for such Customer Input or within any period agreed by the Parties in writing; and/or
 - 1.12.3 failure to provide Customer Input in the format required or where such Customer Input is defective, corrupted (in the case of data) or inaccurate; and/or
 - 1.12.4 changes a material decision which it has previously communicated to FMT; and/or
 - 1.12.5 unreasonably withholds an acceptance or consent.
- 1.13 **"Fees"** means the fees and charges to be paid by the Customer to FMT from time to time in terms of this Agreement, being *inter alia* any Service Fees, Setup Fees and any other fees as may be chargeable under this Agreement from time to time as detailed in the applicable Schedule of Services;
- 1.14 **"FMT Technology"** means the various concepts, ideas, methods, methodologies, procedures, processes, know-how, and techniques; models (including, without limitation, function, process, system and data models); templates; general purpose consulting and software tools, utilities and routines; and logic, coherence and methods of operation of systems which FMT has created, acquired or otherwise has rights in;
- 1.15 **"Initial Term"** means the period over which particular Services will be provided, commencing on the Service Commencement Date and enduring for the period set out in the Schedule of Services;
- 1.16 **"Installation Procedure"** means the structured project management process and steps for the implementation of Services;
- 1.17 **"Intellectual Property Rights"** means any and all rights in the nature of intellectual property rights anywhere in the world (whether registered or unregistered) owned, possessed or controlled by FMT, directly or indirectly, including, without limitation, patents, trademarks, service marks, design rights, copyright (including all copyright in any designs and computer software), source codes, moral rights, databases, trade or business names, whether capable of registration or not, but including any right to register same;
- 1.18 **"Line-item Service"** means each line item of the specific Services to be provided by FMT pursuant to this Agreement, as set out in the relevant Schedule of Services and which together comprise the Services;
- 1.19 **"Network"** means the network comprising all the equipment and/or network infrastructure used by FMT to provide the Services to the Customer;
- 1.20 **"Network Maintenance"** means planned repairs and improvements carried out from time to time to the Network by FMT;
- 1.21 **"Parties"** means, collectively, FMT and the Customer, and **"Party"** refers to either one of the Parties, as the context may require;
- 1.22 **"Personal Information"** means personal information about an identifiable, living, natural person and, where it is applicable, an identifiable, existing juristic person, as defined in POPIA from time to time;
- 1.23 **"POPIA"** means the Protection of Personal Information Act, 2013;
- 1.24 **"Prime Rate"** means the publicly quoted prime rate of interest (percent, per annum) from time to time charged by Nedbank Limited, as certified by any manager of such bank, whose appointment and authority it shall not be necessary to prove, calculated daily and compounded monthly in arrears;
- 1.25 **"Products"** means hardware or software, provided by FMT to the Customer in terms of this Agreement from time to time as set out in a Schedule of Services;
- 1.26 **"Pro rata Service Fees"** means the initial Service Fee payable by the Customer in respect of the first month of a Line-Item Service, being the period between the Service Commencement Date and the end of the first calendar month;
- 1.27 **"Ready for Service Certificate"** means a document electronically issued by FMT, indicating that the relevant Line-item Services is ready to commence;
- 1.28 **"Regulatory Change"** means any change in Applicable Law after the Effective Date which impacts on the Services and/or the manner in which they are performed by FMT or used by the Customer;
- 1.29 **"Security Threat"** means any activity which involves conduct which is known as "pharming", "phishing", "distributed denial of service attacks", "spam", "ransomware", "time bomb", "trojan horse", "worm", "malware", "virus" or other computer software

routine or code intended or designed to: (i) permit access to or the use of a computer system by an unauthorised person, or (ii) disable, damage, erase, disrupt or impair the normal operation of a computer system; (iii) damage, erase or corrupt data, storage media, programmes, equipment or communications, or (iv) otherwise interfere with operations of a computer system.

- 1.30 **"Schedule of Services"** means a document substantially in the form of Annexure 2 stipulating the specific Services and Products to be provided by FMT to the Customer in terms of this Agreement, together with the applicable Fees, Initial Term and other information relevant to the Services, as such Schedule of Services may be amended or supplemented to from time to time by the Parties in terms of the Variation Procedure;
- 1.31 **"Service Commencement Date"** means the date on which specific Line-item Services will commence, being the date on which the Ready for Service Certificate in respect of a Line-item Service is signed off, or deemed to have been signed off, by the Customer in terms of clause 4.2;
- 1.32 **"Service Definitions"** means the definitions of the Services to be provided by FMT to the Customer in terms of specific Schedule of Services, as attached to Annexure 3;
- 1.33 **"Service Fee"** means the monthly fee payable by the Customer in respect of the Line-Item Services provided in terms of this Agreement, as set out in the Schedule of Services;
- 1.34 **"Support Procedure"** means the defined support processes, structure and functions as may be applicable to the Services;
- 1.35 **"Services"** means the services to be provided by FMT to the Customer in terms of this Agreement, as set out in the relevant Schedule of Services and Service Definitions from time to time;
- 1.36 **"Setup Fee"** means the fees related to the initial setup of the Products and/or Services, as specified in the Schedule of Services;
- 1.37 **"Service Levels"** mean the qualitative and quantitative standards according to which the Services are to be provided, as set out in the Service Definitions;
- 1.38 **"Site"** means the sites to, or at which the Services will be provided as set out in the Schedule of Services;
- 1.39 **"Staff"** means any director, employee, agent, consultant, contractor or other representative of a Party involved in the provision or acquisition of the Services;
- 1.40 **"Terms of Use"** means FMT's terms of use applicable to the various services, as amended from time to time, as posted at www.fixedmobile.com, or such other URL as notified by FMT to the Customer in writing. Such terms of use may include, but not be limited to, support procedures and installation procedures;
- 1.41 **"Time and Materials Basis"** means the method of billing based on actual time spent and materials used, based on FMT's standard rates from time to time; and
- 1.42 **"Variation Procedure"** means the variation procedure set out in clause 10.

