



CUSTOMER RELATIONSHIP TERMS

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The Customer Relationship Terms is a working agreement between all parties that supports the "Service & Maintenance" and "Project" Orders.

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1. INTRODUCTION

1.1 **Structure.** These terms are the general terms of the relationship between the Vendor and the Customer. If the Customer receives Goods or Services from the Vendor under these terms, the commercial terms of those transactions will be contained in Orders that will incorporate-

1.1.1 these terms; or

1.1.2 any specific terms relating to the Goods and Services that will, in turn, incorporate these terms;

as amended by those Orders.

1.2 **No obligation.** Nothing in these terms obligates either Party to enter into any Orders.

2. DEFINITIONS AND INTERPRETATION

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

2.1.1 "**Affiliate**" means with regard to either Party, any legal entity which that Party Controls, which Controls that Party, or which is under common Control with that Party, and which enters into an Order;

2.1.2 "**AFSA**" means the Arbitration Foundation of Southern Africa, or its successors in title;

2.1.3 "**Agreement**" means the agreement between the Parties which consists of -

2.1.3.1 these terms;

2.1.3.2 any specific terms relating to the Goods and Services; and

2.1.3.3 any Orders the Parties enter into;

2.1.4 "**Business Day**" means any day other than a Saturday, a Sunday or a public holiday in the Republic of South Africa;

2.1.5 "**Business Hours**" means the Vendor's normal business hours on Business Days;

2.1.6 "**Change Control Procedure**" means the change control procedure referred to in clause 3;

2.1.7 "**Consumables**" means any and all consumable items used by the Vendor in fulfilling its obligations under the Agreement including tapes, discs (both optical and magnetic), diskettes, cartridges, ribbons, cards, paper and other storage media;

2.1.8 "**Contract Year**" means, in respect of an Order, each successive 12 calendar month period during the term of the Order, as measured from the Effective Date;

2.1.9 "**Control**" means owning more than 50% of the issued share capital or the legal power to direct or cause the direction of the general management and policies of the company in question;

2.1.10 "**The Customer**" means the customer that enters into an Order and, if specified in the Order, its Affiliates;

2.1.11 "**Customer Data**" means the Customer's data (including information about an identifiable person) -

2.1.11.1 provided to the Vendor either by the Customer or by any third party on the Customer's behalf; or

2.1.11.2 data specific to the Services which the Vendor generates, processes, or supplies to the Customer in the performance of the Services;

but excludes any derived data that is created by the Vendor for its own internal purposes or which is proprietary or confidential to the Vendor or the Vendor's Third Party Contractors;

2.1.12 "**Customer Material**" means all materials provided or made available by or on behalf of the Customer to the Vendor for purposes of the Agreement and includes the Customer Data;

2.1.13 "**Customer Policies**" means any of the Customer's policies, practices, codes of conduct and procedures including any applicable black economic empowerment, security, information technology, health, safety and environmental policies (as amended from time to time) which may be of general application;

2.1.14 "**Deliverable**" means any deliverable or work product that the Vendor delivers relating to the Services including code, material, a web application, a web site, or custom

software;

2.1.15 "**Delivery Date**" means the estimated date of completion of each Deliverable referred to in the corresponding Order;

2.1.16 "**Documentation**" means any available installation and operating instructions, user and support manuals and technical literature pertaining to the Web Application as supplied by the Vendor with the Web Application;

2.1.17 "**Effective Date**" means in respect of each Order, the effective date stipulated in each Order, in the absence of which it shall be the date the Order is accepted by the Vendor;

2.1.18 "**Existing Material**" means any code, forms, algorithms or materials developed by or for either party independently and outside of the Agreement and provided during the course of the Agreement;

2.1.19 "**Fees**" means the fees and charges to be paid by the Customer to the Vendor in respect of Goods and Services provided by the Vendor under Orders;

2.1.20 "**Goods**" means any and all goods (including any and all equipment, hardware or third party software) to be provided by the Vendor to the Customer under Orders;

