



Services Agreement

entered into by and between

EOH Network Solutions a division of EOH Mthombo (Pty) Ltd

Specifically excluding any affiliates, divisions, subsidiaries and/or holding company of the Service Provider
("the Service Provider")

Description and Registration Number	a private company registered in accordance with the laws of South Africa with registration number 1998/000103/07		
Physical Address	2 nd Floor, Block D, Hertford Office Park, 90 Bekker road, Midrand		
Postal Address	PO Box 6458, Halfway House, Midrand, 1685		
Fax No.		email	
Signed at		Date	
<p>.....</p>			
Name		who warrants that they are duly authorised to sign	
Designation			

and

(Insert) Proprietary (Limited)
("the Customer")

Description and Registration Number	a private company registered in accordance with the laws of South Africa with registration number (Insert)		
Physical Address	(Insert)		
Postal Address	(Insert)		
Contact Person		email	
Signed at		Date	
<p>.....</p>			
Name		who warrants that they are duly authorised to sign	
Designation			

IN TERMS OF WHICH THE PARTIES AGREE AS FOLLOWS:

Document Title	EOH Network Solutions Services Agreement		
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1 **DEFINITIONS AND INTERPRETATION**

In this Agreement the following terms shall have the meanings set out below:

- 1.1 **"AFSA"** means the Arbitration Foundation of Southern Africa, or its successors in title provided that should AFSA or a successor not be in existence at any time, any appointment required to be made by AFSA shall be made by the Chairman of the Johannesburg Bar Council;
- 1.2 **"Anti-Corruption Laws"** means any applicable foreign or domestic anti-bribery and anticorruption laws and regulations, including but not limited to the Foreign Corrupt Practices Act, 1977, as amended, 15 U.S.C. §§ 78dd-1, et seq. (United States of America); Bribery Act, 2010, as amended, c.23, § 1 (United Kingdom); and the Prevention and Combating of Corrupt Activities Act, 2004, as amended (Republic of South Africa), as well as any laws intended to implement the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions;
- 1.3 **"Agreement"** means this agreement, the annexures and all Service Definitions and schedules thereto;
- 1.4 **"Business Day"** means any day other than a Saturday, Sunday or public holiday within the meaning of the Public Holidays Act, 1994, in the Republic of South Africa;
- 1.5 **"Business Hours"** means from 08h00 to 17h00 on a Business Day;
- 1.6 **"Customer Input"** means the inputs reasonably required of the Customer in order to enable the Service Provider to provide the Services to the Customer, as set out in clause 5 and which may be expanded upon in the Service Definitions;
- 1.7 **"Customer Third Party Contracts"** means contracts between the Customer and third parties and **"Customer Third Party Contractor"** shall refer to the third party with whom the Customer has contracted in terms of any Customer Third Party Contract;
- 1.8 **"Confidential Information"** means information or data, whether disclosed orally or in writing, that is identified as being confidential or proprietary at the time of disclosure or which by its nature would generally be deemed in the information technology or telecommunications industry to be of a confidential nature and includes, without limitation the terms and conditions of this Agreement and any information relating to a Party's:
 - 1.8.1 business, business policies, business plans, pricing models, rate cards, Schedule of Services and other business and commercial information; and
 - 1.8.2 know-how, trade secrets, specifications, drawings, sketches, models, samples, data, diagrams and flow charts, and
 - 1.8.3 potential customers, customer lists, sales, sales figures and products; and
 - 1.8.4 technical information, including use of technology, systems, hardware, software (and the incidence of any faults therein) and related material and documentation; and
 - 1.8.5 past, present and future research and development;
- 1.9 **"Core Services"** mean services proprietary to the Service Provider and thus excludes all products and/or services that are provided by the Service Provider but procured from 3rd party's and/or licensed to the Service Provider from a 3rd party;
- 1.10 **"CPI"** means the Consumer Price Index (metropolitan areas, all items) published in the Statistical News Release compiled by Statistics South Africa, or, in the absence thereof, a similar index nominated or prepared by the Service Provider's auditors. The escalation factor used shall be the year on year increase in the CPI published immediately preceding the effective date of increase which escalation factor may be adjusted to take into account the average increase of salaries over such period in the Information Technology Industry as reflected in the South African remuneration survey for Information Technology and Support Services published on the RemChannel website (www.remchannel.co.za) by Channel Consulting (Pty) Ltd, or any similar survey as may be agreed to by the Parties in writing from time to time;
- 1.11 **"Data"** means any data, including personal information as defined in the Protection of Personal Information Act, 2013 (Act No. 4 of 2013), the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002), Personal Data and/or any equivalent legislation of the jurisdictions(s) where the obligations in terms of this Agreement are being provided and/or performed, supplied to the Service Provider by the Customer or Processed on behalf of the Customer by the Service Provider;
- 1.12 **"Data Breach"** shall mean any breach of security leading to unauthorized or unlawful destruction, loss, alteration or disclosure of Data;
- 1.13 **"Data Protection Laws"** means all applicable law relating to data protection, privacy and security when processing Data under the Agreement. This includes without limitation applicable international, regional, federal or national data protection, privacy, export or data security directives (e.g. directives of the European Union), laws, statutes, regulations, rulings, decisions and other binding restrictions of, or by, any judicial or administrative body, whether domestic, foreign or international, including the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002) and the Protection of Personal Information Act, 2013 (Act No. 4 of 2013);
- 1.14 **"Destructive Element"** means any "back door", "time bomb", "time lock", "trojan horse", "worm", "drop dead device", "virus" or other computer software routine or code intended or designed to: (i) permit access to or the use of a computer system by an unauthorised person, or (ii) disable, damage, erase, disrupt or impair the normal operation of a computer system; (iii) damage, erase or corrupt data, storage media, programmes, equipment or communications, or (iv) otherwise interfere with operations of a computer system;
- 1.15 **"Effective Date"** means the earlier of:
 - 1.15.1 the date of signature of this Agreement by the Party signing last in time;
 - 1.15.2 the date of signature by the Customer of the initial Schedule of Services;
 - 1.15.3 the date on which Services commenced in terms of this Agreement, as evidenced by an itemised invoice issued by the Service Provider that was paid by the Customer;
- 1.16 **"Excusable Delay"** means:
 - 1.16.1 a force majeure event relied on by the Customer as contemplated in clause 20 hereof; or
 - 1.16.2 an unreasonable delay on the part of the Customer in ensuring that the Site is ready for set up as required in clause 4.2.1 and/or
 - 1.16.3 a failure by the Customer, or its Staff, to provide Customer Input to the Service Provider timeously or within a reasonable period stipulated by the Service Provider in any written request for such Customer Input or within any period agreed by the Parties in writing; and/or

