



Customer Relationship Terms

(general terms for the provision of ICT related Services)

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Terms version number

1.0

1 INTRODUCTION

These Terms are the general terms of the relationship between Service Provider and Customer. These Terms cover any transactions where Service Provider provides to Customer who receives ICT Services. The commercial terms of any transaction will be contained in an Order that will incorporate these Terms; or The Order will prevail if there is a conflict of meaning. Nothing in these Terms obligates any party to enter into any Orders.

2 DEFINITIONS AND INTERPRETATION

2.1 **Definitions.** For purposes of the Agreement:

- 2.1.1 "**AFSA**" means the Arbitration Foundation of Southern Africa (or its successor or body nominated in writing by it in its stead);
- 2.1.2 "**Agreement**" means the agreement between Service Provider and Customer, consisting of the Terms and any Orders the parties enter into;
- 2.1.3 "**Business Day**" means any day other than a Saturday, a Sunday or a holiday (including a public or bank holiday) in the jurisdiction where the entity of the Service Provider that entered into the relevant Order is organised;
- 2.1.4 "**Business Hours**" means Service Provider's normal business hours on Business Days;
- 2.1.5 "**Contract Year**" means, in respect of an Order, each successive 12 calendar month period during the term of the Order, as measured from the Effective Date;
- 2.1.6 "**Customer**" means the customer that enters into an Order and, if specified in the Order, those related to it;
- 2.1.7 "**Customer Data**" means Customer's data (including information about an identifiable person):
- 2.1.7.1 provided to Service Provider either by Customer or by any third party on Customer's behalf; or
- 2.1.7.2 data specific to the Services that Service Provider generates, processes, or supplies to Customer in the performance of the Services;
- but excludes any derived data that is created by Service Provider for its own internal purposes or which is proprietary or confidential to Service Provider or Service Provider's Third Party Contractors;
- 2.1.8 "**Customer Material**" means all materials provided or made available by or on behalf of Customer to Service Provider for purposes of the Agreement and includes Customer Data;
- 2.1.9 "**Customer Policies**" means any of Customer's policies, practices, codes of conduct and procedures including any applicable broad based black economic empowerment, security, information technology, health, safety and environmental policies (as amended from time to time) that may be of general application;
- 2.1.10 "**Deliverable**" means any deliverable or work product delivered by Service Provider relating to the Services;
- 2.1.11 "**Delivery Date**" means the estimated date of completion of each Deliverable referred to in the corresponding Order;
- 2.1.12 "**Effective Date**" means in respect of each Order, the effective date stipulated in each Order, in the absence of which it will be the date the Order is accepted by Service Provider;
- 2.1.13 "**EULA**" means an end user license agreement;
- 2.1.14 "**Fees**" means the fees, charges, or purchase consideration that Customer will pay to Service Provider in respect of Services provided by Service Provider under Orders;
- 2.1.15 "**Intellectual Property Rights**" mean all intellectual property rights, including but not limited to –
- 2.1.15.1 all works eligible for copyright under section 2 of the Copyright Act 98 of 1978, including copyright in the Database;
- 2.1.15.2 domain names, registered or unregistered trademarks, trade or business names, service marks, design rights, trade secrets, know-how and patents;
- 2.1.15.3 any application or right to apply for registration of any of these rights; and
- 2.1.15.4 all rights of a similar nature to any of the above rights which may subsist in South Africa or elsewhere, whether or not such rights are registered or capable of being registered;

- 2.1.16 "**ICT**" means information, communication or technology;
- 2.1.17 "**Order**" means a services order agreed to and signed by both the parties describing the specific Services to be provided by Service Provider to Customer;
- 2.1.18 "**Personnel**" means any director, employee, agent, consultant, contractor or other representative;
- 2.1.19 "**Service Provider**" means the vendor that enters into an Order and, if specified in the Order, those related to it;
- 2.1.20 "**Service Provider Technology**" means any and all technology that Service Provider has created, acquired or otherwise has rights in and may, in connection with the performance of Service Provider's obligations under the Agreement, employ, provide, modify, create or otherwise acquire rights in and includes all concepts; ideas; methods; methodologies; procedures; processes; know-how; techniques; function, process, system and data models; templates; the generalised features of the structure, sequence and organisation of software, user interfaces and screen designs; general purpose consulting and software tools, utilities and routines; and logic, coherence and methods of operation of systems;
- 2.1.21 "**Services**" means any services Service Provider provides to Customer, under Orders;
- 2.1.22 "**Service Levels**" means the levels according to which each Service is to be provided, as agreed by the parties and stipulated in an Order;
- 2.1.23 "**Sign**" means the handwritten signature, an advanced electronic signature, or an electronic signature used by any electronic signature service that the parties agree to use, of the duly authorised representative of a party;
- 2.1.24 "**Signature Date**" means the date of signature by the party signing last;
- 2.1.25 "**Site**" means the physical site referred to in an Order, at which Services are to be provided by Service Provider for use by Customer under the Order;
- 2.1.26 "**Terms**" means these terms, consisting of:
- 2.1.26.1 these customer relationship terms; and
- 2.1.26.2 any other relevant specific terms, policies, disclaimers, rules and notices agreed between the parties (including any that may be applicable to any specific Services);
- 2.1.27 "**Third Party Contracts**" means any and all contracts in force as at the Effective Date between Customer and Third Parties Contractors, referred to in the Order;
- 2.1.28 "**Third Party Contractor**" means, in respect of any goods and services, any contractor, supplier, vendor or licensor of the goods or services, which is not a party to the Agreement;
- 2.1.29 "**Time and Materials**" means Service Provider's standard time and materials Fees applicable from time to time;
- 2.1.30 "**Writing**" means any mode of reproducing information or data in physical form and includes hard copy printouts, handwritten documents, fax transmissions, but excludes information or data in electronic form.
- 2.2 **Definitions in the Order.** Words defined (or assigned a meaning) in the Order will have that meaning in these Terms, unless the context clearly indicates otherwise.
- 2.3 **Interpretation.** A word defined or assigned a meaning in the Agreement will start with a capital letter. All headings are inserted for reference purposes only and must not affect the interpretation of the Agreement. Whenever "*including*" or "*include*", or "*excluding*" or "*exclude*", together with specific examples or items follow a term, they will not limit its ambit. Terms other than those defined within the Agreement will be given their plain English meaning. References to any enactment will be deemed to include references to the enactment as re-enacted, amended, or extended from time to time. A reference to a person includes a natural and juristic person and a reference to a party includes the party's successors or permitted assigns. Unless otherwise stated in the Agreement, when any number of days is prescribed in the Agreement the first day will be excluded and the last day included. The rule of construction that an agreement must be interpreted against the party responsible for its drafting or preparation does not apply. GMT +2 will be used to calculate any times.

