

P.O. Box 1638  
Parklands  
2121  
Tel: +2711 237 1000  
Fax: +2711 314 5020  
www.mustek.co.za

Registration no. 187/070161/06  
Registered Address  
322 15<sup>th</sup> Road  
Randjespark  
Midrand  
South Africa

Dear Prospective Dealer,

Thank you for your interest in our products and services.

Mustek Limited only supplies to businesses that are registered with the Companies and Intellectual Property Commission (CIPC). The primary business activities on the founding statement must state that the business is a computer reseller or is involved in the IT sector, retail etc.

Please complete the application form as follows:

- Complete the application form in full and sign each page of the terms and conditions as well as the front and back page.
- A witness must co-sign with you and initial each page of the document.
- Please sign next to point 23 acknowledging the surety clause.
- Please complete the Addendum if you wish to supplement the terms of the Agreement and purchase Cloud Services from Mustek.

The following originals or certified copies of documents are required:

- A completed Dealer Application form, refer above.
- Certificate of incorporation.
- Copy of each director's identity documents.
- VAT registration and tax clearance certificate (if applicable).
- Bank letter.
- A business portfolio or a letter stating the main business activity.
- Resolution letter if application is not signed by the authorized signatory.
- Contact details for relevant parties authorized to place orders, refer letter regarding One-time-passwords (OTPs).

The original dealer application must be received. Minimum monthly purchases of R5000 are required to maintain registration. If the minimum spend is not adhered to the account will be terminated. You will be contacted by our credit-vetting department with an account number should your application for dealership be successful.

**Gauteng\***  
Tel: 011 237 1000

**Eastern Cape**  
Tel: 041 397 8700

**Kwazulu-Natal**  
Tel: 031 534 7000

**Western Cape**  
Tel: 021 413 3000

**Free State**  
Tel: 051 405 0400

**Limpopo**  
Tel: 011 237 1015

**Mpumalanga**  
Tel: 013 757 0027

**Northern Cape**  
Tel: 053 831 1571

**North West**  
Tel: 018 381 5938



**Board of  
Directors:**  
(Mustek Limited):

Rev Dr VC Mehana<sup>®</sup> (Chairman), H Engelbrecht (Group Chief Executive Officer), CJ Coetzee (Managing Director), S Abou Baker Ebrahim (Group Financial Director), PM Marlowe\*, RB Patmore\*, S Thomas\*  
S van Schalkwyk (Company Secretary)

\* denotes Non-executive Director \* denotes Independent Non-executive Director \* denotes - ISO 9001, ISO 14001, ISO 27001 certified

### **Credit Terms**

- The company offers deferred payment terms to qualifying applicants. Please complete the credit amount if required. We further advise that all credit facilities are underwritten by Credit Guarantee Insurance Corporation (CGIC) and any terms granted will be subject to their approval.
- In the event that no credit is required the payment terms would be strictly cash or bank guarantee cheque or EFT in advance.

### **Collections**

- We have a strict goods collections policy.

### **Cash / COD Accounts**

- No direct deposits will be accepted.
- Payment may be done in any one of the following ways:
  - Cash payable at the cashier
  - Credit card payable at the cashier
  - EFT – proof of payment required.
- Payments must at least show on a provisional statement before release of goods can occur.

### **30 / 60 Day Accounts**

An official purchase order must be presented matching the order/s collected.

**Proof of identification** (ID book or driver's license) must be provided for each of the following:

- EFT collections
- 7 / 14 / 30 Day Accounts

We look forward to a good business relationship with your company.

Yours faithfully

**National Credit Manager**

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Dear Prospective Mustek Dealer,

## OTP (ONE-TIME PASSWORD) ACTIVATION FOR SECURE ORDER PLACEMENT

In order to prevent the fraudulent activity of orders being placed on unsuspecting customers' accounts, Mustek introduced OTP activation on all transactions over R5000.00 to secure all future transactions.

The procedure is simple:

- When you or one of your staff places an order, either telephonically or via e-mail, Mustek's Order System will immediately send an OTP via SMS to your designated cellphone number/s.
- This OTP must be communicated and confirmed with the Mustek salesperson either telephonically or via e-mail so that the Order can be confirmed on Mustek's system.

Mustek requires from your concern, the names of your staff authorised to place orders and the relevant cell phone numbers for OTPs. Therefore, kindly fill in the information in the allocated provisions below to facilitate the OTP's being processed for orders. Without the information, our Sales Team will not be able to process your orders.

Company Name: \_\_\_\_\_ Account Number: \_\_\_\_\_

Approved Personnel					
Name:		Cell No.:		Email:	
Name:		Cell No.:		Email:	
Name:		Cell No.:		Email:	
Name:		Cell No.:		Email:	
Approved personnel above, authorised by the company director					
Name:		Signature			

Please return this form completed with your Dealer Application as follows: -

- For **Gauteng and all other regions except for those listed below**, please send the application to [dealerapplications@mustek.co.za](mailto:dealerapplications@mustek.co.za),
- For **KwaZulu-Natal** please send the application to [carinav@mustek.co.za](mailto:carinav@mustek.co.za)
- For the **Western Cape**, please send the application to [wilnaj@mustek.co.za](mailto:wilnaj@mustek.co.za)

Thanking you in advance for your co-operation in eradicating fraudulent activity.

Yours sincerely

**National Credit Manager**

G-QRF014 2022-11

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# DEALER APPLICATION

(Including Deed of Suretyship)



Registration Number 1987/070161/06

Trading Name of Customer:			
Registered Name of Customer (hereinafter "the customer"):			
Previous trading / registered names:			
Incorporated form of business:			
Date of establishment of business:			
V.A.T. registration number:			
Registration number of incorporation:			
Registered name of holding companies:			
Names of subsidiaries and associate companies:			
Business activities:			
Physical address of "the customer":			
			Code:
Postal address of "the customer":			
			Code:
Are deliveries to be made to this address?	YES	<input type="checkbox"/>	NO <input type="checkbox"/>
If not, then where?			
Are invoices to be sent to this postal address?	YES	<input type="checkbox"/>	NO <input type="checkbox"/>
If not, then where?			
Registered address of the customer:			
			Code:
Premises:	Owned	<input type="checkbox"/>	or Leased <input type="checkbox"/>
Customer Tel. area code & number:	(       )		
Customer Fax area code & number:	(       )		
Customer E-mail:			
Account contact person:			
Account contact cell number:			
Account contact E-mail:			
Name of landlord:			
Postal address of landlord:			
			Code:
Details of Proprietors, Directors (       % share), Members (       % share), Partners (       % share):			
Full name:		ID No. (or date of birth):	
Registered address:			
			Code:
Full name:		ID No. (or date of birth):	
Registered address:			
			Code:

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S van Schalkwyk (Company Secretary)

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# DEALER APPLICATION, continued

(Including Deed of Suretyship)



Registration Number 1987/070161/06

Page 2

If the customer is a sole trader, state how long the proprietor thereof has traded as such (a):
Alternatively state how long the signatory has been a director/member/shareholder of the Company (b):

Banker's details/ Institution:	Branch:
Account name:	Account type:
Account number:	Date opened:

Auditor's/ Financial Officer's name:
Tel. area code & number: (      )

Trade reference 1	Name:	Tel. area code & number: (      )
	Address:	
	Credit limit: R	
Trade reference 2	Name:	Tel. area code & number: (      )
	Address:	
	Credit limit: R	
Trade reference 3	Name:	Tel. area code & number: (      )
	Address:	
	Credit limit: R	

List all sureties, cession of debtors, notarial bonds, other security given by the company:
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--

List liquidations against the company or any of its principals:
---

--

Have moratoriums or offers of compromise ever been made to any creditors of the company?
--

Kindly provide copies of the latest Financial Statement, and indicate which year:
---

Credit amount required per month? R
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Aggregate sales:	Asset value of customer:
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List the Microsoft Partner Network ID (MPN ID), if applicable. (See also the Cloud Services Addendum):
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The signatory whose signature appears below hereby accepts the terms and conditions of sale forming part of this customer application on behalf of the above-mentioned customer (and warrants that he is duly authorised thereto by the said customer) and binds himself as surety for and co-principal debtor with the customer in terms of the said terms and conditions of sale and hereby warrants that he has read and understood the said terms and conditions of sale.

The signatory further certifies that his attention has been drawn to the inclusion of the deed of suretyship in terms of clause 23 of the terms and conditions of sale and that he has had an opportunity to consider same prior to signature of the customer application and the terms and conditions of sale.