Customer initial

Service Provider initial

- 1.16.4 a failure by the Customer to provide Input in the format required or where such Customer Input is defective, corrupted (in the case of data) or inaccurate; and/or
- 1.16.5 where the Customer changes a material decision which it has previously communicated to the Service Provider; and/or
- 1.16.6 a change to a Product or Service due to incomplete or inaccurate information provided by the Customer; and/or
- 1.16.7 where the Customer unreasonably withholds an acceptance or consent.
- 1.17 **"Fees"** means the fees and charges to be paid by the Customer to the Service Provider from time to time in terms of this Agreement, being *inter alia* any Service Fees, Setup Fees and any other fees as may be chargeable under this Agreement from time to time as detailed in the applicable Schedule of Services;
- 1.18 **"Initial Term"** means the period over which particular Services will be provided, commencing on the Service Commencement Date and enduring for the period set out in the Schedule of Services;
- 1.19 **"Installation Procedure"** means the structured project management process and steps for the implementation of Services;
- 1.20 **"Intellectual Property Rights"** means any and all rights in the nature of intellectual property rights anywhere in the world (whether registered or unregistered) owned, possessed or controlled by the Service Provider, directly or indirectly, including, without limitation, patents, trademarks, service marks, design rights, copyright (including all copyright in any designs and computer software), source codes, moral rights, databases, trade or business names, whether capable of registration or not, but including any right to register same;
- 1.21 **"Line-item Service"** means each line item of the discrete Services to be provided by the Service Provider pursuant to this Agreement, as set out in the relevant Schedule of Services and which together comprise the Services;
- 1.22 **"Network"** means all the equipment and/or network infrastructure used by the Service Provider to provide the Services to the Customer;
- 1.23 **"Network Maintenance"** means planned repairs and improvements carried out from time to time to the Network by the Service Provider;
- 1.24 **"Parties"** means, collectively, the Service Provider and the Customer, and **"Party"** refers to either one of the Parties, as the context may require;
- 1.25 **"Personal Data"** shall mean personal data as defined in the Data Protection Laws, including any information relating to an identified or identifiable individual (including, but not limited to, name, postal address, email address, telephone number, date of birth, social security number, driver's license number, other government-issued identification number, financial account number, credit or debit card number, insurance ID or account number, health or medical information, consumer reports, background checks, biometric data, digital signatures, any code or password that could be used to gain access to financial resources, or any other unique identifier) that is Processed by the Service Provider under the Agreement;
- 1.26 **"Prime Rate"** means the publicly quoted prime rate of interest (percent, per annum) from time to time charged by Nedbank Limited, as certified by any manager of such bank, whose appointment and authority it shall not be necessary to prove, calculated daily and compounded monthly in arrears;
- 1.27 **"Products"** means hardware and software, provided by the Service Provider to the Customer in terms of this Agreement from time to time as set out in a Schedule of Services;
- 1.28 **"Pro rata Service Fees"** means the initial Service Fee payable by the Customer in respect of the first month of a Line Item Service, in respect of after the period between the Service Commencement Date and the end of the first calendar month;
- 1.29 **"Process"** shall mean any operation, or set of operations, performed on Data, by any means, such as by collection, recording, organization, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction and "Processing" shall have a corresponding meaning;
- 1.30 **"Ready for Service Certificate"** means a document signed by the Customer upon completion of the Line Item Services or Services;
- 1.31 **"Renewal Period"** means a period of 12 (twelve) months;
- 1.32 **"Schedule of Services"** means the signed schedule of services initially attached hereto as Annexure 1 and which stipulates the specific Services and Products to be provided by the Service Provider to the Customer in terms of this Agreement, together with the applicable Fees, Initial Term and other information relevant to the Services, as such Schedule of Services may be amended or supplemented to from time to time by the Parties in terms of the Variation Procedure;
- 1.33 **"Service Commencement Date"** means the date on which specific Line-item Services will commence, being the date on which the Ready for Service Certificate in respect of a Line-item Service is signed off, or deemed to have been signed off, by the Customer in terms of clause 4.1;
- 1.34 **"Service Definitions"** means the definitions of the Services to be provided by the Service Provider to the Customer in terms of specific Schedule of Services, as attached to Annexure 2;