2 STATUS AND PRECEDENCE

- 2.1 This Agreement is an enabling agreement under which the Parties may from time to time agree to the provision of Products and/or Services by FMT by the completion of a Schedule of Services. All terms and conditions applicable to the specific Products and/or Services (in addition to the applicable terms and conditions contained in this Agreement) shall be set out in the Schedule of Services and applicable Service Definition to be signed by the Parties.
- 2.2 Except where provided to the contrary in a Schedule of Services and then only to the extent as specified, each Schedule of Services (informed by these terms and conditions) shall be a separate and legally binding contract under which the Customer agrees to purchase Products and/or Services. Insofar as any term and condition in any Schedule of Service and applicable Service Definition conflicts with this Agreement in respect of the description of the Products and/or Services, including specifications and pricing, the terms and conditions in the Schedule of Services and/or Service Definition will prevail. In any other matter the Agreement shall prevail.

3 APPOINTMENT AND DURATION

- 3.1 **Appointment.** The Customer hereby appoints FMT as the preferred provider to the Customer of the Products and Services and FMT hereby accepts such appointment.

3.2 **Duration.** This Agreement shall commence on the Effective Date and, subject to the rights of termination stipulated herein, continue thereafter until the termination or lapsing of all Services listed in the Schedule of Services.

3.3 **Line-item Services.**

3.3.1 Each Line-item Service contemplated in a Schedule of Service shall commence on the relevant Service Commencement Date and shall endure for the relevant Initial Term, whereafter it shall be automatically renewed for an indefinite period, subject to the right of either Party to terminate the specific Line-item Service at the end of its relevant Initial Term or any time thereafter:

3.3.1.1 on 3 calendar months' notice in respect of access port Services;

3.3.1.2 one calendar month's notice in respect of all other Services.

3.3.2 Notwithstanding the provisions of clause 3.3.1, the Customer may cancel a Line Item Service prior to the Service Commencement Date of such Line-item Service. Any such cancellation shall be by way of notice in writing by the Customer to FMT and shall be effective on receipt of such notice by FMT. Upon cancellation, FMT will be entitled to charge the Customer such costs and expenses that have actually been incurred by FMT, or obligations to which FMT has become contractually bound in respect of the Products and/or Services it was going to provide to the Customer, including any third party supplier costs, Staff costs, the cost of removing any equipment already installed or demobilising any Staff off the Customer's Site. The Customer agree that the termination fees payable in terms of this clause 3.3.2 are an agreed and reasonable pre-estimate of the costs and expenses incurred by FMT as a consequence of the cancellation of the relevant Line-item Service.

4 PRODUCTS AND SERVICES

4.1 **Provision of Products and Services.**

4.1.1 FMT shall during the term of this Agreement provide the Products and Services to the Customer in accordance with the terms of this Agreement, as read with the relevant Schedule of Services and Service Definitions. Products and/or Services will only be provided to the Customer upon receipt of a signed Schedule of Services and/or subsequent addendum to the Schedule of Services.

4.1.2 In addition, the Customer acknowledges and agrees it has read, understands and agrees to adhere to FMT's Terms of Use, as such terms may be amended by FMT from time to time, which Terms of Use are incorporated herein by this reference. FMT may notify the Customer of any such changes via email.

4.2 **Set-up of Services.**

4.2.1 FMT shall commence set-up of the Services in accordance with an implementation plan incorporated in the relevant Schedule of Services.

4.2.2 The set-up of the Services shall be undertaken by FMT in accordance with the network design submitted by FMT to the Customer, based on the information provided by the Customer. Whilst FMT shall use reasonable commercial endeavours to design an appropriate solution for the Customer, such design is strictly based on the information and requirements provided by the Customer and accordingly FMT cannot be held responsible for any error resulting from incorrect, inaccurate or incomplete information provided by the Customer.

4.2.3 For circumstances where a Cherry Picker is required for the installation of the port, FMT will advise the customer of such requirement after the site survey has taken place and will supply the Customer with a quotation for acceptance. Unless otherwise agreed between the parties, any cherry picker costs are for the Customer's account.

4.2.4 Upon completion of the set-up of each Line-item Services, the Customer shall be electronically issued with a Ready for Service Certificate to confirm that the relevant Line-item Services are ready to commence.

4.2.5 Should the Customer:

4.2.5.1 fail to sign off the Ready for Service Certificate in respect of any Line-item Services within 5 Business Days of the submission of the Ready for Service Certificate by FMT and fail to inform FMT of any problems with the set-up or configuration of specific Line-item Services within such period ("**Acceptance Period**"); or

4.2.5.2 commence use of any Line-item Services;

it shall be deemed to have signed-off on the relevant Line-item Services on the earlier of the date on which it commences use of the Services or the Acceptance Period lapses.