I hereby certify that all above information is true and correct.	Signed:
Date:	
Printed full name of signatory:	
Company designation of signatory:	

FOR OFFICE USE		
Accepted-Signature:	Date:	Account Number:
Accepted-Name:	Amount: R	Credit period:

# Terms and Conditions

(Including Deed of Suretyship)

## 1 INTERPRETATION

In this agreement -

- 1.1 Clause headings are for convenience and shall not be used in its interpretation;
- 1.2 Unless the context clearly indicates a contrary intention –
  - 1.2.1 an expression which denotes-
    - 1.2.1.1 any gender includes the other genders;
    - 1.2.1.2 a natural person includes an artificial person and vice versa;
    - 1.2.1.3 the singular includes the plural and vice versa;
  - 1.2.2 the following expressions shall bear the meanings assigned to them below and cognate expressions bear corresponding meanings-
    - 1.2.2.1 "agreement" – means the Dealer Application and the Standard Terms;
    - 1.2.2.2 "CPA" – means the Consumer Protection Act 68 of 2008 as amended;
    - 1.2.2.3 "consumer" – means "consumer as defined in terms of the CPA;
    - 1.2.2.4 "customer" – shall mean the person whose name appears on the Dealer Application which is annexed hereto next to the caption "*Registered Name of Customer*", or if no such application is annexed hereto, or no name appears thereon, or in any other circumstances, any person or persons at whose request or on whose behalf the supplier undertakes to supply any goods, do any business, or provide any advice or service;
    - 1.2.2.5 "goods" – any items or services of whatsoever nature that are supplied by the supplier to the customer in terms of this agreement;
    - 1.2.2.6 "signatory" – means the person who signs this agreement and the Dealer Application on behalf of the customer as well as any other agreement or document between the Supplier and the customer;
    - 1.2.2.7 "supplier"– Mustek Limited, Registration number 1987/070161/06;
    - 1.2.2.8 "terms and conditions" – means the Suppliers standard terms and conditions as contained herein, including terms contained in any of the suppliers policies and procedures as amended by the supplier (from time to time), including but not limited to warranty policies, service procedures, repair and replacement policies and packaging policies;
    - 1.2.2.9 "Dealer Application" – means the Dealer Application Form containing, inter alia, the customer's information and forming part of the terms and conditions.

## 2 THESE TERMS AND CONDITIONS TO PREVAIL

- 2.1 It is recorded that the only basis upon which the supplier is prepared to do business with the customer is that, notwithstanding anything in the customers enquiry, specification, acceptance, order or other documentation or any other documentation or discussion/s to the contrary, the terms and conditions shall constitute the sole terms of the agreement between the supplier and the customer and shall operate in respect of any and all business between the customer and the supplier.
- 2.2 All and any business undertaken, including any advice, information or service provided whether gratuitously or not by the supplier to the customer is and shall be subject to the terms and conditions, and each term and condition shall be deemed to be incorporated in and to be a term and condition of any agreement between the supplier and the customer.
- 2.3 This agreement shall commence from the date of signature hereof, by the party signing last in time and shall be renewed automatically on an annual basis, subject to the provisions of 2 and 18 below.
- 2.4 Notwithstanding anything to the contrary contained herein, the customer acknowledges that:

- 2.4.1 The supplier shall at all times be entitled to determine (in its sole discretion) the nature, extent and duration of any credit facilities (if any) granted to the customer in terms of this agreement;
- 2.4.2 The supplier shall be entitled to terminate this agreement on 48 (forty eight) hours notice to the customer; or
- 2.4.3 should the customer not purchase any goods for a period exceeding 2 (two) consecutive months, the supplier shall be entitled (but not obliged) to terminate this agreement;

Provided that should the supplier terminate this agreement for any reason whatsoever, such termination shall not affect any obligations of the customer to the supplier in terms hereof, which obligations arose prior to the date of termination and the supplier shall furthermore be immediately entitled to claim all amounts owing by the customer to the supplier in terms hereof or in terms of any other agreement.

## 3 NO VARIATIONS OR AMENDMENTS

- 3.1 This agreement constitutes the whole agreement between the customer and the supplier relating to the subject matter hereof.
- 3.2 No amendment or consensual cancellation of this agreement or any provision or term thereof or of any agreement, bill of exchange or other document issued or executed pursuant to or terms of this agreement and no settlement of any disputes arising under this agreement and no extension of time, waiver or relaxation or suspension of any of the provisions or terms of this agreement or of any agreement shall be binding unless recorded in a written document signed by a Director or Credit Manager of the supplier. Any such extension, waiver or relaxation or suspension which is so given or made shall be strictly construed as relating strictly to the matter in respect whereof it was made or given.

- 3.3 No extension of time or waiver or relaxation of any of the provisions or terms of this agreement or any agreement, bill or exchange or any agreement, bill or exchange or any other document issued or executed pursuant to or in terms of this agreement, shall operate as a waiver of the supplier's and/or the customer's rights as entrenched in the CPA with regard to enforcement of this agreement.
- 3.4 The supplier shall not be bound by any express or implied term, representation, warranty (with the exception of the warranties as provided for in the CPA), promise or the like not recorded herein, whether it induced the contract between the supplier and the customer or not.
- 3.5 No person other than a Director or a Credit Manager of the supplier has any authority to delete amend or any respect vary any of these conditions or accept any other conditions or agree to a consensual cancellation hereof.

## 4 QUOTATIONS

- 4.1 Any quotation given is not an offer by the supplier to sell the goods but constitutes an invitation by the supplier to the customer to do business with the supplier.
- 4.2 A quotation may be revoked at any time by the supplier.
- 4.3 The supplier may accept or reject in whole or in part any order placed upon it by the customer pursuant to the quotation. Accordingly, a contract shall only come into force between the supplier and the customer if after receipt by the supplier of the customer's order or acceptance of the quotation the supplier supplies, or tenders to supply, the goods in question to the customer.
- 4.4 Any quotation is based on rates of exchange, freight charges, insurance, rail costs, costs of labour and materials and other charges ruling at the date of the quotation. In the event of any variation occurring subsequent to the date of the quotation in any of the aforesaid rates and/or charges, as the case may be, the supplier shall prior to delivery furnish the customer with an amended quotation which quotation is to be accepted or rejected, either verbally or in writing by and on behalf of the customer.

## 5 PLACING OF ORDERS

- 5.1 If telephone orders are placed by the customer, the supplier may require such orders to be confirmed in writing by the customer, prior to acceptance by the supplier.
- 5.2 An order may not be withdrawn until accepted or rejected by the supplier. Any such order shall upon acceptance thereof by the supplier be irrevocable by the customer.
- 5.3 In the event of the agreement being subject to the provisions of the CPA, the Customer can cancel or withdraw an order but in such event the supplier will be entitled to charge a reasonable cancellation fee.
- 5.4 The supplier will not be responsible for any errors or misunderstandings occasioned by the customer's failure to record not only the details of the order correctly, but also the customer's failure to clearly notify the supplier at the time of placing the order of its specific requirements regarding each and every item included in the order.

## 6 PURCHASE PRICE AND PAYMENT

- 6.1 Orders are accepted by the supplier only on the basis that the prices charged will be those ruling at the date of dispatch of the goods, unless otherwise expressly stated. A copy of the suppliers ruling prices from time to time may be obtained from the supplier by the customer on request.
- 6.2 Unless otherwise expressly stated, prices are exclusive of value added tax which shall be for the account of the customer unless the customer has given acceptable proof to the supplier that the supply is a zero rate or an exempt supply. The customer shall pay or reimburse to the supplier the amount of any value added tax simultaneously with the purchase price.
- 6.3 The customer shall be obliged to pay to the supplier in addition to the contract price herein-
  - 6.3.1 the amount of any tax, duty or other charge of any nature whatsoever imposed by any law, regulation or enactment of whatsoever nature which comes into force on a date after the date on which any price charged is determined;
  - 6.3.2 any other additional costs of any nature whatsoever arising due to factors beyond the control of the supplier. In particular, but without limiting the generality of the foregoing, the supplier shall be entitled to increase the purchase price in respect of any goods supplied in order to make provision for any increases in costs arising as a result of or during the period of any delay caused by the customer.
- 6.4 Any expense incurred by the supplier at the instance of the customer in modifying or otherwise altering or making additions to the design, quantities or specifications for standard goods, and any expenses arising as a result of suspension of work by the supplier due to instructions given, or a failure to give instruction by the customer, shall be added to the purchase price in respect of the relevant goods.
- 6.5 The purchase price in respect of any goods sold by the supplier to the customer in terms of this agreement shall be payable-
  - 6.5.1 by the customer to the supplier, at the supplier's head office or at such other places as the supplier may direct from time to time;
  - 6.5.2 in cash;
  - 6.5.3 in South African currency without deduction or set-off and free of any exchange, and
  - 6.5.4 during or before the expiry of the credit period indicated on the dealer application which is annexed hereto, which period shall commence upon the issuing of an invoice by the supplier, or if there is no credit period indicated, or no credit period has been approved in terms of 6.6 below, or no dealer application is annexed, cash on order.

