

# Master Service Agreement

entered into between

**Data Control & Systems (1996) (Private) Limited**

trading as

**Liquid Intelligent Technologies**

(Hereinafter referred to as “LIT”)

and

.....

**(Hereinafter referred to as the “Customer”)**

on the terms and conditions set out in this document

<b>Liquid Intelligent Technologies</b>	
Signed at:-	_____
Date:-	_____
For and on behalf of <b>Liquid Intelligent Technologies</b>	
Signature	_____
Full Name	_____
Position	_____
By signing above, I warrant that I have been duly authorised to sign this Agreement.	
Physical Address	Block B, Stand 45-47, Sam Levy Village Office Park, Piers Road, Borrowdale, Harare Zimbabwe
Postal Address	

.....	
Signed at:-	_____
Date:-	_____
For and on behalf of the Customer	
Signature	_____
Full Name	_____
Position	_____
By signing above, I warrant that I have been duly authorised to sign this Agreement.	
Physical Address	.....
Postal Address	.....

## **1. SERVICES**

- 1.1 Pursuant to the MSA, LIT will provide the Services to the Customer for the Service charges. Customer's signature on the Order Form/s and use of the Service or the LIT Network constitute its acknowledgement of the terms and conditions of the MSA and to be bound by the MSA.
- 1.2 The MSA consists of one or more Order Form/s, these Terms and Conditions, the SLA (if any) and any schedules or addenda. Capitalised terms are defined at the end of these Terms.
- 1.3 The Customer may order additional Services or locations through additional Order Forms, which will be governed by this MSA. The Customer's account must be current in order to make changes to Services or order additional Services.
- 1.4 LIT shall be entitled to appoint any of its Affiliates to provide the Services, provided that LIT shall be and remain liable with such appointee for the due and proper performance by it of all of its duties, functions and obligations under the MSA.
- 1.5 LIT shall not be committed to provide any Services and the Customer shall not be committed to order, to be charged for, or to pay for any Services until the Customer has signed an Order Form in respect of the required Services.

## **2. DURATION**

- 2.1 The MSA shall commence on the Effective Date and shall continue while any Service Order is in place, subject to the remaining provisions of the MSA.
- 2.2 Each Service's Initial Term is indicated on the applicable Order Form and begins as of the Service Date. The Initial Term will begin on the Service Date. Unless otherwise indicated on the Order Form, at the end of the Initial Term, the MSA will renew for successive Renewal Terms equal in length to the Initial Term unless and until terminated as provided herein.
- 2.3 Termination of one Service shall not affect the term of any other Order Form, or the MSA, which shall continue, in full force and effect.

## **3. PROVISION OF SERVICES**

- 3.1 In providing the Services to the Customer, LIT reserves the right to utilise any technology which it has available and which it considers at its discretion as most suitable and reasonable to render Services, unless a specific technology is specified in the Order Form.
- 3.2 The Customer shall use the Services and the LIT Network in accordance with the terms and conditions of the MSA.
- 3.3 The Customer shall endeavour to ensure that the Services are not used in a manner which constitutes an infringement of any rights of LIT or any third party, or for any illegal, fraudulent, or unauthorised activities and shall further endeavour to ensure that it, its employees, and its customers do not by any act or omission, damage, interfere with or impede the operation of the Service or the LIT Network. Customer shall do this, inter alia, by exercising appropriate control over Customer's employees and customers, including by inserting a clause to this effect in any MSAs with Customer's customers. In particular, the Customer shall not use the Services to provide any telecommunications or related services to third parties unless the Customer is duly licensed.
- 3.4 Where the Customer is aware that there is any violation or contravention contemplated in this clause 3, it will endeavour to co-operate and subject to any confidentiality restraints on the Customer and to the extent practicable provide LIT with the necessary information to assist in identifying, preventing, remedying, or rectifying such violation or contravention.
- 3.5 Where the Customer (or the Customer's customer) has a service requirement that is not covered by an existing Order Form, the additional or alternate requirement/s will be addressed on a case-by-case basis, provided that this requirement is brought to the attention of LIT promptly and the Parties agree to the terms applicable thereto in writing.
- 3.6 Services will be placed on-hold by the LIT Service Delivery team should there be challenges arising from the Customer in the provisioning of Services. Common causes for delay include but are not limited to the following:
  - 3.6.1 Access to customer building is not available. This could also imply permissions have not been provided by the Customer or landlord (if building is being leased) to provision the Services;

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- 3.6.2 Building is not yet ready to accommodate the Services, such as the building is still being constructed or there is no power or space available;
- 3.6.3 Awaiting downtime/change control approval on current services in order to allow LIT to provision the new Service;
- 3.6.4 Customer is not yet ready for the Service e.g. Customer needs to migrate services from another service provider first before accepting LIT's Services;
- 3.6.5 Incorrect solution ordered.
- 3.7 For these cases, orders will be placed on hold as LIT cannot proceed with or finalise the service provision. LIT will measure this timeframe referred to as on-hold days and if Service exceeds ninety (90) business days in on-hold days, service cancellation will be triggered by LIT. Cancellation penalties will also be considered and passed onto the Customer based on the scope of work already completed and where LIT has incurred costs.
- 3.8 The Service(s) shall commence on the Service Commencement Date which will also be indicated on the Liquid Service Handover Form ("SHF") and shall thereafter remain in force for the Contract Term as agreed to by the Parties on the Order Form.
- 3.9 The Customer has five (5) business days to dispute or accept the Service Commencement Date on the SHF in writing. Should no dispute or acceptance be received within these five (5) businesses days, LIT will deem the Service(s) as accepted and will trigger billing as per the Service Commencement Date.
- 3.10 For the avoidance of doubt, the Customer's failure to dispute or accept the Service Commencement Date on the SHF in writing shall not delay the billing of the Customer by LIT.

#### 4. FEES AND CHARGES

- 4.1 The Customer shall pay to LIT the fees and/or charges, including NRCs and MRCs agreed between the Parties in each Order Form on or before the due date for such payment and without any set off or other deduction, save for any deductions warranted by law and any set off in respect of any amount the Parties have agreed is owed to the Customer.
- 4.2 To the extent that an Order Form reflects an indicative cost for installation or other NRCs and a detailed site survey conducted by LIT indicates a higher cost, LIT shall advise the Customer accordingly. The Customer shall then have the election to accept the higher cost and proceed with the Service or not to accept the higher cost and to cancel the Service, in which case no penalties shall apply. LIT shall not be obliged to provide the Service at the indicative cost provided.
- 4.3 LIT may make general credit reference enquiries about the Customer at any time, including checking the correctness of the information supplied by the Customer when applying for a Service. LIT reserves the right to refuse to provide a Service if the Customer does not pass the credit vetting procedure and to the extent permissible under the law shall obtain Customer's written consent before furnishing any information relating to the Customer's account and compliance with the standard conditions to any credit bureau.
- 4.4 LIT may require the Customer to make payment of a deposit to be determined by LIT as a pre-condition for providing a Service or at any stage once a Service has commenced and to serve as security for payment of any amounts due to LIT by the Customer. LIT may require that such deposit, be increased, decreased or altered during the currency of the MSA as the nature and extent of the Services change on reasonable prior written notice. Any deposit provided shall be refunded on termination of the Service after deducting the amounts due.
- 4.5 Should the Customer cancel or modify an order so that LIT incurs costs relating to such cancellation or modification, the Parties shall discuss the possibility of the Customer paying any fees to cover reasonable costs incurred.
- 4.6 LIT shall install the Service, as requested by the Customer against payment of the relevant NRC, if applicable.
- 4.7 LIT shall be entitled to adjust the monthly fees and charges as a result of any regulatory, or government-imposed Taxes, duties, or other factors that have a direct and demonstrable impact on such fees and charges. LIT shall provide fourteen (14) days prior notice in writing of such adjustment or such shorter period of notice as may be reasonable in the circumstances and should Customer object to the increase in fees it shall be entitled to terminate this MSA notwithstanding any other clause in this MSA.

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- 4.8 The Customer agrees that its obligation to pay Service charges and Taxes under the MSA for Services rendered prior to the termination of the MSA shall survive the termination of the MSA.
- 4.9 Usage independent charges are invoiced monthly in advance; usage-dependent charges are invoiced monthly in arrears and LIT will invoice the Customer for each Service provided under the MSA from the Service Commencement Date.
- 4.10 LIT shall submit a detailed monthly statement of account together with all related tax invoices valid for VAT setting the amount due and payable by the Customer before payments can be made.
- 4.11 LIT may include on any invoice, where necessary and on an episodic basis but not as a routine billing practice, any amount not previously billed for calendar months prior to the current month provided that the Customer is aware of such amount and has agreed to the billing method.
- 4.12 All tax invoices, permitted under applicable law and regulations, shall be due on presentation and shall be payable by the Customer within seven (7) working days of the date of such invoice, which payment shall be made by cheque or by electronic funds transfer into a banking account specified by LIT in writing. If any previously invoiced and undisputed amount is overdue, the Customer shall pay interest on the overdue amount. The applicable interest rate on the overdue amounts is to be compounded on a monthly basis and charged at the prevailing prime lending rates charged by Stanbic Bank Zimbabwe Limited, as published by such bank or certified by a manager of such bank, whose authority need not be proved, and such interest shall run from the date upon which payment of the relevant amount became due until payment thereof has been made in full.
- 4.13 Invoices shall be provided electronically to the Customer on the same date as the invoice date, or the next following Business Day.