- 1.35 **"Service Fee"** means the monthly fee payable by the Customer in respect of the Line-Item Services provided in terms of this Agreement, as set out in the Schedule of Services;
- 1.36 **"Service Level Agreement"** means a document describing the service levels to be provided by the Service Provider to the Customer and the service level credits due in respect of performance failure if and where applicable, as same may be amended or supplemented from time to time by the Service Provider;
- 1.37 **"Support Procedure"** means the defined support processes, structure and functions as may be applicable to the Services;
- 1.38 **"Services"** means the Services and other services to be provided by the Service Provider to the Customer in terms of this Agreement, as set out in the relevant Schedule of Services and Service Definitions from time to time;
- 1.39 **"Setup Fee"** means the fees related to the initial setup of the Products and/or Services, as specified in the Schedule of Services;
- 1.40 **"Service Levels"** mean the qualitative and quantitative standards according to which the Services are to be provided, as set out in the Service Definitions read together with the Service Level Agreement (if applicable);
- 1.41 **"Site"** means the sites to, or at which the Services will be provided as set out in the Schedule of Services;
- 1.42 **"Staff"** means any director, employee, agent, consultant, contractor or other representative of a Party involved in the provision or acquisition of the Services;
- 1.43 **"Time and Material Basis"** means the method of billing based on actual time spent and materials used, based on the Service Provider's standard rates from time to time; and

Customer initial

Service Provider initial

- 1.44 **"The Service Provider Technology"** means the various concepts, ideas, methods, methodologies, procedures, processes, know-how, and techniques; models (including, without limitation, function, process, system and data models); templates; general purpose consulting and software tools, utilities and routines; and logic, coherence and methods of operation of systems which the Service Provider has created, acquired or otherwise has rights in;
- 1.45 **"Variation Procedure"** means the variation procedure set out in clause 10.
- 1.46 This Agreement shall be subject to the following rules of interpretation.
 - 1.46.1 Headings and sub-headings are inserted for information purposes only and shall not be used in the interpretation of this Agreement.
 - 1.46.2 Unless otherwise stated:
 - 1.46.2.1 references to clauses, sub-clauses, schedules, annexures or paragraphs are to be construed as references to clauses, sub-clauses, schedules, annexures or paragraphs of this Agreement;
 - 1.46.2.2 references in schedules and/or annexures to clauses shall, unless expressly provided otherwise, be deemed to be a reference to clauses in such schedule and/or annexure;
 - 1.46.2.3 References to any enactment shall be deemed to include references to such enactment as re-enacted, amended or extended from time to time.
 - 1.46.3 References to:-
 - 1.46.3.1 persons shall include companies, corporations and partnerships;
 - 1.46.3.2 any Party shall, where relevant, be deemed to be references to, or to include, as appropriate, their respective successors or permitted assigns;
 - 1.46.3.3 the singular shall include the plural and vice versa;
 - 1.46.3.4 any one gender shall include a reference to all other genders;
 - 1.46.3.5 days shall be deemed to be to calendar days, unless specifically stipulated as being business days.
 - 1.46.4 The expiration or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provide 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.
 - 1.46.5 If any provision in a definition is a substantive provision conferring rights or imposing duties on any Party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in this Agreement.
 - 1.46.6 When any number of days is prescribed in this Agreement, same shall be reckoned exclusively of the first and inclusively of the last day, unless the last day falls on a day which is not a business day, in which case the last day shall be the next business day.
 - 1.46.7 Where the approval or consent of any Party is required in terms of this Agreement, the Parties hereby agree that such approval or consent shall not, unless expressly provided to the contrary, be unreasonably withheld or delayed by the Party who is required to give same.
 - 1.46.8 The rule of construction that the Agreement shall be interpreted against the Party responsible for the drafting or preparation of the Agreement, shall not apply.
 - 1.46.9 The term "including". The words "include", "includes", and "including" means "include without limitation", "includes without limitation", and "including without limitation". The use of the word "including" followed by specific examples shall not be construed as limiting the meaning of the general wording preceding it.
 - 1.46.10 Terms other than those defined within the Agreement will be given their plain English meaning, and those terms, acronyms, and phrases known in general commercial or industry-specific practice, will be interpreted in accordance with their generally accepted meanings.