Directors/Members &  
Witness initial here

## Terms and Conditions, continued

### 6 PURCHASE PRICE AND PAYMENT, CONTINUED

- 6.6 After the completion of the dealer application by the customer and acceptance of these terms and conditions by the customer, the supplier shall at its own discretion be entitled to-
- 6.6.1 make such enquiries as it may deem necessary to determine whether or not to grant the customer credit as applied for in the dealer application;
- 6.6.2 determine whether or not to grant the customer credit as applied for in the dealer application, and
- 6.6.3 inform the customer of the determination made pursuant to 6.6.2 above.
- 6.7 Until a determination is made by the supplier as contemplated in terms of 6.6.2 above any goods supplied by the supplier to the customer shall be supplied on a cash on order basis only.
- 6.8 The supplier shall not be obliged to make a determination in terms of 6.6.2 above and to the extent that it does not, any goods supplied by the supplier to the customer shall be supplied on a cash on order basis.
- 6.9 The purchase price does not include charges for delivery of the goods to the customer's premises. **The supplier shall be entitled to charge the customer for delivery of the goods to the customer's premises (or third party's premises as the case may be) at the supplier's prevailing rates from time to time (as determined by the supplier).** The customer shall provide at its cost the necessary labour, equipment or facilities required for off loading of the goods at its premises.
- 6.10 The customer has no right to withhold payment for any reason whatsoever. The customer is not entitled to set off any amount due to the customer by the supplier against any debt owed by the customer to the supplier nor shall any payment be withheld by virtue of any alleged counterclaim against the supplier by the customer.
- 6.11 The customer hereby agrees that any item handed in for repair may be sold by the supplier to defray the cost of such repairs and the supplier's usual storage cost, if the item remains uncollected within 30 days of the repair being completed.

### 7 RISK

The risk of damage to or destruction of any relevant goods passes to the customer on delivery thereof by the supplier to the customer, frustrated by customer in any manner whatsoever where upon risk of damage and destruction shall pass when the supplies tenders delivery.

### 8 REPAIRS

- 8.1 The supplier will prepare and issue a quotation for the repair of goods, which quotation will be furnished to the customer and on acceptance of the quotation by the customer, the supplier will undertake the repairs in accordance with the quotation.
- 8.2 The customer is entitled to waive the necessity of a quotation for the repairs, **alternatively** is able to furnish the supplier with a pre-authorisation for the repairs up to a specific maximum amount.
- 8.3 In the event of a quotation having been prepared by the supplier and the customer not accepting such quotation, the supplier will be entitled to charge a reasonable fee for the cost of preparing the estimate, including the cost of performing any diagnostic work, disassembly or reassembly required to prepare the quotation including any damage or loss of material or parts in the cause of preparing the estimate.
- 8.4 The supplier shall have the right of retention and lawful lien over the goods submitted for repairs until such time as the customer effects payment for the repairs and/or quotation fee in full.

### 9 IMPORTED GOODS

Where the goods or any part thereof are to be imported, this agreement is subject to the condition that the supplier's order is accepted and confirmed by the supplier's own suppliers and that delivery is made there under in due course.

### 10 DELIVERY

- 10.1 Subject to the provisions of the CPA (if applicable), any delivery date indicated by the supplier shall merely be regarded as the estimated date of delivery and shall not bind the supplier to effect delivery on or near such date.
- 10.2 The customer shall accept delivery whenever it is tendered and shall not be entitled to resile from the agreement not to withhold or defer any payment nor to a reduction in price nor to any other right or remedy against the supplier, its servants, agents or any other persons for whom it is liable in law (in whose favour this constitutes a stipulation alteri) whether for losses, costs, damages, expenses, interest or otherwise (not limited ejusdem generis) on account of delays in effecting delivery, partial delivery or non delivery, whether occasioned by any negligent (including grossly negligent) act or omission on the part of the supplier, its servants, agents or any other persons for whom it is liable in law, or not.
- 10.3 If delivery of any particular order is to be effected in packs, the supplier shall not be obliged to deliver any parts of the order unless any part of the order which has already been delivered has been paid. The supplier is not obliged to accept the return of any goods and this clause shall not be used to imply that the supplier shall be obliged to accept the return of any goods.
- 10.4 The supplier shall have the right to deliver any portion of the goods sold without delivery, or making provision for delivery of all the goods sold and to invoice the customer therefore and the customer shall accept such goods when tendered.
- 10.5 If goods are to be delivered by road, the customer shall be obliged to ensure that the delivery destination shall be easily accessible to road transport vehicles. The customer shall be responsible for off-loading the goods at the delivery destination. If goods are to be delivered by rail, the customer shall be responsible for collection of goods at the railhead.
- 10.6 The customer shall be obliged to inspect all goods upon delivery and shall endorse the delivery note as to any missing or damaged goods.

No claims for missing or damaged goods shall be valid unless the delivery note has been endorsed as aforesaid and unless, in addition the customer notifies the supplier in writing within 3 business days of the delivery of the goods of the claim in question and the goods relating to such claim furnishing full details in regard thereto.

The customer shall bear the onus of proving that upon delivery, any goods are missing or damaged or that the customers order was in any way not complied with.

- 10.7 If the supplier is unable to deliver the goods to the customer due to any act or omission on the part of the customer, the supplier shall be entitled to charge the customer for the storage of the goods.
- 10.8 The customer shall be obliged to furnish information necessary to enable delivery of the relevant goods to be effected and if the customer fails or refuses to do so, or if it fails or refuses to take delivery, the goods shall without prejudice to the provisions of clause 10.7, be deemed to have been delivered to the customer upon notification by the supplier to the customer to that effect.
- 10.9 If the supplier agrees to engage a third party to transport the goods, the supplier is hereby authorised to engage a third party on the customer's behalf and on the terms deemed fit by the supplier. The customer hereby indemnifies the supplier against any claims that may arise from such agreement against the supplier. The customer shall reimburse the supplier for any costs incurred in arranging special delivery, including but not restricted to, the costs of necessary disbursements and insurance. Any documentation purporting to evidence the said extra costs will be deemed to be prima facie proof thereof.

### 11 WARRANTIES AND GUARANTEES

- 11.1 Subject to the provisions of the CPA, no warranties, guarantees or representations, express or implied or tacit whether by law, contract or otherwise and whether they induced the contract or not, which are not set forth in this agreement shall be binding on the supplier, the customer irrevocably waives any right (common law or otherwise) it may have to rely thereon.
- 11.2 To the extent that goods supplied by the supplier are in any way defective, the customer shall be entitled, within the warranty period applicable to such goods to claim the replacement or repair of goods to eliminate any defect in workmanship or materials found to be due exclusively to any acts or omissions on the part of the supplier, in the supplier's sole opinion (which shall be binding on the customer), provided that the customer notifies the supplier, in writing, of such defect within 7 days after the defect arises (which notice shall specify the alleged defect), provided that the supplier shall have been given a reasonable opportunity of inspecting any alleged defect.
- 11.3 In order to be a valid claim, terms of the guarantee as set out in clause 11.2, must be in writing, specifying the alleged defect, and supported by the original tax Invoice. In addition the goods must be returned by the customer to the supplier at the customer's expense, packaged in their original undamaged packing material.
- 11.4 The parties agree that the supplier shall have no ability in respect of any injury, loss or damage (direct, indirect or consequential) arising out of the use of, or inability to use, the goods and whether or not occasioned by the supplier's negligence (gross or otherwise) or any act or omission on its part. Without limiting the foregoing the supplier does not warrant that the goods will be fit for the purposes for which they are to be used by the customer (notwithstanding that the use to which the customer intends to put the goods is known to the supplier). For the purposes hereof, any reference to the supplier shall include its servants, agents or contractors or any person for whose acts or omissions the supplier may be liable in law. This also constitutes a stipulation alteri in favour of such persons the benefits of which may be accepted by them at any time.
- 11.5 The supplier shall be relieved of all obligations in terms of this clause, if-
- 11.5.1 repairs or modifications have been made by persons other than the supplier, unless such repairs or modifications are made with the prior written consent of the supplier;
- 11.5.2 any goods are operated with any accessory, equipment or part not specifically supplied or approved in writing by the supplier;
- 11.5.3 the goods shall not have been operated or maintained in accordance with the supplier's instruction, or under normal use; the goods shall not have been properly installed.
- 11.6 If repairs or replacements are effected by the supplier, only the parts actually worked on and not the complete goods shall be subject to a new guarantee, if any, hereunder.
- 11.7 Customers who acquire goods for the purpose of on-selling these goods, whether that customer is permitted to do so or not (and noting herein contained shall be deemed to allow that the customer to on-sell goods acquired from the supplier whilst ownership vests in the supplier), shall not advertise or issue or in any other way give or make any warranties guarantees or representations as to the goods in any form whatsoever or offer to do so, which could result in liability being imposed upon the supplier.
- 11.8 Notwithstanding the contents of this clause 11, insofar as any transactions in terms hereof fall within the ambit of the CPA, the following provisions shall apply in respect of warranties and guarantees in respect of the goods.
- 11.8.1 Within 6 months after delivery of the goods to the customer, the customer may return the goods to the supplier, without penalty, if the goods do not satisfy the requirements and standards contemplated in Section 55 of the CPA in which event the supplier may either:
- 11.8.1.1 repair or replace the failed, unsafe or defective goods; or
- 11.8.1.2 refund the customer for the price paid by the customer for the goods.
- 11.8.2 In the event of the supplier repairing any particular goods or component of such goods and within 3 months of that repair, the failure or defect or unsafe features not being remedied or a further failure, defect or unsafe feature is discovered, The supplier may:
- 11.8.2.1 replace the goods; or
- 11.8.2.2 refund the Customer the price paid by the Customer for the goods.

