



STANDARD TERMS AND CONDITIONS

Version: 1.00 Dated 1 July 2024

INTRODUCTION

These Standard Terms and Conditions are incorporated by reference into the Main Part of the Agreement and, as such, the Agreement by and between the Service Provider and the Client comprises the Main Part, these Standard Terms and Conditions and the various Annexures annexed to the Main Part.

DEFINITIONS AND INTERPRETATION

For the purpose of this Agreement, the following words and/or expressions will, unless the context clearly indicates otherwise, have the meanings ascribed to them below:

"Act of Insolvency" means, in relation to any Party, any one or more of the following events or circumstances:

- such Party is unable (or admits inability) to pay its debts generally as they fall due or is (or admits to being) otherwise insolvent or stops, suspends or threatens to stop or suspend payment of all or a material part of its debts or makes a general assignment or any arrangement or composition with or for the benefit of its creditors or a moratorium is agreed or declared in respect of or affecting all or a material part of its indebtedness; and/or
- such Party begins negotiations or takes any proceedings or other steps with a view to the general readjustment, rescheduling or deferral of its financial indebtedness (or any part thereof which it would otherwise be unable to pay when due) or proposes to take any such step; and/or
- any liquidator, trustee, curator, business rescue practitioner, debt counselor or the like is appointed in respect of such Party or any material part of its assets or such Party requests any such appointment; and/or
- the commission or omission of any act which is akin to an act of insolvency as contemplated in Section 8 of the Insolvency Act, 1936 (Act No. 24 of 1935);
- a Party is placed under a provisional or final winding-up order; and/or
- a Party fails to satisfy or take steps to have set aside any judgment taken against it within 10 (ten) Calendar Days after such judgment has come to its notice; and/or
- any event which has a similar effect to those events specified in the above Clauses;

"the Agreement" or **"this Agreement"** or **"this Document"** or **"hereto"** or **"herein"** or **"hereunder"** or **"hereby"** or **"herein contained"** or words of similar meaning means the agreement by and between the Parties, as contained and set out in:

- the Main Part; and
- these Standard Terms and Conditions; and
- the Annexures,

and any addition, amendment, renewal, extension, further renewal and/or further extension, as the case may be;

"Annexures" means any and all attachments, appendices

and/or schedules attached to the Main Part and forming an integral part of the Agreement;

"CIPC" means the Companies and Intellectual Property Commission established by virtue of the Companies Act;

"Client" means the Juristic Person designated as such under the column "Client" on **Annexure A**;

"Client Duties & Responsibilities" means those initial specific duties and/or responsibilities of the Client under and by virtue of this Agreement as set out on **Annexure B**, together with such other duties and responsibilities as may be agreed to in Writing by and between the Parties from time to time;

"Common Law" means the non-enacted law of South Africa that has its roots in and consists of an amalgam of rules and principles drawn from *inter alia* Roman Law, Roman-Dutch Law and English Law, as the case may be, combined and adapted by the Courts to meet the perceived evolving needs of South Africa from time to time in accordance with and/or subject only to the Constitution;

"Companies Act" means the Companies Act, 2008 (Act No. 71 of 2008);

"Confidential Information" means, vis-à-vis either Party, all information and/or data regarding or belonging to a Party, whether disclosed, directly or indirectly, whether or not such information and/or data is marked as being confidential, private, restricted, secret, proprietary or any similar designation and in whatever format and whether recorded or not (and if recorded, whether recorded in Writing, on any electronic medium or otherwise), which (whether intended or included by PoPI or otherwise) - by its nature or content is identifiable as confidential and/or proprietary to that Party; and/or is intended or its content could reasonably be expected to be confidential and/or proprietary to that Party; and/or is manifestly or by its very nature confidential, including but not limited to: trade secrets; Intellectual Property, including but not limited to designs, studies, ideas, concepts, techniques, processes, operating methods and/or procedures; existing and future business and strategic plans and/or objectives, including existing and future business initiatives and/or opportunities; existing clients; financial information, including but not limited to charge out rates, pricing, expenses, costs, margins, performance, management accounts, budgets and projections, debtors, collections, purchasing policies, work in progress and staff salaries, including but not limited to basic salaries and other benefits; recruitment initiatives and appointments; marketing strategies; bespoke and/or other computer programs, software and source code of that Party, its service providers and/or existing clients; information furnished by any representative of that Party unless such information is readily available in the public domain; information acquired by observation or otherwise, during a visit to and/or whilst being at, on and/or in the offices and/or any other facility of that Party; information about that Party's clients, products and/or services; information the unauthorised disclosure of which could reasonably be expected to cause harm or risk to that Party and/or any existing client; any information which is not readily available or accessible to a competitor of that Party and/or an existing client in the normal and ordinary course of business;

"Consents" or **"Approvals"** or words of similar meaning means and includes, without limitation, all: consents, approvals, permits, licenses, clearances, authorisations, rulings, exemptions, registrations, filings, decisions and/or certificates, where applicable and/or required, to be issued by or made or lodged with or submitted to any Responsible Authority, including but not limited to SARS; such resolutions, authorities and/or instructions required to be given and/or passed by a Person, including a Juristic Person's board of directors, shareholders, members, trustees, partners and/or participants, as the case may be; and/or such permission, approval, say-so, assent, sanction, okay, go-ahead and/or concurrence with, for and/or in response to a particular request by one Party to another to proceed with, undertake and/or do a particular or specific action;

"Constitution" means the Constitution of South Africa as legislated for by the Constitution of the Republic of South Africa Act, 1996 (Act No. 108 of 1996);

"Consumer Protection Act" means the Consumer Protection Act, 2008 (Act No. 68 of 2008);

"Copyright Act" means the Copyright Act, 1978 (Act No. 98 of 1978);

"Court" means any and/or the applicable South African court as contemplated in Chapter 8 of the Constitution;

"Currency Exchanges Act" means The Currency and Exchanges Act, 1933 (Act No. 9 of 1933);

"Designs Act" means the Designs Act, 1993 (Act No. 195 of 1993);

"Discretion" means, in relation to a Person and/or Party, the sole, absolute and unfettered discretion of that Person and/or Party, as the case may be, provided such discretion is exercised in a reasonable and not a capricious manner;

"ECT Act" means the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002);

"Exchange Control Regulations" means the Exchange Control Regulations, 1961 promulgated under and in terms of the Currency Exchanges Act, together with such Regulations, Orders and Rules issued pursuant to and in accordance therewith;

"Fee Schedule" or **"Schedule of Fees"** means the schedule of fees prescribing the fees, costs and charges to be charged to and paid by the Client to the Service Provider from time to time, with the initial Fee Schedule attached to the Main Part marked **Annexure D**

"Force Majeure" means, in relation to the failure and/or inability of a Party to perform (wholly, partially or late), some unforeseen event or circumstance beyond the reasonable control of the affected Party which prevents it from performing, timeously or otherwise, its obligations under this Agreement and which includes, but is not limited to: war, civil war, riots, armed conflicts or terrorism; nuclear contamination; chemical or biological contamination; lack of electrical power due to only the incapacity of supply by a national electrical supply grid and/or supply generally; technical problems or downtime related to a fixed line or mobile telecommunications provider; explosions, earthquakes, lightning, floods and other natural disasters, which, in each case, is beyond the Party's reasonable control, having exercised reasonable care and diligence to prevent and/or mitigate against the occurrence and/or consequences of that event or circumstance, but will not include – any event or circumstance which is caused by the negligence or inaction of a Party or that of such Party's sub-contractors, agents or employees; and/or any event which a diligent Party could reasonably have been expected to both take into account at the time of execution of this Agreement, and avoid or overcome in the performance of its obligations hereunder;

"Income Tax Act" means the Income Tax Act, 1962 (Act No. 58 of 1962);

"Intellectual Property" means and includes, without limitation, in any jurisdiction worldwide, any and all of the following: all inventions, whether patentable or unpatentable, whether or not reduced to practise/paper, all changes, modifications, variants of, additions to, improvements and/or enhancements thereto, together with all patent applications and patent disclosures, including but not limited to all drafts thereto; revisions, extensions, renewals and/or re-examinations thereof; all trademarks, service marks, trade dress, logos, trade names and corporate names, including but not limited to all domain names, internet and intranet names, addresses, icons and other designations of whatsoever nature or description useful to identify or locate the Person on a computer, computer network or handheld device, such as the world wide web, together with any and all adaptations, enhancements, derivations, translations and/or combinations thereof, including any and all applications (drafts or otherwise), registrations and renewals pertaining thereto; all works capable of copyright, all copyright and any and all applications (including any and all drafts), registrations and renewals thereof, as well as all moral and ethical rights; any and all designs and patterns, whether registrable or unregistrable, whether or not reduced to practise, all changes, modifications, variants of, additions to, improvements and/or enhancements thereto, together with all applications and disclosures, including but not limited to all drafts thereto, revisions, extensions, renewals and/or re-examinations thereof; all trade secrets and business information, including but not limited to research, ideas, conceptual thinking, development, know-how, formulas, algorithms, compositions, specifications, requirements, technical data, drawings, manufacturing and production processes and techniques, customer, service provider and supplier lists, pricing and costing information, business plans, marketing strategies and all proposals of whatsoever kind; any and all computer software, including but not limited to its source code, bespoke programmes, the data retained thereon or therein and all related documentation; any and all copies and/or intangible embodiments, in each instance, in respect of any of the above, in whatever medium or form; generally, any and/or all intellectual property, be it any inventive idea, work and/or product design, whether aesthetic or functional in nature, including all rights, title and interest thereto, as the term and concept of intellectual property is understood and applied under and/or by virtue of *inter alia* the Common Law, the Copyright Act, the Designs Act, the Patents Act, the Trade Marks Act, international treaty and/or convention, including but not limited to the Berne Copyright Convention, the Paris Convention and/or the Madrid Protocol;

"Laws" or **"the Law"** means the Common Law, Legislation and all judicial decisions and other notifications or similar directives made pursuant thereto that have the force of law, whether issued by an executive, a legislative, provincial, local, judicial or administrative entity or Person in South Africa, as the case may be and as the context may require or determine;

"Legislation" means, where and to the extent applicable, including but not limited to, all applicable national, provincial and/or local statutes, statutory instruments, regulations, bye-laws, ordinances, orders, executive orders, rules, Notices, directives and/or codes of practice, promulgated, passed and/or executed by virtue of the powers bestowed on such Person, having the force of Law in means all applicable statutes, statutory instruments, bye-laws, regulations, orders, rules, executive orders and other secondary, provincial or local legislation, treaties, directives and codes of practice having the force of law in South Africa;

"Main Part" means the primary document signed by the Parties, for which these Standard Terms and Conditions are incorporated by reference and to which the Annexures are attached;