2 STATUS AND PRECEDENCE

- 2.1 This Agreement is an enabling agreement under which the Parties may from time to time agree to the provision of Products and/or Services by the Service Provider by the completion of a Schedule of Services in accordance with the Variation Procedure stated herein. All terms and conditions applicable to the specific Products and/or Services (in addition to the applicable terms and conditions contained in this Agreement) shall be set out in the Schedule of Services and applicable Service Definition to be signed by the Parties.
- 2.2 Except where provided to the contrary in a Schedule of Services and then only to the extent as specified, each Schedule of Services (informed by these terms and conditions) shall be a separate and legally binding contract under which the Customer agrees to purchase Products and/or Services. Insofar as any term and condition in any Schedule of Service and applicable Service Definition conflicts with this Agreement in respect of the description of the Products and/or Services, including specifications and pricing, the terms and conditions in the Schedule of Services and/or Service Definition will prevail. In any other matter the Agreement shall prevail.

3 APPOINTMENT AND DURATION

- 3.1 The Customer hereby appoints the Service Provider as the provider to the Customer of the Products and Services and the Service Provider hereby accepts such appointment.
- 3.2 This Agreement shall commence on the Effective Date and, subject to the rights of termination stipulated herein, continue thereafter until the termination or lapsing of all Services listed in the Schedule of Services.
- 3.3 Each Line-item Service contemplated in a Schedule of Service shall commence on the relevant Service Commencement Date and shall endure for the relevant Initial Term, whereafter it shall be automatically renewed for further Renewal Periods, subject to the right of either Party to terminate the specific Line-item Service at the end of its relevant Initial Term or any Renewal Period on no less than 90 (ninety) days written notice to the other Party prior to the expiry of the Initial Term or any Renewal Term.
- 3.4 The Customer shall be entitled to cancel a Line Item Service prior to the Service Commencement Date. Any such cancellation shall be by way of notice in writing by the Customer to the Service Provider and shall be effective 30 (thirty) days from the date of receipt of such notice by the Service Provider. Upon cancellation the Service Provider will be entitled to charge the Customer such costs and expenses that the Service Provider has/or will incur or obligations to which the

Customer initial

Service Provider initial

Service Provider has become necessarily bound by virtue of such Product and/or Services it was going to provide to the Customer, including any third-party supplier and/or subcontractor costs, Staff costs, the cost of removing any equipment already installed or demobilising any Staff off the Customer's Site. The Customer agree that the termination fees payable in terms of this clause 3.4 shall be payable upon demand and that such termination fee represents an agreed and reasonable pre-estimate of the costs and expenses incurred by the Service Provider as a consequence of the termination.

3.5 Save for cancellation in terms of clause 3.4 or any other rights of termination or cancellation as set forth in this Agreement, neither Party will be entitled to terminate a Line Item Service before expiry of the Initial Term or Renewal Period.

4 PRODUCTS AND SERVICES

4.1 **Provision of Products and Services.** the Service Provider shall during the term of this Agreement provide the Products and Services to the Customer in accordance with the terms of this Agreement, as read with the relevant Schedule of Services and Service Definitions. The Customer acknowledges and agrees it has read, understands and agrees to be bound by the Installation Procedure, Support Procedure and Service Level Agreement ("terms of use") (as may be applicable to the Services being provided to it and which may be updated from time to time), which terms of use are incorporated herein and available upon request.

4.2 Setup of Services.

4.2.1 The Customer is responsible for and shall ensure that all preparatory work, information, items or consents including but not limited to the necessary hardware and software infrastructure at the Customer Site is ready and available for installation and set-up of the Services and that all necessary approvals including but not limited to landlord approvals are in place, completed, available or obtained within a reasonable time period to enable the Service Provider to set up the Services. Any delay in the availability or readiness of the Site will result in a delay in the set-up of the Service.