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## Terms and Conditions, continued

- 11.8.3 The aforesaid warranty exists in addition to an express warranty or condition stipulated by the producer or importer as the case may be;
- 11.8.4 In the event of the supplier providing any new or reconditioned parts installed during any repair or maintenance work and the labour required to install it, such work and parts will be warranted for a period of 3 months after date of installation or such longer period as the supplier may specify in writing.
- 11.8.5 **This warranty** is at all times subject to the supplier's policies containing circumstances where the warranties and/or guarantees are excluded due to, inter alia, goods being misused or abused and does not apply to any ordinary wear and tear in respect of the goods, having regard to the circumstances in which the goods were intended to be ordinarily used. Furthermore, the terms and conditions as contained in any of the suppliers policies and procedures [as amended by the supplier (from time to time)], including but not limited to warranty policies, service procedures, repair and replacement policy and packaging policies shall apply in respect of such warranty and are deemed specifically incorporated herein.

### 12 HANDLING FEE ON RETURN OF GOODS

Subject to the provisions of the CPA:

- 12.1 the supplier is not obliged to accept the return of any goods and this clause shall not be used to imply that the supplier shall be obliged to accept the return of any goods; and
- 12.2 the supplier reserves the right to levy a handling fee of 30% of the purchase price of the relevant goods on such goods returned to and accepted by the supplier, if the return of goods takes place after 14 days from the date of invoice (maximum 30 days).

### 13 AVAILABILITY OF IMPORTED PERMITS

The supplier's obligations hereunder shall be subject, in those cases where the goods or part thereof are to be imported, to the availability of an import permit to the supplier.

### 14 OWNERSHIP

- 14.1 Ownership of the goods shall not pass to the customer until the purchase price (including interest if any) in respect of the goods in question has been paid. The provisions hereof shall apply notwithstanding the installation of such goods on the customer's premises or accession thereof to any of the customer's goods or that the goods may be incorporated into or form part of other goods or change their essential character. All goods, whether fixed to immovable property or not, shall be deemed to be severable without injury to either property.
- 14.2 The supplier reserves the right to inform the owner/landlord of the premises in which the goods are or at any time may be, of the provisions of this clause. The customer shall be obliged to advise the supplier of the name and address of the landlord of any such premises and shall promptly advise the supplier of any change in the name and/or address of any landlord or of any new landlord.
- 14.3 The customer shall take all such steps as may be necessary to notify interested third parties that ownership of the relevant goods has not passed from the supplier to the customer. In particular the customer shall inform the owner/landlord of the premises in which the goods are or at any time may be, of the provisions of this clause. The customer shall produce written proof of such notices to the supplier on demand.

### 15 SUBSTITUTE GOODS OR PARTS

- 15.1 The supplier shall be entitled to substitute for any goods specified in this agreement with such other goods which the supplier in its sole discretion may regard as suitable substitutes therefore on reaching an agreement with the customer.
- 15.2 The supplier reserves the right to alter specifications without notice. Should conditions render unavailable any materials or goods specified herein or otherwise required in order to fulfill this agreement, a substitution deemed by the supplier to be suitable for the performance of its obligations will be supplied on acceptance by the customer.

### 16 DOCUMENTATION

Subject to the provisions of the CPA (if applicable), all specifications, descriptive matter, drawings and other documents furnished by the supplier do not form part hereof and may not be relied upon, unless they are agreed in writing by the supplier to form part hereof. All descriptive matter, specifications, drawings and particulars given by the supplier are approximate only and the supplier cannot be held responsible for loss including consequential loss due to discrepancies therein.

### 17 INSURANCE

The supplier shall have the option to require the customer, at its own expense, and prior to taking delivery of the goods, to insure the goods and thereafter keep the goods insured until such time as goods have been paid for in full. Such insurance shall be taken with such insurers as may be approved by the supplier in writing, for such amount and on such terms as may be approved by the supplier in writing. The insurance policy shall record the interest of both the supplier and the customer. The customer shall, if so required by the supplier, cede to the supplier all rights in terms of such insurance policy. The supplier shall exercise the said option by giving the customer written notice that it is doing so at any time prior to the delivery of the goods by the supplier to the customer.

### 18 BREACH

- 18.1 Subject to clause 18.2, if the customer breaches any of the terms or conditions hereof or any other agreement with the supplier or fails to pay any amount payable by it on due date or commits any act of insolvency or endeavours to compromise generally with its creditors or does or cause to be done anything which may prejudice the supplier's rights hereunder or at all, or allows any judgement against it to remain unsatisfied for 7 days or is placed into provisional or final sequestration or if his estate is voluntarily surrendered, the supplier shall have the right, without prejudice to any other right which it may have against the customer, to elect to-
- 18.1.1 treat as immediately due and payable all outstanding amounts which would otherwise become due and payable over the unexpired period of the agreement and to claim such amounts as well as any other amounts in arrears including interest and to cease performance of its obligations hereunder as well as under any other contract with the customer until the customer has remedied the breach;
- 18.1.2 cancel this agreement and retake possession of any of the goods sold without prejudice to its rights to claim damages.
- 18.2 The supplier shall not be obliged to comply with its obligations hereunder in any respect whatsoever for so long as the customer is indebted to the supplier in any amount whatsoever in respect of any cause whatsoever or fails to comply with any other obligations to the supplier, whether arising out of this contract or otherwise. In particular, without limiting the generality of the foregoing, if delivery of any particular order is to take place in packs, the supplier shall not be obliged to deliver any part of the order until the purchase price in respect of the goods which already has been delivered, has been paid.
- 18.3 No claim under this contract will arise against the supplier unless the customer has given the supplier 30 days written notice sent by prepaid registered post to rectify any defect or breach of contract.
- 18.4 The customer agrees that the customer indebtedness to the supplier shall be determined and proven by a certificate issued by the supplier, which authority need not be proven. Such certification shall be prima facie proof of the indebtedness of the customer.
- 18.5 The Customer hereby indemnifies the supplier against any and all damage of whatsoever nature, howsoever and by whomsoever caused in relation to the removal of goods, excluding any gross negligence by the supplier, and without derogating from the generality of the foregoing, the removal of repossessed goods from the premises of the customer or any other premises where the goods may be found.
- 18.6 The customer hereby agrees that the supplier shall not be required to furnish security in terms of rule 62 of the rules of Court of the Magistrate's Court.
- 18.7 The supplier shall have the right to institute any legal action in either the relevant Magistrate's Court or the Supreme Court at its sole discretion and the customer consents to jurisdiction of the Magistrates court.

### 19 DOMICILIUM AND NOTICES

- 19.1 The parties choose domicilium citandi et executandi ("domicilium") for the purposes of the giving of any notice, the payment of any sum, the serving of any process and for any other purpose arising from this agreement at their addresses and telefacsimile numbers as set out in the dealer application annexed hereto.
- 19.2 Each of the parties shall be entitled from time to time, by written notice to the other, to vary its domicilium to any other address which is not a post office box or poste restante.
- 19.3 Any notice given and any payment made by any party to any other ("the addressee") shall be in writing and if-
- 19.3.1 delivered by hand during the normal business hours of the addressee at the addressee's domicilium for the time being shall be presumed, until the contrary is proved by addressee, to have been received by the time of delivery;
- 19.3.2 posted by prepaid registered post from an address to the addressee at the addressee's domicilium for the time being shall be presumed, until the contrary is proved by the addressee, to have been received by the addressee on the fourteenth day after the date of posting;
- 19.3.3 transmitted by telefacsimile from an address to the addressee at the addressee's telefacsimile address for the time being shall be presumed, until the contrary is proved by the addressee, to have received by the addressee on the first business day after the date of transmission.

### 20 NO CESSION

The customer shall not be entitled to cede or assign any rights and/or obligations which it may have in terms of this agreement to any third party. The supplier on notice to customer shall be entitled to cede, assign delegate.

### 21 SECURITY FOR OBLIGATIONS

The supplier reserves the right to require satisfactory security from the customer for the due performance of any of the customer's obligation hereunder including but not limited to the payment of the purchase price. If the supplier so requires, the customer shall deliver to supplier prior to the supplier complying with any of its obligations hereunder, confirmed irrevocable letters of credit by financial institutions acceptable to the supplier.

If such security or guarantees or letters of credit are not furnished within 7 days after any such demand, the supplier shall be entitled to withdraw without prejudice to its rights of whatsoever nature to withdraw any credit provided to the customer in terms thereof.

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## Terms and Conditions, continued

### 22 COSTS

- 22.1 The customer shall be liable for all costs incurred by the supplier in the recovery of any amounts or the enforcement of any rights which it has hereunder, including collection charges and costs on an attorney and own client scale and costs of counsel as on brief whether incurred prior to or during the institution of legal proceedings or if judgement has been granted, in connection with the satisfaction or enforcement of such judgement.
- 22.2 The customer undertakes to pay the cost of the suretyship and cession contained herein, including any stamp duty payable thereon and agrees that such costs can be debited to the customer's account upon acceptance.