## 5. RETAINED RESPONSIBILITIES

- 5.1 In connection with any Services provided by LIT under the MSA and the Order Form, the Customer undertakes to provide to LIT or retain responsibility for, as applicable, any Customer obligations and requirements detailed in the Order Form and listed in the relevant Service Description.
- 5.2 LIT's non-performance of any particular obligation under the MSA shall be excused if and to the extent such LIT's non-performance results from the Customer failing to perform its retained responsibilities and vice versa.
- 5.3 In particular:
  - 5.3.1 if the Customer is not the owner of any one or more of the premises where the Service is to be provided, the Customer shall obtain any permission from the owner of such premises that may be required, and the Customer hereby indemnifies LIT against all damages or claims resulting from the failure to obtain such permission relating to the installation and/or removal of the Service;
  - 5.3.2 the Customer will, at own cost, ensure the provision of suitable electrical power supply, accommodation and air-conditioning should this be required for the proper functioning of the Service;
  - 5.3.3 the Customer shall allow LIT free access to the premises during reasonable hours to install, inspect, maintain, or remove telecommunication facilities or equipment.

## 6. SAFETY AND SECURITY

- 6.1 Each Party agrees to comply with the safety and security procedures notified to them by the other Party.
- 6.2 The Parties shall each at their own cost and expense take whatever steps as are necessary to procure and discharge their respective obligations and rights in terms of the MSA and applicable laws to ensure the health and safety of the other Parties' employees, agents, directors, sub-contractors, and members of the public.

## 7. DELIVERY

LIT shall use its best endeavours to meet all required delivery dates. LIT specifically notes that delivery dates are dependent on obtaining permissions from relevant authorities and LIT shall not incur any liability in respect of delays occasioned by such authorities regarding such permissions.

## 8. FORCE MAJEURE

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- 8.1 A Party shall not be liable for a failure to perform any of its obligations in terms of the MSA in so far as it is able to prove that:
  - 8.1.1 such failure was due to an impediment beyond its reasonable control;
  - 8.1.2 it could not reasonably have been expected to have taken such impediment and its effects upon such Party's ability to perform into account at the time of conclusion of the MSA;
  - 8.1.3 it did all reasonably possible to mitigate the adverse impact on the other Party; and
  - 8.1.4 it could not reasonably have avoided or overcome the impediment or at least its effects and, for purposes of this clause 8.1, the following events contained in the definition of Force Majeure (which enumeration is not exhaustive)
- 8.2 Relief from liability for non-performance by reason of the provisions of this clause shall commence on the date on which the Party seeking relief ("Defaulting Party") gives written and detailed notice of the impediment relied upon and shall terminate upon the date on which such impediment ceases to exist, provided that if the impediment continues for a period of more than 10 (ten) consecutive days, the other Party shall be entitled, at its option, to terminate the MSA by written notice to the Defaulting Party without any penalty, early termination fees or other recourse by the Defaulting Party, and the Defaulting Party shall do all reasonably possible to assist the other Party in procuring substitute Services.

## 9. LIMITATION OF LIABILITY

- 9.1 Neither Party shall be liable to the other for any indirect, incidental, consequential, punitive, or special damages, including without limitation damages for lost profits, advantage, savings or revenues, or increased cost of operation.
- 9.2 Subject to clause 9.3 below, each Party's entire liability, and the other Party's exclusive remedy for damages arising out of performance under the MSA, including for mistakes, omissions, interruptions, delays, errors or defects in the Services, shall in no event exceed the greater of the applicable credits specified in the SLA (if one has been entered into) as to such Service or the pro-rated cost to Customer of the Services not received or received in degraded form for the period of Service during which such mistake, omission, interruption, delay, error or defect in the Services occurs and continues.
- 9.3 Clause 9.2 above shall not apply to:
  - 9.3.1 bodily injury, death, or damage to real or tangible property caused by either Party's negligence;
  - 9.3.2 a breach of confidentiality;
  - 9.3.3 a settlement, defence or payment obligation arising out of a third party claim; or
  - 9.3.4 damages arising out of a Party's gross negligence or wilful misconduct.
- 9.4 LIT's liability to the Customer for damage to property resulting from LIT's negligence or the negligence of its employees, agents or sub-contractors shall be limited to the extent of the proceeds paid in terms of any insurance policy held by LIT, provided that LIT shall maintain in effect and in good standing insurance coverage for such damage to property, death or injury and provided further that such coverage shall be legally and actually made available to Customer as and at the time of any such damage, death or injury. LIT shall, with the Customer's involvement and with continuous information to Customer, investigate each claim on its own merits prior to the insurance company, which holds the insurance policy paying the amount claimed. Payment shall be based on the merits of the claim and shall not be determined by the amount covered by the insurance policy. LIT shall indemnify Customer against any failure or refusal on the part of the relevant insurance company to pay a claim. The Customer's liability to LIT for damage to property, death or injury resulting from the Customer's negligence or the negligence of its employees, agents or sub-contractors shall be limited to the extent of the proceeds paid in terms of any insurance policy held by the Customer, provided that the Customer shall maintain in effect and in good standing insurance coverage for such damage to property, death or injury and provided further that such coverage shall be legally and actually made available to LIT as and at the time of any such damage, death or injury.
- 9.5 With the exception of clauses 9.2 and 9.4, without in any way limiting or derogating from the above provisions, the Parties agree that the total amount of either Party's liability arising out of the performance of its obligations under and in terms of the MSA and whether in contract, delict, breach of statutory duty or otherwise, shall, during the term of the MSA, be limited to the fees paid by the

Customer in respect of a 12 (twelve) month period. These limitations on liability apply to the benefit of the Parties, their Affiliates and third parties whose networks are affected.

## 10. **SUSPENSION OF SERVICES**

- 10.1 Subject to clauses 11 and 13 and pursuant to immediate written notice identifying the cause by LIT to Customer as soon as the cause is known to LIT, in the case of clause 10.1.1 and on no less than five (5) Business Day's written notice in the case of clauses 10.1.2 and 10.1.3, detailing the alleged breach, and where a request for Arbitration has not been made by either Party, LIT may lawfully suspend or withdraw all or part of any Service under any Order Form at any time until further notice to the Customer if, in LIT's reasonable discretion:
- 10.1.1 the continued provision of the Service will cause LIT to breach any applicable law or violate a condition of its licence;
  - 10.1.2 the Customer is in material and continuing breach of any of the provisions of the MSA including, without limitation, due to any delay or failure by the Customer to make any payment in terms of the MSA; and
  - 10.1.3 any overdue tax invoice for charges billed by LIT to the Customer remains unpaid.
- 10.2 The exercise of LIT's right to suspend the Services under this clause 10 is without prejudice to any other remedy available to LIT under the MSA and does not constitute a waiver of LIT's right to subsequently terminate the MSA.
- 10.3 Where LIT has suspended the Services in terms of clause 10.1, LIT may:
- 10.3.1 refuse to reconnect the Services unless precluded by any law or order of court; and
  - 10.3.2 if it agrees to reconnect the Services, require the Customer to pay a reconnection fee in advance as a pre-condition to making the Services available again or require the payment of a deposit or other security for payments;
  - 10.3.3 continue to invoice the Customer for MRCs and minimum usage charges (if any) during the period of suspension of any Service/s; and
  - 10.3.4 credit the Customer with all charges for the period during which any Service/s have been suspended, should it transpire that the suspension of the Customer was erroneous.

## 11. **TERMINATION**

- 11.1 Subject to this MSA either Party may terminate a Service at the end of an Initial Term or Renewal Term by providing the other Party with at least one (1) calendar month written notice. Either Party may terminate this MSA once all Services have expired or been terminated, by providing the other Party with at least one (1) calendar month written notice.
- 11.2 Without prejudice to any rights and remedies that may have accrued, either Party may (without prejudice to such rights as the aggrieved Party may have at law, including the right to claim damages or to enforce the relevant provisions of the MSA) terminate the MSA by providing the other Party with 30 (thirty) days written notice of its intention to do so, if the other Party suffers any of the following (or any local legal equivalent):
- 11.2.1 ceases to trade (either in whole, or as to any part involved in the performance of the MSA);
  - 11.2.2 becomes insolvent, has a receiver, administrator or manager appointed of the whole or any part of its assets or business; or
  - 11.2.3 makes any composition or arrangement with its creditors, takes, or suffers any similar action in consequence of debt, is unable to pay its debts under any applicable law relating to bankruptcy, insolvency, or the relief of debtors.
- 11.3 If a Service is terminated prior to the Service Date, Customer shall pay LIT the Early Termination Fee, including in the event of a termination by LIT in terms of clause 11.2. The Customer has an option to pay for the full actual cost of provision of the service upfront for the early termination not to apply.
- 11.4 Customer acknowledges that because actual damages to LIT caused by early termination of a Service order are uncertain and would be difficult to determine, the Early Termination Fee is a reasonable liquidated damage and is not a penalty.