- 2.4 **Conflict.** If there is a conflict of meaning between these customer relationship terms and any other relevant specific terms, policies, disclaimers, rules and notices agreed between the parties, the specific terms will prevail in respect of Customer's use of the relevant Services.

3 TERM

These Terms commence on acceptance and continue until terminated.

4 ORDERS

- 4.1 **Invitation to do business.** The marketing of the Services by Service Provider is merely an invitation to do business or for Customer to make an offer to procure Services. The parties only conclude a valid and binding Order when Service Provider accepts the offer made by Customer which will be indicated by Service Provider signing the Order
- 4.2 **Fees.** Despite Service Provider's best efforts, the stated Fees may be incorrect. Service Provider will confirm the Fees for any Services when Service Provider accepts the Customer's offer.
- 4.3 **Third party terms.** If a third party supplies or delivers any Services directly to Customer, third party terms or conditions may apply. Customers are solely responsible to ensure they understand and agree to those terms.
- 4.4 **Time and place.** The parties conclude any agreement between them at the time when a duly authorised representative of Service Provider accepts the relevant offer and at the place where Service Provider has its head office. Service Provider does not need to communicate the acceptance of the offer to Customer.
- 4.5 **Orders.** The Terms in effect at the time Customer makes an offer will govern the Order. Each Order will create a separate agreement. Despite that, Service Provider may consider the breach of any one Order to constitute a breach of any or all Orders.
- 4.6 **Sales representatives.** No sales representatives of Service Provider has the authority to bind Service Provider and no representation, warranty or any other statements made or given by any sales representative of Service Provider will be binding on Service Provider, unless given in Writing and Signed by a duly authorised representative of Service Provider.
- 4.7 **Software.** Please note that intellectual property laws protect all software. Software is licensed, not sold, to Customer. Unless agreed otherwise, the license for any software is contained in the EULA. Customer will be required to agree to the EULA prior to use of the software. The applicable EULA, which takes precedence, governs the use of the software. If Customer does not agree to the EULA, Customer must return the software in accordance with the return policy of Service Provider for a refund of the Fees. If Customer uses the software (or takes any other action that is described in the packaging or software as constituting Customer's consent to the EULA), then Customer agrees to the EULA and may not be eligible for a refund or return of the software, unless otherwise allowed in the documentation accompanying the software or applicable law.

4.8 SERVICES

Service Provider will provide the Services to Customer at the Service Levels.

5 CHANGE CONTROL

- 5.1 **Changes to Services.** During the currency of an Order, events may occur which require a change to the nature and scope of Services. The parties will not implement a change unless they comply with this clause.
- 5.2 **Change request.** A party may propose a change to the nature and scope of Services by sending a scope change document to the other party detailing the desired changes.
- 5.3 **Scope change document.** If a scope change document is made by:
- 5.3.1 Customer, Customer will specify the reasons for that change and describe the change in sufficient detail to enable Service Provider to formulate a response. Service Provider will investigate the likely impact of any proposed changes on the

- 5.3.2 provision of Services and will provide Customer with a scope change proposal, including amended pricing and timeframes; Service Provider, Service Provider will detail in a scope change proposal the reasons for and impact of the change, the services required to implement the change and the effect that the changes, if implemented, will have on the relevant Order.
- 5.4 **Sign-off.** The parties will discuss and agree the proposed changes and make the necessary amendments to Service Provider's scope change proposal. Customer will then consider the scope change proposal and may approve or reject it in writing within three Business Days. If a scope change proposal:
- 5.4.1 is accepted by Customer, the scope change proposal will be signed off by duly authorised representatives of the parties and incorporated into the relevant Order; or
- 5.4.2 is rejected by Customer, the Services will continue to be provided by Service Provider on the existing terms.
- 5.5 **No change effective until sign-off.** No party may proceed with any change to an Order until the change and all matters relating to the change have been agreed in writing between the parties. Pending sign-off, the parties will continue to perform their obligations without taking account of the proposed changes. No party must agree to any change, but a party will not unreasonably delay or withhold their agreement to a proposed change.
- 5.6 **Exception.** Amendments to the content of the Agreement that do not directly impact the nature and scope of the Services will not be subject to this change control procedure, but shall be executed in writing.

6 PERSONNEL

- 6.1 **Access.** With effect from the Signature Date, Customer will allow Service Provider and its Personnel access (at all reasonable times) to the Sites for the purposes of fulfilling its obligations under Orders.
- 6.2 **Compliance with Customer Policies.** Service Provider will take all reasonable steps to comply, and ensure that its Personnel comply, with Customer Policies. Customer must notify Service Provider of all Customer Policies prior to the Effective Date and give Service Provider and the relevant Personnel reasonable written notice of any change in existing Customer Policies or the implementation of new Customer Policies.
- 6.3 **Allocation of resources.** Service Provider may allocate and re-allocate all Service Provider Personnel who provide Services under the Agreement.