5 CUSTOMER INPUT

In order to enable FMT to provide the Services in terms of this Agreement, the Customer shall, to the extent required by FMT and at the Customer's cost:-

- 5.1 ensure that FMT and its Staff have reasonable access to all relevant Sites, which access is required to enable FMT to fulfil its obligations in terms of this Agreement;
- 5.2 ensure that the Customer provides electricity services, access to networks, required information at each Site;
- 5.3 make available sufficiently competent and authorised resources, with appropriate access rights and permissions, to assist FMT and consider all requests by FMT for consent or authorisation without any delay, having regard to the nature of the request and the impact which any delay in such consent or authorisation may have on the provision of Services pursuant to this Agreement;
- 5.4 comply with all reasonable policies, procedures and instructions of FMT in respect of the provision of Services pursuant to this Agreement;
- 5.5 take commercially reasonable measures to ensure that no Security Threat is created, facilitated or introduced with respect to FMT's systems by the Customer's Staff, third party and/or any subscriber; and
- 5.6 provide all such other assistance and support as may be contemplated in this Agreement.

6 COMPLIANCE

- 6.1 **Regulatory compliance.** The Customer has sole responsibility to ensure that the information it and its users transmit and receive over the Network complies with all applicable laws and regulations.
- 6.2 **Acceptable use.** The Customer hereby agrees that in using the Services it shall at all times comply, and shall procure that its Staff at all times comply, with FMT's Terms of Use.
- 6.3 **Security Policies.** The Customer shall be required to implement:
 - 6.3.1 its own acceptable use policy; and
 - 6.3.2 any further requirements designed to enhance to usability as communicated by FMT and agreed upon in writing by the Parties.
- 6.4 **Suspension of Network Service:** is If the security or integrity of the Network compromised for any reason whatsoever, FMT shall have the right to suspend access, either wholly or in part, to the Services and/or the Network provided that:
 - 6.4.1 FMT takes reasonable measures to advise the Customer of such suspension prior to suspending the Services and/or access to the Network;
 - 6.4.2 FMT takes proactive steps to ensure that the Services and/or Network suspension is uplifted as soon as reasonably possible; and
 - 6.4.3 a root cause analysis and future avoidance advice is provided to the Customer.
- 6.5 **Regulatory or statutory changes to Services:** Notwithstanding the provisions of clause 10, should any Regulatory Change arise during the term of this Agreement, FMT shall promptly analyse the impact of such Regulatory Change on the Services, and where reasonably possible, based on the resource and other requirements to effect any such change, shall incorporate the change without any increase in the Fees or charges. Where an additional fee or increase is required, FMT shall:
 - 6.5.1 notify the Customer of such increase or additional fee, and propose to the Customer changes to the Services, if any, that are, or in the case of a proposed change, may be, required for FMT to modify the Services to address the Regulatory Change;
 - 6.5.2 quote a reasonable fixed price for effecting any required changes and, without limiting the generality of the foregoing, such fixed price shall not exceed the market price for such services taking into account the risk associated with and circumstances surrounding the implementation of the changes required by the Regulatory Change;

- 6.5.3 the Customer shall review the proposal or fixed price submitted by FMT, and upon the Customer's written approval, FMT shall promptly implement such changes to the Services as well as any other changes requested by the Customer and reasonably required as a consequence of the Regulatory Change;

provided that should the Parties be unable to agree on any variation in the price pursuant to a Regulatory Change, FMT may terminate this Agreement on 90 days written notice to the Customer.

7 STAFF

- 7.1 **Compliance with procedures.** FMT shall comply, and ensure that its Staff comply, with any practices and procedures including (but not limited to) any policies, security and access policies, safety, health and environmental policies which are of general application to the Customer's Staff at any Site to which or at which the Services are provided. The Customer shall notify FMT of all such policies and procedures prior to the Effective Date, as the case may be, and give FMT and the relevant Staff no less than 5 days written notice of any change in existing policies or the implementation of new policies.
- 7.2 **Staff shall work under FMT direction.** Unless specifically agreed otherwise between the Parties, FMT's Staff shall at all times be subject to and work under the direction and control of FMT.
- 7.3 **Disciplinary action and incapacity counselling.** FMT will be exclusively responsible for taking disciplinary action against its Staff in accordance with its own disciplinary code and counselling procedures.

8 EXCUSABLE DELAY

In the event of an Excusable Delay arising:

- 8.1 the time for FMT's performance shall be extended on a reasonable basis in proportion to the prejudice caused by the Excusable Delay and FMT may charge for any additional hours required to execute the Services or remedy the Excusable Delay on a Time and Materials Basis;
- 8.2 if an amount would have been payable to FMT by the Customer had it not been due to an Excusable Delay, FMT shall be entitled to:
- 8.2.1 invoice the Customer for work actually completed to date, including (if applicable) the Set-Up Fees; and
- 8.2.2 at its election, commence or continue billing of the applicable Services Fees;
- 8.3 FMT shall not be liable for any failure to provide any Services in terms of this Agreement where such failure is a result of any Excusable Delay.

9 CUSTOMER THIRD PARTY CONTRACTORS

- 9.1 **Applicable provisions.** Where FMT is required to manage or liaise with Customer Third Party Contractors, the following provisions will apply:-
- 9.1.1 the Customer shall notify FMT in writing of the applicable terms and conditions of the Customer Third Party Contracts insofar as they relate to or have an impact on FMT's obligations in terms of this Agreement; and
- 9.1.2 the Customer shall be responsible for obtaining and maintaining all necessary licences, consents or authorities under the Customer Third Party Contracts (including, without limitation, any consents or licences required to enable FMT to fulfil its obligations in terms of this Agreement) and shall be liable for all fees and other charges payable to any third party pursuant to the Customer Third Party Contracts.
- 9.2 **No liability.** FMT shall not be liable for any act or omission of a Customer Third Party Contractor.