### 23 SURETYSHIP AND WARRANTY OF AUTHORITY (PLEASE TAKE NOTE)

- 23.1 The signatory by his signature hereto, binds himself in favour of the supplier, its successors-in-title and assign as surety for and co-principal debtor in solidum with the customer for the due and punctual performance by the customer of all its obligations to the supplier in terms of this agreement.
- 23.2 The suretyship in 23.1 shall remain of full force and effect notwithstanding –
- 23.2.1 any amendment/s to this agreement and/or any agreement for the time being subsisting between the parties;
- 23.2.2 any indulgence, concession, leniency or extension of time which may be shown or given by the supplier to the customer.
- 23.3 The signatory hereby renounces the benefits of the legal exceptions "non causa debiti", "errore calculi", "excussio de duobus vel pluribus reis debendi", "no value received" and "revision of accounts", with the meaning and effect of all of which he declares himself to be fully acquainted.
- 23.4 The signatory warrants, as a material warranty which the signatory relies on in entering into the agreement that he is duly authorised to represent and bind the customer to this agreement, and that he has read and understood each term and condition of this agreement and accepts them as binding on him and the customer. The customer hereby warrants that it regards the terms and conditions of this as binding upon it.
- 23.5 The signatory and the customer hereby warrant that the signatory to any tax invoice, delivery note or other documentation of the supplier made out in the name of, or to the customer is duly authorised to bind the customer in respect of the relevant transaction.
- 23.6 The signatory shall be bound by the provisions of this agreement as if he were the customer, mutatis mutandis particularly, but without limitation thereto, insofar as the agreement provides for proof of facts, costs of proceedings, service of process, limitations of defences and jurisdiction.

### 24 EXEMPTION AND INDEMNITY

- 24.1 The customer shall have no claim of any nature whatsoever for damages, a remission of the purchase price, cancellation or otherwise, against the supplier, its servants, agents or others on whose behalf the supplier would be liable, in respect of any loss or damage sustained by the customer of any nature whatsoever or any damage caused to the assets of the customer or assets kept on its premises by any third parties or in regard to the customer's business or sustained by any of its customers, howsoever caused including the negligent (excluding grossly negligent) acts or omissions of the supplier, its servants, agents or others for whom it may be liable in law. This constitutes also a stipulatio alteri in favour of such person the benefits of which may be accepted by them at any time.
- 24.2 In the event that the customer who acts as supplier to the customer and as such becomes a supplier as defined in the CPA, and such customer does not comply with the provisions of the CPA in any manner whatsoever and the customer proceeds with a claim against the supplier, then the customer indemnifies the supplier to the fullest extent permitted in law against any claims made against the supplier by the customer.

### 25 CONSEQUENTIAL LOSS

Under no circumstances whatsoever including as a result of its negligent (including grossly negligent) acts or omissions or those of its servants, agents or contractors or other persons for whom in law may be liable, shall the supplier be liable for any consequential loss sustained by the customer. This also constitutes a stipulatio alteri in favour of such persons the benefits of which may be accepted by them at any time.

### 26 SEVERABILITY

Each paragraph or clause in this agreement is severable, the one from the other and if any paragraph or clause is found by any competent Court to be defective or unenforceable for any reason whatsoever, the remaining paragraphs or clauses shall be of full force and effect and continue to be of full force and effect.

### 27 FORCE MAJEURE

Any transaction is subject to cancellation by the supplier due to force majeure from any cause beyond the control of the supplier, including without restricting the generality of the foregoing, inability to secure labour, power, materials or supplies, or by reason of an act of God, war civil disturbances, riot, state of emergency, strike, lockout, or other labour disputes, fire, flood, drought or legislation.

### 28 CESSION

- 28.1 The customer hereby irrevocably cedes, assigns and transfers, makes over unto and in favour of the supplier, all the customers right title and interest in and to its claims against its debtors, both present and future and from whatsoever cause arising, as security for all or any of the amounts which the customer may now or at any time in the future owe to the supplier.
- 28.2 The customer irrevocably and in rem suam authorises the supplier in its absolute discretion to claim from all or any of the customer's debtors the whole or any portion of the indebtedness, to take any action in its name in any court of competent jurisdiction and to proceed in execution there under against all or any of the said debtors, to exchange agreements, documents of title or any other security held by the customer.

- 28.3 The security created by the cession shall be a continuing one notwithstanding any fluctuation in the amount of indebtedness of the customer to the supplier.
- 28.4 The customer hereby undertakes on demand to furnish the supplier with such information concerning its debtors as may be reasonably required, to enable the supplier to give effect to the provisions of this clause.

### 29 FURNISHING OF INFORMATION BY CUSTOMER

The customer shall forthwith after the conclusion of the contract, furnish the supplier with all information reasonably required by the supplier to enable it to comply with its obligations.

### 30 RECEIPT OF DOCUMENTS, ETC

No notices, cash or other documents sent to the supplier through the post shall be deemed to have been received unless and until actually received by the supplier.

### 31 HEADINGS

The clause headings in this agreement are for references purposes only and shall not be used in the interpretation of this agreement.

### 32 INTEREST

The customer shall pay interest at the publicly quoted basic rate per annum ruling from time to time at which The Standard Bank of South Africa Limited lend on overdraft, which rate shall be proved by way of a certificate signed by any employee of such Bank, compounded monthly in arrear, on all amounts owing by the customer to the supplier which have not been paid on the due date thereof, reckoned from the due date thereof until date of payment. Such interest shall be payable on demand.

### 33 CREDIT BUREAU REPORTS

- 33.1 The customer consents and agrees that the supplier may:
- 33.1.1 perform a credit search on the customer's record with a registered credit bureau;
- 33.1.2 monitor the customer's behaviour by researching its record at a registered credit bureau;
- 33.1.3 use new information and data obtained from other registered credit bureaux in respect of the customer's business relationship with the supplier;
- 33.1.4 record and transmit details in respect of:
- 33.1.4.1 the conduct of the customer's account in meeting its obligations on the account;
- 33.1.4.2 how the customer has performed in meeting its obligations in terms of any agreement concluded between the customer and the supplier, with a registered credit bureau.
- 33.1.5 convey the information provided herein by the customer to a registered credit bureau which information may be used by the registered credit bureau in the normal course of its business as a registered credit bureau accessed by the other Credit Providers (as defined in the National Credit Act 34 of 2005) and customers of the registered credit bureau;
- 33.1.6 evaluate the criminal history or record, previous convictions and any other relevant information of the customer with the Criminal Record Centre.
- 33.2 The supplier undertakes to give the customer 20 (twenty) business days written notice prior to the forwarding of the details as mentioned in clause 33.1.4.1 and 33.1.4.2, above to any registered credit bureau.

### 34 WARRANTY BY CUSTOMER – NATIONAL CREDIT ACT 34 OF 2005

- 34.1 The customer by his signature hereto warrants that at the date of signature hereof and each date which the customer purchases goods from the supplier that:
- 34.1.1 The aggregate annual sales of the customer exceeds R1 000 0000 ( one million rand); and/or
- 34.1.2 The net asset value of the customer exceeds R1 000 000 (one million rand).
- The customer hereby irrevocably unconditionally agrees to indemnify and keep indemnified, the supplier, on demand, for any and all, liabilities, damages, penalties, actions, judgments, costs, expenses or disbursement of any kind whatsoever which may be imposed on, incurred by or asserted against the supplier in any way resulting from or arising of a breach of any warranty contained in clause 34.1 above.

### 35 ACKNOWLEDGMENT AND CONSENT

- 35.1 The customer by his signature hereto acknowledges and agrees that :
- 35.1.1 the supplier may retain copies of the documents provided by the customer in support of this dealer application and utilise such information when making a decision whether or not to grant incidental credit in terms hereof.
- 35.1.2 the supplier shall only use any information for the purposes of this dealer application.
- 35.1.3 the supplier may disclose the information to credit bureaux from time to time, including but not limited to the customer's credit history.
- 35.1.4 the supplier may process customer personal information collected in this dealer application to provide personalised services, to communicate the customers for marketing purposes, to send the customer promotional material or communications regarding supplier's products and services and to obtain feedback from the customer to improve our products and services.

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Terms and Conditions, continued

- 35.1.5 the suppliers' authorised personnel and third party service providers, including but not limited to vendors and credit bureaus, may have access to customer personal information, or the supplier may provide such information to the suppliers' third party service providers for the purposes of this dealer application.
- 35.1.6 at times supplier may act for customer and process the personal information of your customers and in doing so will protect such as required in terms of relevant data protection legislation.
- 35.1.7 the supplier complies with the Protection of Personal Information Act 4 of 2013 and does not sell personal information and shall not disclose customer personal information unless legally obliged to do so or for the purposes of this dealer application.
- 35.1.8 the customer may obtain further information regarding the processing of personal information, by viewing the suppliers' Privacy Policy at [www.mustek.co.za](http://www.mustek.co.za).
- 35.1.9 the customer may vary its information by contacting [POPI@mustek.co.za](mailto:POPI@mustek.co.za).