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- 11.5 If Customer defaults in any of its payment obligations under the MSA, Customer agrees to pay LIT's reasonable expenses, including but not limited to legal and collection agency fees, incurred by LIT in enforcing its rights provided that the default in payment does not arise from a dispute between the Parties. All termination notices by Customer must be sent separately for each Service (including terminating one Service location after a Service is switched to a new Service location).

## 12. SERVICE VARIATIONS

- 12.1 If Customer wishes to make a change, modification, or adjustment to any element of any Service, the following procedure will apply:
- 12.1.1 Customer will forward a change request to LIT, setting out the details of the change request;
- 12.1.2 LIT will investigate the feasibility, cost implications and impact of the change request on the Services and provide such study to the Customer ("Impact Study").
- 12.2 If the Customer makes a decision to proceed with the change request after considering the Impact Study, the Customer shall give LIT a written instruction to proceed with that change on the basis set out in the Impact Study. That instruction shall be binding on the Parties and the MSA shall be deemed to be amended accordingly.
- 12.3 If the Parties cannot agree upon the necessary amendments, the change request will not be implemented.

## 13. DISPUTE RESOLUTION

- 13.1 In the event of any dispute arising between the Parties under the MSA or any Order Form, the Parties will act in good faith to attempt to settle the dispute through discussions between senior representatives (which shall to the extent reasonably possible include the respective CEO's) of the Parties within 30 (thirty) days of a Party giving the other Party notice of the issue in dispute.
- 13.2 Any Dispute, which cannot be resolved in terms of clause 13.1 above, shall be resolved by binding arbitration as provided below;
- 13.2.1 Arbitration shall be conducted by the Commercial Arbitration Centre in Harare unless the Parties agree to the appointment of an independent arbitration provider or unless otherwise agreed between the Parties in writing;
- 13.2.2 Arbitration shall be before a single arbitrator chosen by the Parties or in the event that the Parties cannot agree on an arbitrator, the arbitrator shall be appointed by the Chairperson of the Commercial Arbitration Centre in Harare taking into account the provisions of this clause 13 of the MSA in writing;
- 13.2.3 The arbitrator shall have industry and subject matter background or experience relevant to the nature of the dispute;
- 13.2.4 The arbitrator shall not be entitled to make an award for punitive damages or costs in his/her arbitration award and neither of the Parties will be entitled to withdraw from arbitration proceedings nor to claim at any such arbitration proceedings that they are not bound by the arbitration provision of the Agreement;
- 13.2.5 Each Party shall pay its own fees and expenses with regard to the arbitration and the Parties shall share equally the fees and expenses of the arbitrator unless and to the extent the rules of any arbitration provider selected allow for the arbitrator to order the fees of the winning Party to be paid by the losing Party. In such case, the losing Party shall pay the fees and expenses of the winning Party, if and as the same may be mandated or apportioned in the discretion of the arbitrator;
- 13.3 The Parties hereby consent and submit to the exclusive jurisdiction of the High Court of Harare, Zimbabwe for interim remedies, including injunctive relief, and for the enforcement of the arbitral award arising from or in connection with the MSA. The Parties agree that any costs awarded with respect to litigation or enforcement in the High Court of Harare, Zimbabwe will be recoverable in accordance with the High Court tariff, determined on an attorney-and own-client scale.

## 14. CONFIDENTIALITY

- 14.1 Subject to clauses 14.2 to 14.4, each Party must :
- 14.1.1 use the other Party's Confidential Information only for the purposes of the MSA and must keep confidential and not disclose to any person the other Party's Confidential Information; and

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- 14.1.2 not make press or other public announcements or issue press releases about the Services, the MSA or the transactions related to it without the written approval of the other Party ("Announcement").
- 14.2 Clause 14.1.1 does not apply to Confidential Information that is in the public domain other than such information that has entered the public domain as a result of a breach of the MSA or any other obligation of confidence.
- 14.3 A Party may disclose the Confidential Information of the other Party if that disclosure is to the employees, contractors or professional advisers of that Party or its Affiliates who have a need to know that information in relation to provision of the Services and who have agreed in writing to keep it confidential.
- 14.4 A Party may disclose Confidential Information of the other Party or make an Announcement that is required by any applicable law.

## **15. INTELLECTUAL PROPERTY RIGHTS**

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

## **16. NOTICES AND DOMICILE**

- 16.1 The Parties choose as their respective domicile for the purpose of legal proceedings and for the purposes of giving or sending any notice provided for or necessary in terms of the MSA, the addresses set out on the Order Form. A Party may change its domicile to any other physical address and its address for the purposes of notices to any other postal address or fax number by written notice to the other Party to that effect. Such change of address will be effective (7) seven days after receipt of notice of the change of domicile. All notices to be given in terms of the MSA will –
- 16.1.1 be given in writing;
- 16.1.2 be delivered or sent by prepaid registered post, by fax or by electronic mail;
- 16.1.3 if delivered be presumed to have been received on the date of delivery;
- 16.1.4 if sent by prepaid registered post be presumed to have been received within three business days of posting unless the contrary is proved;
- 16.1.5 if sent by fax or electronic mail be presumed to have been received on the first business day following the date of sending of the fax unless the contrary is proved.
- 16.2 Notwithstanding the above, any notice actually received by the Party to whom the notice is addressed will be deemed to have been properly given and received, notwithstanding that such notice has not been given in accordance with the provisions of this clause 16.

## **17. CESSION, ASSIGNMENT, NOVATION AND SUB-CONTRACTING**

The MSA shall be binding on the Parties hereto and their respective successors and assigns. Neither Party shall be entitled to assign or otherwise transfer the benefit or burden of all or any part of the MSA without the prior written consent of the other except that LIT may assign its rights and obligations under the MSA or novate this MSA without the approval of the Customer to an Affiliate or to an entity which acquires all or substantially all of the assets of LIT.

## **18. SEVERABILITY**

Each provision of the MSA is severable from the other provisions. Should any provision be found by a court of competent jurisdiction to be invalid or unenforceable for any reason, the Parties will consult with one another in good faith in order to agree, if possible, an alternative provision in accordance with the intent and tenor of the MSA. The remaining provisions of the MSA shall nevertheless remain binding and continue with full force and effect.

## **19. BENEFIT OF THE MSA**

The MSA will inure for the benefit of and be binding upon the successors in title and permitted assigns of the Parties hereto or either of them.

## **20. GENERAL**

- 20.1 The MSA constitutes the whole of the agreement between the Parties hereto relating to the matters dealt with in the MSA and save to the extent otherwise provided herein no representation, term or



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condition relating to the subject matter of the MSA not incorporated in the MSA shall be binding on any of the Parties.

20.2 No variation, addition, deletion, or cancellation will be of any force or effect unless reduced to writing and signed by the Parties hereto or their duly authorised representatives.

20.3 This MSA will be governed by and construed under the laws of the Republic of Zimbabwe.

## **21. WAIVER**

No waiver of any of the terms and conditions of the MSA shall be binding or effectual for any purpose unless expressed in writing and signed by the Party hereto giving the same, and any such waiver shall be effective only in the specific instance and for the purpose given. No failure or delay on the part of either Party hereto in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power, or privilege.

## **22. SURVIVAL**

Any provision of the MSA, which contemplates performance or observance subsequent to any termination, or expiration of the applicable MSA shall survive any termination or expiration of the applicable MSA and continue in full force and effect.

## **23. COVENANT OF GOOD FAITH**

Each Party agrees that it shall at all times act in good faith, in its respective dealings with the other Party under or in connection with the MSA.

## **24. COSTS**

Each Party shall bear its own costs of or incidental to the drafting and execution of the MSA.

## **25. DATA PROTECTION AND PRIVACY**

25.1 Each Party shall comply with the Data Protection Legislation that is applicable to that Party in relation to the processing of personal information in connection with this MSA.

25.2 The Customer acknowledges that it has read and understood LIT's processing schedule attached hereto as Schedule 2. The Customer hereby consents to the processing of Customer personal information in accordance with the processing schedule and all applicable Data Protection Legislation.

25.3 LIT will have in place adequate technical and organisational security measures such as identifying reasonably foreseeable internal and external risks to personal Information under LIT's possession or control and maintain appropriate safeguards against the identified risks so that the confidentiality of this processing complies with the applicable Data Protection Legislation.

25.4 Customer will:

25.4.1 comply with, and its acts or omissions will not cause LIT to be in breach of the Data Protection Legislation or other applicable laws or regulations as they may be amended from time to time;

25.4.2 obtain adequate consents from its customers and employees, including for transfers of personal information; and

25.4.3 be responsible for the instructions it may give to LIT regarding the processing of personal information. LIT will act on those instructions as reasonably necessary for the provision of Service.

25.4.4 For the purposes of this clause "personal information" shall have the meaning set out in the applicable Data Protection Legislation.