"Marks" means those brands and/or trademarks, whether registered, the subject of a pending registration or otherwise, which are owned by a Party;

"Other Beneficiaries" means any Natural Person or Juristic Person whose activities may be controlled by the Client or who is associated with the Client, who receives, is or will be a recipient of or a beneficiary of the Services;

"Parties" means the Client and/or the Service Provider, collectively or individually, as the context may require or determine and a reference to the term **"Party"** means either one of them;

"Patents Act" means the Patents Act, 1978 (Act No. 57 of 1978);

"PoPI" means the Protection of Personal Information Act, 2013 (Act No. 4 of 2013);

"Prime Rate" means the Prime Rate of interest publicly quoted and charged by the Service Provider's bank from time to time – a certificate signed and issued by any manager of the Service Provider's bank as to the Prime Rate and the dates of any change thereof will be *prima facie* proof of the facts stated therein, meaning that in the absence of some other evidence to the contrary, the fact in issue may be taken to be proven, shifting the onus and burden onto the Party disputing such fact to prove otherwise;

"Responsible Authority" or **"Regulatory Authority"** means any national, provincial and/or local authority or legislature, any agency, regulatory body, local institution, department, inspectorate, minister, commission, tribunal, board, ministry, official or public or statutory Person (whether autonomous or not) having jurisdiction (in the widest sense) over any or all of the Parties or the subject matter of this Agreement;

"Responsible Person" means each of the individuals or Natural Persons appointed, in Writing, from time to time, by each of the Parties to be their respective contact and authorised representatives for and by and between the Parties, with the initial Responsible Persons and their contact details set out on **Annexure A**;

"SARS" means the South African Revenue Services;

"Security" means, including but not limited to,: any pledge, cession, assignment, charge, mortgage or notarial bond, lien, servitude, usufruct, lease, licence, right of use, option over, power of sale, hypothecation, right of retention over, right of pre-emption or right of first refusal in respect of any asset for and/or to secure any obligation; and/or the giving of any guarantee, suretyship, put option, call option or other means of securing the obligation of a Person; and/or any action or omission which gives, allows and/or results in the encumbering of an asset;

"Service Provider" means the Juristic Person designated as such under the column "Service Provider" on **Annexure A**;

"Service Provider Duties & Responsibilities" means those initial specific duties and/or responsibilities of the Service Provider under, by virtue of and as set out in this Agreement, together with such other duties and responsibilities as may be agreed to in Writing by and between the Parties from time to time, which additional duties and/or responsibilities must be recorded on **Annexure C**, duly updated;

"Services" means the services to be delivered by the Service Provider to the Client, initially as set out in **Annexure C**, together with such other services as may be agreed to in Writing by and between the Parties from time to time, which additional services must be recorded in **Annexure C**, duly updated;

"Signatory" or **"Signatories"** means the Persons signing this Agreement for and on behalf of either the Client and/or Service Provider, as the case may be and as the context may require or determine;

"South Africa" means the Republic of South Africa;

"Surviving Provisions" means those provisions which continue to survive the termination of this Agreement, for whatsoever cause or reason, being these Definition and Interpretation provisions, those provisions commencing from Breach until the

Cost of the Agreement, together with such other Clauses which by their nature should and/or must survive the termination of this Agreement;

"Tax" or **"Taxes"** means, *inter alia*, any and where applicable,:

- all taxes levied in terms of the Income Tax Act, including but not limited to PAYE (pay as you earn), SITE (standard income tax on employees) and dividends tax; and/or capital gains tax in terms of the Income Tax Act; and/or
- VAT in terms of the VAT Act; and/or
- withholding tax in terms of the Income Tax Act; and/or
- interest, duties, levies, imposts, charges, administrative fees, fines and/or penalties legislated for, levied, imposed and/or charged by SARS and/or other applicable Responsible Authority in South Africa and/or any jurisdiction to which this Agreement may apply, from time to time, and as may be applicable for any and all matters arising from this Agreement;

"Trade Marks Act" means the Trade Marks Act, 1993 (Act No. 194 of 1993); and/or

"VAT" means Value Added Tax as defined and contemplated, from time to time, under and in terms of the Value Added Tax Act, 1991 (Act No. 89 of 1991), (**"VAT Act"**) together with such Rules, Notes and Notices published under and by virtue of such Act.

In construing and/or interpreting this Agreement, unless otherwise specified,:

- any reference to a currency will be a reference to the prevailing currency of South Africa (currently the Rand or **"R"**) or the currency stipulated in the Fee Schedule, as the case may be;
- any reference to **"Date of Signature hereof"** or **"Signature Date"** (or words of similar meaning) will be read as meaning a reference to the date of the last Signature on this Agreement, namely the date on which the last Party signs the Agreement;
- any reference to the terms **"Signature"**, **"signs"**, **"initial"** or words of similar meaning, means a hand-written signature or initial or signing by hand, as the case may be, and specifically includes an *"electronic signature"* as that term is defined, contemplated and provided for in the ECT Act;
- any reference, express or implied, to any Legislation, includes references to:
 - such Legislation as re-enacted, amended, replaced, extended, consolidated or applied by or under any other form or manner of Legislation (before and/or after Signature hereof); and
 - any Legislation which that piece of Legislation re-enacts (with or without modification); and
 - any subordinate Legislation made (before or after Signature hereof) under any enactment and/or statute, as re-enacted, amended, replaced, consolidated, extended or applied as described above or under any Legislation referred to above,

provided that no such Legislation made or passed after the Signature Date will increase the liability of any Party under this Agreement (save for any increase in the statutory maximum interest rate allowed and/or claimable under any Law);

- any references to documents **"in the agreed form"** are to documents in terms agreed by the Parties and initialled by or on behalf of the Parties for the purposes of identification;
- any reference to a Part, Clause, Section, Schedule or Annexure will, unless clearly stipulated otherwise, be deemed to be a reference to a Clause, Part, Section, Schedule or Annexure of or to this Agreement, as the case may be;

- any reference to this Agreement means this Agreement and all Clauses, Parts, Section, Schedules and Annexures hereto;
- all Parts, Sections, Schedules and Annexures will be deemed to form part of this Agreement, with all Schedules and Annexures being read as if in the body of this Agreement, unless: stipulated otherwise; or it is an agreement in its own right; or the context clearly determines otherwise;
- to the extent a Schedule or Annexure is replaced, the latest and/or most recent Schedule or Annexure shall take precedence over or supersede the earlier version of such Schedule or Annexure, as the case may be, unless the context and/or circumstances determine otherwise;
- headings of the Parts, Sections or Clauses in this Agreement are for the purpose of convenience and reference only and will not be used in the interpretation of nor modify nor amplify the terms of this Agreement or any Clause hereof;
- if any provision in a definition is a substantive provision conferring rights or imposing obligations on a 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 Agreement;
- any reference to a Day, week, Month or year will be construed as a Gregorian Day, week, Month or year, as the case may be;
- any reference to a **"Day"** will mean a period of 24 (twenty four) hours running from 1 (one) second past midnight to midnight that same Day;
- any reference to **"Business Day"** will mean any Day other than a Saturday, Sunday and Public Holiday, as the case may be, whereas the term **"Calendar Day"** means each and every Day of the week;
- any reference to a public holiday or the words **"Public Holiday"** will, unless otherwise agreed to in Writing by and between the Parties, be only those statutorily recognised and gazetted Public Holidays in South Africa from time to time;
- any reference to **"Business Hours"** will mean 09h00 to 17h00 Local Time;
- any references to specific times will be to the official time as applied from time to time in the province of the Western Cape, South Africa (**"Local Time"**);
- if any obligation or act is required to be performed on a particular Day or date, it will be performed, unless otherwise stipulated, by 16h00 Local Time;
- when any number of Days is prescribed, same will be reckoned exclusively of the first and inclusively of the last Day unless the last Day falls on a Saturday, Sunday or Public Holiday in South Africa, in which case the last Day will be the next succeeding Business Day;
- where figures are referred to in numerals and in words, if there is any conflict between the two, the words will prevail;
- expressions defined in this Agreement will bear the same meanings in the Main Part, any Schedules or Annexures to this Agreement which do not themselves contain their own conflicting definitions;
- the use of the words **"include"**, **"including"**, **"without limitation"**, **"including but not limited to"** and **"in particular"** whether or not followed by a specific example will not be construed as limiting the meaning of the general wording preceding it and, as such, the rule of interpretation, that when particular words pertaining to a class, category or genus are followed by general words, the general words are construed as limited to things of the same kind as those specified, will not apply to and in this Agreement;
- the words **"other"** and **"otherwise"** will not be construed in their narrow sense or application where a wider construction or interpretation is possible;
- where any term is defined within the context of any particular Clause, the term so defined, unless it is clear from the Clause in question that the term so defined has limited application to the relevant Clause, will bear the meaning ascribed to it for all purposes in terms of this Agreement, notwithstanding that that term has not been defined in this interpretation Clause;
- there will be an obligation and it will be binding on and enforceable by the permitted assigns or liquidators of the Parties as fully and effectually as if they had signed this Agreement in the first instance and reference to a Party will be deemed to include such Party's administrators, permitted assigns or liquidators, as the case may be;
- the expiration or termination of this Agreement will not affect such of the provisions of this Agreement as expressly provide or contemplates that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the Clauses themselves do not expressly provide for this;
- any provision which contemplates performance or observance subsequent to any termination or expiration of this Agreement, will survive any termination or expiration of this Agreement and continue to be of full force and effect;
- termination, howsoever arising, will be without prejudice to and will not affect the accrued rights, remedies, claims and/or liabilities of either of the Parties arising hereunder prior to such termination;
- the expiry or termination of this Agreement will not prejudice the rights of either Party in respect of any antecedent breach or non-performance by a Party of any of the terms and conditions hereof;
- should this Agreement be signed on a date that results in the use of any tenses herein being inappropriate, the term will be read in the appropriate tense;
- the rule of construction that the contract will be interpreted against the Party responsible for introducing a Clause and/or the structuring of any provision and/or the drafting or preparation of the Agreement, will not apply and is hereby waived by the Parties;
- the rule of construction that the contract will be interpreted most favourable to the consumer and/or the Party receiving the service will not apply and is hereby waived by the Parties;
- an expression or word which signifies or refers to – any gender includes, where applicable and appropriate, the other genders; and/or a **"Person"**, includes, where applicable and appropriate: a *Natural Person*, being a human being or man, woman or child of the species *Homo sapiens*; or a *Juristic Person*, which for purposes of this Agreement, is a company, close corporation, corporate legal entity, trust, partnership, association, political party, government, national, provincial or local authority or other entity, whether or not having a separate legal personality;
- the singular includes the plural and vice versa, where applicable and appropriate;
- any reference to **"Writing"** or words of similar meaning means legible (coherent and understandable) writing in English in handwritten or typographical manner or form;
- any reference to **"Notice"** or Notice being required to be given, will mean Written Notice or Notice in Writing;
- the words **"shall"**, **"will"** and/or **"must"** used in the context of any obligation or restriction will have a prescriptive and preemptory (meaning absolute) application;

- a reference to a consecutive series of two or more Clauses is deemed to include all the Clauses including and between the first and the last mentioned Clauses;
- defined terms or words appearing in title case or starting with a capital letter must be given their defined meaning whilst the same terms or words appearing in lower case must be interpreted in accordance with their plain English and grammatical meaning;
- the English version of this Agreement will take precedence over any translation hereof;
- references to "**indemnifying**" any Person against any circumstance include indemnifying and keeping it harmless, on an after Tax basis, from all actions, claims and proceedings from time to time made against it and all loss, damage, payments, costs or expenses suffered, made or incurred by it as a consequence of that circumstance;
- no provision will, unless otherwise specifically provided for, constitute a stipulation for the benefit of any Person who is not a Party to this Agreement;
- reference to any Responsible Authority or any public or professional organization or firm (including but not limited to its responsible Person, including its President, Chairperson, Minister and/or Director General, as the case may be) will include references to any of his or its successors or any organization, entity or Person which takes over its or his functions or responsibilities, as the case may be;
- if any interest is to be charged on any payment in arrear or otherwise, interest will accrue daily and be compounded monthly.