Signed at \_\_\_\_\_ on this the \_\_\_\_\_ day of \_\_\_\_\_ year \_\_\_\_\_  
(preferably the area to be filled in)

\*Name \_\_\_\_\_

\*Signature \_\_\_\_\_  
**For and on behalf of the customer**  
( who warrants that he/she is duly authorised hereto);  
**and**  
**in his/her capacity as surety for the customer** (as  
contained in clause 23 herein).

**WITNESSESS:** (to be witnessed by someone other than the signatory)

- 1. \_\_\_\_\_
- 2. \_\_\_\_\_

\*Name \_\_\_\_\_

\*Signature \_\_\_\_\_  
**\*For Mustek Limited**  
(who warrants that he is duly authorised hereto)

**WITNESSESS:** (to be witnessed by someone other than the signatory)

- 1. \_\_\_\_\_
- 2. \_\_\_\_\_

## ADDENDUM

### RESELLER TERMS AND CONDITIONS FOR CLOUD SERVICES

- A. This Addendum ("Addendum") is made by and between \_\_\_\_\_ (Registration Number \_\_\_\_\_) (hereinafter referred to as "the Reseller" for the purposes of this Addendum) and MUSTEK LIMITED (Registration Number 1987/070161/06) (including any of its Affiliates and Subsidiaries) ("MUSTEK").
- B. The RESELLER has executed MUSTEK's standard Terms and Conditions of Sale and/or Credit (as the case may be) and/or has entered into a valid agreement with MUSTEK for RESELLER's purchase of Products and Services from MUSTEK (the "Agreement");
- C. The Parties wish to supplement the terms of the Agreement for RESELLER's purchase of Cloud Services from MUSTEK;
- D. The RESELLER and MUSTEK hereby agree the following terms and conditions for RESELLER's purchase of Cloud Services from MUSTEK;
- E. The effective date of this Addendum shall be the date upon which the RESELLER signs this Addendum or the date which the RESELLER accepts these terms and conditions by clicking the "I/WE HAVE READ AND ACCEPT THE TERMS AND CONDITIONS OF ADDENDUM" checkbox displayed below ("Effective Date"), provided that should the RESELLER have began purchasing the Cloud Services prior to the Effective Date, then the Effective Date of this Addendum shall be the date on which the RESELLER first purchased the Cloud Services
- 1. Definitions**  
In this Agreement, unless inconsistent with or otherwise indicated by the context: -
- i. "Agreement" means any other terms and conditions of sale, contracts, agreements or arrangements between RESELLER and MUSTEK for the purchase by RESELLER of any products and services other than Cloud Services for End Users, whether executed before or after the Effective Date.
  - ii. "Affiliate" means any person or entity Controlling, Controlled by or under common Control with such Party.
  - iii. "Cloud Service" or "Cloud Services" means any service that is provided via the internet by the CSP and offered for sale by MUSTEK (or any of its Affiliates and Subsidiaries) to the RESELLER, from time to time, including any additional Support Services. Cloud Services include, but are not limited to Software as a Service ("SaaS"), Platform as a Service ("PaaS") and Infrastructure as a Service ("IaaS"). Additional information regarding each Cloud Service may appear in the applicable Documentation.
  - iv. "CSP" means any/all the third-party vendors of Cloud Services to End Users via MUSTEK and the Reseller.
  - v. "CSP EULA" means any Cloud Services related End User Licence Agreement required by a CSP which is applicable to the Cloud Services to be resold by RESELLER to End Users in the Territory. Such CSP End User Licence Agreement may contain Documentation. It is at the sole discretion of the CSP as to whether or not the RESELLER is required to enter into a CSP End User Licence Agreement.
  - vi. "CSP Agreement" means an agreement between MUSTEK and any/all CSP's who have authorised MUSTEK to grant the rights and authority granted to RESELLER under this Addendum.
  - vii. "Contract" means this Addendum and any other agreement entered into by MUSTEK and RESELLER in terms of the Agreement including, but not limited to, Purchase Orders issued by RESELLER and accepted by MUSTEK for the RESELLER's purchase of Cloud Services from MUSTEK.
  - viii. "Control" means the power, direct or indirect, to direct or cause the direction of the management and policies of such entity whether by contract, ownership of shares, membership of the board of directors, agreement or otherwise and, in any event and without limitation of the foregoing, any entity owning more than 50% of the voting securities of a second entity shall be deemed to control that second entity. The terms "Controlling" and "Controlled" shall have a corresponding meaning;
  - ix. "Documentation" means any and all additional documents, including, inter alia, policies, procedures, programs, requirements, criteria and/or information relating to the sale and usage of the Cloud Services, including but not limited to the Authorized Use Policy, Statements of Work, any system requirement documentation, data privacy policy, CSP EULA and/or Service Level Agreements ("SLAs"), it being recorded that MUSTEK may update or modify the Documentation from time to time. The RESELLER must accept and comply with and shall notify its End Users to accept and comply with, the terms of any applicable Documentation. Such Documentation may be provided to the RESELLER in the form of a CSP EULA.
  - x. "End User" means any user of the Cloud Services.
  - xi. "Support Services" means any additional support services available from MUSTEK and/or the CSP for the applicable Cloud Services as further detailed in any Documentation.
  - xii. "Territory" means the geographic regions or markets in which MUSTEK is authorised to distribute and shall include all media and channels of distribution.
  - xiii. "Usage Report" means a periodic report generated by CSP and/or MUSTEK for a specific End User. The Usage Report may be sent or made accessible to the RESELLER for forwarding to the End User, indicating the actual level of Cloud Services usage during a given time period and may serve as a basis for the invoicing and payment of any Overage Fees or usage based Fees in accordance with any applicable, additional requirements or Documentation.
- 2. Appointment**
- a. **Non-Exclusivity**  
Subject to compliance with the terms of this Addendum and the Agreements, MUSTEK hereby grants RESELLER the non-exclusive right and authority to purchase from MUSTEK and subsequently market and sell Cloud Services to End Users in the Territory.
  - b. **Vendor Certification.**  
Should the CSP require compliance with a formal certification program, then RESELLER shall be obliged to comply obtain such certification prior to placing Purchase Orders for Cloud Services with MUSTEK. Without derogating from the foregoing, MUSTEK may from time to time require the RESELLER to comply its additional criteria set forth in any Documentation prior to placing Purchase Orders with MUSTEK for Cloud Services.
  - c. **No License of Trademarks.**  
Nothing contained herein shall be construed as granting to the RESELLER any right or license to use any trade names, service marks, trademarks, logos and other marks (collectively, "Trademarks"), which, if applicable, shall be subject to a separate agreement, including any current published requirements or guidelines ("Trademark Guidelines").
  - d. **Hardware and Infrastructure Purchases.**  
The RESELLER agrees that any/all hardware and related products associated with the delivery of the Cloud Services purchased from MUSTEK shall be purchased in terms of the Agreements (as defined above).
  - e. **End User Agreements.**  
RESELLER shall not sell or distribute any Cloud Services to any End Users unless an End User enters into an agreement with RESELLER (the "End User Agreement") that at least:
    - (i) completely disclaims MUSTEK's and CSP's liability for all matters arising out of or related to this Addendum or the Cloud Services to be provided hereunder to the extent permissible by law and requires the End User to look solely to the RESELLER with respect to such matters, unless otherwise agreed by writing by MUSTEK and CSP;

- (ii) requires the End User to agree that all End User use of the Cloud Services shall be lawful and to ensure that each End User complies fully with the applicable terms of this Addendum or any Documentation, the acceptable use policy for the Cloud Services (if any), and all applicable laws and regulations in any of its dealings with respect to the Cloud Services;
- (iii) prohibits the End User from reselling or distributing the Cloud Services;
- (iv) indemnifies, defends and holds CSP and MUSTEK, and their respective Affiliates, officers, directors, employees and suppliers harmless from and against any third-party claims arising out of or relating to the End User's (or its authorized users') use of the Cloud Services;
- (v) protects CSP's proprietary rights in the Cloud Services to at least the same degree as the terms and conditions of this Addendum or any Documentation;
- (vi) makes no representations or warranties on behalf of MUSTEK or CSP, except to the extent permitted in any Documentation;
- (vii) specifies CSP and MUSTEK as express intended third party beneficiaries of the provisions in the End User Agreement relating to this Section 2e(vi), to the extent permitted by applicable law; and
- (viii) does not grant any rights to the End User beyond the scope of this Addendum.

### 3. Term and Termination

#### a. Termination.

Notwithstanding anything contained to the contrary herein or the Agreements, the RESELLER's right and authority to purchase, market and sell a particular CSP's Cloud Services to End Users in the Territory will immediately terminate in the event that the applicable CSP Agreement is terminated or expires (for any reason whatsoever). MUSTEK will endeavour to notify RESELLER in advance of any such termination or expiration.

- b. **Term.** The Cloud Services shall be sold by MUSTEK to the RESELLER for usage by End Users for a fixed term, which shall be designated on the Purchase Order between RESELLER and MUSTEK ("**Subscription Term**"). Each Subscription Term shall begin on the effective date set forth on the Purchase Order and shall run for the designated term, unless otherwise terminated in accordance with the Agreement and/or this Addendum, including any applicable Documentation. The applicable CSP Specific Addendum or Documentation may specify a minimum Subscription Term and may provide for automatic-renewal of such Subscription Terms. Except as specified herein, the RESELLER shall not have the right to terminate any Purchase Order or its obligations to provide Cloud Services to any End User during a Subscription Term.