## **26. ETHICAL PRACTICE, CONFLICT OF INTEREST, MODERN SLAVERY & ANTI-BRIBERY & CORRUPTION**

26.1 Ethical Practice

26.1.1 The Parties hereby undertake to perform their obligations and conduct their respective business affairs under this MSA by:

26.1.1.1 Ensuring strict compliance with ethical practices applicable to their business (including their Affiliates) as regulated by the laws and acts in the Republic of Zimbabwe or to which the Republic of Zimbabwe has signed or is a signatory. This includes but is not limited to such laws and acts relating to corrupt practices, money laundering, the environment and sustainability; and

26.1.1.2 acting in accordance with the code of ethics, code of conduct, or similar codes/policies as may be made available by either Party on its website;

26.1.2 The Customer and its employees and personnel shall not donate, offer, gift or make, any financial contributions, payments, remuneration, gratuities, donations or comparable benefits, whether directly or indirectly, to any director, shareholder, employee or any other person or entity associated with LIT, which is intended or may be perceived to be an attempt to influence such person or to otherwise gain an unfair advantage.

## 26.2 Conflict of interest and Reputational Risk

26.2.1 The Customer and its employees and personnel shall at all times ensure that it acts in the best interests of LIT by ensuring that any business or personal association which it may have does not involve a conflict of interest of any nature whatsoever with its operations as well as its obligations under and in terms of this MSA.

26.2.2 The Customer warrants that it shall not conduct itself in a manner which will bring LIT and any director, shareholder, employee or any other person or entity associated with LIT into disrepute. If the Customer fails to comply with provisions of this clause 26 and LIT incurs any reputational damage or potential reputational damage, LIT shall immediately terminate (in writing) this MSA.

26.2.3 The Customer warrants that it has no business, professional, personal, or other interest, including, but not limited to, the representation of third parties, that would conflict in any manner or degree with its rights and/or obligations under this MSA nor would it result in a conflict of interest with LIT and any director, shareholder, employee or any other person or entity associated with LIT.

26.2.4 If a conflict of interest arises, as contemplated in this clause 26., the Customer shall immediately inform LIT (in writing) of such conflict. If LIT reasonably decides that such conflict is material in nature, then it may terminate this MSA immediately upon written notice to the Customer. Termination shall be effective on receipt of the abovementioned notice by the Customer.

## 26.3 Modern Slavery

26.3.1 The Parties hereby warrant that they will not employ, whether directly or indirectly, any human resource that is under 16 (sixteen) years of age, or less than the local minimum employment age, whichever is the higher, in the exercise or execution of their rights and duties under this MSA. The Parties also warrant to share this commitment with its own employees, partners, sub-contractors and suppliers involved in the provision of Services herein, and to request adherence thereto.

26.3.2 Should either Party become aware of any issue which may contravene Section 11 of the Labour Act [Chapter 28:01]; Section 10A of the Children's Act [Chapter 05:06]; Section 54 and 55 of the Constitution of Zimbabwe [Act 1 of 2013] or any other applicable legislation in Zimbabwe, the Party must in writing bring it to the attention of the other Party, without delay.

## 26.4 Anti-Corruption and Anti-Bribery

26.4.1 The Customer acknowledges that LIT is subject to the Anti-Corruption and Anti-Bribery Laws and understands its and LIT's obligations under the applicable Anti-Corruption and Anti-Bribery Laws. The Customer warrants to its best knowledge and belief that neither the Customer nor any of its directors, employees and/or personnel is or has been subject to the following:

26.4.1.1 the target or subject of any criminal investigation involving public corruption or other criminal wrongdoing;

26.4.1.2 convicted or charged with any crime involving public corruption.

26.4.2 As an ongoing warranty throughout the duration of this MSA, the Customer warrants that it shall not make, or authorise or tolerate to be made, in the performance of this MSA, any payments, loans or gifts, or promises or offers of payments, loans or gifts, of any money or anything of

- value, directly or indirectly, to or for the use or benefit of any person the making of which would violate any laws of any Competent Authority.
- 26.4.3 The Customer further warrants that neither the Customer nor any of its employees, personnel, principals and/or shareholders is an official or employee of any Competent Authority and warrants to notify LIT immediately if this warranty ceases to be accurate.
- 26.4.4 For the duration of this MSA, the Customer shall annually certify its ongoing compliance with its obligations relating to the Anti-Corruption and Anti-Bribery Laws. The Customer shall procure that it and its employees, personnel and/or who interact with any Competent Authority on LIT's behalf will participate in anti-bribery and anti-corruption training if so, requested by LIT and ensure compliance with all policies of LIT relating to anti-bribery and anti-corruption.
- 26.4.5 Without any prejudice to any other rights which LIT may have under this MSA or by law, if the Customer breaches any of the warranties or obligations set forth in this section, then:
- 26.4.5.1 LIT shall have a right of action against the Customer for any amount of damages, losses and/or penalties suffered by LIT, or any sanctions imposed by a Competent Authority against LIT for any monetary payment or thing of value made or given by the Customer in breach of any of the above-mentioned warranties;
- 26.4.5.2 all obligations by LIT to provide the Services to the Customer shall cease immediately and without notice; and
- 26.4.5.3 LIT may, in its sole discretion rescind this MSA with immediate effect and the Customer shall hold harmless and indemnify LIT from any damage or loss, of whatever kind or nature, arising from any transaction in violation of this clause 26.
- 26.4.5.4 The Customer shall promptly notify LIT (in writing) of any such contravention to this clause without delay. In the event that the Customer fails to comply with the provisions of this clause, such failure shall constitute a breach of this MSA and LIT shall be entitled to terminate this MSA on written notice to the Customer.

**[DEFINITIONS AND INTERPRETATION CLAUSE TO FOLLOW]**

## DEFINITIONS AND INTERPRETATION

Affiliate	With respect to LIT means any other entity which (i) is a subsidiary or holding company or a subsidiary of the holding company of LIT and shall include any foreign entity which falls within the ambit of such term; and/or (ii) controls, is controlled by or is under common control with LIT; and/or (iii) in which LIT or any Affiliate of LIT has a direct or indirect equity interest;
Anti- Bribery and Anti-Corruption Laws	means all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption in Zimbabwe; the UK Bribery Act; the Prevention and Combating of Corrupt Activities Act, No.12 of 2004, the African Union Convention Against Corruption, 2003 and the United Nations Convention Against Corruption;
Confidential Information	means any information or data which by its nature or content is identifiable as confidential and/or proprietary to either Party and/or any third party, or which is provided or disclosed in confidence, and which a Party or any person acting on its behalf may disclose or provide to the other Party, or which may come to the knowledge of the other Party by whatsoever means;
Competent Authority	means a Minister, government department or other authority having the power to issue and enforce regulations, orders or other instructions having the force of law in respect of the Services;
Country	Means the Republic of Zimbabwe;
Customer	The Party identified as such on the Order Form;
Data Protection Legislation	means the provisions of the Cyber and Data Protection Act [Chapter 12:07]; Consumer Protection Act [Chapter 14:14]; Postal and Telecommunications (Subscriber Registration) Regulations, 2014; and the Interception of Communications Act [Chapter 11:20] relating to personal information and any other legislation and regulatory requirements in force from time to time which apply to a Party relating to the use of personal information (including, without limitation, the privacy of electronic communications); and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a Party;
Early Termination Fee	<p>The fee calculated on the outstanding fees and charges for each Service as at the date of early termination thereof determined as follows:</p> <ul style="list-style-type: none"> <li>▪ In the event that a Service is terminated prior to the Service Commencement Date thereof, the Customer shall be liable for a pre-commencement cancellation fee equal to the documented actual costs incurred by LIT in fulfilment of the applicable Service;</li> <li>▪ In the event that a Service is terminated subsequent to the Service Commencement Date thereof and the remaining term set out in the Order Form for the applicable Service is 12 (twelve) months or less; 50% of the fees and charges for the remaining months in the term for the applicable Service;</li> <li>▪ In the event that a Service is terminated subsequent to the Service Commencement Date thereof and the remaining term of the Order Form term for the applicable Services is greater than twelve (12) months; 50% of the fees and charges for the applicable Service for the remaining months in the first twelve (12) months and 25% of the fees and charges for the applicable Service for each month thereafter;</li> </ul>

The amounts referred to above shall be in addition to all fees for any other Services that continue unchanged, as at the effective date of termination;

**Effective Date**

means the date of signature of the MSA by the last signatory hereto and more particularly the commencement of business on that day;

**Force Majeure**

Means impediments beyond the control of each of the Parties, namely:

- war, whether declared or not, civil war, civil violence, riots, and revolutions, acts of piracy, acts of sabotage;
- natural disasters such as violent storms, cyclones, earthquakes, floods, and destruction by lightning;
- acts of authority, whether lawful or unlawful, apart from acts for which the Party seeking relief has initiated or assumed risk; and
- acts and omissions of any third party telecommunications provider or any utility provider, other than where such party is a subcontractor, agent, contracted party, or affiliated company;
- causes beyond a Party's control, including but not limited to acts of God; fire; explosion; vandalism; cable cut; any law, order, regulation, direction, action, or request of any government, including federal, state, provincial, municipal, and local governments claiming jurisdiction over a Party or the Service, or of any department, agency, commission, bureau, corporation, or other instrumentality of any such government, or of any civil or military authority;
- national emergencies; and
- unavailability of materials or rights-of-way; insurrections; riots, terrorist acts or strikes, lock-outs, work stoppages, or other labour difficulties, supplier failures, shortages, breaches, or delays;