7 CUSTOMER OBLIGATIONS

To enable Service Provider to provide the Services, Customer agrees to provide ongoing assistance, liaison, input, support and full co-operation and will, to the extent required by Service Provider and at Customer's cost:

- 7.1 **provision of office and working space;** provide Service Provider and its Personnel with access to adequate working space, office furniture and parking;
- 7.2 **provision of Consumables;** provide the Consumables reasonably required by Service Provider to fulfil its obligations under Orders, unless any Consumables are agreed to be provided by Service Provider under an Order;
- 7.3 **decisions and approvals;** render all decisions and approvals required as soon as is reasonably possible;
- 7.4 **suitable infrastructure;** provide a suitable infrastructure for the components, software or Deliverables that are to be implemented, including main servers, network operating systems, third party software, databases, tools and related facilities, in accordance with any specification requirements;
- 7.5 **access;** provide Service Provider with reasonable access to Customer Material and Customer's computer systems;
- 7.6 **notifications;** notify Service Provider as soon as reasonably possible of any issues, concerns or disputes;
- 7.7 **Customer Material;** be responsible for the accuracy and

- completeness of all Customer Material;
- 7.8 **supply of infrastructure;** provide electricity services, telephone services and other connectivity (including access to computer networks and the Internet) at each Site;
- 7.9 **dependent functions;** make available sufficiently qualified and authorised Customer Personnel, with appropriate access rights and permissions;
- 7.10 **compliance with Service Provider policies;** comply with all reasonable policies, procedures and instructions of Service Provider; and
- 7.11 **no malicious software;** take commercially reasonable measures to ensure that no malicious software is introduced into Customer's or Service Provider's systems by its Personnel or any third party.
- 8 CUSTOMER MATERIAL AND CUSTOMER DATA**
- 8.1 **Ownership.** Ownership in all Customer Material whether under its control or not, will continue to vest in Customer and Service Provider will not obtain any proprietary rights in Customer Material. Customer grants to Service Provider (and Service Provider's contractors as necessary) a perpetual, non-exclusive, royalty free licence to use, reproduce and modify any Customer Material for the purposes of providing the Services or as directed by Customer.
- 8.2 **Privacy and data protection.**
- 8.2.1 **General.**
- 8.2.1.1 Service Provider and Customer are each responsible for complying with their respective obligations under applicable privacy and data protection laws governing Customer Data.
- 8.2.1.2 Customer remains solely responsible for determining the purpose and means of Service Provider's processing of Customer Data, including that processing will not place Service Provider in breach of any applicable privacy and data protection laws.
- 8.2.2 **Trans-border Customer Data flows.**
- 8.2.2.1 Customer consents to Service Provider transferring Customer Data across a country border to enable Service Provider to comply with its obligations under the Agreement.
- 8.2.2.2 Customer is solely responsible for determining that any transfer of Customer Data across a country border complies with the applicable privacy and data protection laws.
- 8.2.3 **Indemnity.** Customer agrees to indemnify, defend, and hold harmless Service Provider (and those related to it and its Personnel, co-branders or other partners) from and against any claim, demand, loss, damage, cost, or liability (including legal costs) arising out of or relating to Customer failing to comply with its obligations under this clause. If permissible under applicable law, legal costs will be on an attorney and own client basis.
- 8.2.4 **Access.** On a party's reasonable written request, the other party will provide the requesting party with the information that it has regarding Customer Data and its processing that is necessary to enable the requesting party to comply with its obligations under this clause and the applicable privacy, data protection and access to information laws. The requesting party will reimburse the other party for its reasonable charges for its assistance.
- 8.3 **Preservation of integrity of Customer Data.** Both parties will take reasonable precautions (having regard to the nature of their obligations under the Agreement), to preserve the integrity of Customer Data and to prevent any unauthorised access, corruption or loss of Customer Data.
- 8.4 **Return of data.** On termination of any Order, each party will return to the other party in the form in which it was received all of the other party's data or information provided to the party for the purpose of the performance of the relevant Order.
- 9 CUSTOMER THIRD PARTY CONTRACTORS**
- 9.1 **Applicable terms.** Where Service Provider is required under Orders to manage or liaise with Customer-appointed Third Party Contractors pursuant to Third Party Contracts, the following terms will apply:
- 9.1.1 Customer will notify Service Provider in writing of the applicable terms of the Third Party Contracts insofar as they relate to or have an impact on Service Provider's obligations;
- 9.1.2 Service Provider will not be required to ensure or be responsible for ensuring Customer's or the Third Party Contractors' compliance with the Third Party Contracts;
- 9.1.3 Customer will obtain and maintain all necessary licences, consents or authorities under the Third Party Contracts (including any consents or licences required to enable Service Provider to fulfil its obligations under the Agreement) and will be liable for all fees and other charges payable to any Third Party Contractors pursuant to the Third Party Contracts.
- 9.2 **No liability.** Service Provider will not be liable for any act or omission of a Third Party Contractor.
- 10 VENDOR WARRANTIES**
- 10.1 **Service warranties.** Service Provider warrants that in relation to the Services:
- 10.1.1 Service Provider and its Personnel will possess and have the right to use:
- 10.1.1.1 knowledge and expertise sufficient to enable Service Provider to provide the Services; and
- 10.1.1.2 all maintenance and other manuals, specifications, diagnostic aids and testing devices and specialised tools and equipment necessary to enable Service Provider to provide the Services.
- 10.1.2 Service Provider will employ a sufficient number of suitably trained Personnel to provide the Services and to achieve the Service Levels;
- 10.1.3 Service Provider will provide the Services in accordance with all applicable laws, enactments and regulations.
- 10.2 **General Warranties.** Service Provider warrants further that:
- 10.2.1 Service Provider has the legal right and full power and authority to execute and deliver, and to exercise Service Provider's rights and perform Service Provider's obligations under the Agreement;
- 10.2.2 Service Provider and its Personnel will not knowingly introduce any malicious software into Customer's system.
- 11 DISCLAIMER OF WARRANTIES**
- 11.1 **Disclaimer.** Use of the Services is at the sole responsibility and risk of each Customer. The Services are provided on an "as is" and "as available" basis. Except for the warranties given in the Agreement, Service Provider expressly disclaims all representations, warranties, or conditions of any kind, whether express or implied, including:
- 11.1.1 any implied warranties or conditions of satisfactory quality, no latent defects, fitness for a particular purpose, accuracy, system integration, quiet enjoyment, title, and non-infringement; or
- 11.1.2 any warranties regards third party software; or
- 11.1.3 that the Services will meet the requirements of Customer or be uninterrupted, be legally effective or complete, timely, secure, error-free or free from infection by malicious software. Each Customer should keep up-to-date security software on any systems used to access the Services.
- 11.2 **Exclusion of liability.** Despite any warranty given by Service Provider, Service Provider will not be liable regards any defect arising from:
- 11.2.1 wilful damage, negligence, abnormal working conditions, failure to follow its instructions (whether oral or in writing), misuse, or alteration or repair of the Deliverable without Service Provider's express prior approval;
- 11.2.2 attachments, features or devices used on any goods that are not supplied or approved in writing by Service Provider;
- 11.2.3 the use of any version other than the current version of the correct operating system software.
- 12 CUSTOMER WARRANTIES**
- Customer warrants that:
- 12.1 it has not been induced to enter into the Agreement by any prior