To the extent any Party's place of business is outside South Africa, reference herein, express or implied, to any Law or Legislation, including but not limited to the Income Tax Act and the VAT Act shall be deemed, where applicable and necessary, to also include and incorporate references to the Law and Legislation of the country or jurisdiction other than South Africa. By way of explanation only: to the extent the Law of a country other than South Africa requires that:

- a withholding tax be deducted by a Party, then the Party responsible for deducting any withholding tax must do so in compliance with such Law; and
- General Sale Tax ("**GST**") be charged and collected on the sale of any goods or services, then such GST must be added and collected in compliance with such Law; and
- Taxes on employees' salaries and wages be deducted, then such Taxes shall deducted in accordance and in compliance with such Law.

LEGAL STRUCTURE & NATURE OF THE RELATIONSHIP

Independent Contractor

The relationship of the Service Provider to the Client is and will at all times be and remain that of a wholly independent contractor.

This Agreement does not constitute and will not be deemed to create a principal/agent or employer/employee relationship or joint venture or partnership between the Parties or result in or create rights to share any fees, income or profits, save as otherwise specifically provided for herein.

The Service Provider will not be required to exclusively devote its time to providing the Services for the Client.

Neither the Client nor any of its directors, officers, employees, representatives and/or agents will have control over the conduct of the Service Provider (or any of its employees), except to the extent provided for in this Agreement. The Client will not have control over the day-to-day details of the Services, or over the methods and means of performing such Services.

No Authority to Bind

Neither Party may or will hold itself out as an employee, agent and/or partner of the other, and will not have any authority to act for and/or on behalf of the other to give any Security, conclude any contract or incur any obligation, debt and/or liability on behalf of or binding upon the other or to sign any document on its behalf without first having obtained the other Party's prior Written Consent thereto, save as may be otherwise specifically provided for herein.

Juristic Personality

Given that the Parties are Juristic Persons, each must and will procure and ensure that all Natural Persons employed or contracted by it to undertake any of its obligations under or by virtue of this Agreement are bound by the provisions herein contained and, in particular, without limitation, those pertaining to Confidential Information, Intellectual Property, non-solicitation and consequences of termination, as the case may be.

Outsourcing

The Service Provider will be entitled, but not obliged, to outsource or sub-outsource, to any other Person ("**the Sub-outsourced Provider**"), the Services or any part thereof, on the strict understanding and proviso that the Service Provider must and will stand behind, procure and ensure that the Sub-outsourced Provider performs its tasks and work in accordance with the terms and conditions provided for herein. For the avoidance of doubt, the Service Provider will remain responsible, liable and accountable to the Client for the activities and performance, or lack thereof, of the Sub-outsourced Provider.

For the avoidance of doubt, should the Client require the Service Provider to obtain any Tax, legal or other advice, this function and instruction is not considered outsourcing and is not covered by the immediately preceding paragraph.

Conflict with Other Documentation

If there is any conflict or inconsistency between the provisions of this Agreement and any Proposal, Quotation and/or Letter of Engagement,:

- the provisions of this Agreement will prevail; and
- this Agreement will replace and supersede such Proposal, Quotation and/or Letter of Engagement, as the case may be.

This Agreement replaces and supersedes all other agreements of whatsoever nature by and between the Parties, save and to the extent where provisions therein continue to survive such termination.

APPOINTMENT AND PERIOD

Appointment

The Client hereby appoints the Service Provider, which, by its Signatory's Signature hereto, accepts the appointment on the terms and conditions set out in this Agreement.

Effective Date

This Agreement will become of full force and effect on the Signature Date and will endure indefinitely until terminated by either Party in accordance herewith.

Commencement Date

The Service Provider will, notwithstanding the earlier or later coming into being of this Agreement, as the case may be, commence conducting, undertaking, performing and/or delivering, as the case may be, the Services on and with effect from the Commencement Date.

Standard Termination

Notwithstanding any other provision contained in this Agreement, either Party will be entitled, but not obliged, to terminate this Agreement, without cause, by giving the other

Party 3 (three) calendar Months' Written Notice to that effect.

Short Notice Termination

Notwithstanding any other provision contained in this Agreement, including but not limited to the breach provisions, either Party will be entitled, but not obliged, to forthwith terminate this Agreement by giving the other Party 7 (seven) Calendar Days prior Written Notice to that effect, in the event that:

- the transactions contemplated herein or any part thereof is contravening or will contravene any Law, including but not limited to the Exchange Control Regulations; or
- the other Party ceases to carry on business; or
- the other Party commits an Act of Insolvency; or
- the other Party makes an assignment for the benefit of creditors or enters into a composition or compromise with its creditors generally; or
- the other Party passes a resolution to be wound-up, declared bankrupt or deregistered (otherwise than in furtherance of any scheme for amalgamation or reconstruction) or undergoes any similar or equivalent process; or
- the other Party passes a resolution to be or is placed in business rescue as that term is defined in the Companies Act; or
- the other Party breaches any business ethics provisions provided for by and between them and/or the Law.

Antecedent Breach

Any termination under this Clause will be without prejudice to the rights of either Party against the other in respect of any antecedent breach as contemplated and provided for in this Agreement.

Accrued Rights

The termination of this Agreement, for whatever reason, will not affect the rights of a Party which may have accrued as at the date of termination and will further not affect any rights which specifically or by their nature survive the termination of this Agreement and will be deemed to remain in and of full force and effect.

Consequences of Termination

Upon the termination of this Agreement, for any cause whatsoever (including but limited to a breach),:

- each Party will, if and where applicable, forthwith remove itself and all of its staff, workers, agents, representatives and/or consultants from the other Party's premises by providing prior reasonable Written Notice; and/or
- the Parties will promptly and unconditionally return to the other Party the software, the source code and all that Party's Confidential Information, books and records, including but not limited to correspondence and planning strategies, kept by the other Party in undertaking its duties, the Services or otherwise and all assets and security and other keys pertaining to and/or belonging to that Party, save that the Service Provider will not be obliged to return anything before and until all of its fees and charges arising hereunder have been paid in full by the Client; and/or
- the Parties will immediately cease to use each other's Marks in any way; and/or
- the Service Provider will be entitled to retain one copy of any and all documentation upon which the Services were based to enable the Service Provider to maintain a professional record of its involvement.

SERVICE PROVIDER'S RIGHTS AND OBLIGATIONS

The Services

Subject to payment by the Client of the fees, costs and disbursements, the Service Provider undertakes, for the term of this Agreement, to deliver the Services to the Client.

General Duties & Responsibilities

Standard of the Services, Governance & Controls

In addition to the reciprocal obligations herein provided for and the specific duties and responsibilities set out in **Annexure C**, the Service Provider must and will provide and undertake its duties and responsibilities with all the skill, care, professionalism and diligence to be expected from and of a qualified, competent and experienced provider of services of a similar scope and complexity as that required to conduct, undertake, perform and/or deliver the Services. As such, the Service Provider will:

- undertake, perform, accomplish, complete and deliver the Services in a workmanlike and professional manner and with a reasonable degree and level of care, diligence, proficiency, skill and accuracy; and
- have in place appropriate governance, risk management and internal controls to perform the Services; and
- procure that its systems and processes:
 - comply from time to time with all applicable prevailing Laws; and/or
 - are regularly updated to comply with all applicable Laws within 30 (thirty) Calendar Days of publication thereof or such further time as may be reasonable given the complexity of the task at hand and/or the circumstances; and/or
 - are regularly tested to ensure that they are fit for purpose.

The Service Provider must and will, as a Juristic Person, procure and ensure that its duties and responsibilities are carried out by employees, service providers and/or agents who are properly trained, experienced and, where appropriate, accredited to perform such duties and responsibilities.

The Service Provider will be expected to meet the key performance objectives as at and on the deliverable timelines (service levels) as may be agreed to, in Writing, from time to time, by and between the Parties.

To the extent the Client is of the reasonable opinion that the Service Provider can improve its levels of service, it is encouraged to contact the Service Provider's Chief Executive Officer.

The Service Provider will provide the Services during normal Business Hours, unless otherwise specified herein. Should the Client require the Services to be performed outside of Business Hours, the Service Provider must use its best endeavours to accommodate the Client in this regard, subject to the Client paying the additional charges occasioned thereby and therefore.

Time for the delivery of the Services

The Service Provider will be responsible to set its own hours of performing the work and Services, save that it will ensure that its representatives are contactable and/or available to be contacted during Business Hours. For the avoidance of doubt, the Client will not have the right to set defined work hours. Notwithstanding the foregoing, the Service Provider will, at all times and from time to time,:

- be responsive to the Client's needs; and
- be punctual in attending scheduled meetings with the Client; and
- respect the Client's hours of business.

Process

The Parties must and will agree, in Writing, a process that best suits them and their needs. In this regard, the Service Provider will provide the Client with a plan for the coordination of their respective activities so as to optimize the efficient and productive performance of work and the achievement of the Client's overall goals and objectives *vis-à-vis* the Services.

Each of the Parties hereby undertake to adhere to, abide by and comply with the agreed plan, which may be amended, in Writing, from time to time, to accommodate changing circumstances and/or personnel. The agreed plan, once signed by both of the Parties, will be and become an Annexure to this Agreement.

The Service Provider's Responsible Person will meet with the Client's Responsible Person, from time to time, on an agreed frequency, to discuss *inter alia* and at least any concerns, queries or issues which either the Client or the Service Provider may raise.