4.2.2 The set-up of the Services shall be undertaken by the Service Provider in accordance with the network design submitted by the Service Provider to the Customer, based on the information provided by the Customer. Whilst the Service Provider shall use reasonable commercial endeavours to design an appropriate solution for the Customer, such design is strictly based on the information and requirements provided by the Customer and accordingly the Service Provider cannot be held responsible for any error resulting from incorrect, inaccurate or incomplete information provided by the Customer.

4.2.3 Upon completion of the setup of each Line-item Services, the Service Provider shall present the Customer with a Ready for Service Certificate for signature by the Customer to confirm that the relevant Line-item Services are ready for commencement.

4.2.4 Should the Customer:

- 4.2.4.1 fail to sign off the Ready for Service Certificate in respect of any Line-item Services within 5 (five) Business Days of the submission of the Ready for Service Certificate by the Service Provider and fail to inform the Service Provider of any problems with the setup or configuration of specific Line-item Services within such period; or
- 4.2.4.2 commence use of any Line-item Services;

it shall be deemed to have signed-off on the relevant Line-item Services on the earlier of the date on which it commences use of the Services or the relevant period lapses.

4.3 **Service Provider Products on Site.** No lien over any Service Provider owned Products provided to the Customer as part of the Services ("Loan Products") shall be established in favour of the party in possession of those Loan Products. During the period where the Loan Products are located at the Customer's Site for purposes of performing the Services (whether affixed or not), the Customer shall: (i) take proper and diligent care of those Loan Products; (ii) take all reasonable steps to exclude any landlord's hypothec over the Loan Products, including by giving any landlord written notice that it is not the owner of those Loan Products; (iii) accept all risk in the Loan Products in which regard it shall take reasonable steps to protect the Loan Products from loss and/or damage and shall insure the same against all risks, and (iv) to ensure that the Loan Products has not been acceded or become part of a structure belonging to/or under the control of the Customer. The Service Provider shall be entitled to make reasonable inspections of the Customer's premises to establish whether or not the Customer is complying with its obligations in terms of this clause and to be provided with proof of all risks insurance cover of The Loan Products. The Customer shall return the Loan Products to the Service Provider on termination of the particular Schedule of Services in the same condition in which it was received, fair wear and tear excepted and shall remedy, to the reasonable satisfaction of the other, any damage to The Loan Products sustained whilst under its care; alternatively, in the event of The Loan Products being damaged beyond repair the Customer shall upon written demand by the Service Provider, forthwith replace The Loan Products with new equipment of equal or better standard, quality and specification.

5 CUSTOMER INPUT

In order to enable the Service Provider to provide the Services in terms of this Agreement, the Customer shall, to the extent required by the Service Provider and at the Customer's cost:-

5.1 allow the Service Provider and its Staff reasonable access to all necessary Sites which are under the control of the Customer or its Staff, which access is required to enable the Service Provider to fulfil its obligations in terms of this Agreement;

5.2 provide electricity services, telephone services and other connectivity (including access to networks, information) at each Site;

5.3 make available sufficiently competent and authorised resources, with appropriate access rights and permissions, to assist the Service Provider and consider all requests by the Service Provider for consent or authorisation without any delay, having regard to the nature of the request and the impact which any delay in such consent or authorisation may have on the provision of Services pursuant to this Agreement;

Customer initial

Service Provider initial

- 5.4 comply with all reasonable policies, procedures and instructions of the Service Provider in respect of the provision of Services pursuant to this Agreement;
- 5.5 take commercially reasonable measures to ensure that no Destructive Element is introduced into the Customer's or the Service Provider's systems by the Customer's Staff or any third party. Save where a Service Definition specifies otherwise and/or any requirements imposed on the Service Provider in terms of applicable law, The Service Provider shall not be responsible for any Customer Data that may be provided and/or transmitted over the Services and/or Network. The Service Provider will not be held responsible for any loss, destruction, alteration or disclosure of any Customer data caused by any third party including but not limited to any network intrusion, unpermitted access, security breaches or hacking;
- 5.6 provide all such other assistance and support as may be contemplated in this Agreement.