10 VARIATION PROCEDURES

- 10.1 **Request for new Products and/or Services.** Should the Customer at any time request additional Products and/or Services the Customer shall submit a request to FMT detailing the nature and scope of the services and/or the specifications and quantity of the Products and/or Services.
- 10.2 **Amendments to Services.** Should the Parties require an amendment to the nature or scope of Products and/or Services currently being provided by FMT to the Customer, including any upgrades and/or downgrades of Services, the Party requesting the change shall submit a request to the other Party in writing setting forth the details of such change.

- 10.3 **Sign-off.** In respect of both clause 10.1 and 10.2 the Parties shall discuss the proposed new Products and/or Services and/or amendments to existing Products and/or Services (as applicable) and shall in the event of new Products and/or Services effect such amendments by the way of signing a new Schedule of Services and in the case of the amendment to existing Products and/or Services, the Parties shall amend the current Schedule of Services and/or sign an addendum to the existing Schedule of Services.
- 10.4 **No amendment effective until sign-off.** Neither FMT nor the Customer shall be entitled to proceed or require the implementation of any new Products and/or Services or amendment to the existing Products and/or Services pursuant to this clause 10 until such changes and/or amendment and all matters relating thereto have been agreed in writing between the Parties in accordance with the provisions of this clause 10. Pending sign-off as aforesaid, the Parties will continue to perform their obligations without taking account of the proposed amendments and/or changes. Neither Party shall be obliged to agree to any proposed by the other Party but the Parties will not unreasonably delay or withhold their agreement to a proposed changes and/or amendments.

11 CONSIDERATION

- 11.1 **Consideration.** As consideration for the provision of the Products and the Services pursuant to this Agreement, the Customer shall pay FMT the Setup Fee, any Pro rata Services Fees and Service Fees set out in the relevant Schedule of Services.
- 11.2 **VAT.** All amounts stipulated in this Agreement are, unless otherwise indicated, stipulated exclusive of Value-Added Tax, which shall be payable by the Customer at the applicable rate.
- 11.3 **Setup Fees.** Setup Fees and Pro rata Service Fees are invoiced by FMT in arrears and are payable within 15 days of FMT's invoice in respect thereof, or as may otherwise be provided in the relevant Service Definition.
- 11.4 **Service Fees.** Service Fees are invoiced by FMT monthly in advance and are payable within 15 days of FMT's invoice in respect thereof.
- 11.5 **Invoices.** FMT shall provide the Customer with a detailed VAT invoice in respect of all Fees payable pursuant to this Agreement. Such invoice may be in electronic or hardcopy format and may be sent by email.
- 11.6 **Payments.** All payments by the Customer must be made in South African Rand, free of set-off, deduction and bank charges, by electronic fund transfer, unless otherwise agreed in writing. Payments must be paid directly into FMT's bank account, notified by FMT to the Customer in writing. The Customer bears all risk of payment via EFT and shall not process any change in bank account details unless it has confirmed any such change with a director of FMT.
- 11.7 **Overdue amounts.** If the Customer fails to make any payment on the due date, FMT may, without prejudice to any of its rights, charge the Customer interest on the overdue amounts at the Prime Rate, plus any additional costs incurred by FMT related to collections as a result of Customer's failure to make any payment on the due date.
- 11.8 **Suspension of Services.** In addition, FMT shall be entitled, without liability, to suspend the Services for any period during which any Fees (including all interest thereon) are outstanding or in arrears, provided that FMT shall give the Customer no less than 5 Business Days written notice (which shall include by way of e-mail) of its intention to suspend the Services.
- 11.9 **Disputes relating to the calculation or quantum of any payment or whether payment is due and payable.** Subject to the provisions of sub-clause 11.11 below, if the Customer (acting in good faith) disputes the calculation or quantum of any payment (or part thereof) or whether the payment (or part thereof) is due and payable, then such dispute shall be referred to a senior manager of both parties for resolution. If no resolution is achieved within 10 Business Days after the matter was referred for resolution, the Parties shall proceed in terms of clause 18 below. Irrespective of this provision, any and all amounts not in dispute shall be paid on the due date thereof.
- 11.10 **Deemed Acceptance.** In the event that the Customer wishes to lodge a dispute in accordance with clause 11.9 above, then the Customer shall be obliged to do so within 7 Business Days of the date of the disputed invoice, failing which the Customer shall be deemed to have accepted the amount owing in respect of such invoice;
- 11.11 **Escalations.**
- 11.11.1 FMT's Fees shall escalate in accordance with CPI every 12 months reckoned from the Service Commencement Date, unless otherwise agreed between the Parties.
- 11.11.2 In addition, if:

- 11.11.2.1 there is a subsequent price increase on components of the Products and/or Services as a result of Regulatory Change and/or tariff changes; and/or
- 11.11.2.2 there be a changes in any exchange rate which affects the cost to FMT of providing the Services;,
FMT shall be entitled to increase the affected Fees by the rand value of the increase but in proportion to the Products and/or Service provided after written notification to the Customer.
- 11.12 **No set-off.** The Customer will not be entitled to withhold payment of any amount payable in terms of this Agreement to satisfy any claim against FMT arising from this or any other agreement with FMT, nor will the Customer be entitled to set off any such amount payable in terms of this Agreement against any amount owing to it by FMT in terms of this or any other agreement.
- 11.13 **Back-billing.** FMT may include on any invoice any amount not previously billed for periods prior to the current month, provided that FMT shall not be entitled to pull any amounts which were incurred more than 6 months prior to the date of invoice.