Information

The Service Provider may rely on any instruction or request made or Notice given or information supplied, whether verbally or in Writing, by and/or from the Client's Responsible Person and/or any Person whom the Client may nominate or appoint from time to time as a duly authorised representative of the Client.

The Service Provider may receive information from the Client or from other sources in the course of delivering the Services, in which event the Service Provider will:

- consider the consistency and quality of the information received, but will not be required to establish the reliability and/or veracity thereof; and
- assume no responsibility and make no representations with respect to the accuracy, reliability and/or completeness of any information provided to it; and
- not be liable to the Client for any loss or damage suffered by the Client arising from any fraud, misrepresentation, withholding of information material or otherwise to the Services or other default or breach relating to such information, whether on the part of the Client or that of any other information sources.

To the extent verbal information is given by the Service Provider, the Service Provider is required to confirm such information in Writing, if requested by the Client, setting out the background and context in which it was given. The Client cannot place any reliance on any verbal information, unless such information has subsequently been confirmed in Writing. The Service Provider accepts no responsibility for the consequences of the Client acting upon unconfirmed verbal information.

To the extent the Service Provider's information is based on unaudited or third party information, the Service Provider cannot and does not accept responsibility if such information is incorrect.

Service Provider's Team

The team appointed by the Service Provider will not be required, expected and/or deemed to have knowledge of any information known to other colleagues in the team or in any associated company, which is not known to them personally, or be required to obtain such knowledge from their colleagues.

The team appointed by the Service Provider will not be required to make use of, or to disclose to the Client, any information, whether known to them personally or known to colleagues, which may be confidential to another client of the Service Provider or any associated company.

Notwithstanding the foregoing, the Service Provider will use its best endeavours to procure and ensure that the team appointed by the Service Provider is up to date with all work

performed for the Client, thereby ensuring continuity of the Service and the avoidance of unnecessary repetition.

Important Notifications

The Service Provider must bring to the attention of the Client any and all issues with respect to the Services immediately upon same coming to its attention and/or knowledge.

The Service Provider must, in Writing,:

- raise and address with the Client all and/or any queries forthwith upon such query arising; and/or
- notify the Client if and when the Service Provider experiences any problems with the Client's server and/or software immediately upon such problem being experienced; and/or
- notify the Client if and when the Service Provider knows or has a suspicion that it will be unable to realistically achieve any deadline or timetable set for any deliverable.

Proposals, Presentations & Reports

To the extent the Service Provider is required to make a proposal, presentation or compile a report, as the case may be, only final proposals, presentations and/or reports shall take precedence and be binding on the Service Provider, provided a legal obligation is reduced to Writing and signed by both of the Parties.

No reliance may be placed on any interim or draft proposal, presentation or report.

The Service Provider is not and will not be under any obligation to update any proposal, presentation or report issued in interim or final form, unless otherwise agreed to in Writing by the Service Provider.

Any proposal, presentation or report, including any advice, in any medium or form, proffered or made available by the Service Provider to the Client, will be supplied for the sole benefit and information of the Client only; it may not be copied, referred to or disclosed, in whole or in part, save for the Client's internal purposes only, without the Client first obtaining the Service Provider's prior Written Consent thereto, which Consent may not be unreasonably conditioned, delayed and/or refused.

The Client may not disclose or make available any proposal, presentation or report or quote therefrom or reproduce the Service Provider's Mark in any form or medium without the Client first obtaining the Service Provider's prior Written Consent thereto, which Consent may not be unreasonably conditioned, delayed and/or refused.

The Client may disclose, in whole only, such proposal, presentation or report to its bank or legal and other professional advisers, for purposes of seeking advice thereto or thereon, provided that when doing so, the Client informs them that:

- disclosure by them is not permitted without first obtaining the Service Provider's prior Written Consent thereto; and
- the Service Provider accepts no responsibility and/or liability of whatsoever nature; and
- the Service Provider does not owe them a duty of care.

If and to the extent the Service Provider offers or gives any advice, opinion, statement of expectation, forecast or recommendation, such must not and will not be construed or amount to any form of guarantee, warranty or the like as to the actual happening or predicted future events or circumstances.

Compliance with the Law

The Service Provider must and will ensure that:

- all work performed by the Service Provider under this Agreement complies with or will comply with all applicable Laws; and

- all software used by the Service Provider in carrying out the Services will not be in contravention of the Copyright Act and/or any other Intellectual Property Legislation; and/or
- it will not use another Person's Intellectual Property without first obtaining the required Consent therefore or breach any Intellectual Property rights under the Common Law, the Copyright Act, the Designs Act, the Patents Act, the Trade Marks Act and/or any other Legislation, international treaty or convention.

Variation of the Services

The Client may, on giving reasonable Written Notice, from time to time, request changes to the Services, whether by way of the omission of Services, the addition of new Services, or increasing or decreasing the Services or the locations where they are to be provided or otherwise) for any reason whatsoever ("**a Variation**").

In the event of a Variation, the price to be paid by the Client for:

- any additional Services must be agreed to in Writing by and between the Client and the Service Provider prior thereto, failing which the Service Provider will not be obliged to perform any additional Services; and/or
- any reduced Services will not reduce the rate, the price and/or the Fees herein provided for, unless the Service Provider has agreed thereto in Writing.

No Variation of the Services will take effect or be binding on the Service Provider unless and until such Variation has been agreed to, reduced to Writing and signed by both of the Parties.

Any and all Variations must be reflected in a new **Annexure C** and **Annexure D** if there is any price variation, which will replace the prevailing Annexure C and Annexure D, as the case may be. The Parties must sign and date the new Annexure C and Annexure D from time to time.

The entering into of a new Annexure C and Annexure D (or any other annexure) will not novate or terminate the Agreement, which will remain of full force and effect, save for the Variations.

Limitation of Liability

To the fullest extent permitted in Law and notwithstanding any other provision of this Agreement, the total collective liability of the Service Provider, its shareholders, associated companies, directors, employees, sub-contractors, legal advisers, representatives and/or agents for and/or in respect of any claim under, by virtue, as a result or consequence of, pursuant to and/or arising from this Agreement, the Services and/or otherwise shall be limited to and not exceed the total compensation paid and/or to be paid and received by the Client to the Service Provider during the financial year during which the cause of action arises or arose, as the case may be.

The limitation provided for herein is for any and all claims, liabilities, expenses, warranties and/or indemnities:

- howsoever arising; and/or
- of whatsoever nature or kind; and/or
- on whatever legal principle or basis of Law; and/or
- for any and all types of damages or delict of whatsoever nature, including but not limited to direct, indirect, consequential, special, incidental, punitive, exemplary loss and/or loss of profits; and/or
- for any and all costs, including but not limited to professional fees, such as attorneys' fees, advocates' fees and expert-witnesses' fees and attendant expenses and disbursements, including but not limited to travel and accommodation, plus VAT thereon; and/or

- whether caused by the Service Provider itself or any of its shareholders, associated companies, directors, employees, sub-contractors, legal advisers, representatives and/or agents; and/or
- for any claim that may be brought by the Client, its shareholders, associated companies, directors, employees, sub-contractors, legal advisers, representatives and/or agents.

The Client hereby waives all its rights to claim any amount in excess of the limited amount aforesated.

The limitation of liability provided for herein will not be applicable in the event the Service Provider, its shareholders, associated companies, directors, employees, sub-contractors, legal advisers, representatives and/or agents have caused the damage by fraud, intentional misconduct or gross negligence.

In determining the liability of the Service Provider, the Court or the arbitrator, as the case may be, must and will limit the liability of the Service Provider to that portion of the loss or damage suffered by the Client which can be ascribed to the Service Provider by such Court or arbitrator allocating a proportionate responsibility, having regard to the contribution to the Client's loss or damage in question or that of any other Person, based upon relative degrees of fault, with the provisions of Section 1 of the Apportionment of Damages Act, 1956 (Act No. 34 of 1956), applying to all claims by and between the Parties, with the terms "*breach of contract*", "*gross negligence*", "*damages*" or "*losses*" falling within the definition or meaning of the words "*fault*" and "*damage*" in the aforesated Act.

Any and all claims under, by virtue, as a result or consequence of, pursuant to and/or arising from this Agreement, the Services and/or otherwise must be made within 2 (two) years of the date on which the Client or such other Person becomes aware or ought reasonably to have become aware of the circumstances giving rise to a claim or potential claim against the Service Provider.

No claim may be brought personally against any individual director, officer, employee, legal adviser or agent of the Service Provider.

Nothing herein contained will be construed as in any way reducing or affecting a Person's general duty to mitigate any loss suffered or to be suffered by that Person.

Conflicts of Interest

The Service Provider will take appropriate steps to ensure that neither the Service Provider nor any of its employees, servants, agents, suppliers or sub-contractors are placed in a position where there is or may be an actual conflict or a potential conflict between the pecuniary or personal interests of such Persons and the duties owed to the Client hereunder. The Service Provider will forthwith disclose to the Client full particulars of any and when such conflict of interest may arise.

The Service Provider and/or its associated companies may be approached to contract with a competitor of the Client or advise a Person who is in dispute with the Client or advise or represent a Person whose interests are opposed to that of the Client's interests through their material concern in matters to which their services are specifically and directly related ("**Adversarial Conflicts**"). In this regard, the Service Provider will seek and continue to seek to identify Adversarial Conflicts. To the extent the Client is aware or becomes aware of any Adversarial Conflict, the Client must forthwith inform the Service Provider.

To the extent an Adversarial Conflict is found to exist, the Service Provider will endeavour to facilitate and institute safeguards, such as the use of separate teams and personnel, geographical separation and operational independence. These safeguards will constitute full compliance with the Service Provider's duty of confidence in relation to competing and/or conflicting Persons.

Where another Person has engaged the services of the Service Provider, and during the delivery of the Services, the Service Provider, in its Discretion, is of the opinion, even with the safeguards being introduced, that the Client's or the other Person's interests are likely to be prejudiced, the Services Provider may, after consultation, with the Client, choose to terminate the Agreement, in which case it will be entitled to do so by giving the Client Notice of termination. The Service Provider will not be responsible for any costs that the Client may incur pursuant to such termination and/or in securing other services.