2.1.21 "**Order**" means a goods, licence, services or work order agreed to and signed by both the Parties describing the specific Goods or Services to be provided by the Vendor to the Customer, including any schedules or annexures;

2.1.22 "**Parties**" means the Vendor and the Customer and "**Party**" means either one of them;

2.1.23 "**Personnel**" means any director, employee, agent, consultant, contractor or other representative;

2.1.24 "**Change Request Document**" means the Change Request Document referred to in clause 5.3;

2.1.25 "**Services**" means any and all services to be provided by the Vendor to the Customer, under Orders;

2.1.26 "**Service Levels**" means the levels according to which each Service is to be provided as agreed by the Parties;

2.1.27 "**Sign**" means the handwritten signature or advanced electronic signature of the duly authorised representative of a Party and "**Signed**", "**Signing**" and "**Signature**" shall have a corresponding meaning;

2.1.28 "**Signature Date**" means the date of signature of any document by the Party signing last;

2.1.29 "**Site**" means the physical site referred to in an Order, to which Goods are to be delivered or at which Services are to be provided by the Vendor for use by the Customer under the Order;

2.1.30 "**Specifications**" means the specifications (which may be in the form of a proposal, wire frames, project initiation document, functional specification, or technical specification) of the Web Application attached to the relevant Order or in writing, dated and signed by the Parties;

2.1.31 "**Third Party Contracts**" means any and all contracts in force as at the Effective Date between the Customer and Third Parties Contractors, referred to in the Order;

2.1.32 "**Third Party Contractor**" means, in respect of any goods and services, the contractor, supplier, vendor or licensor (as the case may be) of the goods or services which is not a party to the Agreement;

2.1.33 "**Time and Materials**" means the Vendor's standard time and materials fees and charges applicable from time to time;

2.1.34 "**Vendor**" means the vendor that enters into an Order and, if specified in the Order, its Affiliates;

2.1.35 "**Vendor Technology**" means any and all technology that the Vendor has created, acquired or otherwise has rights in and may, in connection with the performance of the Vendor's obligations under the Agreement, employ, provide, modify, create or otherwise acquire rights in and includes all concepts; ideas; methods; methodologies; procedures; processes; know-how; techniques; function, process, system and data models; templates; the generalised features of the structure, sequence and organisation of software, user interfaces and screen