**Initial Term**

Initial length of term for the Services as indicated on the Order Form;

**Intellectual Property Rights**

means and includes:

- rights in and in relation to any patent, design, trademark, trade or business name (including all goodwill associated with any trademark, or any trade or business name), copyright, database, domain name, circuit topography design, and/or utility model, and including the benefit of all registrations or applications to register and the right to apply for registration of any of the foregoing items and all rights in the nature of any of the foregoing items, each for their full term (including any extensions or renewals thereof) and wherever in the world enforceable;
- all other intellectual property rights and forms of protection of a similar nature or having equivalent or similar effect and which may subsist anywhere in the world;

**Licence**

means the Telecommunications license issued to LIT and any renewal, amendment, re-issue or equivalent thereof authorising LIT to provide the Services;

**LIT**

means Data Control & Systems (1996) (Private) Limited trading as Liquid Intelligent Technologies, a limited liability company with registration number 7695/96;

**LIT Network**

the telecommunication network and network components owned and operated by LIT or its Affiliates, including points of presence ("PoP"), but

does not include customer equipment (modems, routers etc) unless such customer equipment is rented to the Customer by LIT and management thereof is specified as a Service, or any networks or network equipment not owned or controlled by such LIT Network;

MRC	Monthly Recurring Charge, being the monthly charges for the Services as set out in applicable Order Form;
MSA	The entire Master Service Agreement between LIT and the Customer for provision of the Service, consisting of one or more Order Form/s, Service Handover Forms, these Terms and Conditions, the SLA (if any), and any schedules or addenda hereto;
NRC	Non-Recurring Charge, being the installation and other related fee for the Services and any applicable deposit as set out in the applicable Order Form;
Order Form	means the form constituting part of the MSA and to which these Terms and Conditions are attached, through which the Customer makes application for Services, setting out the details of the Services requested such as quantities, fees, and charges payable;
Party	means either LIT or the Customer and "Parties" means both of them collectively and shall be deemed to mean and include their respective successors and permitted assigns;
Processing and Appropriate Technical Organisational Measures	Means the functions, processes, controls, systems, procedures and measures taken to protect and secure the personal information that a Party processes;
Renewal Term	Subsequent length of term as per order for the Services after completion of the Initial Term;
Service Commencement Date	<p>Earlier of the date on which:</p> <ul style="list-style-type: none"> <li>LIT deems that the Service is available for Customer's use at either the LIT-defined demarcation point or last-available test point, as indicated on the Liquid Service Handover Form (SHF); or</li> <li>Customer first uses the Service or the LIT Network under the MSA.</li> </ul>
Service Description	Means a schedule containing the detailed description of the nature and type of each different Service requested by the Customer, which is provided by LIT;
Service Handover Form	or SHF means the form constituting part of this MSA, provided by LIT to the Customer after LIT has completed the installation and testing of the Service or any variation of the Service, as the case may be;
Service(s)	Services provided by LIT under the MSA / Means the telecommunication and related services described in the Service Description of an Order Form;
SLA	means a comprehensive service level agreement in respect of the provision of the Services and all or any other service level agreement in respect of additional services which the Parties may enter into and a copy of which will form an additional Schedule to the MSA;
Taxes	All taxes arising in any jurisdiction, including without limitation all: sales, use, excise, gross receipts, value added, access, bypass, franchise, telecommunications, property (for co-location customers), consumption, or other taxes, fees, duties, charges or surcharges (however designated) which are imposed on or based on the provision, sale or use of the Service(s), including such taxes imposed directly on LIT or for which LIT



is permitted to invoice Customer in connection with LIT's performance under the MSA. Taxes do not include LIT's income taxes;

## INTERPRETATION

- In the MSA and in the annexes to the MSA –
  - clause headings are for convenience and are not to be used in its interpretation;
  - unless the context indicates a contrary intention an expression which denotes –
  - any gender includes the other genders;
  - a natural person includes a juristic person and vice versa;
  - the singular includes the plural and vice versa.
- Words and expressions defined in any clause shall, for the purposes of that clause, bear the meaning assigned to such words and expressions in such clause.
- If any provision is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that it is only in the definition clause, effect will be given to it as if it were a substantive provision in the body of the MSA.
- In the MSA and the annexes, the word "MSA" refers to the MSA and the words "clause" or "clauses" or "annexe" or "annexes" refer to clauses of or annexes to the MSA.
- Any reference to "days" shall be construed as being a reference to calendar "days" unless qualified by the word "business" in which instance a "business day" shall be any day other than a Saturday, Sunday and/or a public holiday in Zimbabwe from time to time. Any reference to "business hours" shall be construed as being the hours between 08h00 and 17h00 on any business day.
- The words "include", "includes", and "including" means "include without limitation", "includes without limitation", and "including without limitation". The use of the word "including" followed by a specific example/shall not be construed as limiting the meaning of the general wording preceding it.
- Terms other than those defined within the MSA will be given their plain English meaning, and those terms, acronyms, and phrases known in the information technology and telecommunications industries will be interpreted in accordance with their generally accepted meanings.
- Defined terms appearing in the MSA in title case shall be given their meaning as defined, while the same terms appearing in lower case shall be interpreted in accordance with their ordinary meaning as qualified by the clause and shall, unless the context otherwise indicates, include the term as defined.
- In the event of ambiguity or conflict between any of the constituent parts of the MSA, the order of precedence in the interpretation of the MSA shall be:
  - the Order Form
  - the Terms and Conditions;
  - the Product Description as indicated in the Service Order form;
  - the SLA (if any);
  - Service Handover Form;
  - and further Schedules and Annexes hereto.
- The rule of construction that a contract shall be interpreted against the Party responsible for the drafting or preparation of the contract shall not apply.
- Any reference to an enactment is to that enactment as at the Signature Date and as amended or re-enacted from time to time.
- If any provision in a definition is a substantive provision imposing rights or obligations on any Party effect shall be given to it as if it were a substantive provision in the body of the MSA.
- When any number of days is prescribed in the MSA, same shall be reckoned exclusive of the first day and inclusive of the last day unless the last day does not fall on a Business Day, in which case the last day shall be the next succeeding Business Day.

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- Reference to day/s, month/s or year/s shall be construed as Gregorian calendar day/s, month/s, or year/s.
- A law shall be construed as any law (including common law) or statute, constitution, decree, judgment, treaty, regulation, directive, by-law, order or any legislative measure of any government, local government, statutory or regulatory body or court.

**[SCHEDULE 1 TO FOLLOW]**



## **SCHEDULE 1**

### **CLOUD SERVICES SCHEDULE**

## 1. Applicability

This Cloud Services Schedule ("Schedule") is applicable only to the the Liquid Master Services Agreement (**MSA**) (as defined below) and the **COF** (as defined below) for the purchase of the Microsoft Services, which have been signed by the Customer and Liquid Intelligent Technologies.

## 2. Definitions

- 2.1. Except where the context requires otherwise, words, terms and definitions shall have the meaning given to them by the MSA or the COF.
- 2.2. Any capitalised terms not defined in this Schedule shall have the meaning ascribed thereto in the MSA.
- 2.3. For the purposes of this Schedule, the following expressions shall have the meanings given to them hereunder:
  - 2.3.1. "**Business Day**" means a day other than Saturday or Sunday, or a proclaimed public holiday officially recognised as such in the country where the Customer uses the Services;
  - 2.3.2. "**Business Hours**" means period between 08:00am and 17:00 pm on any given Business Day in the country where the Customer uses the Services;
  - 2.3.3. "**COF**" means the confirmation order form or service order form that shall be signed or has been signed by the Customer;
  - 2.3.4. "**Software licensing**" refers to Microsoft Cloud Solution Provider ("CSP") on-premises subscription-based software licensing of Microsoft's desktop tools, infrastructure services and productivity servers. The licensing is available on an annual or 3-year subscription period.
  - 2.3.5. "**Perpetual licensing**" refers to Microsoft CSP on-premises software licensing of Microsoft's desktop tools, infrastructure services and productivity servers. Licensing is available on a once-off upfront payment and may be utilised in perpetuity.
  - 2.3.6. "**Cloud Licensing**" refers to all Microsoft CSP licensing falling under Microsoft 365, Dynamics 365, Power Platform, and Enterprise and Mobility that is licensed for use in the cloud and on-premises hardware.
  - 2.3.7. "**Customer**" shall have the meaning ascribed thereto in the COF;
  - 2.3.8. "**Customer Specific Services**" means any Services where (i) the Customer has imposed any specific requirements that result in an increase to Liquid Intelligent Technologies of the cost of providing such Services, including but not limited to medium, delivery route, technology specifications, non-standard service levels or a third party that Liquid Intelligent Technologies is obliged to utilise; (ii) any Service that originates from and/or terminates at an

international location; or (iii) any service that forms part of a group of services linked together by Liquid Intelligent Technologies for feasibility purposes; and/or which are classified as 'non-standard' in the relevant COF;