12 INTELLECTUAL PROPERTY

The Customer acknowledges that any and all Intellectual Property Rights proprietary to FMT are and shall remain the property of FMT. The Customer shall not for the duration of this Agreement, or at any time after termination or cancellation or expiration of this Agreement, acquire or be entitled to claim any right or interest therein or in any way question or dispute the ownership thereof.

13 FMT WARRANTIES

13.1 *Intellectual Property Warranties*

- 13.1.1 FMT warrants that no aspect of the provision of the Products and/or Services or any FMT Technology will infringe any Intellectual Property Rights of any third party, and FMT shall, at its cost, defend the Customer against any such claim, provided that in respect of all such claims, the Customer:-
- 13.1.1.1 gives prompt notice to FMT of such claim and FMT has the election to control the defence thereof;
- 13.1.1.2 takes all reasonable steps to mitigate any loss or liability in respect of the claim; and
- 13.1.1.3 does not compromise or settle the claim in any way without FMT's prior written consent.
- 13.1.2 Should any third party succeed in its claim for the infringement of any Intellectual Property Rights, FMT shall, at its discretion and within 30 days of the infringing item having been found to so infringe, undertake one or more of the following actions:-
- 13.1.2.1 obtain for the Customer the right to continue using the infringing item or the parts thereof which constitute the infringement;
- 13.1.2.2 replace the infringing item or the parts thereof which constitute the infringement with another product which does not infringe and which in all respects operates substantially in accordance with the specifications thereof;
- 13.1.2.3 alter the infringing item in such a way as to render it non-infringing while still in all respects operating substantially in accordance with the specifications thereof; or failing any of the above, or
- 13.1.2.4 withdraw the infringing item and refund to the Customer all fees paid by it to FMT in respect of such item, pro-rated on a 3-year straight line depreciation;
- provided that the above remedies shall be the Customer's sole remedies in respect of any breach of this warranty.
- 13.2 **Exclusions.** FMT shall not be liable under the provisions of this clause 13.1 for any claim which arises out the provision by FMT of Products and/or Services to the Customer which are procured from or proprietary to third parties.
- 13.3 **Disclaimer of warranties.** FMT hereby excludes and disclaims all warranties, whether express or implied, statutory or otherwise, except those warranties expressly made in this Agreement. Without limiting the foregoing FMT hereby disclaims all warranties of fitness for purpose and in respect of third party software applications and hardware utilised by or licensed to the Customer by any third party or by FMT pursuant to this Agreement.
- 13.4 **Survival.** This clause 13 shall survive termination of this Agreement.

14 CONFIDENTIAL INFORMATION

- 14.1 **Confidentiality obligation.** Each Party ("**the Receiving Party**") must treat and hold as confidential all Confidential Information of the other Party ("**the Disclosing Party**") to which they have access or which otherwise becomes known to them during the currency of this Agreement.
- 14.2 **Exceptions.** The obligations of confidentiality contained herein shall not apply to any confidential information which the Receiving Party thereof can show (and it shall be for the Receiving Party to prove this by documentary evidence):
- 14.2.1 is, at the time of disclosure to the Receiving Party by the Disclosing Party, within the public domain and could be obtained by any person with no more than reasonable diligence; or
 - 14.2.2 comes into the public domain and could be obtained after such disclosure, otherwise than by reason of a breach of any of the undertakings contained in this Agreement; or
 - 14.2.3 is, at the time of such disclosure, already within the possession of the Receiving Party, or it has been independently developed by the Receiving Party; or
 - 14.2.4 is subsequently provided to the Receiving Party by a person who has not obtained such information from the Disclosing Party, provided that, in any such case, such information was not obtained illegally or disclosed by any person in breach of any undertaking or duty as to confidentiality, whether express or implied; or
 - 14.2.5 is disclosed with the written approval of the Disclosing Party; or
 - 14.2.6 is or becomes available to a third party from the Disclosing Party on an unrestricted basis; or
 - 14.2.7 is obliged to be reproduced under order of a court or government agency of competent jurisdiction or in satisfaction of the requirements of any stock exchange or other regulatory authority.
- 14.3 **Duties of Parties.** The Receiving Party therefore agrees to hold such Confidential Information in the strictest confidence, not to make use thereof other than for the performance of the obligations under this Agreement, to release it only to Staff and professional advisors requiring such information on a need-to-know basis and not to release or disclose it to any other person.
- 14.4 **Obligation prior to disclosure.** The Receiving Party shall procure that any party to whom it validly discloses the confidential information of the Disclosing Party, as contemplated in this clause 14.3 undertakes to respect the secret, confidential and proprietary nature thereof.
- 14.5 **Survival.** The Parties agree that the provisions of this clause will survive the termination of this Agreement for a period of 2 years from date of termination of this Agreement.

15 LIMITATION OF LIABILITY

- 15.1 **Limitation of direct damages.** Notwithstanding the form (whether in contract, delict, or otherwise) in which any legal action may be brought, and subject to the provisions of clause 15.2, FMT's maximum liability for general and/or direct damages for any claim arising out of this Agreement or any negligent misconduct or omission arising during the course of fulfilling its obligations in terms of this Agreement, shall be limited to an aggregate amount of all the Fees paid by the Customer to FMT for the Services in respect of which such liability arises during the 12 month period preceding the date on which the relevant cause of action first arose. Such maximum amount shall be an aggregate amount for all claims thus arising.
- 15.2 **Exclusion of damages.** Neither Party shall be liable for any loss of profits, goodwill, business, clients, contracts, revenue, investment return, investment performance the use of money, contractual penalties imposed by third parties, anticipated savings or data (whether such loss is direct, indirect, consequential or otherwise); or any special, indirect or consequential loss and such liability is excluded whether it is foreseen, foreseeable, known or otherwise.
- 15.3 **Carveout.** The Parties acknowledge that the exclusions contemplated in this clause 15 shall not apply to any breach by a Party of the provisions of clauses 12 and 14 or to any amounts due and payable by the Client to the Contractor for Goods or Services actually provided in terms of this Agreement.