- representations, warranties or guarantees (whether oral or in writing), except as expressly contained in the Agreement;
- 12.2 by entering into an Order Customer is not acting in breach of any agreement to which Customer is a party;
- 12.3 if Service Provider Personnel are required to use software owned or operated by Customer, all necessary user licences have been obtained in advance;
- 12.4 the use of Customer Material by Service Provider does not and will not infringe the intellectual property rights of any other person;
- and Customer agrees to indemnify, defend, and hold harmless Service Provider (and those related to it and its Personnel, co-branders or other partners) from and against any claim for damages by any third party as a result of the breach of these warranties, including all legal costs. If permissible under applicable law, legal costs will be on an attorney and own client basis.
- 13 **FEES AND PAYMENT**
- 13.1 **Due Dates.** Customer will be liable for and pay the Fees promptly on the due date, without any deduction, set off or demand and free of exchange in the currency specified in the Order.
- 13.2 **Manner of payment.** Customer must make payment in the manner specified in the Order.
- 13.3 **Late payments.** The additional surcharges and penalties specified in the Order will apply to any payment received after the Due Date to cover collection fees and additional administration costs. Customer must pay the surcharges and penalties to Service Provider on-demand. Service Provider may withhold or remove any Goods or halt the provision of any Services until Customer has paid all amounts that are due.
- 13.4 **Interest on overdue amounts.** Any amount not paid by Customer on the Due Date will bear interest for the benefit of Service Provider, from the Due Date until the date Customer pays it. The rate of interest will be 2% above the published prime overdraft rate from time to time of Service Provider's bankers. A letter signed by a general, branch or other bank manager setting out their rate will be proof of the rate. Interest will be payable on a claim for damages from when the damages were suffered.
- 13.5 **Appropriation.** Service Provider may appropriate any payment received from Customer towards the satisfaction of any indebtedness of Customer to Service Provider under the Agreement.
- 13.6 **Withhold payment.** Customer may not withhold payment of any amount due to Service Provider for any reason.
- 13.7 **Certificate.** A certificate, signed by an accountant appointed by Service Provider, of the amount due by Customer and the date on which it is payable will be conclusive irrefutable proof of the correctness of the certificate's contents.
- 13.8 **Tax.** All Fees exclude any tax (including value added tax and other taxes levied in any jurisdiction), duty (including stamp duty), tariffs, rates, levies and any other governmental charge or expense payable, which will be payable where applicable by Customer in addition to the Fees.
- 13.9 **Costs to implement.** Unless otherwise stated, the parties will bear their own costs to implement (or perform their obligations under) the Agreement.
- 13.10 **Payment profile.** Customer and any signatory consent and agree that Service Provider may provide any registered credit bureau with information about the payment of amounts.
- 13.11 **Expenses.** Customer will reimburse Service Provider for all reasonable expenses as are properly incurred by Service Provider or Service Provider's Personnel in fulfilling Service Provider's obligations under the Agreement. Expenses include travelling, subsistence, goods and services purchased on Customer's behalf, communications, stationery, report and presentation material. Travelling and subsistence expenses will be billed in accordance with Service Provider's standard policies from time to time.
- 13.12 **Reimburse costs.** If Service Provider suspends the Services or removes any Goods supplied by Service Provider, Customer

will pay to Service Provider the costs incurred by Service Provider (including redeployment, travel and associated expenses) in remobilising Service Provider's employees affected by the Agreement and recommencing the Services or re-installing the removed Goods.