- 2.3.9. **“Liquid Intelligent Technologies”** means the relevant Liquid Intelligent Technologies Affiliate in the country of service provision and identified on the COF;
- 2.3.10. **“Liquid Master Services Agreement”** or **“MSA”** means the master services agreement (or in certain countries the cloud support services agreement) between Liquid Intelligent Technologies and the Customer;
- 2.3.11. **“Microsoft Customer Agreement”** means the customer agreement between Microsoft and the Customer;
- 2.3.12. **“Perpetual licensing”** refers to Microsoft CSP on-premises software licensing of Microsoft’s desktop tools, infrastructure services and productivity servers. Licensing is available on a once-off upfront payment and may be utilised in perpetuity;
- 2.3.13. **“Self-subscription”** means an arrangement where the Customer purchases or varies its access to Azure products;
- 2.3.14. **“Services”** means collectively the Microsoft 365, Microsoft Dynamics 365, Microsoft Power Platform, Azure services and other online services as set out in this Schedule.
- 2.3.15. **“Service Credits”** means the credits due to the Customer for unscheduled Service Downtime calculated in accordance with clause 4.6.
- 2.3.16. **“Service Downtime”** means unscheduled Service Downtime as stipulated in the relevant COF read in conjunction with clause 4.3 below.
- 2.3.17. **“Service Fees”** means the charges for the licences as set out in the COF;
- 2.3.18. **“SHF”** means the service hand over form issued by Liquid Intelligent Technologies to the Customer after Liquid Intelligent Technologies has completed the installation and testing of the Service, or any variation of Service, as the case may be;
- 2.3.19. **“Subscription Term”** means the length of the subscription agreement as set out in the COF.
- 2.3.20. **Software licensing** refers to Microsoft Cloud Solution Provider (“CSP”) on-premises subscription-based software licensing of Microsoft’s desktop tools, infrastructure services and productivity servers. The licensing is available on an annual or 3-year subscription period.

2.3.21. **“Subscription Downgrade/Upgrade”** means switching the current subscription license to a license with less/more features and/or lower/higher price.

2.3.22. **“Usage based billing”** means billing based on how much the customer “uses” the product or service in order to create a dynamic bill for the customer based on usage.

### 3. Service Description

3.1. The term “Microsoft Dynamic 365 services” refers to unification of Microsoft Dynamics 365 customer relationship management (“CRM”) and enterprise resource planning (“ERP”) capabilities to deliver new applications to help manage specific business functions.

3.2. The term “Azure services” refers to cloud computing service created by Microsoft for building, testing, deploying, and managing applications and services through Microsoft-managed data centres offered through Liquid Intelligent Technologies.

3.3. This service schedule applies to all Microsoft 365, Office 365, Dynamics 365, Azure and other Microsoft CSP offers and supporting services purchased directly from Liquid Intelligent Technologies as set out in the relevant COF. The Customer should note that these services, may be enhanced, updated, amended and/or upgraded from time to time.

### 4. Service Levels

4.1. The Customer should be aware that all aspects relating to the Service Level in respect of this Service, shall be dealt with exclusively under and in terms of the relevant Microsoft Customer Agreement.

4.2. Further, the Customer should be aware that all information and formula set out under this clause 4 is subject to any changes and or amendments that may be notified and effected by the Microsoft Customer Agreement.

4.3. “Service Downtime” as defined in the relevant COF, is broken down per service.

CLOUD SERVICE	QUALIFICATIONS OF DOWNTIME
Exchange Online	Any period of time when users are unable to send or receive email with Outlook Web Access. There is no Scheduled Downtime for this service.
Online archiving	Any period of time when users are unable to access the email messages stored in their archive. There is no Scheduled Downtime for this service.
Exchange online protection	Any period of time when the network is not able to receive and process email messages. There is no Scheduled Downtime for this service.



Microsoft Teams	Any period of time when end users are unable to see presence status, conduct instant messaging conversations, or initiate online meetings.
Office 365	Any period of time when Office applications are put into reduced functionality mode due to an issue with Office 365 activation.
Microsoft 365	Any period of time when Office applications are put into reduced functionality mode due to an issue with Office 365 activation.
OneDrive for Business	Any period of time when users are unable to view or edit files stored on their personal OneDrive for Business storage.
Office Online	Any period of time when users are unable to use the Web Applications to view and edit any Office document stored on a SharePoint Online site for which they have appropriate permissions.
Teams	Any period of time when end users are unable to see presence status, conduct instant messaging conversations, or initiate online meetings. <sup>1</sup>
AD Domain services	the total accumulated minutes during a billing month for a given Microsoft Azure subscription during which a given Managed Domain is unavailable. A minute is considered unavailable if all requests for domain authentication of user accounts belonging to the Managed Domain, LDAP bind to the root DSE, or DNS lookup of records, made from within the virtual network where the Managed Domain is enabled, either return an Error Code or fail to return a Success Code within 30 seconds.
Azure Container Instances	the total number of minutes within Maximum Available Minutes that have no Connectivity
Azure Database for MySQL	the total number of minutes within Maximum Available Minutes during which a Server is unavailable. A minute is considered unavailable if all continuous attempts by Customer to establish a connection to the Server returned an Error Code
Backup Service	The total accumulated Deployment Minutes across all Protected Items scheduled for Backup by you in a given Microsoft Azure subscription during which the Backup Service is unavailable for the Protected Item. The Backup Service is considered unavailable for a given Protected Item from the first Failure to Back Up or Restore the Protected Item until the initiation of a successful Backup or Recovery of a Protected Item, provided that retries are continually attempted no less frequently than once every thirty minutes.



- 4.4. Microsoft 365 subscriptions come with a guaranteed amount of uptime and the details thereof are set out in an agreement between the Customer, and Microsoft and is available at <https://www.microsoft.com/licensing/docs/customeragreement>.
- 4.5. Liquid Intelligent Technologies reserves the right to reference Service Downtime as ascribed by Microsoft for all purposes and intent thereby overriding any such description in omission as per this Schedule.
- 4.6. Service Availability
- 4.6.1. Liquid Intelligent Technologies shall calculate, on a monthly basis, the Service Downtime in accordance with the applicable Microsoft SLA available at <https://www.microsoft.com/licensing/docs/view/Service-Level-Agreements-SLA-for-Online-Services>. The duration of such Service Downtime shall be used to determine any Service Credits that the Customer shall be entitled to.
5. Exchange Rate Fluctuations
- 5.1. Charges are based on pricing in US Dollars. Where Liquid Intelligent Technologies agrees to pricing and payment in any other currency, it will apply its acquisition exchange rate applicable at the time of invoice.
6. Fault Reporting and escalation procedures are as defined at <https://liquidcloud.africa/support>
7. Provision of Service
- 7.1. Liquid Intelligent Technologies shall make provision for any and all aspects pertaining to the enablement of the Customer's contracted Services:
- 7.1.1. restricted to the platform from which the Services are run; and
- 7.1.2. excluding any individual end user and/or mailbox creation.
- 7.1.3. excluding license provisioning in the Microsoft tenant.
- 7.2. The Customer shall be responsible for obtaining all approvals and consents necessary for installation and use of the Services.
- 7.3. If applicable, within 72 (seventy-two) hours of completing the installation for the applicable Service, Liquid Intelligent Technologies will issue a SHF containing essential information required to configure and use the Service as well as the Service Identity Number ("Service ID"). The Service ID shall be used in all interactions with Liquid Intelligent Technologies regarding the Service and shall be set out in the COF.
- 7.4. The Customer shall then conduct acceptance tests on the newly provided Service for a period of 2 (two) Business Days following receipt of the SHF.
- 7.5. Should the Customer detect a fault on the Service during these acceptance tests, then the Customer shall notify Liquid Intelligent Technologies of such fault in writing within 5 (five) Business Days following receipt of the SHF.

- 7.6. The Customer may only reject a Service on the basis that the agreed technical specifications as set forth in the COF have not been met, subject to notification as per paragraph 7.5 above.
- 7.7. If the Customer notifies Liquid Intelligent Technologies of its non-acceptance within the timeframe set out in paragraph 7.5 above, further tests of the Service shall be conducted and a new/revised SHF shall be provided to the Customer within 5 (five) Business Days.
- 7.8. The Service shall be deemed accepted by the Customer if no objection has been raised by the Customer within 2 (two) Business Days following receipt of the SHF in accordance with paragraph 7.7 above.
- 7.9. Subscriptions will automatically be renewed on the Subscription Term basis unless the Customer provides notice of termination at least 30 (thirty) days prior to the renewal date. Renewal pricing will be based on the current pricing at the time of the renewal Subscription.
8. The Customer hereby accepts all terms and conditions set out in the Microsoft Customer Agreement.
9. Service Terminations – Early Termination Costs

The termination fee payable by the customer for terminating Services which are specified as Customer Specific Services in the relevant COF, shall be calculated as at the termination date and shall be equal to 100% (one hundred per cent) of the MRC for the remainder of the Subscription Term thereof.