- designs; general purpose consulting and software tools, utilities and routines; and logic, coherence and methods of operation of systems;
- 2.1.36 **"Product"** means the web and mobile application/service, web site, or custom software as described in the Specifications and includes:
- 2.1.36.1 any one or more modules; and
- 2.1.36.2 the Documentation.
- 2.1.37 **"Writing"** means any mode of reproducing information or data in physical form and includes hard copy printouts, handwritten documents, fax transmissions, but excludes information or data in electronic form and **"Written"** and **"Write"** shall have a corresponding meaning.
- 2.2 **Headings.** Headings and sub-headings are inserted for information purposes only and shall not be used in the interpretation of the Agreement.
- 2.3 **Examples.** Whenever a term is followed by the word "including" or "include" or "excluding" or "exclude" and specific examples, the examples shall not limit the ambit of the term.
- 2.4 **Enactments.** References to any enactment shall be deemed to include references to the enactment as re-enacted, amended or extended from time to time.
- 2.5 **References to persons.** References to persons shall include natural and juristic persons and references to either Party shall include the Party's successors or permitted assigns.
- 2.6 **Calculation of Days.** Unless otherwise stated in the Agreement, when any number of days is prescribed in the Agreement the first day will be excluded and the last day included, unless the last calendar day falls on a calendar day that is not a Business Day, in which event the last calendar day shall be the next Business Day.
- 2.7 **Rule of construction excluded.** The rule of construction that an agreement shall be interpreted against the Party responsible for its drafting or preparation shall not apply.
3. **ORDERS**
- 3.1 **Request for Goods or Services.** If the Customer at any time requires additional goods or services related to the Goods or Services, the Customer will submit a request for proposal ("**RFP**") to the Vendor detailing:
- 3.1.1 the nature of and scope of the services; or
- 3.1.2 the specification and quantity of goods;
- required together with any other requirements or information that is relevant to the provision of additional goods or services and stipulating a reasonable timeframe within which the Vendor may submit a proposal to the Customer.
- 3.2 **Submission of proposal.** The Vendor may submit a proposal to the Customer. It may be in the form of a 'Project Order' or 'Support and Maintenance Order'.
- 3.3 **Acceptance of proposal.** If the proposal is acceptable to the Customer, the Parties will execute a 'Project Order' and/or 'Support and Maintenance Order'.
4. **ACCEPTANCE PROCEDURE**
- 4.1 **Commencement and initial period.** The Customer will commence acceptance testing of any Deliverable immediately following delivery by the Vendor. The Customer will use acceptance tests and data developed by the Customer and approved by the Vendor in its reasonable discretion. The acceptance tests will be completed within:
- 4.1.1 30 calendar days of the delivery of Web Application; or
- 4.1.2 five calendar days of the delivery of any document deliverable.
- The Parties may agree in writing to extend any period.
- 4.2 **Assistance.** The Vendor will assist the Customer to complete the acceptance tests on request and reasonable notice.
- 4.3 **Variations.** If, during the period of the acceptance testing, the Customer discovers any:
- 4.3.1 material variations in any Web Application from its Specification; or
- 4.3.2 any fault in any document deliverables,
- the Customer will report them to the Vendor in writing.
- 4.4 **Correction.** The Vendor will correct any variance or fault as soon as possible and at its cost.
- 4.5 **Additional period for testing.** The Customer will have an additional period (equal to the initial period above) to conduct acceptance tests on any corrected Deliverable. If the Customer discovers any further (i) material variance in corrected Web Application from its Specification; (ii) or fault in a corrected document deliverable, the Customer will report the further variance or fault to the Vendor. The Vendor will correct any further variance or fault in the corrected Deliverable as soon as possible and at its cost. During the additional period, the Customer may not report any variance or fault that does not relate to: (i) a variance or fault that the Customer initially reported; or (ii) the corrected Deliverable. The Parties will deal with these separately as additional services.
- 4.6 **Confirmation of acceptance.** The Parties may, at any time, confirm in writing that the Customer has accepted the Deliverables.
- 4.7 **Deemed acceptance.** The Customer will be deemed to have accepted the Deliverables if the Customer:
- 4.7.1 fails to sign a confirmation of acceptance within three Business Days from when the Vendor has signed and sent it to the Customer;
- 4.7.2 fails to report any variance or fault to the Vendor in writing at the end of the initial or additional period; or
- 4.7.3 fails to report any variance or fault to the Vendor in any corrected Deliverable within three Business Days, from when the Vendor calls on the Customer to do so in writing; or
- 4.7.4 puts any Deliverable to productive use.
5. **CHANGE CONTROL**
- 5.1 **Changes to Goods and Services.** During the currency of an Order, events may occur which require a change to the nature and scope of Goods and Services. No change shall be implemented unless the Parties comply with the terms of this clause.
- 5.2 **Change request.** A Party may propose a change to the nature and scope of Goods and Services by sending a Change Request Document to the other Party detailing the desired changes.
- 5.3 **Change Request Document.** Should a Change Request Document be made by -
- 5.3.1 The Customer, the Customer shall specify the reasons for that change and describe the change in sufficient detail to enable the Vendor to formulate a response. The Vendor shall investigate the likely impact of any proposed changes on the provision of Goods and Services and shall provide the Customer with a scope change proposal, including amended pricing and timeframes;
- 5.3.2 Vendor, the Vendor shall detail in a scope change proposal the reasons for and impact of the change, the services required to implement the change and the effect that the changes, if implemented, will have on the relevant Order.
- 5.4 **Sign-off.** The Parties shall discuss the proposed changes and shall effect the amendments to the Vendor's scope change proposal as may be agreed. The scope change proposal shall then be considered by the Customer and approved or rejected in its discretion in writing within 3 Business Days. If a scope change proposal -
- 5.4.1 is accepted by the Customer, the scope change proposal shall be signed off by duly authorised representatives of the Parties and incorporated into the relevant Order;
- 5.4.2 is rejected by the Customer, the Goods or Services shall continue to be provided by the Vendor on the existing terms.
- 5.5 **No change effective until sign-off.** Neither the Vendor nor the Customer shall be entitled to proceed with or require the implementation of any change to an Order until the change and all matters relating to the change have been agreed in writing between the Parties. Pending sign-off, the Parties will continue to perform their obligations without taking account of the proposed changes. Neither Party shall be obliged to agree to any change proposed by the other Party