6 COMPLIANCE

- 6.1 **Regulatory compliance:** The Customer has sole responsibility to ensure that the information it and its users transmit and receive over the Network complies with all applicable laws and regulations. The Customer hereby indemnifies the Service Provider and holds it harmless against any claim by any third party against the Service Provider under any applicable law including but not limited to any claim arising in relation to the content transmitted using the Services or any claim arising directly or indirectly out of or relating to the use of the Services to carry material or obscene, indecent or defamatory nature.
- 6.2 **Acceptable use:** The Customer hereby agrees that in using the Services it shall at all times comply, and shall procure that its Staff at all times comply, with the Service Providers Acceptable Use Policy (AUP) from time to time as such is published on the Service Providers website (www.eoh-ns.co.za).
- 6.3 **Security Policies:** The Customer shall be required to implement:
 - 6.3.1 An Acceptable Use Policy; and
 - 6.3.2 Deploy industry acceptable anti-virus software on desktop and laptop computers; and
 - 6.3.3 Any further requirements as communicated by the Service Provider and agreed upon in writing by the Parties.
- 6.4 **Suspension of Network Service:** In the event that the security or integrity of the Network is compromised for any reason whatsoever, the Service Provider shall have the right to suspend access to the Services and/or the Network provided that: (1) the Service Provider takes reasonable measures to advise the Customer of such suspension prior to suspending the Services and/or Network, (2) the Service Provider takes proactive steps to ensure the Services and/or Network suspension is uplifted as soon as reasonably possible and (3) a root cause analysis and future avoidance advice is provided to the Customer.
- 6.5 **Regulatory or statutory changes to Services:** Notwithstanding clause 10, the Service Provider will be entitled to implement changes to the Services where required to do so in terms of law or legislation. If a legal or regulatory intervention or ruling of any sort prevents the accomplishment of the purpose of this Agreement, the Customer and the Service Provider shall immediately commence good faith negotiations to explore whether a similar economic effect can be obtained consistent with the applicable legal or regulatory requirements. The delay or failure by the Service Provider to perform any of its obligations under this Agreement that is caused by or materially contributed to by a restriction of a legal or regulatory nature that affects, wholly or partly, the provision of the Services or Products, shall not constitute a breach of this Agreement.
- 6.6 **Interception of Communication.** The Customer acknowledges that the Service Provider and/or a third-party network operator has an obligation in terms of applicable law, including but not limited to the Regulation of Interception of Communications and Provision of Communication Related Information Act, Act no. 70 of 2002 ("RIC Act") to intercept, lock, filter, read, delete, disclose and use communications sent or posted via the Service Provider or the network operator's network. The Customer hereby consents to such activities by the Service Provider and/or a third-party network operator where such actions are within the scope and purpose of the applicable law. the Service Provider and/or a third-party network operator shall not be liable to the Customer for any losses, liabilities, damages and claims and for any related costs and expenses suffered by the Customer as a result of the Service Provider and/or a third-party network operator performing any activity permitted under the applicable law.
- 6.7 **Consumer Protection Act Warranty.** The Customer warrants that the asset value or annual turnover of the Customer exceeds the threshold monetary value as published under the Consumer Protection Act of 2008, as amended from time to time and as such confirms that this agreement does not fall within the ambit of the Consumer Protection Act. in the event that the Customer during the term of this Agreement falls within the threshold it undertakes to advise the Service Provider immediately thereof, failing which the Customer undertakes to indemnify and holds the Service Provider harmless against any loss or damages suffered by the Service Provider arising out of the failure of the Customer to comply with this clause 6.7

7 STAFF

- 7.1 **Compliance with procedures.** The Service Provider shall comply, and ensure that its Staff comply with any practices and procedures including (but not limited to) any policies, security and access policies, safety, health and environmental policies which are of general application to the Customer's Staff at any Site to which or at which the Services are provided. The Customer shall notify the Service Provider of all such policies and procedures prior to the Effective Date, as the case may be and give the Service Provider and the relevant Staff no less than 5 (five) days written notice of any change in existing policies or the implementation of new policies.
- 7.2 **Staff shall work under the Service Provider direction.** Unless specifically agreed otherwise between the Parties, the Service Provider's Staff shall at all times be subject to and work under the direction and control of the Service Provider.
- 7.3 **Disciplinary action and incapacity counselling.** The Service Provider will be exclusively responsible for taking disciplinary action against its Staff in accordance with its own disciplinary code and counselling procedures.

Customer initial

Service Provider initial

8 **EXCUSABLE DELAY**

- In the event of an Excusable Delay arising:
- 8.1 the time for the Service Provider's performance shall be extended on a reasonable basis in proportion to the prejudice caused by the Excusable Delay and the Service Provider may charge for any additional hours required to execute the Services or remedy the Excusable Delay on a Time and Materials Basis;
 - 8.2 if an amount would have been payable to the Service Provider by the Customer had it not been due to an Excusable Delay, the Service Provider shall be entitled to invoice the Customer for work actually completed to date, including (if applicable) the Set-Up Fees and at its election commence or continue billing of the applicable Services Fees;
 - 8.3 the Service Provider shall not be liable for any failure to provide any Services in terms of this Agreement where such failure is a result of any Excusing Cause.