14 DELAYS

- 14.1 **Definition.** Where:
- 14.1.1 Customer does not provide access to a person, place or thing timeously; changes a decision that Customer has previously communicated to Service Provider; does not reply to a communication from Service Provider within the required (or reasonable) period required; unreasonably withholds an acceptance or consent; commits a breach of the Agreement that is not otherwise categorised as a Delay; or
- 14.1.2 Service Provider's performance is affected by an event of force majeure; or the failure of a third party supplier or service provider;
- this will constitute a "**Delay**".
- 14.2 **Notification.** A party will notify the others of an event that has occurred or is anticipated and that:
- 14.2.1 the notifying party believes is or may be a Delay;
- 14.2.2 occurred no more than 14 calendar days previously.
- 14.3 **Extension of time for performance.** Service Provider's performance will be extended on a reasonable basis in proportion to the prejudice caused by the Delay, provided that the extension is at least the number of days of the Delay.
- 14.4 **Proposals for Delay.**
- 14.4.1 If a Delay arises, Customer may instruct Service Provider to submit proposals for different ways of dealing with the Delay. Service Provider will submit proposals to Customer, which may set out a variety of methods for dealing with the Delay that Service Provider considers practical.
- 14.4.2 Proposals for addressing Delays will include proposed changes to the scope of work, prices and any delay to the date of performance assessed by Service Provider.
- 14.4.3 Service Provider will submit proposals within 14 calendar days of being requested to do so by Customer and Customer will reply to Service Provider within three Business Days of the submission:
- 14.4.3.1 accepting the proposal, or
- 14.4.3.2 requiring a revised proposal, in which event, Customer will provide Service Provider with reasons for doing so. Service Provider will submit the revised proposal within 21 calendar days of being required to do so; or
- 14.4.3.3 notifying Service Provider that the proposal will not be accepted and that a revised proposal is not required. In such event, a dispute will be deemed to exist between the parties.
- 14.5 **Assessing Delays.**
- 14.5.1 The changes to the prices must be assessed with regard to the effect of the Delay on:
- 14.5.1.1 the fee for the work already done, and
- 14.5.1.2 the forecast fee for the work not yet done.
- 14.5.2 A delay in performance is assessed as the length of time that, due to a Delay, planned performance is later than originally indicated.
- 14.5.3 Service Provider will include in Service Provider's proposal for a change to the scope proposed rates for its Personnel.
- 14.6 **Implementation.** Service Provider will implement each accepted proposal in accordance with the proposal's terms.
- 14.7 **Milestones.** If an amount would have been payable to Service Provider had it not been for a Delay as set out in clause 14.1.1, Customer will pay Service Provider the amount, despite the fact that any milestone has been adjusted.
- 15 **INTELLECTUAL PROPERTY**
- 15.1 **Existing material.** Except as provided to the contrary in the Agreement, all right, title, interest, and ownership (including all Intellectual Property Rights) in, to or of any code, forms,

- algorithms or materials developed by or for Service Provider or Customer independently and outside of the Agreement and provided during the course of the Agreement ("**Existing Material**") will remain the sole property of the party providing the Existing Material or a third party licensor. All moral rights are reserved.
- 15.2 **Deliverables.** Except as provided to the contrary in the Agreement, all right, title, interest, and ownership (including all Intellectual Property Rights) in, to or of any Deliverables are the sole property of or will vest in Service Provider or a third party licensor (unless specified to the contrary in an Order). All moral rights are reserved.
- 15.3 **Retention of Rights.** Service Provider has created, acquired or otherwise obtained rights in the Service Provider Technology and despite anything contained in the Agreement, Service Provider will own all right, title and interest, including all Intellectual Property Rights, in and to the Service Provider Technology.
- 15.4 **Use of Service Provider Technology.** To the extent that Service Provider utilises any Service Provider Technology in connection with Service Provider's performance under an Order, the Service Provider Technology will remain the property of Service Provider and Customer will acquire no right or interest.
- 15.5 **Trademarks.** Service Provider's logo and sub-logos, marks, and trade names are the trademarks of Service Provider and no person may use them without permission. Any other trademark or trade name that may appear on the marketing material of Service Provider is the property of its respective owner.
- 15.6 **Restrictions.** Except as expressly permitted under the Agreement, the Services may not be:
- 15.6.1 modified, distributed, or used to make derivative works;
- 15.6.2 rented, leased, loaned, sold or assigned;
- 15.6.3 decompiled, reverse engineered, or copied; or
- 15.6.4 reproduced, transferred, or distributed.
- 15.7 **Prosecution.** All violations of proprietary rights or the Agreement will be prosecuted to the fullest extent permissible under applicable law.
- 16 **CONFIDENTIAL INFORMATION**
- 16.1 **Confidentiality obligation.** Each party ("**Receiving party**") must treat and hold as confidential all information that it may receive from the other party ("**Disclosing party**") or that becomes known to it during the currency of the Agreement.
- 16.2 **Nature.** The confidential information of the Disclosing party will include:
- 16.2.1 all software and associated material and documentation, including the information contained therein;
- 16.2.2 Customer Data;
- 16.2.3 all information relating to:
- 16.2.3.1 the Disclosing party's past, present and future research and development;
- 16.2.3.2 the Disclosing party's business activities, pricing, products, services, customers, as well as the Disclosing party's technical knowledge and trade secrets;
- 16.2.4 the Agreement.
- 16.3 **The Receiving party's obligations.** The Receiving party agrees that to protect the proprietary interests of the Disclosing party in the Disclosing party's confidential information:
- 16.3.1 it will only make the confidential information available to those of the Receiving party's Personnel who are actively involved in the execution of the Receiving party's obligations under the Agreement and then only on a "need to know" basis;
- 16.3.2 it will initiate internal security procedures reasonably acceptable to the Disclosing party to prevent unauthorised disclosure and will take all practical steps to impress upon those Personnel who need to be given access to confidential information, its secret and confidential nature;
- 16.3.3 subject to the right to make the confidential information available to its Personnel under this clause, it will not at any time use any confidential information of the Disclosing party or directly or indirectly disclose any confidential information of the Disclosing party to third parties;
- 16.3.4 all written instructions, drawings, notes, memoranda and records of whatever nature relating to the confidential information of the Disclosing party that have or will come into the possession of the Receiving party and its Personnel, will be and will at all times remain the sole and absolute property of the Disclosing party and will promptly be handed over to the Disclosing party when no longer required for the purposes of an Order.
- 16.4 **Effect of termination.** On termination or expiry of an Order, the parties will deliver to each other or, at the other party's option, destroy all originals and copies of confidential information in their possession.
- 16.5 **Exceptions.** These obligations will not apply to any information that:
- 16.5.1 is lawfully in the public domain at the time of disclosure;
- 16.5.2 subsequently and lawfully becomes part of the public domain by publication or otherwise;
- 16.5.3 subsequently becomes available to the Receiving party from a source other than the Disclosing party, which source is lawfully entitled without any restriction on disclosure to disclose the confidential information; or
- 16.5.4 is disclosed pursuant to a requirement or request by operation of law, regulation or court order.
- 16.6 **Indemnity.** The Receiving party indemnifies the Disclosing party against any loss or damage that the Disclosing party may suffer as a result of a breach of this clause by the Receiving party or the Receiving party's Personnel.
- 16.7 **Survival.** This clause is severable from the remainder of the Agreement and will remain valid and binding on the parties, despite any termination, for a period of five years after the effective date of termination.
- 17 **NON-SOLICITATION**
- 17.1 Customer acknowledges that Service Provider is providing a valuable service by identifying and assigning Service Provider Personnel to perform the Services.
- 17.2 Customer further acknowledges that Customer would receive substantial additional value, and Service Provider would be deprived of the benefits of its work force, if Customer were to directly hire Service Provider's Personnel after they have been introduced to Customer by Service Provider.
- 17.3 Customer will not, during the currency of any Order or for a period of 12 calendar months following termination, directly or indirectly solicit, offer employment to, employ or contract in any manner with any Service Provider Personnel who were involved in the implementation or execution of the Order.
- 17.4 In the event that Customer employs any Service Provider Personnel, Customer shall pay to Service Provider an amount equal to the total of the first year and a half's compensation that the Service Provider pays such person.
- 18 **INTELLECTUAL PROPERTY RIGHTS INFRINGEMENT**
- 18.1 **Defence.** Service Provider will defend Customer against any claims made by an unaffiliated third party that any Services infringes its patent, design, copyright or trade mark and will pay the amount of any resulting adverse final judgment (or settlement to which Service Provider consents). Service Provider will reimburse Customer with all costs reasonably incurred by Customer in connection with assisting Service Provider with the defence of the action. Customer will promptly notify Service Provider of the claim in writing and Service Provider will have sole control over its defence or settlement.
- 18.2 **Consequences of successful claim by third parties.** If any third party succeeds in its claim for the infringement of any intellectual property rights, Service Provider may within 30 calendar days of the infringing item having been found to so infringe:
- 18.2.1 obtain for Customer the right to continue using the infringing item or the parts that constitute the infringement; or
- 18.2.2 replace the infringing item or the parts that constitute the