CLIENT' RIGHTS AND OBLIGATIONS

General Duties & Responsibilities

In addition to the reciprocal obligations provided for herein and the specific duties and responsibilities set out in **Annexure B**, the Client must and will:

Client Representative

- appoint a Responsible Person to be its Client Representative to:
 - be and become the liaison between the Service Provider and the Client, with respect to all communications and correspondence between them; and
 - assist the Service Provider in the management and alignment of the Services within the Client's business to achieve best efficiencies and maximum workflows; and
 - sign-off and/or veto any action and/or matter the Client's Responsible Person deems appropriate or necessary for him or her to sign-off on; and
 - regularly consult with the Service Provider on all matters either Party deems appropriate or necessary; and
 - procure and ensure that the Client timeously provides and delivers to the Service Provider all the information it requires and/or which is necessary for the Service Provider to deliver the Services timeously or otherwise; and
 - address and/or answer any and all of the Service Provider's queries; and/or

Information & Support

- provide, at all reasonable times, during Business Hours, the Service Provider with:
 - accurate, detailed and complete information timeously to enable the Service Provider to deliver the Services; and
 - access to any and all of its personnel who may have the information or access to the information the Service Provider requires to deliver the Services; and
 - access to all information and data required by the Service Provider to perform the Services; and
 - all the requisite reasonable support required by the Service Provider to set-up, conduct, undertake and deliver the Services,

it being clearly acknowledged, understood and accepted by the Client that this is a material term of the Agreement in order for the Service Provider to perform its duties and undertake the Services, more particularly:

- the Client must and will use its best endeavours to procure and to promptly supply all information and assistance and all access to documentation in its possession, custody or under its control and to personnel under its control; and

- where information or documentation is not in the possession or custody or under the control of the Client, the Client will use its best endeavours to procure the supply of the information, assistance and/or access, as the case may be; and
- the Client must and will promptly inform the Service Provider of any information or development that may come to its attention which may have a bearing on or be relevant to the Services or the Service Provider's delivery thereof; and
- the Client irrevocably undertakes to promptly supply information in response to the Service Provider's enquiries to enable it to comply with its statutory obligations under the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001) and the Prevention of Organised Crime Act, 1998 (Act No. 121 of 1998) and the Auditing Profession Act, 2005 (Act No. 26 of 2005); and/or

Risk Management & Checks & Balances

- procure and ensure, prior to handing-over and/or delivering information to the Service Provider that all such information is current and has been carefully checked and thereafter independently verified as being accurate, detailed and complete in every respect; and
- develop, maintain and regularly test that it has sufficient systems and processes in place to detect, flag and investigate potential and/or possible irregular, unauthorised, illegal, unlawful and/or fraudulent activities and/or transactions; and
- with each batch of information, certify, in Writing, that that batch of information is current and has been carefully checked and thereafter independently verified as being accurate, detailed and complete in every respect,

it being clearly acknowledged, understood and accepted by the Client that if the Client and the Client's systems, processes, protocols and staff do not timeously provide current, accurate, detailed and complete information, in every respect, the Services will be compromised and the integrity and credibility thereof will be prejudiced and tainted, which could result in additional costs to the Client; and/or

Compliance

- comply, during the term of this Agreement, with the Laws of South Africa (and to the extent the Client is located outside of South Africa, to also the Laws of such country or jurisdiction) and hold the necessary Consents required to conduct its business and, in particular, the business contemplated and provided for herein; and/or
- comply, at all times, with the South African labour and Tax Legislation (and to the extent the Client is located outside of South Africa, to also the labour and Tax Legislation of such country or jurisdiction); and/or
- comply strictly with the time lines, deadlines, processes, procedures and protocols agreed to in Writing with the Service Provider to enable the Service Provider to deliver the Services accurately and timeously; and/or

Reviews of Service Provider

- undertake periodic performance reviews of the Service Provider, at least once every quarter year, and advise the Service Provider thereof in Writing; and/or

Monitor Service Provider's Performance

- monitor the Service Provider's performance under and compliance with this Agreement; and/or

Specific Responsibilities

- retain responsibility and accountability for the management, conduct and operation of its business and affairs; and
- retain responsibility and accountability for any and all representations made by the Client and/or its staff to third parties, including but not limited to public and/or published information; and
- safeguarded its assets; and
- procure and ensure that its systems, hardware, software, policies, procedures, processes and protocols are sufficient for its needs and adhered to to prevent errors and irregularities, including but not limited to fraud and other illegal acts; and
- retain responsibility and accountability for the use of, extent of reliance on, or the implementation of any advice or recommendation supplied by the Service Provider; and
- retain responsibility and accountability for making any decisions in respect of the Services so delivered or any use thereof; and
- retain responsibility and accountability for the delivery, achievement and/or realisation of any benefit, directly or indirectly related to the Services that require implementation by the Client; and
- retain responsibility and accountability for ensuring that all arrangements are made for access, security procedures, virus checks, facilities, licences and/or Consents, without any cost to the Service Provider, where the Client requires the Service Provider to do so or the nature of the Services is such that it is likely to be more efficient for the Service Provider to perform work at the Client's premises, use or access the Client's computer systems and/or telephone networks; and/or
- be duly registered with the applicable Responsible Authority to conduct and undertake the business contemplated and provided for herein and shall hold the requisite Approvals and certificates prescribed in Law; and
- employ suitably qualified, trained, skilled and experienced personnel and staff (who are fit and proper) to compile, manage and distribute the information required for the Services.

Non-solicitation

The Client cannot and will not, during the term of this Agreement and for a period of 12 (twelve) Months immediately following termination of this Agreement, either directly or indirectly, employ or engage any of the Service Provider's employees or consultants (whether directly as an employee of the Client and/or associated companies or as a contractor or indirectly through another Person) and to this extent must and will not solicit, persuade, encourage, induce or entice (in the widest sense), with the intention to offer employment to any employee of the Service Provider.

To the extent the Client, during the term of this Agreement and for a period of 12 (twelve) Months immediately following termination of this Agreement, either directly or indirectly, employs or engages any of the Service Provider's employees or consultants (whether directly as an employee of the Client and/or associated companies or as a contractor or indirectly through another Person), the Service Provider shall be entitled to levy a recruitment fee of 15% (fifteen) (plus VAT) on the first year's cost to company remuneration package of the staff member accepting such employment, which levy the Client shall be obliged to pay.

The provisions of the immediately preceding Clause pertaining to non-solicitation shall, for whatever reason or cause, survive the termination, expiration or cancellation of this Agreement.

RECIPROCAL OBLIGATIONS

The reciprocal obligations contained herein will apply to the Parties in addition to any other obligations herein provided for.

Consultation and Cooperation

The Parties must act in close consultation and cooperation with each other in relation to the performance of their respective obligations under this Agreement.

Communications

The Parties choose to communicate with each other by electronic mail on the basis that in consenting to this method of communication they each accept the inherent risks of such method of communication, including but not limited to the risks of:

- the interception of or unauthorised access to such communications; and
- viruses or other harmful software or devices, hereby undertaking to regularly use commercially reasonable procedures and software to check for the most commonly known viruses before sending any information electronically.

If a Party is concerned about the possible effects of a particular electronic transmission and such communication pertains to a matter of significance upon which that Party may wish to rely, that Party should request a hard or paper copy of such transmission from the other Party.

The Parties may, from time to time, request, in Writing, that certain documents and/or certain electronic transmissions are password protected.

Notification of Incidents

Without limiting any Party's other obligations herein, each Party must as soon as practicable after becoming aware of a matter inform the other Party of any event, activity or incident that will, or is reasonably likely to,:

- prevent or materially limit a Party from carrying out and/or undertaking any of its duties and/or responsibilities hereunder; and/or
- prejudice or negatively impact upon the status, reputation, name, brand, Mark and/or financial wherewithal of a Party; and/or
- cause a Party financial damage or otherwise; and/or
- affect the relationship as between the Parties.

Ownership

Each Party will, notwithstanding any other provision herein contained, retain ownership in, to and of its own property and assets, including but not limited to its Intellectual Property. Nothing herein contained will bestow ownership on a Party in the other Party's property, assets and/or Intellectual Property.

Each Party must and will keep confidential any methodologies and technology used by the other Party in carrying out the Services.

The data and accounting records of the Client shall remain that of the Client, subject only to the Service Provider's right of retention for the payment of outstanding fees, costs and disbursements.

Intellectual Property

Neither Party will have any rights and will obtain no rights in the other Party's Intellectual Property (including any goodwill associated with such rights) or in the equipment

and services developed and/or used by the other Party in the delivery of any service and/or any other manner or means contemplated and/or provided for herein. As such, all and any Intellectual Property rights vesting in a Party, whether by Legislation or otherwise (including but not limited to the Common Law), will remain vested in that Party.

Neither Party is permitted to register or attempt to register (or cause a third party to register or attempt to register) any Intellectual Property anywhere in the world which potentially conflicts with either of their respective Intellectual Properties. To this extent, each Party irrevocably undertakes in favour of the other not to do anything or allow anything to be done that may infringe a Party's right in that regard.

The Parties hereby conditionally authorize each other to use each other's Intellectual Property, in South Africa, to perform their respective obligations under this Agreement, provided always that they will not be permitted to make any changes whatsoever to each other's Intellectual Property.

Notwithstanding the above conditional authorisation, neither Party is and/or will be permitted to use the other Party's:

- name as a reference in proposals or similar submissions to other prospective clients or competitors; and
- company name or any abbreviation or derivative thereof; and
- Marks or other forms of Intellectual Property,

without the prior Written Consent of that Party first being had and obtained, which Consent may not be unreasonably conditioned, delayed and/or withheld.

The Intellectual Property and/or information in any data base or lists belonging to a Party is only permitted to be used by the other Party for the purposes of this Agreement.

The total right, title and interest in and to any copyright (including but not limited to moral and economic rights) and any other Intellectual Property rights, in any works or part thereof produced in terms of or arising out of the performance of a Party's duties hereunder, its staff, contractors or other agents during the course and scope of this Agreement will vest in that Party.

To the extent either Party is required to develop, pursuant to this Agreement, any source or other computer based code, data, algorithm, document, presentation, solutions design, web site or any other application of whatsoever nature or kind, all Intellectual Property rights in and to such work will, unless otherwise agreed to in Writing by the Parties, shall accrue to and vest exclusively in Party developing such source or other computer based code, data, algorithm, document, presentation, solutions design, web site or other application. To the extent that an Intellectual Property right vests, for whatever reason, in either Party when it should have exclusively vested in the other Party, the incorrect Party hereby assigns and, to the extent necessary, irrevocably undertakes to assign all such Intellectual Property rights to the correct Party, which hereby accepts such assignment.

To the extent a Party is required to defend and/or institute any application and/or action to protect and/or claim its Intellectual Property, the Party causing such action will be responsible for and hereby indemnifies that Party for and/or against any such application, action, claim and/or other proceeding of whatsoever nature.

Safety & Security

The Parties will comply with all reasonable safety and security requirements of each other and will cause their employees, agents and sub-contractors to comply with such requirements.

Taxes

The Parties will be responsible for the payment of their own Taxes as may arise pursuant to and/or out of this Agreement and account to SARS in that regard. To the extent any withholding or similar Taxes is applicable, the Party responsible to withhold such Taxes will be entitled to withhold and pay such Taxes in accordance with the Law.