- c. **Cessation Period.** After expiry or termination of the Addendum, unless otherwise set forth in the applicable CSP Specific Addendum or Documentation there shall begin a period to allow End Users to cease using the Cloud Services ("**Cessation Period**"). The Parties shall continue to be bound by this Addendum during the Cessation Period with respect to any Purchase Orders submitted prior to the effective date of expiration or notice of termination, as the case may be, for the duration of any active Subscription Terms ("**Surviving Subscription Terms**"). During the Cessation Period, the RESELLER shall not enter into any new Purchase Orders, nor shall RESELLER renew or extend the Subscription Term for any Surviving Subscription Terms.

- d. **Cessation Assistance.** Except as otherwise set forth in a CSP EULA or any Documentation, the RESELLER will, at least thirty (30) days prior to the effective date of termination or expiration of each End User's Subscription Term during the Cessation Period, or as promptly as possible if less time is available, notify the End Users of the impending termination. The Parties will cooperate in good faith to provide such End Users with instructions regarding how such End Users may continue to receive the applicable or comparable Cloud Services and to timely transition End Users seeking to maintain continuity of such Cloud Services, including, but not limited to, assignment or transfer of End User Cloud Services subscriptions. The Addendum shall fully and finally terminate upon expiration of the final Cessation Period for the final Surviving Subscription Term.

### 4. Purchase Orders

#### a. Purchase Orders.

The RESELLER may submit a purchase order in writing or electronically to MUSTEK (or via entering its details on the relevant internet platform) for Cloud Services hereunder ("**Purchase Order**") which must contain the following information:

- (i) RESELLER's corporate name;
- (ii) End User's corporate name;
- (iii) the specific Cloud Services ordered;
- (iv) the initial Cloud Services quantity ordered;
- (v) the committed Subscription Term length for each of the Cloud Services ordered; and
- (vi) any additional information required or set forth in any Documentation ("**Purchase Order Details**"). MUSTEK's quotes shall not constitute an offer. A Purchase Order submitted by RESELLER shall constitute an offer to contract subject to this Agreement, however

a Purchase Order shall not be deemed a Contract unless and until the earlier date upon which:

- a) written acceptance is provided by MUSTEK or
- b) MUSTEK proceeds with the fulfilment of the Purchase Order. No additional or alternative terms or agreement or any alteration to this Agreement proposed by the RESELLER contained or referred to in a Purchase Order or other form submitted to MUSTEK shall be deemed to apply unless they are expressly accepted in writing by an Authorized Representative of MUSTEK with respect to that Purchase Order. The RESELLER shall be solely responsible for the accuracy and completeness of any Purchase Order, including, but not limited to, the specification, configuration or other details of Cloud Services and their functionality, compatibility and interoperability with other products or services, as well as their fitness for particular use.

### 5. Acceptance of Documentation.

The RESELLER's submission of any Purchase Order for Cloud Services hereunder shall constitute RESELLER's acknowledgement and acceptance of any applicable Documentation for such Cloud Services. RESELLER agrees that it shall forward on any applicable Documentation to the End User.

### 6. Acceptance of CSP EULA.

Where CSP requires the RESELLER to enter into a CSP EULA, RESELLER agrees to execute the relevant CSP EULA prior to submission of any Purchase Order for such CSP Cloud Services. The RESELLER agrees that it shall forward on any applicable Documentation or terms set forth in a CSP EULA to the End User.

### 7. Usage Reports.

Periodically, a report may be generated by CSP or MUSTEK, which may be sent or made accessible to the RESELLER for forwarding to the End User, indicating the actual level of Cloud Services usage by End Users during a given time period and which may serve as a basis for the invoicing and payment of any Overage Fees or usage based Fees in accordance with any additional requirements or Documentation.

### 8. Prices and Payment Terms

#### a. Payment Terms.

Payment terms for the initial Cloud Services order, and any subsequent Cloud Services orders, are set forth in Section 8 a(i) ("**Fees**"). If applicable, payment terms for any additional fees generated by Overage (as defined below and as may be further described in any applicable Documentation) incurred during the Subscription Term shall be set forth in Section 8 a(ii) below ("**Overage Fees**").

- (i) **Fees.** Upon acceptance of a Purchase Order from RESELLER, MUSTEK shall invoice RESELLER the Fees for the initial Cloud Services quantity set forth on the Purchase Order. All MUSTEK's invoices for Fees will be paid by RESELLER either annually or monthly in advance or monthly in arrears, as set forth in MUSTEK's published price list for such Cloud Services or in terms of any written quotation issued by MUSTEK to a RESELLER ("a Quotation").

Kindly note that :

- a) the Fees shall be as set forth in MUSTEK's published price list (as amended from time to time) or in any Quotation;
- b) Fees are based on the quantity of Cloud Services purchased and not actual usage by the End User, which may be less. The committed quantity of purchased Cloud Services cannot be decreased during the Subscription Term, unless otherwise agreed by the Parties in writing.
- (ii) **Overage Fees.** In the event actual usage of Cloud Services exceeds the initial quantity ordered on the Purchase Order ("**Overage**"), RESELLER may be billed for any applicable Overage charges on a monthly basis in accordance with any applicable CSP terms or Documentation ("**Overage Fees**"). All of MUSTEK's invoices for Overage Fees will be paid by the RESELLER on demand.

#### b. CSP Orders.

Except as otherwise set forth in the applicable CSP Addendum, The RESELLER shall not place any order for Cloud Services directly with the CSP. If an End User places any order for Cloud Services directly with the CSP ("**Direct CSP Orders**") and the CSP accepts such order, then MUSTEK shall be entitled to invoice RESELLER the Fees for such additional Cloud Services in accordance with Section 8a(i) above.

**c. Suspension of Access**

In the event that

- (i) any fees owed to MUSTEK by the RESELLER, including but not limited to monthly Fees or Overage Fees, are overdue and RESELLER has not paid such overdue fees within 2 (two) days of MUSTEK's written notification of failure to pay, or
- (ii) the RESELLER is in material breach of the Agreement, including any terms of any CSP EULA or Documentation, then MUSTEK may either, in its sole discretion:
  - a) Suspend or may request CSP to suspend End User's access to the Cloud Service(s) associated with such delinquent payment; or
  - b) MUSTEK may choose not submit Purchase Orders to CSP for orders from RESELLER without penalty to MUSTEK; or
  - c) Terminate or suspend the Agreement with the RESELLER (collectively "**Suspension of Services**").

In the event of Suspension of Services, End User and/or the RESELLER may be subject to termination of the Cloud Services and liable pay any applicable early termination fees ("Early Termination Fees") set forth in any applicable Documentation or set forth in the CSP terms for the Cloud Services. Notwithstanding the foregoing, in the event MUSTEK elects or requests a Suspension of Services, the RESELLER may be liable for any fees, including but not limited to monthly Fees or Overage Fees, associated with such delinquent payment through the end of the current Subscription Term. RESELLER acknowledges that a Suspension of Services may result in liability to MUSTEK and/or CSP and the RESELLER agrees to fully indemnify, defend and hold harmless MUSTEK, MUSTEK's Affiliates and CSP from and against all claims, losses, liabilities, damages, costs and expenses (including reasonable attorneys' fees), judgments or settlement amounts arising out of or in connection with any Suspension of Access.

Notwithstanding anything to the contrary in this Addendum and in addition thereto, in the event of Suspension of Services, MUSTEK may, in its sole discretion, by notice in writing to RESELLER, elect to undertake invoicing of the RESELLER's End-User as an interim arrangement until all Fees are paid and any billing and invoicing issues are resolved to the reasonable satisfaction of MUSTEK. In the event of termination under this clause 8c, CSP or MUSTEK shall have the right to notify the End Users of such termination of the RESELLER and provide instructions on how any affected End Users may continue to receive the Cloud Services, including with respect to any Renewal Subscription Term.

**9. Electronic Delivery and Hosting and Data Centre Facilities**

**a. Electronic Delivery.**

CSP shall electronically deliver the Cloud Services (subject to a valid, accepted Purchase Order) directly to End Users, including any additionally required Documentation, for the purposes of this Addendum. Such Cloud Services shall be provided by CSP in accordance with any additional terms and conditions of use provided in any Documentation, CSP EULA (and Documents) or URL Link, including, without limitation, the applicable authorized use policy for the Cloud Services ("**A.U.P.**"), incorporated herein by reference. The RESELLER and/or End User's usage of the Cloud Services remains subject, at all times, to the terms and conditions of the CSP's applicable A.U.P. MUSTEK shall not be liable for any losses, damages, claims or liabilities arising out of or in connection with an alleged or actual breach of the CSP's A.U.P. by any RESELLER or End User. MUSTEK shall not be liable with respect to any breach or error in delivery, loss, damage or interruption to the Cloud Services during the Subscription Term.