16 BREACH

Should either Party ("**the Defaulting Party**"):

- 16.1 commit a material breach of this Agreement, and fail to remedy such breach within 14 days of having been called upon in writing by the other Party ("**the Aggrieved Party**") to do so; or

- 16.2 be provisionally or finally wound up, whether voluntarily or compulsory; or
- 16.3 make any arrangement with its creditors, or be placed under business rescue;
- 16.4 cease or threaten to cease to carry on its normal line of business in the Republic of South Africa or default or threaten to default in the payment of its liabilities generally, be unable to pay its debts as described in Section 345 of the Companies Act, 1973, or commit any act or omission which would, in the case of an individual, be an act of insolvency in terms of the Insolvency Act, 1936; or
- 16.5 have any judgment granted against it (which is not subject to appeal or, if it is, such appeal is not diligently pursued) or the passing of any resolution, for the dissolution and/or liquidation of such Party except for the purposes of amalgamation or reconstruction on terms approved in advance by the other Party in writing;
- 16.6 or any of its Directors be found guilty of any crime involving dishonesty, bribery or corruption or otherwise be guilty of conduct which in the reasonable opinion of the Aggrieved Party brings, or is likely to bring, the Aggrieved Party into disrepute; or
then the Aggrieved Party may, at its election, terminate this Agreement on written notice to the Defaulting Party, in which event such termination shall be without prejudice to any claims which the Aggrieved Party may have for damages against the Defaulting Party occasioned by the termination of this Agreement in terms of this clause.

17 EFFECT OF TERMINATION

- 17.1 **Amounts due payable.** On termination of this Agreement, a Schedule of Services or any Line Item Service, all amounts due and payable, including unamortised expenses and reasonable costs incurred as a consequence of the termination shall become due and payable even if they have not been invoiced. Such amounts may not be withheld by the Customer for any reason.
- 17.2 **Termination.** Upon termination, cancellation or expiry of this Agreement:
 - 17.2.1 the provision of all Services shall forthwith cease; and
 - 17.2.2 any Products and/or equipment belonging to FMT and utilised by the Customer during the term of the Agreement shall be returned to FMT;
 - 17.2.3 each Party will deliver to the other Party, or at the other Party's option destroy, and procure the delivery of or destruction of all originals or copies of Confidential Information and proprietary materials in its possession or under its control.
- 17.3 **Survival.** Termination of this Agreement shall not affect the enforceability of the provisions which are intended to operate after such expiry or termination.

18 DISPUTE RESOLUTION

- 18.1 **Committee.** Any dispute which arises between the Parties shall be referred to a joint dispute resolution committee ("DRC") of a Director of each of the Parties, or alternates appointed by them, which DRC will use its best endeavours to resolve the dispute within 14 days of the dispute having been referred to it.
- 18.2 **Technical disputes.** If so agreed by the DRC, any dispute of a technical nature concerning the interpretation of any specifications or requirements or relating to the functions or capabilities of the Products, may be referred by the DRC, together with reasons for referring the matter, to an independent expert agreed between the Parties, or failing agreement, appointed by the Arbitration Foundation of Southern Africa ("AFSA") for final settlement. Such expert shall be deemed to act as an expert and not as an arbitrator. The decision of the expert shall (in the absence of clerical or manifest error) be final and binding on the Parties and the expert's fees for so acting shall be borne by the Parties in equal shares unless the expert determines that the conduct of either Party was such that it should bear a greater proportion or all of such fees.
- 18.3 **Failure to resolve.** Should the DRC be unable to agree on whether a dispute is technical or not, or if it is unable to resolve a dispute in accordance with the foregoing, such dispute will be finally resolved in accordance with the Rules of AFSA by an arbitrator agreed between the Parties, or failing such agreement, appointed by AFSA.
- 18.4 **Demand for arbitration.** Either Party may demand that a dispute be referred to arbitration by giving written notice to that effect to the other Party.
- 18.5 **Urgent interim relief.** This clause shall not preclude either Party from obtaining interim relief on an urgent basis from a court of competent jurisdiction pending the decision of the arbitrator.

- 18.6 **Arbitration provisions.** The arbitration referred to in clause 18.3 shall be held:-
- 18.6.1 at Johannesburg in the English language; and
- 18.6.2 immediately and with a view to its being completed within 21 days after it is demanded.
- 18.7 **Right of appeal.** The Parties irrevocably agree that the submission of any dispute to arbitration in terms of this clause 18 is subject to the Parties' rights of appeal. Either Party may appeal the arbitration ruling by giving written notice to that effect to the other Party to the arbitration within 20 days of the ruling being handed down. The appeal shall be dealt with in accordance with the rules of AFSA by a panel of 3 arbitrators appointed by AFSA for this purpose.
- 18.8 **Parties to be bound.** The Parties irrevocably agree that upon expiry of the 20 day period for appeal or the handing down of the ruling of the appeal panel, as the case may be, as contemplated in clause 18.7, the decision in arbitration proceedings:-
- 18.8.1 shall be final and binding upon the Parties;
- 18.8.2 shall be carried into effect; and
- 18.8.3 may be made an order of any court of competent jurisdiction.
- 18.9 **Interruption of Prescription.** The Parties agree that the demand by a Party to submit a dispute to arbitration in terms of this clause 18 shall be deemed to be the required legal process to interrupt prescription in terms of the Prescription Act, 1969.
- 18.10 **Costs.** The costs of the arbitration shall be borne by the Parties in equal shares, unless otherwise determined by the arbitrator.
- 18.11 **Severability.** This clause 18 is severable from the rest of this Agreement and shall remain valid and binding on the Parties notwithstanding any termination of this Agreement.