but the Parties will not unreasonably delay or withhold their agreement to a proposed change.

- 5.6 **Exception.** It is expressly recorded that amendments to the content of the Agreement which do not directly impact the nature and scope of Goods or Services provided shall not be subject to the Change Control Procedure, but shall be executed in writing.

6. PERSONNEL

- 6.1 **Allocation of resources.** The Vendor shall be entitled, in its discretion, to allocate and re-allocate all the Vendor Personnel who provide Services under the Agreement.

7. VENDOR WARRANTIES

- 7.1 **Service warranties.** The Vendor warrants that in relation to the Services -

7.1.1 The Vendor will employ a sufficient number of suitably trained Personnel to provide the Services and to achieve the Service Levels;

7.1.2 The Vendor will provide the Services in accordance with all applicable laws, enactments and regulations.

- 7.2 **General Warranties.** The Vendor warrants further that -

7.2.1 The Vendor has the legal right and full power and authority to execute and deliver, and to exercise the Vendor's rights and perform the Vendor's obligations under the Agreement;

7.2.2 The Vendor and its Personnel will not knowingly introduce any malicious software into the Customer's system.

- 7.3 **DISCLAIMER OF WARRANTIES.** VENDOR HEREBY EXCLUDES AND DISCLAIMS ALL WARRANTIES, WHETHER EXPRESSED OR IMPLIED, STATUTORY OR OTHERWISE, EXCEPT THOSE WARRANTIES EXPRESSLY MADE IN THE AGREEMENT, INCLUDING -

7.3.1 ANY IMPLIED WARRANTIES OF SATISFACTORY QUALITY, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE;

7.3.2 ALL WARRANTIES IN RESPECT OF THIRD PARTY SOFTWARE APPLICATIONS PROVIDED PURSUANT TO THE AGREEMENT.

8. CUSTOMER WARRANTIES

The Customer warrants that -

8.1 it has not been induced to enter into the Agreement by any prior representations, warranties or guarantees (whether oral or in writing), except as expressly contained in the Agreement;

8.2 by entering into an Order the Customer is not acting in breach of any agreement to which the Customer is a party;

8.3 if the Vendor Personnel are required to use software owned or operated by the Customer, all necessary user licences have been obtained in advance;

8.4 the use of the Customer Material by the Vendor does not and will not infringe the intellectual property rights of any other person;

and the Customer hereby indemnifies and holds the Vendor harmless from any claim for damages by any third party as a result of the breach of these warranties, including all legal costs incurred on an attorney and own client basis.

9. FEES AND PAYMENT

9.1 **Fees.** The Customer shall be liable for and shall pay the Fees.

9.2 **Invoices.** All invoices shall be paid by the Customer according to the different terms, whichever is applicable, detailed in the 'Service and Maintenance Order', or 'Project Order'.

9.3 **Interest on outstanding amounts.** Where payment of any amount due is not made on the due date, the Vendor shall be entitled to -

9.3.1 charge interest on the outstanding amount at a rate of 2% above the prime overdraft rate. Interest shall be calculated from the due date of payment to the date of actual payment, both days inclusive, compounded calendar monthly in arrears and the Customer agrees and undertakes to pay on demand the penalty interest, which it hereby accepts as fair and reasonable; and

9.3.2 without prejudice to any other right or remedy it may have, remove any Goods supplied by the Vendor or halt the provision of any Services as the Vendor (in the Vendor's sole discretion) chooses until all payments in arrears have been paid in full.