**b. Hosting and Data Centre Facilities.**

The hosting and data centre facilities supporting the Cloud Services delivered by CSP for usage by the End User shall be provided for and managed by a third party to this Agreement. MUSTEK shall not be liable in respect of any breach or error in delivery, loss, damage or interruption to the Cloud Services during the Subscription Term. The RESELLER shall immediately notify the applicable CSP, in writing, of any such error, loss, breach, damage or interruption. MUSTEK shall not be liable for any loss, damage or expense whatsoever and howsoever arising from any breach or error, loss, damage, defect or interruption to the Cloud Services. Any error, loss, damage or interruption of Cloud Services discovered by the RESELLER and/or End User after delivery shall not entitle RESELLER and/or End User to rescind the Purchase Order or the remainder of a Contract.

**10. Support and Service Level Agreements**

**a. Support.**

If applicable, CSP and/or MUSTEK will provide a reasonable level of technical and customer support for the Cloud Services in accordance with the CSP's and/or MUSTEK's then-current support policy for the Cloud Services ("**Support Terms**"), as set forth in the Documentation or CSP Specific Addendum. Support Terms may include, among other things, the levels of support available to the RESELLERs and/or End-Users, a description of support offerings, applicable hours of operation, number of available skilled resources, languages supported and scheduled maintenance windows.

**b. Service Level Agreements.**

To the extent that CSP provides quality and performance standards in connection with its provision of any Cloud Services purchased hereunder, as set forth in the applicable Documentation or CSP Specific Addendum, CSP shall be fully responsible for delivery of the Cloud Services in accordance with the terms of such SLAs, including payment of any penalties or return credits in the event of disruption or outages. Unless otherwise agreed by the Parties in writing, MUSTEK shall not offer any SLAs in connection with the provision of Cloud Services hereunder.

**11. Indemnification**

**a. General Indemnity.**

The RESELLER will indemnify, defend and hold harmless MUSTEK and MUSTEK's Affiliates, directors, officers, employees, agents, contractors, CSPs and End Users from and against all claims, lawsuits, losses, liabilities, damages, costs and expenses (including reasonable attorneys' fees), judgments or settlement amounts arising out of or in connection with

- (i) any breach of Section 2e(vi) or where an End User Agreement otherwise fails to protect MUSTEK in the manner described in Section 2e(vi).

**b. MUSTEK's Obligations.**

In connection with the indemnities provided hereunder, MUSTEK shall:

- (i) promptly notify RESELLER of any claim that is subject to the RESELLER's indemnification obligations hereunder, but MUSTEK's failure to promptly notify RESELLER shall not discharge the RESELLER of its obligation to indemnify MUSTEK unless and only to the extent that such failure is held to prejudice RESELLER's defense of such claim;
- (ii) reasonably cooperate with RESELLER in the performance of its obligations hereunder, provided any related costs or expenses incurred by MUSTEK shall be covered by RESELLER; and
- (iii) grant RESELLER the right to control the defense and settlement of any claim which is subject to indemnification, provided RESELLER pays in full any monetary component of such settlement and further provided that such settlement contains a full and unconditional release of MUSTEK and no admission of liability on behalf of MUSTEK. Notwithstanding the foregoing,
  - a) MUSTEK shall have the right to employ separate counsel and participate in the defense of such action, at MUSTEK's expense, and
  - b) if
    - 1) RESELLER does not promptly assume the defense of any such claim following notice of its election to do so, or
    - 2) MUSTEK reasonably concludes that there may be defenses available to it which are different from or additional to those available to RESELLER and which could reasonably be expected to result in a conflict of interest or prejudice to MUSTEK if both Parties were represented by the same counsel, then MUSTEK have the right to undertake the defense of such claim with counsel of its own choosing, with the reasonable costs thereof to be borne by RESELLER.

**12. Warranty and Limitation of Liability**

**a.** Any warranty and Limitation of liability for Cloud Services under this Addendum shall be in accordance with the terms of the Agreement.

**13. Personal Data Protection.**

**a.** During the Term of this Addendum in connection with any processing of personal data which it receives under this Agreement, each Party shall

- (i) comply with all applicable laws rules, regulations, regulatory requirements and codes of practice including, but not limited to, the Protection of Personal Information Act, No 4 of 2013 (collectively, the "**Data Protection Laws**") and



- (ii) implement commercially reasonable technical and organizational security procedures and measures to preserve the security and confidentiality of the personal data received under this Agreement. Neither Party shall do any act that puts the other Party in breach of its obligations under the Data Protection Laws. Nothing in this Addendum shall be deemed to prevent any Party from taking the steps it reasonably deems necessary to comply with the Data Protection Laws including requiring signature of the each Party on additional terms and conditions related to the Data Protection Laws prior to providing any personal information, and neither Party shall take any action which a reasonable person knowledgeable in the Data Protection Laws should know may cause or otherwise result in a violation of the Data Protection Laws. Each Party agrees to obtain all necessary consents under the Data Protection Laws and will not pass personal data to third parties without prior notification to the data subject. MUSTEK may use, store or otherwise process and may transfer or disclose any personal data provided by RESELLER to any member of MUSTEK wherever located in the world for the purpose of administration of this Agreement and relationship management on an ongoing basis, and RESELLER agrees to inform its employees of the same. RESELLER will have the obligation to take necessary steps to provide prior notice to the data subject that their information may be used, stored or otherwise processed by MUSTEK wherever located in the world. RESELLER may use, store or otherwise process personal data provided by MUSTEK for relationship management purposes, but shall not pass any personal data to third parties without prior notification to the data subject.
- b. **Security Policies.**  
Without limiting the foregoing, and upon request by MUSTEK, RESELLER agrees to disclose in writing to MUSTEK a detailed description of RESELLER's information and data security controls and policies ("Information Security Management Program"). Upon reasonable demand, MUSTEK shall have the right to examine RESELLER's ongoing compliance with its stated written information controls and security policies.
- c. **Data Processing Indemnification.**  
Each Party shall defend, indemnify and hold harmless the other Party from and against any and all claims, actions, liabilities, losses, damages and expenses (including reasonable legal expenses) which arise from third party

claims and/or government agency actions arising directly or indirectly out of or in connection with a Party's data processing activities under or in connection with this Addendum, including without limitation those arising out of any third party demand, claim or action, or any breach of contract, negligence, fraud, willful misconduct, breach of statutory duty or noncompliance with any part of the Data Protection Laws. RESELLER will obtain adequate cyber insurance to cover the costs of potential data breaches and subsequent related litigation.

**14. No Conflicts and Entire Agreement.**

This Addendum (together with all Contracts) constitutes the entire agreement between the Parties with respect to the purchase of Cloud Services and supersedes any and all written or oral agreements previously existing between the Parties and/or their Affiliates with respect to the purchase of Cloud Services from MUSTEK. RESELLER acknowledges that it is not entering this Addendum on the basis of any representations not expressly contained herein. Every Contract between MUSTEK and the RESELLER or any of its subsidiaries shall be subject to the Addendum. RESELLER may not purchase Cloud Services from MUSTEK where there is no valid Agreement in place. RESELLER shall execute MUSTEK's credit application in the absence of a valid Agreement.

In the event of a conflict between the terms of the Agreement and terms in this Addendum, the terms of this Addendum shall take precedence for RESELLER's Purchase of Cloud Services.

In the event of any conflict between the terms and conditions of this Addendum and any applicable CSP Specific Addendum, the terms and conditions of the applicable CSP Specific Addendum shall prevail.

The Agreement, including this Addendum, may not be amended or modified unless mutually agreed to in writing executed by Authorized Representatives of the Parties. Unless expressly permitted under the terms of the Agreement and/or this Addendum, neither electronic mail nor instant messaging shall be considered a "writing" sufficient to change, modify, extend or otherwise affect the terms of the Agreement.

- 15.** This Addendum may be executed contemporaneously in one or more counterparts, each of which shall be deemed an original, but which together shall constitute one instrument and the Parties may rely on a facsimile or scanned signature to bind the other Party.

## BY OUR SIGNATURE IN THE SPACE BELOW, I/WE CONFIRM I/WE HAVE READ AND ACCEPT THE TERMS AND CONDITIONS OF THIS ADDENDUM

YOU REPRESENT THAT YOU HAVE THE REQUISITE AUTHORITY TO BIND SUCH ENTITY TO THIS CLOUD SERVICES ADDENDUM IN WHICH CASE THE TERMS "RESELLER", "YOU" OR "YOUR" SHALL REFER TO SUCH COMPANY OR LEGAL ENTITY. IF YOU DO NOT HAVE AUTHORITY TO ENTER INTO THIS ADDENDUM, OR IF YOU DO NOT AGREE WITH THESE TERMS, DO NOT SIGN THIS ADDENDUM AND DO NOT PURCHASE, SELL OR USE MANAGED SERVICES OR SERVICES UNDER ANY CIRCUMSTANCES.

**IN WITNESS WHEREOF**, the RESELLER has caused this Addendum to be executed by their duly authorized representatives.

**RESELLER**

Full Name of RESELLER:

Signature for and on behalf of RESELLER:

Name of Signatory:

Designation:

Date:





For more information, visit [www.mustek.co.za](http://www.mustek.co.za) or please contact:

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