- infringement with another product that does not infringe and that in all respects operates substantially in accordance with its specifications; or
- 18.2.3 alter the infringing item in a way as to render it non-infringing while still in all respects operating substantially in accordance with its specifications; or
- 18.2.4 withdraw the infringing item and refund to Customer all Fees paid by Customer to Service Provider under the relevant Order with regard to the infringing item in the preceding 12 calendar month period.
- 18.3 **Exclusion.** Service Provider will not be liable for any claim that arises out of goods or services selected by Customer and that are procured by Customer from third parties.
- 18.4 **Survival.** This clause will survive termination of the Agreement.
- 19 **LIMITATION OF LIABILITY**
- 19.1 **Direct damages limited.** To the extent permitted by applicable law, regardless of the form (whether in contract, delict or any other legal theory) in which any legal action may be brought, each party's maximum liability for direct damages for anything giving rise to any legal action will be an amount equal to the total Fees already paid (or due and payable) by Customer to Service Provider in respect of the Order for the period 12 months preceding the claim. The aggregate amounts for all claims will not be greater than the maximum amount.
- 19.2 **Indirect damages excluded.** To the extent permitted by applicable law, in no event will a party (or its Personnel) be liable for any indirect, incidental, special or consequential damages or losses (whether foreseeable or unforeseeable) of any kind (including loss of profits, loss of goodwill, damages relating to lost or damaged data or software, loss of use, damages relating to downtime or costs of substitute products) arising from the Agreement.
- 19.3 **Exclusions.** The limitation contained in this clause will not apply to any breach by a party of the other party's proprietary or confidential information or intellectual property.
- 19.4 **Service Provider not liable for Customer default.** Service Provider will not be liable for any loss or damage suffered by Customer arising out of or in connection with any breach of the Agreement by Customer or any act, misrepresentation, error or omission made by or on behalf of Customer or Customer's Personnel.
- 19.5 **Other goods or services.** Service Provider is not liable for any other goods, or service provided by any third party.
- 20 **PROJECT MANAGERS**
- 20.1 **Appointment.** On the Effective Date, each party will appoint a suitably qualified and responsible person to act as their project manager.
- 20.2 **Function.** The project managers' responsibilities include the management and coordination of the Services and the discussion and management of any changes.
- 20.3 **Replacement.** A party may, on seven calendar days' written notice to the other, appoint an alternative project manager who is suitably qualified and responsible.
- 21 **STEERING COMMITTEE**
- 21.1 **Steering committee.** The parties may elect to establish a steering committee, in which case the steering committee will be constituted in accordance with this clause, within 30 calendar days of the Effective Date, or a longer period as the parties may agree to in writing.
- 21.2 **Functions.** The functions of the steering committee will be:
- 21.2.1 to provide a means for a high-level joint review of issues relating to all aspects of the Agreement;
- 21.2.2 to provide a forum for joint strategic discussion;
- 21.2.3 to provide a means of agreeing Orders;
- 21.2.4 to provide a means of resolving disputes or disagreements between the parties;
- but the steering committee will not concern itself with the day to day management of the provision of Services under Orders.
- 21.3 **Constitution of steering committee.** The steering committee will be constituted and will function as follows:
- 21.3.1 the steering committee will comprise the representatives of the parties as agreed by the parties from time to time in writing. The representatives will be authorised to make decisions at steering committee meetings on behalf of the respective parties;
- 21.3.2 the initial chairperson of the steering committee will be agreed by the parties in writing;
- 21.3.3 any appointment, removal or replacement of representatives by a party will be by written notice to the other party and will be effective as soon as notice is received by the other party;
- 21.3.4 the steering committee may from time to time co-opt additional persons to sit on the steering committee, whether in a voting or monitoring capacity;
- 21.3.5 subject to the Agreement, the members of the steering committee may adopt procedures and practices for the conduct of the activities of the steering committee as they consider appropriate from time to time;
- 21.3.6 the steering committee will meet on at least a quarterly basis during the currency of Orders and, in addition, the steering committee will meet (on reasonable notice) on the request of any party or to conduct any other ad hoc function contemplated in the Agreement. The time and place for meetings will be determined by the steering committee;
- 21.3.7 duly appointed alternate representatives may attend meetings of the steering committee and will have the right to speak but no alternate may vote if his principal is present at that meeting;
- 21.3.8 a quorum for a meeting of the steering committee will be one representative of each of the parties;
- 21.3.9 each member of the steering committee will be entitled to one vote;
- 21.3.10 all matters will be decided by consensus;
- 21.3.11 where the steering committee decides it is appropriate, meetings may also be held by telephone or another form of telecommunication, by which each participant can hear and speak to all other participants at the same time.
- 21.4 **Minutes of Meetings.** All business transacted at meetings of the steering committee will be recorded and Signed by a member of the committee representing each of the parties and these minutes will be circulated to the members within 14 calendar days of each meeting. The minute book will at all times be available for inspection by the members of the committee or their duly authorised agents who may make copies or to take extracts.
- 22 **BREACH AND TERMINATION**
- 22.1 **Breach.** If a party ("**Defaulting party**"):
- 22.1.1 commits a material breach of an Order and fails to remedy the breach within 30 calendar days of having been called on in writing by the other party to do so; or
- 22.1.2 fails to pay any amount due and fails to remedy the breach within 2 calendar days of having been called on in writing to do so; or
- 22.1.3 effects or attempts to effect a compromise or composition with its creditors; or
- 22.1.4 is provisionally or finally liquidated or placed under judicial management;
- then, the other party who signed the relevant Order ("**Innocent party**") may, to the extent permitted by applicable law and without prejudice to its rights in the Agreement or in law :
- 22.1.5 claim specific performance of the specific Order to which the event relates on written notice; or
- 22.1.6 cancel the specific Order to which the event relates on written notice;
- and claim damages from Customer (including, any claim for any Fees already due).
- 22.2 **Discontinue the goods, or services.** The Agreement will automatically terminate if Service Provider discontinues the Services.
- 23 **EFFECT OF TERMINATION**