Insurance

The Parties must and will ensure that they each have adequate insurance cover, at all times, to conduct their respective businesses and to accommodate and provide for the risks contemplated and provided for herein.

Representatives and/or Responsible Persons

Each Party must and will nominate and appoint a Responsible Person, who will have authority to act on its behalf in respect of all matters relating to that Party's obligations hereunder, save that to be legally binding the obligation must be reduced to Writing and signed by that Party's duly authorised Responsible Person.

Each Responsible Person must and will coordinate and manage that Party's duties and responsibilities and work with the other Party to address any problems that arise in connection therewith and therefrom.

Each of the Parties' Responsible Persons must and will meet at least once every 3 (three) Months to discuss their duties and responsibilities or more frequently and upon short notice if circumstances require.

The meetings contemplated herein will take place at the times and places agreed from time to time by and between the Parties' respective Responsible Persons.

Minutes must and will be taken and kept of all meetings by and between the Responsible Persons and circulated within 3 (three) Business Days of the meeting having taken place.

Personnel

Each Party must provide or procure, at its own cost, a sufficient number of staff or personnel to ensure that the Services are timeously delivered, and, that each Responsible Person performs to his or her ability, delivers in terms of their functionality and achieves, at least, the agreed minimum acceptable levels of satisfaction.

Business Ethics

The Parties undertake to and in favour of each other,:

- to at all times act honestly and fairly;
- not to offer or give, directly or indirectly, any bribe or other improper benefit or advantage to any Person;
- not to demand or accept, directly or indirectly, any bribe or other improper benefit or advantage for itself and/or any Person;
- not to make, directly or indirectly, any payment except to the extent that such payment is legitimate compensation for legitimate services;
- not to receive, directly or indirectly, any payment except to the extent that such payment is legitimate compensation for legitimate services;
- not to provide to any Person, any written or oral information which he knows to be false, inaccurate or misleading, or where it is wilfully blind or reckless as to whether the information is false, inaccurate or misleading;
- not to dishonestly withhold from any Person, any written or oral information;
- not to conspire, with any Person dishonestly to cause loss to any Person or to deprive any Person of his or its rights;
- not to authorise or acquiesce in or turn a blind eye to, any

corruption and/or bribery of any kind or nature;

- not to receive or give any gift in excess of a value of R1,000.00 (one thousand Rand) from or to any Person connected with any Regulatory Authority, government and/or political party;
- not to receive or give any hospitality (including any meal, sporting event or other entertainment) in excess of a value, per Person, of R1,000.00 (one thousand Rand) from or to any Person connected with any Regulatory Authority, government and/or political party; and/or
- not to receive or give any donation or other benefit in excess of a value of R1,000.00 (one thousand Rand) to any political party and/or politician;
- if any one of them suspects any corruption or bribery by any staff, contractor, service provider, client and/or other Person, he will forthwith report the matter to the other Party;
- to develop and implement clear procedures to ensure that all necessary and prudent precautions are taken to, in and when forming business relationships with clients, business partners and/or service providers (as understood in the widest sense) ("**Business Associates**");
- to undertake and have clearly documented due diligence procedures on Business Associates, which involve investigating in detail the experience and reputation of such Business Associates;
- to institute a clearly articulated policy on combating bribery, with compliance standards and procedures that are to be followed by Business Associates, where applicable; and/or
- to comply with all applicable Laws regarding and pertaining to anti-money laundering and anti-terrorist financing and sanctions programs, including, without limitation, the implementation, maintenance and operation of policies, programs and procedures reasonably designed to comply with such anti-money laundering Laws.

Data Protection

The Parties irrevocably undertake to and in favour of each other that they will comply, and will cause their employees, agents and sub-contractors to enter into and sign confidentiality undertakings to protect any confidential information as contemplated and provided for under and by virtue of any of Laws, including but not limited to any and all applicable personal or private information and/or data protection Laws as may be applicable from time to time, including but not limited to PoPI.

The Service Provider acknowledges that the information it receives and/or is to receive from the Client is not only confidential, but also sensitive, and should be treated as such.

The Service Provider agrees to indemnify, defend, protect and hold harmless the Client, its parent, officers, directors, employees, agents, successors and assigns from and against, any and all claims, demands, actions, losses, liabilities, injury, damages (including taxes), suits (or any claims relating to the foregoing) and all related costs and expenses, including without limitation lawyers' fees, reasonable investigation and discovery costs, which are caused by, arise out of or relate to the Service Provider's breach of any application data protection laws. The Service Provider expressly agrees that this indemnity shall not be limited by any other clause in the Agreement, including the Limitation of Liability, but shall instead be limited to the sum in South African Rand that is the equivalent of five hundred thousand Great British Pounds at the date of the breach.

Confidentiality

The existence of and the terms of this Agreement and any Confidential Information relating thereto or to the Parties is confidential to the Parties and their professional advisers and will not be disclosed by them to anyone whatsoever unless

disclosure is required by Law, or by order of Court, or to enable the disclosing Party to comply with the requirements of any licensed stock exchange or other Responsible Authority, or unless otherwise agreed to in Writing by the Parties.

The Parties will hold such Confidential Information in the strictest confidence, prevent any copying thereof by whatever means and not make use thereof other than for the purposes of this Agreement and to release it only to such properly authorised directors, employees or third parties requiring such information for the purposes of this Agreement and will not release or disclose it to any other Person who has not signed an agreement expressly binding himself or itself not to use or disclose it other than for the purposes of this Agreement.

The confidentiality undertaking and obligations contained herein do not apply to information which-

- is publicly available at the date of disclosure or thereafter becomes publicly available from sources other than the Parties; and
- is required by Law or any Responsible Authority to be disclosed.

The Parties will take such precautions as may be reasonably necessary to maintain the secrecy and confidentiality of the Confidential Information in respect of any other Person to whom any such information may have been or will be disclosed.

Save as may be required during the normal course of business and/or by Law or any Responsible Authority, no announcement or publicity of the existence of this Agreement or its content will be made or issued by or on behalf of any Party without first obtaining the prior Written Consent of the other Party, which Consent may not be unreasonably conditioned, delayed and/or withheld.

To the extent that a Party is required to apply for an interdict, injunction or similar urgent relief, specific performance and/or other equitable remedy as may be appropriate for any threatened or actual breach of any provision of this Agreement, including but not limited to this confidentiality Clause, no proof of special damages will be necessary for the enforcement of the rights under this Agreement nor will it be necessary to argue that damages would or would not be an adequate remedy for any breach of this confidentiality Clause. This confidentiality Clause is without prejudice to any other rights or remedies that a Party may have under this Agreement and/or in Law.

The provisions herein pertaining to the data protection and confidentiality provisions will survive the termination of this Agreement for whatsoever cause and/or reason for a period of 2 (two) years from the date the Agreement is terminated.

Upon expiry or termination of this Agreement, howsoever caused, upon Written request, the Parties will each forthwith return to the other any physical manifestations, including electronic means, of such Confidential Information, secrets or know-how, then or thereafter in its possession or under its control.

COMMERCIAL AND FINANCIAL CONSIDERATIONS

Fees

The Client will pay the Service Provider the fees, disbursements, VAT (where applicable) and any foreign taxes (where applicable) as contemplated and provided for in **Annexure D** or otherwise, which sets out the basis and manner in which the Service Provider is to be remunerated for the Services.

Save as may be otherwise provided for in **Annexure D**, as the fees are based on a number of fixed and variable factors and circumstances, to the extent these factors and circumstances change due to the actions or omissions of the Client, including but not limited to the Client failing to meet deadlines, providing insufficient or incorrect information, resulting in *inter*

in the event the Service Provider having to pay overtime rates to its staff, requiring additional and/or more skilled resources, the Service Provider has the right, but not the obligation, to charge and the Client will pay such additional fees for the extra time spent, additional resources required and/or disbursements incurred in respect thereof. This additional charge will be invoiced separately from time to time if and when applicable.

Variation

Save as may be otherwise provided for in **Annexure D**, the Service Provider has the right, but not the obligation, to increase the fees and/or fee rates charged to the Client in the event of any Variation of the Services and/or a change of

circumstances. Save for any additional fees and charges levied for additional work required, as contemplated above, no increase in fees or fee rates will take effect unless agreed to in Writing by the Client. To the extent there is no agreement on any increase in the fees or the fee rate, the Service Provider has the right, but not the obligation, to terminate this Agreement on 3 (three) Calendar Month's Written Notice to the Client.

Annual Increase

Save as may be otherwise provided for in **Annexure D**, the Service Provider has the right, but not the obligation, to increase the fees and disbursement charge out rates for the Services annually, on the anniversary of the Commencement Date, to accommodate inflation and other market forces by:

- agreement in Writing by and between the Parties; or failing agreement
- an amount equal to at least the then publicly quoted and published annual inflation rate of and for South Africa.

Disbursements

The Client will pay the Service Provider for any and all disbursements incurred and/or expended by the Service Provider in respect of, in the process of and for delivering the Services, including but not limited to travelling expenses, photocopies, stationery, revenue stamps, postage, emails, telephone calls and other electronic communications. The disbursements will be charged at the Service Provider's prevailing charge out rate from time to time.

Invoices

The Client will not be obliged to pay any fee unless and until it has received from the Service Provider the invoice in respect of such payment.

Payment

Save as may otherwise be specifically provided for in **Annexure D**, the Client must and will pay any and all fee and other invoices on presentation thereof.

Manner of Payment

All and/or any payments owing and/or to be made in terms of this Agreement will be:

- so made free of exchange and without any deduction of any sort; and
- in full and in cash, in the lawful currency of South Africa or in the currency specifically otherwise provided for in **Annexure D**, by electronic funds transfer into the designated bank account of the Service Provider set out on **Annexure A** or as may be provided, in Writing, from time to time.

The Service Provider hereby appoints the bank set out in **Annexure A** (and such other bank as it may from time to time nominate) as its duly authorised receipting agent (or account) into which all payments must be made. To the extent the Client makes payment into such bank account, it will not be responsible and/or liable (in respect of such payment) for any losses, damages and/or non-payment to the Service Provider thereafter.

The Service Provider hereby authorises and instructs the Client to pay all invoiced amounts directly into the aforementioned bank accounts, with payments so made in terms of this Agreement being made or be deemed to be so made in full and absolute compliance by the Client of its obligation in terms of this Agreement.

VAT

Unless the context of the Clause concerned clearly indicates that the amount concerned is inclusive of VAT, all amounts provided for in this Agreement will be exclusive of VAT (if applicable) and any VAT chargeable in respect of matters giving rise to such payments (or other consideration) will be added to such payment or other consideration and paid in

addition by the Client. The same principle applies to the extent any GST is payable in any country or jurisdiction other than South Africa.