10. Additional terms and conditions relating to Microsoft Subscription

10.1. Subscription license count change

10.1.1. Customer may increase the number of licenses under their subscriptions at any time to the highest number of licences permitted by Microsoft with respect to a specific product. Charges will be pro-rated based on the day of license order.

10.1.2. Customer may only decrease the number of licenses under their subscriptions at the time of their subscription term renewal. Fourteen (14) days notification before the subscription renewal is required to be sent by the Customer to Liquid Intelligent Technologies requesting the specific subscription licence count adjustment.

10.2. Cloud Subscription License Upgrades and Downgrades.

10.2.1. Customer may upgrade their subscriptions at any time. Charges will be pro-rated based on the day of license order.

10.2.2. Customer may only downgrade their subscriptions at the time of their subscription term renewal. Fourteen (14) days notification before the subscription renewal is required to be sent by the Customer to Liquid Intelligent Technologies requesting the specific subscription downgrade.

#### 11. Software Licensing and Perpetual Licensing Cancellation

Customer can cancel a software purchase within 21 days of the purchase date. If Customer cancels within this first 21-day period, Customer will not be charged an early termination fee. After 21 days, Customer can no longer cancel a purchase. Cancellation requires ticket to be raised with Microsoft setting out reasons for the cancellation. If Microsoft advises on any cancellation fees payable, Customer will be obligated to pay the cancellation charges. Where Microsoft agrees to a credit, a credit note will be issued to the Customer in the next billing cycle on any prorated credit amount.

#### 12. Billing and Payment for Services relating to Microsoft Azure services

- 12.1. All figures quoted are, unless otherwise stated, estimated values. Actual billing may vary based the consumption and or usage of the products and services. The more accurate the initial information, the more accurate the estimated costs will be, however month to month billing may still vary.
- 12.2. As an example: a service which is billed hourly may, in February generate up to 672 Hours of usage (24 Hours X 28 Days) However the same product used in March may generate up to 744 Hours (24 Hours X 31 Days). The billing in the month with more hours of usage will therefore be more than that in the month with fewer hours of usage.
- 12.3. If the service is provisioned part way through or is turned off for a period during a billing period, this can affect the hours consumed for that period. Storage is charged for regardless of whether the relevant services are running.
- 12.4. Any services added over and above what is specified in the Azure estimated figures will be charged for based on said services billing parameters (Per User, GB, Hour, Month etc.). If Customer is unsure of the costs related to running a service on Azure, please contact Supplier for an estimate.
- 12.5. Customer will be billed for not only the Services arising from a COF but also for Services arising from Self-subscription.

**[SCHEDULE 2 TO FOLLOW]**

## SCHEDULE 2

This Data Processing Schedule ("**Schedule**") to the Agreement shall apply where the provision of services (the "**Services**") by Data Control & Systems (1996) (Private) Limited trading as Liquid Intelligent Technologies (hereinafter referred to as "**LIT**") to you (hereinafter referred to as the "**Customer**") involves the processing of Personal Information which is subject to the Data Protection Legislation and LIT acts as Processor on behalf of the Customer as the Controller. This Schedule does not apply where LIT is the Controller. In the event of conflict between this Schedule and the Agreement, this Schedule shall control with respect to its subject matter.

### 1. DEFINITIONS.

Terms not defined herein have the meanings set forth in the Agreement. The following words in this Schedule have the following meanings:

- 1.1. "**Agreement**" means the agreement between Customer and LIT for the provision of the Services to the Customer;
- 1.2. "**Controller**" means an entity which, alone or jointly with others, determines the purposes and means of the processing of the Personal Information;
- 1.3. "**Customer**" means the Party to the Agreement and identified as such on the Order Form;
- 1.4. "**Personal Information**" refers to the definition in the Cyber and Data Protection Act [Chapter 12:07];
- 1.5. "**Personal Information Breach**" means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Information transmitted, stored or otherwise processed under this Schedule;
- 1.6. "**Data Protection Legislation**" means the provisions of the Cyber and Data Protection Act [Chapter 12:07]; Consumer Protection Act [Chapter 14:14]; Postal and Telecommunications (Subscriber Registration) Regulations, 2014; and the Interception of Communications Act [Chapter 11:20] relating to personal information and any other legislation and regulatory requirements in force from time to time which apply to a Party relating to the use of personal information (including, without limitation, the privacy of electronic communications); and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a Party;
- 1.7. "**Order Form**" means the form constituting part of the Agreement which this Schedule is attached, through which the Customer makes application for Services, setting out the details of the Services requested such as quantities, fees, and charges payable;
- 1.8. "**Processing**" refers to the definition in the Cyber and Data Protection Act [Chapter 12:07];
- 1.9. "**Processor**" means an entity which processes the Personal Information on behalf of the Controller;
- 1.10. "**Sub processor**" means any Processor engaged by LIT for the provision of the Services;

### 2. PROCESSING OF PERSONAL INFORMATION.

#### 2.1. Roles of the Parties.

LIT may process Personal Information under the Agreement as a Processor acting on behalf of the Customer, as the Controller.

#### 2.2. Instructions.

LIT will process Personal Information in accordance with Customer's documented instructions. Customer agrees that this Schedule, the Agreement and any subsequent Order Forms, and any configurations by Customer or its authorized users, comprise Customer's complete instructions to LIT regarding the Processing of Personal Information. Any additional or alternate instructions must be agreed between the parties in writing, including the costs (if any) associated with complying with such instructions. LIT is not responsible for determining if Customer's instructions are compliant with applicable law. However, if LIT is of the opinion that a Customer instruction infringes any applicable Data Protection Legislation, LIT shall notify Customer as soon as reasonably practicable and shall not be required to comply with such infringing



instruction.

### 2.3. Details of Processing.

Details of the subject matter of the Processing, its duration, nature and purpose, and the type of Personal Information and data subjects are as specified in Annex 2.

### 2.4. Compliance.

Customer and LIT agree to comply with their respective obligations under the Data Protection Legislation applicable to the Personal Information that is Processed in connection with the Services. Customer has sole responsibility for complying with the Data Protection Legislation regarding the lawfulness of the Processing of Personal Information prior to disclosing, transferring, or otherwise making available any Personal Information to LIT.

## 3. SUB PROCESSORS.

### 3.1. Use of Sub processors.

LIT may use Sub processors with the Customer's general or specific written consent. Customer agrees that LIT may appoint and use Sub processors to process the Personal Information in connection with the Services. Sub processors may include third parties or any member of the LIT group of companies. Where a Sub processor fails to fulfil its data protection obligations as specified above, LIT shall be liable to the Customer for the performance of the Sub processor's obligations.

### 3.2. List of Sub processors.

LIT will provide a list of Sub processors that it engages to support the provision of the Services upon written request by the Customer or as otherwise made available by LIT. If Customer legitimately objects to the addition or removal of a Sub processor on data protection grounds and LIT cannot reasonably accommodate Customer's objection, the parties will discuss Customer's concerns in good faith with a view to resolving the matter.

## 4. SECURITY.

### 4.1. Technical and organisational security measures.

Taking into account industry standards, the costs of implementation, the nature, scope, context and purposes of the Processing, and any other relevant circumstances relating to the Processing of the Personal Information on LIT systems, LIT shall implement appropriate technical and organizational security measures to ensure security, confidentiality, integrity, availability and resilience of processing systems and services involved in the Processing of the Personal Information that are commensurate with the risk in respect of such Personal Information. The parties agree that the technical and organisational security measures described in Annex 1 ("**Information Security Measures**") provide an appropriate level of security for the protection of Personal Information to meet the requirements of this clause. LIT will periodically (i) test and monitor the effectiveness of its safeguards, controls, systems and procedures and (ii) identify reasonably foreseeable internal and external risks to the security, confidentiality and integrity of the Personal Information, and ensure these risks are addressed.

### 4.2. Technical Progress.

The Information Security Measures are subject to technical progress and development, and LIT may modify these provided that such modifications do not degrade the overall security of the Services provided under the Agreement.

### 4.3. Access.

LIT shall ensure that persons authorized to access the Personal Information (i) have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality and (ii) access the Personal Information only upon instructions from LIT, unless required to do so by applicable law.

## 5. PERSONAL INFORMATION BREACH.

LIT will notify the Customer without undue delay after becoming aware of a Personal Information Breach

in relation to the Services provided by LIT under the Agreement and will use reasonable efforts to assist the Customer in mitigating, where possible, the adverse effects of any Personal Information Breach.

## **6. INTERNATIONAL TRANSFERS.**

LIT may, in connection with the provision of the Services, or in the normal course of business, make worldwide transfers of Personal Information to its affiliates and/or Sub processors. When making such transfers, LIT shall ensure appropriate protection is in place to safeguard the Personal Information transferred under or in connection with this Agreement.