9.4 **Reimburse costs.** If the Vendor suspends the provision of the Services or removes any Goods supplied by the Vendor, the Customer shall pay to the Vendor the costs incurred by the Vendor (including redeployment, travel and associated expenses) in remobilising the Vendor's employees affected by the Agreement and recommencing the provision of the Services or re-installing the removed Goods.

10. DELAYS

10.1 **Definition.** Where -

10.1.1 The Customer does not provide access to a person, place or thing timeously; changes a decision which the Customer has previously communicated to the Vendor; does not reply to a communication from the Vendor within the required (or reasonable) period required; unreasonably withholds an acceptance or consent; commits a breach of the Agreement which is not otherwise categorised as a Delay; or

10.1.2 The Vendor's performance is affected by an event of force majeure; or the failure of a third party supplier or service provider;

10.1.3 an agreed milestone or delivery date is not achieved. this shall constitute a "Delay".

10.2 **Notification.** Either Party shall notify the other of an event which has occurred or is anticipated and which -

10.2.1 the notifying Party believes is or may be a Delay;

11. INTELLECTUAL PROPERTY

11.1 **Existing material.** The Party providing the Existing Material will retain all interest in it. During the Agreement, each Party grants to the other Party (and the Vendor's contractors as necessary) a temporary, non exclusive license to use, reproduce and modify any of its Existing Material provided to the other Party solely for the provision of the Goods or Services. The Customer's license to the Vendor's Existing Material is conditioned upon the Customer's compliance with the Agreement.

11.2 **Deliverables.** All interest to any Deliverables will vest in the Vendor. Upon payment in full, the Vendor grants the Customer a non exclusive, perpetual, fully paid-up license to use, reproduce and modify (if applicable) any Deliverables in the form the Vendor delivers it to the Customer and for the purpose for which it was delivered. They are only for the Customer's internal business operations. The Customer may not resell or distribute the Deliverables to any third party. The Parties may expressly agree to the contrary in any Order.

11.3 **Retention of Rights.** The Vendor has an interest in the Vendor Technology and (despite anything else) the Vendor will own all interest in the Vendor Technology.

11.4 **Use of Vendor Technology.** To the extent that the Vendor utilises any Vendor Technology in connection with the Vendor's performance under an Order, the Vendor Technology will remain the property of the Vendor and the Customer will acquire no interest to it

11.5 **Source code escrow.** Unless another mechanism is mutually agreed to. Within 30 calendar days of the Customer requesting the Vendor to do so, the Vendor will establish an escrow arrangement for the source code of the Web Application. It will be with a reputable escrow agent selected by the Vendor. The Vendor, the Customer and the escrow agent will conclude a written escrow agreement. The escrow agent will release the source code to the Customer in accordance with the escrow agreement. the Customer will pay all fees or expenses related to the escrow arrangement.

12. CONFIDENTIAL INFORMATION

12.1 **Confidentiality obligation.** Each Party ("**Receiving Party**") must treat and hold as confidential all information which it may receive from the other Party ("**Disclosing Party**") or which becomes known to it during the currency of

the Agreement.

12.2 **Nature.** The confidential information of the Disclosing Party shall include -

- 12.2.1 all software and associated material and documentation, including the information contained therein;
- 12.2.2 the Customer Data;
- 12.2.3 all information relating to -
 - 12.2.3.1 the Disclosing Party's past, present and future research and development;
 - 12.2.3.2 the Disclosing Party's business activities, pricing, products, services, customers, as well as the Disclosing Party's technical knowledge and trade secrets;
- 12.2.4 the terms of the Agreement.