All or any VAT arising from the supply of any services by any Party to the other Party in terms of this Agreement will become due for payment and will be paid by the applicable Party forthwith upon presentation of the relevant VAT invoice in the form and containing the particulars prescribed by Legislation and in accordance with the provisions relating to the payment thereof. The same principle applies to the extent any GST is payable in any country or jurisdiction other than South Africa.

In the event that VAT is chargeable on any supply under this Agreement for a consideration not consisting or not wholly consisting of money, the Party to whom the supply is made will pay such VAT (or GST, if applicable) to the Party by whom the supply is made on the same date as such VAT would be payable if the consideration in relation to which it is chargeable was a monetary consideration or if there is no such date within 10 (ten) Business Days of the date upon which the supplier of the services and/or goods has served a written demand on the Party to whom the supply is made in respect of such VAT either consisting of or accompanied by an invoice in the prescribed form and manner.

Any dispute which may arise as to the liability for and/or payment of VAT (or GST, if applicable) or the amount thereof will be referred to both Parties' auditors at that time (acting as independent experts) for decision and their decision will be final and binding as between the Parties and carried into effect. To the extent the auditors are unable to agree or come to a unanimous decision, that dispute will be referred to an independent auditor whose decision will be final and binding as between the Parties and carried into effect.

Disputed Payments

If and to the extent the Client disagrees with or disputes the accuracy or otherwise of any invoice, it must notify the Service Provider, in Writing, within 7 (seven) Calendar Days of receipt thereof, failing which it will be deemed to have accepted the correctness thereof, subject to manifest error and/or fraud later coming to light.

Notwithstanding any dispute by the Client with respect to any invoice, the Client must and will continue to pay the Service Provider, on a without prejudice basis, the full extent of the invoiced amount.

The Parties undertake to use their best endeavours to negotiate in good faith to resolve any invoice dispute contemplated herein as soon as reasonably practicable, but in either event within at least 30 (thirty) Calendar Days of the dispute having arisen, failing which the dispute mechanism set out hereinafter will apply, unless otherwise agreed to in Writing by the Parties.

Excursion, Set-Off or Counter-Claim

The Client will not and does not have the right to defer, adjust, withhold and/or apply set-off to any payment (due to the Service Provider in terms of or arising out of this Agreement), as the Client would otherwise have in Law.

Late Payments

If and to the extent the Client fails, neglects, refuses and/or is unable to pay the amount so invoiced within 30 (thirty) Calendar Days of the invoiced date, such late payment will accrue interest at the Prime Rate plus 3% (three percent) from the due date to the date preceding the date of actual payment in full.

Allocation of Payments

All payments will be allocated first to interest, then to disbursements and then to the oldest outstanding fee.

Other and After Costs

Costs and time spent on matters outside of this Agreement,

including but not limited to legal matters or proceedings, such as attending on, adhering to and/or challenging subpoenas, preparing for and the giving of evidence or attending on regulatory or other governmental enquiries, whether at the request of the Client, as a result of a subpoena or otherwise, will be invoiced separately by the Service Provider and payable by the Client on the same basis as other invoices. This provision applies to any period during the term of the Agreement and after its termination, with this provision surviving the termination of the Agreement.

Collection

Notwithstanding any other provision herein contained, the Client will be liable for and pay any and all legal fees, expenses and/or disbursements reasonably incurred by the Service Provider in recovering, attempting to recover and/or consulting with its attorney and/or advocate in taking advice to recover any amount invoiced by the Service Provider to the Client.

Cancellation Payment

To the extent the Client appoints another service provider in the place and stead of the Service Provider or otherwise terminating this Agreement, the Service Provider will be entitled, but not obliged, to raise an invoice upon receipt of such notification for all work done to date and not yet invoiced, which invoice the Client must and will pay in full prior to the Service Provider being required to hand over any documentation or files to the Client or the newly appointed service provider.

FORCE MAJEURE

Neither Party will be liable for failure to perform if the failure is attributable to a Force Majeure.

If a Party suffers or has to endure Force Majeure conditions that will result in its non-performance, it will and must immediately notify the other Party, in Writing, of the existence of such conditions and the anticipated period of non-performance.

If the actual period of non-performance by either Party, because of Force Majeure conditions, exceeds 30 (thirty) Days from the date of Written Notice of Force Majeure conditions, the other Party will be entitled, but not obliged, to terminate this Agreement at the end of such 30 (thirty) Days period or at any time thereafter during the continuance of the Force Majeure conditions on 60 (sixty) Calendar Days Written Notice to the non-performing Party.

Neither Party will owe to the other any damages, reimbursement, or indemnification as a result of a Force Majeure termination.

BREACH

In addition to any other remedy provided for herein or termination provision, should a Party commit a material breach of any provision of this Agreement ("**the Defaulting Party**") and fail to remedy such breach within 10 (ten) Calendar Days of receiving Written Notice from the non-defaulting Party ("**the Non-defaulting Party**") requiring it to do so, the Non-defaulting Party will be entitled, without prejudice to its other rights in Law, to:

- claim immediate specific performance of all and/or any of the Defaulting Party's obligations, whether or not due for performance, in either event without prejudice to the Non-defaulting Party's right to claim damages; or
- cancel this Agreement, without prejudice to the Non-defaulting Party's right to claim damages.

DISPUTE RESOLUTION

Dispute

Save for any other dispute remedy provided for herein or the

collection of unpaid invoices, should any dispute (other than a dispute in respect of which urgent relief may be obtained from a Court of competent jurisdiction) arise between the Parties (hereinafter collectively referred to as a "**dispute**"), that dispute will, unless resolved by the Parties, be referred to and be determined by arbitration in terms hereof, provided that:

- a Party to the dispute has demanded the arbitration by Written Notice to the other Party; and
- the Party desiring such arbitration has first resorted to the dispute resolution procedures in terms of the ensuing provisions. For purposes of clarity, the dispute resolution mechanism provided for herein, contemplates 3 (three) steps in resolving that dispute, namely that the dispute is –
 - firstly referred to inter-group conciliation; and *failing resolution*
 - then referred to outside mediation by a mediator; and *failing resolution*then referred to arbitration by an arbitrator.

Conciliation

In the event of any dispute arising, that dispute will in the first instance be referred to each of the company's Managing Directors, who will be obliged to engage with each other in good faith, with a view to resolving the dispute, within a period 7 (seven) Calendar Days after the date on which the dispute was referred to them.

Mediation

Only in the event of the dispute not being resolved by conciliation as contemplated above will the dispute be referred to an outside mediator for attempted resolution by such mediator, on the following basis:

- the mediation must be conducted by a mediator selected by agreement between the Parties to the dispute and failing such agreement by the President for the time being of the Cape Law Society ("**CLS**"); and/or
- the Parties must agree on a mutually acceptable venue, failing which the mediation will be held at the offices of the mediator or such venue as he may determine; and/or
- the Parties will not be entitled to be represented at any hearing before or at any meeting or in any discussion with the mediator except by a Party's director, if a Juristic Person; and/or
- the mediator may, as he deems fit, follow formal and/or informal proceedings and receive evidence on submission, orally or in Writing, sworn or unsworn, at joint meetings, with the Parties or separately as from any Person whom he considers can assist in the formulation of his opinion, provided that:
 - the proceedings must be conducted in English; and/or
 - each Party must be given reasonable opportunity of presenting evidence and submissions and of responding to evidence and submissions of any other Party or Person; and/or
 - each Party must be given full details of any evidence on submission received by the mediator from any other Party or any other Person otherwise than at a meeting where all the Parties to the dispute are present; and/or
- the mediator will have the power to propose to the Parties compromise settlements or agreements for the whole or portion of the dispute; and/or
- the mediator must, as soon as is reasonably practicable, give to each of the Parties his Written opinion on the dispute, recording the details of any agreement reached between the Parties during the mediation; and/or
- the mediator's opinion will become binding on the Parties

only to the extent correctly recorded as being agreed by the Parties, in the mediator's Written opinion or otherwise as recorded in Writing to the Parties subsequent to the receipt of the mediator's opinion; and/or

- the disputes on any matter still unresolved after the application of the foregoing provisions must be resolved by arbitration as set out below; and/or
- save for reference to any portion of the mediator's opinion which has become binding in terms of the above no reference must be made by or on behalf of any Party in any proceedings subsequent to mediation, to the mediator's opinion, save that any evidence that was given and any submission statement or admission made in the course of the mediation may be subsequently used in arbitration; and/or
- in respect of the nature of the mediator's opinion and services, each of the Parties must pay its own costs arising from this mediation and the Parties to the dispute must pay in equal shares the fees and disbursements of the mediation and the mediator based upon a scale of fees as agreed between the mediator and the Parties before the commencement of the mediation, and failing which agreement as determined by a nominee of the President for the time being of the CLS, as being fair and reasonable regard being had to the work done by the mediator.

Arbitration

To the extent the mediator is unable to resolve the dispute it must and will be determined by arbitration in accordance with the ensuing provisions.

The arbitration must be held –

- at a mutually acceptable place or venue in Cape Town, or failing agreement thereon, at the offices of the arbitrator or such other venue as may be determined by the arbitrator; and/or
- with only the Parties to the dispute and their legal and other representatives present thereat; and/or
- *mutatis mutandis* in accordance with the Arbitration Act, 1965 (Act No. 42 of 1965) and the Rules of the Arbitration Foundation of South Africa ("**AFSA**"),

it being the intention that the arbitration must be held and completed within 21 (twenty one) Calendar Days after it was demanded.

The arbitrator, who must be a single arbitrator, must be, if the matter in dispute is principally -

- a legal matter, a practising advocate or attorney of at least 15 (fifteen) years' standing; and/or
- an accounting matter, a practising chartered accountant of at least 10 (ten) years' standing; and/or
- any other matter, any independent Person,

agreed upon between the Parties to the dispute.

Should the Parties to the dispute fail to agree whether the dispute is principally a legal, accounting or other matter within 7 (seven) Calendar Days after having been referred to arbitration, the matter will be deemed to be a legal matter.

Should the Parties to the dispute fail to agree on an arbitrator within 7 (seven) Calendar Days after the expiry of the period referred to above, the arbitrator must be appointed, at the request of any Party to the dispute, by the Registrar, for the time being, of the AFSA.

The decision of the arbitrator will be final and binding on the Parties and may be made an order of the Court referred to below or, where appropriate and necessary, at the instance of any of the Parties to the dispute.

The arbitration, including the subject matter of the arbitration and the evidence heard during the arbitration, must be kept confidential and not disclosed to anyone except for purposes

of a Court order to be made in terms hereof.

This dispute resolution provision will not preclude any Party from:

- obtaining interim relief on an urgent basis from a Court of competent jurisdiction pending the decision of the arbitrator; or
- instituting a civil claim for an outstanding invoice.