19 NOTICES AND COMMUNICATION

- 19.1 **Addresses.** Each Party selects:
- 19.1.1 as the address at which documents in legal proceedings in connection with this Agreement may be served on it (its *domicilia citandi et executandi*) the physical address stipulated under such Party's name on the first page of this Agreement;
- 19.1.2 the physical address and the e-mail address under such Party's name on the first page of this Agreement, as the addresses at which notices, communications or documents in connection with this Agreement may be delivered to it;
- or such replacement address notified in writing to the other Party, provided that such replacement address shall only become effective 5 Business Days after the giving of such notice.
- 19.2 **Marked for the attention of.** Any notice or other communication to a Party must be in writing. It must be addressed to the person or designation stipulated under a Party's name on the first page of this Agreement, or such other person or designation notified in writing to the other Party.
- 19.3 **Deemed delivery.** Any communication, notice or document made or delivered by one Party to the other in connection with this Agreement will:
- 19.3.1 if delivered by hand or by courier at the other Party's selected physical address and addressed to the person or designation contemplated in clause 19.2, be deemed to have been received on the Business Day on which it is delivered during Business Hours;
- 19.3.2 if delivered by e-mail to the other Party's selected e-mail address and addressed to the person or designation contemplated in clause 19.2:
- 19.3.2.1 before 15h00 on a Business Day, be deemed to have been received on such Business Day;
- 19.3.2.2 after 15h00 on a Business Day or at any time on a day which is not a Business Day, be deemed to have been received on the first Business Day following delivery;
- provided that the sender has received a return email from the addressee of the email confirming delivery to, or receipt by, the addressee of that email (it being the responsibility of the sender of that email to obtain such confirmation).
- 19.4 **Use of email.** Notwithstanding anything to the contrary contained in this Agreement, a Party may not deliver a notice in terms of clause 16 to the selected e-mail address of the Defaulting Party, it being agreed that such notice must be delivered at the Defaulting Party's selected physical address.

- 19.5 **Notice actually received.** Notwithstanding anything to the contrary stated above, if a notice or communication is actually received by a Party, adequate notice or communication shall have been given, even though it was not delivered in a manner described above.

20 FORCE MAJEURE

- 20.1 **Failure to Fulfil Obligations.** Neither Party shall be liable for any failure to fulfil its obligations under this Agreement if such failure is caused by any circumstances beyond its reasonable control, including flood, fire, earthquake, war, tempest, hurricane, industrial action, government restrictions or acts of God.
- 20.2 **Right to Cancel the Agreement.** Should either Party be unable to fulfil a material part of its obligations under this Agreement for a period in excess of 30 days due to circumstances beyond its reasonable control, as recorded in clause 20.1, the other Party may cancel this Agreement forthwith by written notice.

21 PROTECTION OF PERSONAL INFORMATION

- 21.1 **Access to Personal Information.** FMT acknowledges that in providing the Services to the Customer, it may have access to Personal Information of the Customer and other data subjects.
- 21.2 **Data protection compliance.** FMT hereby warrants in favour of the Customer that it shall, in respect of personal data protection, comply strictly with all relevant legislation and with all the provisions and requirements of the Customer's reasonable data protection policies and procedures (including encryption standards) in force from time to time and notified to the Supplier, and any further requirements of which the Customer may advise the Supplier in writing, or which may be required by legislation, regulation or any relevant industry body, whether within South Africa or elsewhere in the world.
- 21.3 **Standard of care.** FMT shall use the same degree of care, but never less than a reasonable degree of care, to prevent unauthorised use, dissemination or publication of Personal Information, as it uses to protect its own information of similar nature, and will implement any technical and organisational measures to protect Personal Information which are required to comply with any applicable legislation.
- 21.4 **Specific undertakings.** FMT specifically agrees:
- 21.4.1 it shall not, at any time copy, compile, collect, collate, process, mine, store, transfer, alter, delete, interfere with or in any other manner use Personal Information for any purpose other than to the extent necessary to provide the Services to the Customer;
- 21.4.2 to act only in accordance with the requirements of this Agreement and any instructions from the Customer in connection with protecting, collecting, storing, exporting, transferring and otherwise processing of Personal Information;
- 21.4.3 not to copy, reproduce, alter, delete, or transfer any data or Personal Information without the express written permission of the Customer except as technically necessary to comply with the requirements of this Agreement;
- 21.4.4 to inform the Customer promptly in writing if it becomes aware of any unauthorised use or disclosure of Personal Information by itself or others; and
- 21.4.5 to inform the Customer promptly in writing if the Supplier is of the opinion that any instruction from the Customer violates the applicable personal data protection regulations and/or legislation.
- 21.5 **Customer Warranty.** The Customer hereby warrants that it is entitled to disclose the Personal Information of third parties to the Supplier on the basis contemplated in this clause and that it has acquired the consent of such data subjects to the further processing of such information by the Supplier and has otherwise complied with its obligations in terms of relevant data protection legislation regarding the collection and processing. The Customer hereby indemnifies and holds the Supplier harmless against any fines or claims to which the Supplier may be exposed as a result of a breach by the Customer of the warranties contemplated in this clause.