- 23.1 **Amounts due to Service Provider become due and payable.** On termination, cancellation or expiry of any Order, all amounts due to Service Provider for Services rendered or Goods ordered prior to termination will become due and payable even if Service Provider has not invoiced them. Customer may not withhold the amounts for any reason, unless the arbitrator directs otherwise.
- 23.2 **Duties on termination.** On termination, cancellation or expiry of any Order:
- 23.2.1 Service Provider will stop providing the Services and vacate the Site, unless Service Provider is required to render additional services on-Site under a separate Order; and
- 23.2.2 each party will deliver to the other party, or at the other party's option destroy (and procure the delivery or destruction by Third Party Contractors of) all originals and copies of confidential information and proprietary materials in its or their possession or under its or their control.
- 23.3 **Survival.** The termination, cancellation, or expiry of an Order will not affect the enforceability of the terms that are intended to operate after expiry or termination.
- 24 **DISPUTE RESOLUTION**
- 24.1 **Notification.** A dispute concerning this Agreement exists once a party notifies the others in writing of the nature of the dispute and requires it to be resolved under this clause. The parties must refer any dispute to be resolved by:
- 24.1.1 negotiation; failing which
- 24.1.2 mediation; failing which
- 24.1.3 arbitration.
- 24.2 **Negotiation.** Within ten Business Days of notification, the parties must seek an amicable resolution to the dispute by referring it to the steering committee to negotiate and resolve it (by the parties signing an agreement resolving it) within 15 Business Days. If no steering committee exists, then to the project managers or representatives designated and authorised by the project managers.
- 24.3 **Disputes relating to the calculation or quantum of any payments.** Any dispute between the parties about the calculation or quantum of any payment will be referred to a practising chartered accountant of at least 15 years' standing ("**Accountant**").
- 24.4 **Technical disputes.** Any dispute between the parties of a technical nature, (which includes a dispute relating to acceptance testing, commissioning and any Deliverable concerning the interpretation of any specifications or requirements or relating to the functions or capabilities of the Services), will be referred to an independent technical expert having appropriate expertise with respect to the dispute ("**Technical Expert**").
- 24.5 **Accountant and the Technical Expert.** The Accountant and the Technical Expert will be appointed by agreement or, failing agreement, within three Business Days by Service Provider. The Accountant and Technical Expert will act as experts and not as arbitrators. The Accountant and Technical Expert will be requested to give their decision as soon as practicable but no later than five Business Days after the dispute is referred. The decision of the Accountant and the Technical Expert will (in the absence of clerical or manifest error) be final and binding on the parties. The outstanding payment, as determined by the Accountant, will be paid by the party as determined by the Accountant, on demand by the other party. The fees and all associated costs of the Accountant and the Technical Expert will be borne by the parties equally.
- 24.6 **Mediation.** If negotiation fails, the parties must refer the dispute for resolution by mediation under the rules of AFSA.
- 24.7 **Arbitration.** If mediation fails, the parties must refer the dispute within 15 Business Days for resolution by arbitration (including any appeal against the arbitrator's decision) by one arbitrator (appointed by agreement between the parties). Where the entity of the Service Provider involved in the dispute is located in the Republic of South Africa, as an expedited arbitration in the city where Service Provider's contracting entity
- has its headquarters in English under the then current [rules for expedited arbitration](#) of AFSA. If the parties cannot agree on any arbitrator within a period of ten Business Days after the referral, the arbitrator will be appointed by the Secretariat of AFSA; or
- 24.8 **Periods.** The periods for negotiation or mediation may be shortened or lengthened by written agreement between the parties.
- 24.9 **Urgent interim relief.** This clause will not preclude a party from access to an appropriate court of law for interim relief in respect of urgent matters by way of an interdict, or mandamus pending finalisation of this dispute resolution process.
- 24.10 **Severability.** This clause is a separate, divisible agreement from the rest of this Agreement and must remain in effect even if the Agreement terminates, is nullified, or cancelled for any reason or cause.
- 24.11 **Collection proceedings.** Service Provider retains the right to institute collection proceedings in a court of law of competent jurisdiction for matters involving outstanding payment.
- 25 **NOTICES AND DOMICILE**
- 25.1 **Notices.** All notices, authorisations, disclosures, acknowledgements, and requests must be sent by hand, prepaid registered post, courier, facsimile, or electronic mail to the addresses and numbers provided in the relevant Order. By providing contact information, each party consents to its use for administering the relationship by the other party and other third parties that help a party administer the relationship.
- 25.2 **Domicile.** If the laws of the Republic of South Africa apply, then, each party chooses its addresses and numbers provided in the relevant Order as its domicilium citandi et executandi (its domicile for the purpose of being served summons and execution levied) for all purposes under an Order.
- 25.3 **Change of addresses and numbers.** Each party may change the addresses and numbers set out in the relevant Order to any other addresses and numbers in the same jurisdiction by giving written notice to the other party, provided that the change will only take effect 14 calendar days after delivery of the written notice.
- 25.4 **Deemed Delivery.** Notice will be deemed delivered on the date shown on the by hand, prepaid registered post, courier, facsimile or electronic mail confirmation of delivery.
- 25.5 **Notice actually received.** If a notice is actually received by a party, adequate notice or communication will have been given.
- 26 **FORCE MAJEURE**
- 26.1 **Parties not liable for force majeure.** No party will be responsible for any breach of the Agreement caused by circumstances beyond its control, including flood, fire, earthquake, war, tempest, hurricane, industrial action, government restrictions, or acts of God.
- 26.2 **party affected to notify other party.** If an event of force majeure arises, the affected party will notify the other party without delay and the parties will meet within seven calendar days of the notice to negotiate in good faith alternative methods of fulfilling its obligations under an Order, if any. In addition Service Provider will continue to provide and Customer will continue to pay for those Services not affected by the event of force majeure.
- 26.3 **Right to terminate.** If a party is unable to fulfil a material part of its obligations under an Order for a period in excess of 60 calendar days due to circumstances or force majeure, the other party may cancel the relevant Order by Written notice.
- 27 **ASSIGNMENT AND SUBCONTRACTING**
- 27.1 **No Assignment.** No party may delegate its duties under the Agreement or assign its rights under the Agreement, in whole or in part. Service Provider may assign the Agreement to any successor or purchaser of its business or some of its assets.
- 27.2 **Exception.** Despite this clause, it is expressly recorded that Service Provider may cede and assign all rights and obligations under the Agreement to a related person without the prior written consent of Customer, provided that Service Provider will