These dispute resolution provisions -

- constitute an irrevocable Consent by the Parties to any proceedings in terms hereof and no Party will be entitled to withdraw therefrom or claim at any such proceedings that it is not bound by such provisions; and
- are severable from the rest of this Agreement and will remain in effect despite the termination of or invalidity for any reason of this Agreement.

FORUM SELECTION

English language

The Parties select and elect the English language as the language of this Agreement.

All Notices issued pursuant to and/or in terms of this Agreement, as well as all legal actions and court and/or other proceedings will be Written and conducted in the English language.

Choice of Law

This Agreement and the rights and obligations of the Parties will be governed by and construed in accordance with the Laws of South Africa, save where there is a conflict between the Laws of and as applied in the province of the Western Cape and any other province, the Laws as applied in the province of the Western Cape will prevail. The choice of South African Law applies notwithstanding the Client may be registered and/or conducts business outside of South Africa.

Jurisdiction

The Parties irrevocably submit and consent to the exclusive jurisdiction of the Courts of South Africa and, in particular, the High Court of South Africa, Western Cape High Court, Cape Town (or its successor in title), in respect of any claim (including any dispute or difference) arising out of and/or in connection with this Agreement. The choice of and submission to South African Courts applies notwithstanding the Client may be registered and/or conducts business outside of South Africa.

Enforcement

For the purposes of enforcing any claim and/or order made:

- by any arbitration award or an independent expert; and/or
- by any competent Court,

the Parties, to the extent necessary and applicable to give effect to the aforementioned, hereby irrevocably submit to the non-exclusive jurisdiction of the High Court of South Africa, Western Cape High Court, Cape Town (or its successor in title), to apply for such order to be enforced or claim payment, as the case may be.

NOTICES

The Parties choose as their contact or service addresses for all purposes under this Agreement, whether in respect of Court process, Notices or other documents or communications of whatsoever nature, the addresses set out in **Annexure A**.

Any Notice or communication required or permitted to be given in terms of this Agreement will be valid and effective only if in Writing and in English, and which will include without limitation Notice by telefax or electronic-mail.

Either Party may by Notice to the other Party change the physical address chosen as its service address vis-à-vis that Party to another physical address where postal delivery occurs, its postal address, its telefax number or e-mail address, provided that the change will only become effective:

- if the notification is addressed to and is received by the addressee Party's Responsible Person or other duly authorised and designated representative; and
- on the 10th (tenth) Business Day from the receipt of the Notice by the addressee.

Any Notice to a Party -

- sent by prepaid registered post in a correctly addressed envelope to the Responsible Person or duly authorised representative at an address chosen as its service address to which post is delivered will be deemed to have been received on the 5th (fifth) Business Day after posting (unless the contrary is proved); or
 - delivered by hand to the Responsible Person or duly authorised representative during Business Hours at the physical address chosen as its service address will be deemed to have been received on the Day of delivery; or
 - sent by telefax addressed to the Responsible Person or duly authorised representative to its chosen telefax number, will be deemed to have been received on the date of despatch (unless the contrary is proved); or
- sent by electronic mail to the Responsible Person or duly authorised representative to its chosen e-mail address, will be deemed to have been received on the Business Day following the date of transmission (unless the contrary is proved).

Notwithstanding anything to the contrary herein contained, a Written Notice or communication actually received by a Party will be an adequate Written Notice or communication to it notwithstanding that it was not sent to or delivered at its chosen service address.

The Parties accept the postal system and/or electronic methods as their sending and receipting agents for the purposes of giving any Notice contemplated and provided for herein.

To the extent a postal strike is taking place at the time a Party is desirous of despatching a Notice by registered post, the Party so desiring must and will be required to procure and pay for the services of a courier service to deliver such Notice.

MISCELLANEOUS

Warranty of Authority

The Parties warrant their Signatories' authority to sign for and behalf of the Parties and bind them accordingly.

Entire Agreement

This Agreement constitutes the complete and exclusive written expression of the terms of the agreement between the Parties and supersedes all prior or contemporaneous proposals, oral or written, understandings, representations, conditions, warranties, covenants and all other communications between the Parties relating to the subject matter of this Agreement.

This Agreement may not in any way be explained or supplemented by a prior or existing course of dealings between the Parties pursuant to this Agreement or otherwise.

Variations, Waivers & Indulgences

No variation of, addition to, consensual cancellation of or waiver of any right arising in terms of this Agreement (including this Clause) will be of any force or effect unless it is reduced to Writing and signed on behalf of or by the Parties' respective duly authorised representatives.

No failure of any Party to exercise, and no delay by it in

exercising, any right, power or remedy in connection with this Agreement (each a "**Right**") will operate as a waiver of that Right, nor will any single or partial exercise of any Right preclude any other or further exercise of that Right or the exercise of any other Right.

The Rights provided in this Agreement are cumulative and not exclusive of any other Rights (whether provided by Law or otherwise).

Any express waiver of any breach of this Agreement will not be deemed to be a waiver of any subsequent breach. Likewise, one or more waivers of any Right, obligation or default will not be construed as a waiver of any subsequent right, obligation or default.

Any liability to any Party under this Agreement may, in whole or in part, be released, compounded or compromised or time or indulgence given by that Party in its Discretion as regards any Party under such liability without in any way prejudicing or affecting its rights against the other Party under the same or a like liability, whether joint and several or otherwise.

Matters to be agreed

Where it is specified in this Agreement that certain matters are to be agreed between the Parties, failure to reach agreement in respect of such matter will not affect the validity and enforceability of the whole or any part of this Agreement unless otherwise specifically provided for.

Agreement Personal

Save as otherwise specifically provided for in this Agreement, this Agreement is personal to the Parties and no rights or obligations may be ceded, delegated or assigned, as the case may be, unless otherwise agreed to in Writing by both the Parties, which agreement may not be unreasonably conditioned, refused and/or delayed.

Notwithstanding the foregoing, if:

- this Agreement results in and/or is considered or deemed to be a conflict of interest for the Service Provider by virtue of it being a network firm of the international and/or local auditing firm of one of its shareholders from time to time; or
- the Service Provider disposes of its business or part thereof as a going concern,

the Service Provider is entitled to cede, delegate and/or assign, as the case may be, any of its rights and/or obligations, including but not limited to this Agreement, without the necessity of obtaining the Client's prior Approval thereto

Third Parties

This Agreement does not and will not create or give rise to any third party rights.

Save as provided for in the immediately succeeding Clause below, nothing herein contained will be construed and/or constitute a stipulation or benefit in favour of any Person who is not a Party to this Agreement.

The Client hereby indemnifies and undertakes to indemnify and hold harmless the Service Provider, its shareholders, associated companies, directors, employees, sub-contractors, legal advisers, representatives and/or agents, as the case may be, against any loss, damage, expense or liability incurred by any third party or Person as a result of, arising from or in connection with or for:

- any breach by the Client of any of its obligations under this Agreement; or
- any claim made by a third party or Person pursuant to or which arises from or in connection with any breach by the Client of this Agreement.

In addition to acting in its personal capacity and for itself, the Client, by its Signatory's Signature of this Agreement, also accepts the provisions of this Agreement as an agent of and

for Other Beneficiaries. The Client must and will procure that the Other Beneficiaries will act on the basis as if they are Parties to this Agreement, as if each has signed same and agreed to be bound by its terms and conditions, save that the Client shall alone be responsible for the payment of all fees, disbursements and interest.

No agreement by and between the Client and a third party or other Person, which seeks to impose any obligation or liability on the Service Provider, will be binding on the Service Provider.

Conflict & Compliance with the Law

Insofar as any of the provisions contained in this Agreement are in conflict with any of the Laws of South Africa and/or any country or jurisdiction to which this Agreement may apply as a result of the Client being in a country or jurisdiction other than South Africa, for the time being in force, such provisions will be deemed to be amended only to the extent necessary to comply with the provisions of such Laws.

The Parties will ensure that they and their activities will, at all times, comply with the all applicable Laws and the Legislation of South Africa and/or any other applicable country or jurisdiction.

Severability

If any provision of this Agreement is held to be invalid, illegal or unenforceable by a Court of competent jurisdiction or arbitrator, the validity, legality and enforceability of the remaining provisions will in no way be affected or impaired thereby, and this Agreement will remain and be of full force and effect.

Any provision in this Agreement which is or may become illegal, invalid or unenforceable will be ineffective to the extent of such prohibition or unenforceability and will be treated as *pro non scripto* (meaning as if not Written) and severed from the balance of this Agreement, without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such provision.

Time of the Essence

Time will be of the essence for all matters and/or issues arising out of and/or contemplated or provided for in this Agreement, both as regards any dates, times and periods mentioned and as regards any dates, times and periods that may be substituted for them in accordance with this Agreement or by agreement in Writing between the Parties.

Undertaking to give effect to the Agreement

The Parties will respectively cause all resolutions to be passed and undertake to sign all such other documents and do such other things as will be necessary or requisite to give proper and due effect to the terms of this Agreement, or any other matter arising therefrom, according to its intent and purpose.

The Parties will, at their own cost, cause their necessary returns and information to be forwarded to the applicable Responsible Authority having jurisdiction recording the various consequences arising out of this Agreement as may specifically apply to that Party.

The Parties will, and will use their respective reasonable endeavours to procure that any necessary third parties or Persons will do, execute and perform all such further deeds, documents, assurances, acts and things as any one of the Parties may reasonably require to carry the provisions of this Agreement into full force and effect.

Enforcement Costs

Notwithstanding and in addition to any other provision herein contained, in the event of any Party incurring any costs as between attorney and his own client in having to enforce any of its rights under this Agreement ("**the Compliant Party**"), the other Party ("**the Non-compliant Party**") considers itself bound and separately undertakes to pay the Compliant Party, if it is found by a Court of competent jurisdiction or an arbitrator to

be successful in bringing such action and/or in enforcing its rights, the full amount of the costs thus incurred, including all legal and professional fees (whether according to tariff or otherwise), accommodation, travel and out of pocket expenses.

Cost of the Agreement

The Service Provider will be responsible for the legal costs of drafting, redrafting and preparing this Agreement, together with sundry attendances incidental to the foregoing.

The Client will be responsible for its own legal costs in consulting an attorney, professional or other adviser on and/or otherwise in respect of this Agreement.

Counterparts

This Agreement may be executed in more than one counterpart, each of which will be deemed to constitute an original, and will become effective when one or more counterparts have been signed by both of the Parties and such a counterpart (so signed) has been delivered to each of the Parties.

Any counterpart of this Agreement in facsimile form, electronically scanned or electronically mailed will be conclusive evidence of the original Signature and will be as effective as the counterparts in original form showing the original Signatures.

Signature

This Agreement is signed by the Parties' respective Signatories on the dates and at the places indicated in the Main Part.

It is not required for this Agreement to be valid and enforceable that a Party must initial the pages hereof or each of them and/or have its Signatory's Signature verified by a witness.

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