12.3 **The Receiving Party's obligations.** The Receiving Party agrees that in order to protect the proprietary interests of the Disclosing Party in the Disclosing Party's confidential information -

- 12.3.1 it shall only make the confidential information available to those of the Receiving Party's Personnel who are actively involved in the execution of the Receiving Party's obligations under the Agreement and then only on a "need to know" basis;
- 12.3.2 it shall initiate internal security procedures reasonably acceptable to the Disclosing Party to prevent unauthorised disclosure and will take all practical steps to impress upon those Personnel who need to be given access to confidential information, its secret and confidential nature;
- 12.3.3 subject to the right to make the confidential information available to its Personnel under clause 12.3.1, it shall not at any time use any confidential information of the Disclosing Party or directly or indirectly disclose any confidential information of the Disclosing Party to third parties;
- 12.3.4 all written instructions, drawings, notes, memoranda and records of whatever nature relating to the confidential information of the Disclosing Party which have or shall come into the possession of the Receiving Party and its Personnel, shall be and shall at all times remain the sole and absolute property of the Disclosing Party and shall promptly be handed over to the Disclosing Party when no longer required for the purposes of an Order.

12.4 **Effect of termination.** On termination or expiry of an Order, the Parties will deliver to each other or, at the other Party's option, destroy all originals and copies of confidential information in their possession.

12.5 **Exceptions.** These obligations shall not apply to any information which -

- 12.5.1 is lawfully in the public domain at the time of disclosure;
- 12.5.2 subsequently and lawfully becomes part of the public domain by publication or otherwise;
- 12.5.3 subsequently becomes available to the Receiving Party from a source other than the Disclosing Party, which source is lawfully entitled without any restriction on disclosure to disclose the confidential information; or
- 12.5.4 is disclosed pursuant to a requirement or request by operation of law, regulation or court order.

12.6 **Indemnity.** The Receiving Party hereby indemnifies the Disclosing Party against any loss or damage which the Disclosing Party may suffer as a result of a breach of this clause by the Receiving Party or the Receiving Party's Personnel.

12.7 **Survival.** This clause is severable from the remainder of the Agreement and shall remain valid and binding on the Parties, notwithstanding any termination, for a period of 5 (five) years after the effective date of termination.

13. NON-SOLICITATION

Neither Party shall during the currency of any Order, or for a period of 12 calendar months following termination, directly or indirectly solicit, offer employment to, employ or contract in any manner with any Personnel of the other Party who were involved in the implementation or execution of the Order.

14. LIMITATION OF LIABILITY

14.1 **Direct damages limited.** To the extent permitted by

applicable law, regardless of the form (whether in contract, delict or any other legal theory) in which any legal action may be brought, unless otherwise agreed in an Order, each Party's maximum liability for direct damages for anything giving rise to any legal action shall be an amount equal to the total fees already paid or due and payable by the Customer to the Vendor in respect of the Order for the period 12 (twelve) months preceding the claim. The maximum amount shall be an aggregate amount for all claims arising out of the Order during its currency.

14.2 **INDIRECT DAMAGES EXCLUDED.** TO THE EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL EITHER PARTY OR ITS PERSONNEL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES OR LOSSES (WHETHER FORESEEABLE OR UNFORESEEABLE) OF ANY KIND (INCLUDING LOSS OF PROFITS, LOSS OF GOODWILL, DAMAGES RELATING TO LOST OR DAMAGED DATA OR SOFTWARE, LOSS OF USE, DAMAGES RELATING TO DOWNTIME OR COSTS OF SUBSTITUTE PRODUCTS) ARISING FROM THE AGREEMENT.

14.3 **Vendor not liable for the Customer default.** The Vendor shall not be liable for any loss or damage of whatsoever nature suffered by the Customer arising out of or in connection with any breach of the Agreement by the Customer or any act, misrepresentation, error or omission made by or on behalf of the Customer or the Customer's Personnel.

15. BREACH AND TERMINATION

15.1 **Breach.** Should either Party ("**Defaulting Party**") -

- 15.1.1 commit a material breach of an Order and fail to remedy the breach within 30 calendar days of having been called on in writing by the other Party to do so; or
- 15.1.2 fail to pay any invoice that is more than 60 calendar days outstanding; or
- 15.1.3 effect or attempt to effect a compromise or composition with its creditors; or
- 15.1.4 be provisionally or finally liquidated or placed under judicial management;

then the other Party who signed the relevant Order ("**Innocent Party**") may, in its discretion and without prejudice to its rights in the Agreement or in law, terminate the specific Order to which the event relates on written notice to the Defaulting Party.