- notify Customer within a reasonable time of the event occurring.
- 27.3 **Service Provider's Third Party Contractors.** Service Provider may sub-contract or delegate its obligations under the Agreement to Third Party Contractors, provided that Service Provider will remain liable for performance of the Third Party Contractors. Service Provider will not be required to disclose the terms (including payment terms) of any sub-contract entered into with respect to Service Provider's obligations under the Agreement.
- 28 **RELATIONSHIP AND DUTY OF GOOD FAITH**
- 28.1 **No temporary employment service.** Nothing in the Agreement will be construed as constituting a temporary employment service.
- 28.2 **No partnership.** Nothing in the Agreement will be construed as creating a partnership between the parties and no party will have any authority to incur any liability on behalf of the other or to pledge the credit of the other party.
- 28.3 **Good Faith.** The parties will at all times owe each other a duty of good faith and will, in all dealings with each other and in respect of the Services act according to the standard.
- 29 **NON-EXCLUSIVITY**
- Nothing in the Agreement will be construed as precluding or limiting in any way the right of Service Provider to provide any goods or services to any other person or entity. Service Provider may employ, modify, disclose, and otherwise exploit Service Provider's intellectual property (including providing services or creating programming or materials for other customers or itself, providing services that are competitive with any Deliverables, irrespective of their similarity to the Deliverables), subject to the parties confidentiality obligations.
- 30 **GENERAL**
- 30.1 **Entire Agreement.** The Agreement constitutes the entire agreement between the parties in respect of the subject matter of the Agreement.
- 30.2 **Variation.** No amendment or modification to the Agreement will be effective unless in writing and signed by authorised signatories of both Customer and Service Provider.
- 30.3 **Waiver.** No granting of time or forbearance will be, or be deemed to be, a waiver of the Agreement and no waiver of any breach will operate as a waiver of any continuing or subsequent breach.
- 30.4 **Severability.** If any term is void, unenforceable, or illegal, the term will be severed and the remainder of the Agreement will have full force and effect, provided the severance does not alter the nature of the Agreement.
- 30.5 **Governing Law and jurisdiction.** The Agreement is governed by and must be interpreted under the laws of the Republic of South Africa and Customer agrees to submit to the exclusive jurisdiction of the South African courts.
- 30.6 **UN Convention.** The 1980 United Nations Convention on Contracts for the International Sale of Goods and its related instruments will not apply to this Agreement.
- 30.7 **Costs.** Each party will be responsible for its own legal and other costs relating to the drafting and negotiation of the Agreement.
- 30.8 **Publicity.** A party will not make or issue any formal or informal announcement or statement to the press in connection with the Agreement, without the prior written consent of the other parties.
- 30.9 **Right to reference.** Customer consents to Service Provider using its name and a general description of the Services in any marketing or sales material.

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