22 ANTI-CORRUPTION

- 22.1 **Customer Obligations.** Each Party ("**the Promisor**") undertakes to the other Party ("**the Promisee**") that it:
- 22.1.1 will fully comply with, and will procure that all its Staff fully comply with, the Anti-Corruption Laws;
- 22.1.2 will not do, or omit to do, any act that will cause the Promisee to be in breach of the Anti-Corruption Laws;

- 22.1.3 has in place and shall maintain in place throughout the term of this Agreement, policies and procedures to ensure compliance with the Anti-Corruption Laws and will enforce them as appropriate. At the Promisee's request, it will disclose such policies and procedures to the Promisee;
- 22.1.4 will make it clear to its Staff, that it does not accept or condone the payment of bribes (including facilitation payments) on its behalf;
- 22.1.5 will promptly report to the Promisee any request or demand for any undue financial or other advantage of any kind received by it in connection with the performance of this Agreement.
- 22.2 **Indemnity.** The Promisor shall indemnify, keep indemnified and hold harmless the Promisee and its Staff from and against all losses, damages, costs (including but not limited to legal costs and disbursements) arising from or incurred by reason of the Promisor's, or any Staff's breach of the Anti-Corruption Laws.
- 22.3 **Survival.** The provisions of this clause 22 as well as any other clauses in relation thereto shall survive the termination of this Agreement for any reason whatsoever.

23 ASSIGNMENT AND SUB-CONTRACTING

- 23.1 **No Assignment.** Customer shall not be entitled to cede, assign, delegate or otherwise transfer the benefit or burden of all or any part of this Agreement without the prior written consent of FMT, which consent shall not be unreasonably withheld or delayed. FMT shall be entitled to cede, assign, delegate or otherwise transfer the benefit or burden of all or any part of this Agreement without the prior written consent of Customer.
- 23.2 **Sub-contractors.** FMT may sub-contract its obligations under this Agreement to third parties, provided that in such event FMT shall remain liable for the performance by such subcontractor of FMT's obligations in terms of this Agreement.

24 RELATIONSHIP AND DUTY OF GOOD FAITH

- 24.1 **No temporary employment service.** Nothing in this Agreement shall be construed as constituting a temporary employment service as contemplated in section 198 of the Labour Relations Act, 1995.
- 24.2 **Good Faith.** The Parties shall at all times owe each other a duty of good faith and shall, in all dealings with each other and in respect of the Services act according to such standard.
- 24.3 **No authority.** Nothing in this Agreement shall be construed as creating a legal partnership between the Parties and neither Party shall have any authority to incur any liability or obligation on behalf of the other or to pledge or bind the credit of the other Party.

25 GENERAL

- 25.1 **Non-exclusivity.** Nothing in this Agreement shall be construed as precluding or limiting in any way the right of FMT from supplying services of whatsoever nature to other Customers.
- 25.2 **Entire Agreement.** This Agreement and the documents, records or attachments referred to herein or therein, constitute the entire agreement between the Customer and FMT in respect of the subject matter hereof, and supersedes all previous Agreements in respect thereof.
- 25.3 **No Variation.** Subject to the provisions of this clause 25.3, no variation, addition or consensual cancellation of this Agreement or any component thereof shall be of any force or effect unless reduced to writing and signed by the Parties or their duly authorised representatives. For the purposes of clarity no amendment or variation to this Agreement may be concluded via email.
- 25.4 **Waiver.** No granting of time or forbearance shall be or be deemed to be a waiver of any term or condition of this Agreement and no waiver of any breach shall operate a waiver of any continuing or subsequent breach.
- 25.5 **No representations.** The Customer warrants that it has not been induced to enter into this Agreement by any prior representations, warranties or guarantees, whether oral or in writing, except as expressly contained in this Agreement.
- 25.6 **Applicable Law.** This Agreement shall be governed and construed according to the laws of the Republic of South Africa.
- 25.7 **Jurisdiction.** Subject to clause 18, the Parties hereto hereby consent and submit to the exclusive jurisdiction of South Gauteng High Court of South Africa.

- 25.8 **Certificate of indebtedness.** A certificate of indebtedness signed by any director or manager of FMT, whose authority or appointment it shall not be necessary to prove, in respect of any indebtedness of the Customer in terms of this Agreement, shall be *prima facie* evidence of the Customer's indebtedness to FMT.
- 25.9 **Costs.** Each Party shall bear and pay its own fees and costs of and incidental to the negotiation, drafting, preparation and execution of this Agreement.

**Annexure 1:
Index of Annexures and Service Definitions**

This Agreement contains the following additional Annexures, Service Definitions and related documents.

Please mark applicable Annexures and Service Definitions with an "X"

INDEX

Please tick if applicable	Annexure No	Description
X	Annexure 1	This Index of Schedules and Service Definitions
X	Annexure 2	Schedule of Services
X	Annexure 3	Service Definitions and related SLAs (as listed below)
X	Annexure 3.1	Access Ports and related SLA
X	Annexure 3.2	Access Services and related SLA

Annexure 2:
Schedule of Services

Annexure 3:
Service Definitions and related SLAs







Enterprise Master Agreement - Circle Tel

Final Audit Report

2023-06-28

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