16. EFFECT OF TERMINATION

16.1 **Amounts due to the Vendor become due and payable.** On termination of any Order for any reason, all amounts due to the Vendor for Services rendered or Goods ordered prior to termination shall become due and payable even if they have not been invoiced. The amounts may not be withheld for any reason, unless the arbitrator directs otherwise.

16.2 **Duties on termination.** On termination, cancellation or expiry of any Order -

- 16.2.1 the provision of all Services under the Order shall forthwith cease and the Vendor shall vacate the Site unless the Vendor is required to render additional services on-Site under a separate Order;
- 16.2.2 each Party will deliver to the other Party, or at the other Party's option destroy (and procure the delivery or destruction by Third Party Contractors of) all originals and copies of confidential information and proprietary materials in its or their possession or under its or their control.

16.3 **Survival.** The expiry or termination of an Order shall not affect the enforceability of the terms which are intended to operate after expiry or termination.

17. DISPUTE RESOLUTION

17.1 **Failure to resolve.** Should the Parties be unable to agree on whether a dispute is technical or not within 5 Business Days, or if they are unable to resolve a dispute, the dispute will be finally resolved in accordance with the Rules of AFSA, by an arbitrator or arbitrators appointed by it.

17.2 **Demand for arbitration.** Either Party may demand that a dispute be referred to arbitration by giving Written notice to

that effect to the other Party.

- 17.3 **Urgent interim relief.** Nothing in the Agreement shall preclude either Party from obtaining interim relief on an urgent basis from a court of competent jurisdiction.
- 17.4 **Arbitration terms.** The arbitration referred to in clause 17.1 shall be held -
- 17.4.1 at Cape Town in the English language; and
- 17.4.2 immediately and with a view to its being completed within 21 calendar days after it is demanded.
- 17.5 **Right of appeal.** The Parties irrevocably agree that the submission of any dispute to arbitration is subject to the Parties' rights of appeal. Either Party may appeal the arbitration ruling by giving Written notice to the other Party to the arbitration within 20 calendar days of the ruling being handed down. The appeal shall be dealt with in accordance with the rules of AFSA by a panel of 3 arbitrators appointed by AFSA.
- 17.6 **Parties to be bound.** The Parties irrevocably agree that on expiry of the 20 calendar day period for appeal or the handing down of the ruling of the appeal panel, as the case may be, as contemplated in clause 17.5, the decision in arbitration proceedings -
- 17.6.1 shall be final and binding on the Parties;
- 17.6.2 shall be carried into effect; and
- 17.6.3 may be made an order of any court of competent jurisdiction.
- 17.7 **Costs.** The costs of any reference to arbitration will be borne by the unsuccessful Party, unless otherwise determined by the Parties or the arbitrator, irrespective of which Party referred the dispute to arbitration.
- 17.8 **Severability.** This clause 17 is severable from the rest of the Agreement and shall remain valid and binding on the Parties notwithstanding any termination of any Order.
- 17.9 **Collection proceedings.** The Vendor retains the right to institute collection proceedings in a court of law of competent jurisdiction for matters involving outstanding payment.
18. **NOTICES AND DOMICILE**
- 18.1 **Notices.** All notices, authorisations and requests given or made in connection with an Order must be sent by hand, pre-paid registered post or facsimile, or electronic mail to the addresses and numbers set out in the relevant Order.
- 18.2 **Domicile.** Each Party chooses as *domicilium citandi et executandi* (its domicile for the purpose of being served summons and execution levied) for all purposes under an Order the physical address specified for the Party as set out in the relevant Order.
- 18.3 **Change of addresses and numbers.** Each Party may by giving written notice to the other Party, change the addresses and numbers set out in the relevant Order to any addresses and numbers in the Republic of South Africa, provided that the change shall only take effect 14 calendar days after delivery of the written notice. If a notice or communication is actually received by a Party, it shall be deemed delivered and adequate notice or communication shall have been given.
19. **FORCE MAJEURE**
- 19.1 **Parties not liable for force majeure.** Neither Party shall be liable for any failure to fulfil its obligations under the Agreement if and to the extent the failure is caused by any circumstances beyond its reasonable control, including flood, fire, earthquake, war, tempest, hurricane, industrial action, government restrictions or acts of God.
- 19.2 **Party affected to notify other Party.** Should any event of force majeure arise, the affected Party shall notify the other Party without delay and the Parties shall meet within 7 (seven) calendar days of the notice to negotiate in good faith alternative methods of fulfilling its obligations under an Order, if any. In addition the Vendor shall continue to provide and the Customer shall continue to pay for those Goods and Services not affected by the event of force majeure.
- 19.3 **Right to terminate.** Should either Party be unable to fulfil a material part of its obligations under an Order for a period in