9 **CUSTOMER THIRD PARTY CONTRACTORS**

- 9.1 **Applicable provisions.** Where the Service Provider is required to manage or liaise with Customer Third Party Contractors, the following provisions will apply:-
 - 9.1.1 the Customer shall notify the Service Provider in writing of the applicable terms and conditions of the Customer Third Party Contracts insofar as they relate to or have an impact on the Service Provider's obligations in terms of this Agreement; and
 - 9.1.2 the Customer shall be responsible for obtaining and maintaining all necessary licences, consents or authorities under the Customer Third Party Contracts (including, without limitation, any consents or licences required to enable the Service Provider to fulfil its obligations in terms of this Agreement) and shall be liable for all fees and other charges payable to any third party pursuant to the Customer Third Party Contracts.
- 9.2 **No liability.** The Service Provider shall not be liable for any act or omission of a Customer Third Party Contractor.

10 **VARIATION PROCEDURES**

- 10.1 The Products and/or Services to be provided and/or performed by the Service Provider will be set out in the relevant Schedule of Services and applicable Service Definitions. Products and/or Services will only be provided to the Customer upon receipt of a signed Schedule of Services and/or subsequent addendum to the Schedule of Services.
- 10.2 **Request for new Products and/or Services.** Should the Customer at any time request additional Products and/or Services the Customer shall submit a request to the Service Provider detailing the nature and scope of the services and/or the specifications and quantity of the Products and/or Services.
- 10.3 **Amendments to Services.** Should the Parties during the currency of the Agreement require an amendment to the nature or scope of Products and/or Services currently being provided by the Service Provider to the Customer including any upgrades and/or downgrades of Services, the party requesting the change shall submit a request to the other Party in writing set forth the details of such change.
 - 10.3.1 **Sign-off.** In respect of both clause 10.2 and 10.3 the Parties shall discuss the proposed new Products and/or Services and/or amendments to existing products and/or Services (as applicable) and shall in the event of new Products and/or Services effect such amendments by the way of signing a new Schedule of Services and in the case of the amendment to existing Products and/or Services, the Parties shall amend the current Schedule of Services and/or sign an addendum to the existing Schedule of Services.
 - 10.3.2 **No amendment effective until sign-off.** Neither the Service Provider nor the Customer shall be entitled to proceed or require the implementation of any new Products and/or Services or amendment to the existing Products and/or Services pursuant to this clause 10 until such changes and/or amendment and all matters relating thereto have been agreed in writing between the Parties in accordance with the provisions of this clause 10. Pending sign-off as aforesaid, the Parties will continue to perform their obligations without taking account of the proposed amendments and/or changes. Neither Party shall be obliged to agree to any proposed by the other Party but the Parties will not unreasonably delay or withhold their agreement to a proposed changes and/or amendments.

11 **CONSIDERATION**

- 11.1 **Consideration.** As consideration for the provision of the Products and the Services pursuant to this Agreement, the Customer shall pay the Service Provider the Setup Fee, any Pro rata Services Fees and Service Fees set out in the relevant Schedule of Services.
- 11.2 **VAT.** All amounts stipulated in this Agreement are, unless otherwise indicated, stipulated exclusive of Value-Added Tax, which shall be payable by the Customer at the applicable rate.
- 11.3 **Setup Fees.** Setup Fees and Pro rata Service Fees are due by the Customer on the relevant Service Commencement Date and are payable in arrears, within 15 (fifteen) days of the Service Provider's invoice in respect thereof, or as may otherwise be provided on the applicable Schedule of Services.
- 11.4 **Service Fees.** Service Fees are due by the Customer monthly in advance, payable on or before the 15th day of the month in which the relevant Services are to be provided.
- 11.5 **Products.** Products require the payment of an initial upfront fee and is payable as follows: upon signature of a Schedule of Services, 50% (fifty percent) of the cost of all Products purchased under a Schedule of Services shall be invoiced and payable upon presentation thereof. 30% (thirty percent) of the balance of those Products are payable upon delivery to Site and the balance is payable upon installation of the Products.
- 11.6 **Invoices.** the Service Provider shall provide the Customer with a detailed VAT invoice in respect of all Fees payable pursuant to this Agreement. Such invoice may be in electronic or hardcopy format.