## **7. DELETION OF PERSONAL INFORMATION.**

Upon termination of the Services (for any reason) and if requested by Customer in writing, LIT shall, as soon as reasonably practicable, return or delete the Personal Information on LIT systems unless applicable law requires storage of the Personal Information. LIT may defer the deletion of the Personal Information to the extent and for the duration that any Personal Information or copies thereof cannot reasonably and practically be expunged from LIT's systems. For such retention, the provisions of this Schedule shall continue to apply to such Personal Information. LIT reserves the right to charge Customer for any reasonable costs and expenses incurred by LIT in deleting the Personal Information pursuant to this clause.

## **8. COOPERATION.**

### **8.1. Data Subject Requests.**

LIT shall promptly inform Customer of any requests from individuals exercising their data subject rights under the Data Protection Legislation. Customer is responsible for responding to such requests. LIT will reasonably assist Customer to respond to data subject requests to the extent that Customer is unable to access the relevant Personal Information in the use of the Services. LIT reserves the right to charge Customer for such assistance if the cost of assisting exceeds a nominal amount.

### **8.2. Third party requests.**

If LIT receives any requests from third parties or an order of any court, tribunal, regulator or government agency with competent jurisdiction to which LIT is subject relating to the Processing of Personal Information under the Agreement, LIT will promptly redirect the request to the Customer. LIT will not respond to such requests without Customer's prior authorisation unless legally compelled to do so. LIT will, unless legally prohibited from doing so, inform the Customer in advance of making any disclosure of Personal Information and will reasonably co- operate with Customer to limit the scope of such disclosure to what is legally required.

### **8.3. Privacy Impact Assessment and Prior Consultation.**

To the extent required by Data Protection Legislation, LIT shall provide reasonable assistance to Customer to carry out a data protection impact assessment in relation to the Processing of Personal Information undertaken by LIT and/or any required prior consultation(s) with supervisory authorities. LIT reserves the right to charge Customer a reasonable fee for the provision of such assistance.

## **9. DEMONSTRATING COMPLIANCE.**

LIT shall, upon reasonable prior written request from Customer (such request to be made in accordance with the terms of the Agreement), provide to Customer such information as may be reasonably necessary to demonstrate compliance with LIT's obligations under this Schedule and allow for and contribute to audits, including inspections, conducted by the Customer or auditor mandated by Customer.

## **ANNEX 1: INFORMATION SECURITY MEASURES**

LIT takes information security seriously. This information security overview applies to LIT's corporate controls for safeguarding personal information which is processed and transferred amongst LIT group companies. LIT's information security program enables the workforce to understand their responsibilities. Some customer solutions may have alternate safeguards outlined in the statement of work as agreed with each customer.

### **1. SECURITY PRACTICES**

LIT has implemented corporate information security practices and standards that are designed to safeguard LIT's corporate environment and to address: (1) information security; (2) system and asset management; (3) development; and (4) governance. These practices and standards are approved by the LIT CIO and undergo formal review on an annual basis.

### **2. ORGANIZATIONAL SECURITY**

- 2.1. It is the responsibility of the individuals across the organization to comply with these practices and standards. To facilitate the corporate adherence to these practices and standards, the function of information security provides:
  - 2.1.1. Strategy and compliance with policies/standards and regulations, awareness and education, risk assessments and management, contract security requirements management, application and infrastructure consulting, assurance testing and drives the security direction of the company;
  - 2.1.2. Security testing, design and implementation of security solutions to enable security controls adoption across the environment;
  - 2.1.3. Security operations of implemented security solutions, the environment and assets, and manage incident response;
  - 2.1.4. Forensic investigations with security operations, legal, data protection and human resources for investigations including eDiscovery and eForensics.

### **3. ASSET CLASSIFICATION AND CONTROL**

- 3.1. LIT's practice is to track and manage physical and logical assets. Examples of the assets that LIT IT might track include:
  - 3.1.1. Information Assets, such as identified databases, disaster recovery plans, business continuity plans, data classification, archived information;
  - 3.1.2. Software Assets, such as identified applications and system software;
  - 3.1.3. Physical Assets, such as identified servers, desktops/laptops, backup/archival tapes, printers and communications equipment.
- 3.2. The assets are classified based on business criticality to determine confidentiality requirements. Industry guidance for handling personal information provides the framework for technical, organizational and physical safeguards. These may include controls such as access management, end point detection and response, document classification and labelling, data loss prevention, encryption, security incident event monitoring and logging, and data destruction.

### **4. PERSONNEL SECURITY**

As part of the employment process, employees undergo a screening process applicable per regional law. LIT's annual compliance training includes a requirement for employees to complete an online course and pass an assessment covering information security and data privacy. The security awareness program may also provide materials specific to certain job functions.

### **5. PHYSICAL AND ENVIRONMENTAL SECURITY**

LIT uses a number of technological and operational approaches in its physical security program in regard to risk mitigation. The security team works closely with each site to determine appropriate measures are

in place and continually monitor any changes to the physical infrastructure, business, and known threats. It also monitors best practice measures used by others in the industry and carefully selects approaches that meet both uniqueness in business practice and expectations of LIT as a whole. LIT balances its approach towards security by considering elements of control that include architecture, operations, and systems.

## **6. COMMUNICATIONS AND OPERATIONS MANAGEMENT**

- 6.1. The IT organization manages changes to the corporate infrastructure, systems and applications through a centralized change management program, which may include, testing, business impact analysis and management approval, where appropriate.
- 6.2. Incident response procedures exist for security and data protection incidents, which may include incident analysis, containment, response, remediation, reporting and the return to normal operations.
- 6.3. To protect against malicious use of assets and malicious software, additional controls may be implemented, based on risk. Such controls may include, but are not limited to, information security practices and standards; restricted access; designated development and test environments; virus detection on servers, desktops and notebooks; virus email attachment scanning; system compliance scans; intrusion prevention monitoring and response; logging and alerting on key events; information handling procedures based on data type, e-commerce application and network security; and system and application vulnerability scanning.

## **7. ACCESS CONTROLS**

- 7.1. Access to corporate systems is restricted, based on procedures to ensure appropriate approvals. To reduce the risk of misuse, intentional or otherwise, access is provided based on segregation of duties and least privileges.
- 7.2. Remote access and wireless computing capabilities are restricted and require that both user and system safeguards are in place.
- 7.3. Specific event logs from key devices and systems are centrally collected and reported on an exceptions basis to enable incident response and forensic investigations.

## **8. SYSTEM DEVELOPMENT AND MAINTENANCE**

Publicly released third party vulnerabilities are reviewed for applicability in the LIT environment. Based on risk to LIT's business and customers, there are pre-determined timeframes for remediation. In addition, vulnerability scanning and assessments are performed on new and key applications and the infrastructure based on risk. Code reviews and scanners are used in the development environment prior to production to proactively detect coding vulnerabilities based on risk. These processes enable proactive identification of vulnerabilities as well as compliance.

## **9. COMPLIANCE**

- 9.1. The information security, legal, privacy and compliance departments work to identify regional laws and regulations applicable to LIT group. These requirements cover areas such as intellectual property of the company and our customers, software licenses, protection of employee and customer personal information, data protection and data handling procedures, trans-border data transmission, financial and operational procedures, regulatory export controls around technology, and forensic requirements.
- 9.2. Mechanisms such as the information security program, internal and external audits/assessments, internal and external legal counsel consultation, internal controls assessment, internal penetration testing and vulnerability assessments, contract management, security awareness, security consulting, policy exception reviews and risk management combine to drive compliance with these requirements.

## **ANNEX 2: DATA PROCESSING DESCRIPTION**

### **1. SUBJECT MATTER AND DURATION OF THE PROCESSING**

The subject matter and duration of the Processing shall be according to the Agreement.

### **2. PURPOSE OF PROCESSING**

Personal Information will be processed for the purpose of provision of services and performance under our services Agreement. The Agreement and the relevant service descriptions set out the specific details and possible additional services.

### **3. NATURE OF PROCESSING**

- 3.1 Billing
- 3.2 Customer support and management
- 3.3 Data storage
- 3.4 Marketing
- 3.5 Customer onboarding, (including credit checking)

### **4. CATEGORIES OF DATA SUBJECTS**

The data subjects are Customers, Customer's end users, employees, contractors, suppliers and other third parties relevant to the Services

### **5. TYPES OF PERSONAL INFORMATION**

The type of Personal Information that may be submitted by the customer are:

- Contact details: which may include name, address, email address, telephone, fax other contact details, emergency contact details, associated local time zone information.
- Customer details: which may include contact details, invoicing and credit related data and other financial details.
- IT systems and operational information: which may include personal identifiers, voice and data traffic usage logs, user ID and password details, computer name, email address, domain name, user names, passwords, IP address, permission data (according to job roles), account and delegate information for communication services, tracking information regarding patterns of software and internet usage (e.g. cookies), and information recorded for operational and/or training purposes).
- Data subjects 'traffic/transmission data.
- Other: Any other Personal Information submitted by Customer to Provider as Customer's Processor.

### **6. CONTACT DETAILS OF THE PROCESSOR**

For data protection queries you can send a query to:

- Your designated contact under your Agreement; or
- Via an email to [privacy.zimbabwe@liquid.tech](mailto:privacy.zimbabwe@liquid.tech)

**[END OF DOCUMENT]**