excess of 60 calendar days due to circumstances or force majeure, the other Party may at its sole discretion cancel the relevant Order forthwith by Written notice.

20. SUBCONTRACTING

- 20.1 **Vendor's Third Party Contractors.** The Vendor may sub-contract or delegate its obligations under the Agreement to Third Party Contractors, provided that the Vendor shall remain liable for performance of the Third Party Contractors. The Vendor shall not be required to disclose the terms (including payment terms) of any sub-contract entered into with respect to the Vendor's obligations under the Agreement.

21. RELATIONSHIP AND DUTY OF GOOD FAITH

- 21.1 **No temporary employment service.** Nothing in the Agreement shall be construed as constituting a temporary employment service.
- 21.2 **No partnership.** Nothing in the Agreement shall be construed as creating a partnership between the Parties and neither Party shall have any authority to incur any liability on behalf of the other or to pledge the credit of the other Party.
- 21.3 **Good Faith.** The Parties shall at all times owe each other a duty of good faith and shall, in all dealings with each other and in respect of the Services act according to the standard.

22. NON-EXCLUSIVITY

Nothing in the Agreement shall be construed as precluding or limiting in any way the right of the Vendor to provide goods or services of any kind or nature whatsoever to any person or entity as the Vendor in its sole discretion deems appropriate. The Vendor may employ, modify, disclose, and otherwise exploit the Vendor's intellectual property (including providing services or creating programming or materials for other customers or itself, providing services which are competitive with any Deliverables, irrespective of their similarity to the Deliverables), subject to the Parties confidentiality obligations.

23. GENERAL

- 23.1 **Entire Agreement.** The Agreement constitutes the entire agreement between the Customer and the Vendor in respect of the subject matter of the Agreement.
- 23.2 **Variation.** No amendment or modification to the Agreement shall be effective unless in writing and signed by authorised signatories of both the Customer and the Vendor.
- 23.3 **Waiver.** No granting of time or forbearance shall be, or be deemed to be, a waiver of any term of the Agreement and no waiver of any breach shall operate as a waiver of any continuing or subsequent breach.
- 23.4 **Severability.** If the whole or any part of a term of the Agreement is void or voidable by either Party or unenforceable or illegal, the whole or that part (as the case may be) of that term, shall be severed, and the remainder of the Agreement shall have full force and effect, provided the severance does not alter the nature of the Agreement between the Parties.
- 23.5 **Governing Law and jurisdiction.** The Agreement shall be governed and construed according to the laws of the Republic of South Africa and the Customer agrees to submit to the exclusive jurisdiction of the South African courts.
- 23.6 **Costs.** Each Party shall be responsible for its own legal and other costs relating to the drafting and negotiation of the Agreement.
- 23.7 **Publicity.** Neither Party will make or issue any formal or informal announcement or statement to the press in connection with the Agreement, without the prior written consent of the other Party.
- 23.8 **Right to reference.** The Customer hereby consents to the use by the Vendor of the Customer's name and a general description of the Goods or Services in any proposals or other similar documents which the Vendor may issue or submit from time to time.