Customer initial

Service Provider initial

- 11.7 **Payments.** All payments by the Customer must be made in South African Rand, free of set-off and bank charges, by electronic fund transfer, unless otherwise agreed in writing. Subject to clause 11.15, payments must be paid directly into the Service Provider's bank account, the details of which will be provided on the relevant VAT invoice and may change from time to time or such other bank account as the Service Provider may notify the Customer of in writing from time to time.
- 11.8 **Overdue amounts.** If the Customer fails to make any payment on the due date, the Service Provider may, without prejudice to any of its rights, charge the Customer interest on the overdue amounts at the Prime Rate, plus any additional costs incurred by the Service Provider related to collections as a result of Customer's failure to make any payment on the due date.
- 11.9 **Suspension of Services.** In addition, the Service Provider shall be entitled, without liability, to suspend the Services for any period during which any Fees (including all interest thereon) are outstanding or in arrears, provided that the Service Provider shall give the Customer no less than 5 (five) Business Days written notice (which shall include by way of e-mail) of its intention to suspend the Services.
- 11.10 **Disputes relating to the calculation or quantum of any payment or whether payment is due and payable.** Subject to the provisions of sub-clause 11.11 below, if the Parties (acting in good faith) dispute the calculation or quantum of any payment (or part thereof) or whether the payment (or part thereof) is due and payable, then such dispute shall be referred to a senior manager of both parties for resolution. In the event that no resolution is achieved within 10 (ten) Business Days after the matter was referred to resolution, the parties shall proceed in terms of clause 18 below.
- 11.11 **Deemed Acceptance.** In the event that the Customer wishes to lodge a dispute in accordance with clause 11.9 above, then the Customer shall be obliged to do so within 7 (seven) Business Days of the date of the disputed invoice, failing which the Customer shall be deemed to have accepted the amount owing in respect of such invoice;
- 11.12 **Escalations.**
- 11.12.1 The Service Provider's Fees shall escalate in accordance with CPI every 12 months reckoned from the Service Commencement Date, unless otherwise agreed between the Parties.
- 11.12.2 Notwithstanding clause 11.11.1, it is further agreed that should there be a subsequent price increase on components of the Products and/or Services as a result of (i) regulatory and/or tariff changes and/or (ii) changes in exchange rate where the pricing provided to the Customer was quoted in South African Rand but has subsequently increased by more than the base rate used to calculate the initial service fees, the Service Provider shall be entitled to increase the affected Fees by the rand value of the increase but in proportion to the Products and/or Service provided after written notification to the Customer.
- 11.13 **No set-off.** The Customer will not be entitled to withhold payment of any amount payable in terms of this Agreement to satisfy any claim against the Service Provider arising from this or any other agreement with the Service Provider, nor will the Customer be entitled to set off any such amount payable in terms of this Agreement against any amount owing to it by the Service Provider in terms of this or any other agreement.
- 11.14 **Back-billing.** Subject to the provisions of the Prescription Act, 68 of 1969 (as amended) the Service Provider may include on any invoice any amount not previously billed for calendar months prior to the current month.
- 11.15 **Bank Account.** The parties record that the Service Provider's bank account details are not likely to change, however, should the Customer receive a notice advising it of any change in such banking details, the onus shall be on the Customer to ensure that the notice is valid and in this regard it shall ensure that before payment is made into the bank account provided on such notice that it verifies with the financial manager of the Service Provider that the bank account details have indeed been changed.

12 INTELLECTUAL PROPERTY

The Customer acknowledges that any and all Intellectual Property Rights proprietary to the Service Provider are and shall remain the property of the Service Provider. The Customer shall not for the duration of this Agreement, or at any time after termination or cancellation or expiration of this Agreement, acquire or be entitled to claim any right or interest therein or in any way question or dispute the ownership thereof.

13 THE SERVICE PROVIDER WARRANTIES

13.1 Intellectual Property Warranties:

- 13.1.1 The Service Provider warrants that no aspect of the provision of the Products and/or Services or any the Service Provider Technology will infringe any Intellectual Property Rights of any third party, and the Service Provider shall, at its cost, defend the Customer against any such claim, provided that in respect of all such claims, the Customer:-
- 13.1.1.1 gives prompt notice to the Service Provider of such claim and the Service Provider has the election to control the defence thereof;
- 13.1.1.2 takes all reasonable steps to mitigate any loss or liability in respect of the claim; and
- 13.1.1.3 does not compromise or settle the claim in any way without the Service Provider's prior written consent.
- 13.1.2 Should any third party succeed in its claim for the infringement of any Intellectual Property Rights, the Service Provider shall, at its discretion and within 30 (thirty) days of the infringing item having been found to so infringe, undertake one or more of the following actions:-
- 13.1.2.1 obtain for the Customer the right to continue using the infringing item or the parts thereof which constitute the infringement;
- 13.1.2.2 replace the infringing item or the parts thereof which constitute the infringement with another product which does not infringe and which in all respects operates substantially in accordance with the specifications thereof;
- 13.1.2.3 alter the infringing item in such a way as to render it non-infringing while still in all respects operating substantially in accordance with the specifications thereof; or failing any of the above, and

Customer initial

Service Provider initial

- 13.1.2.4 withdraw the infringing item and refund to the Customer all fees paid by it to the Service Provider in respect of such item, pro-rated on a 3-year straight line depreciation;
provided that the above remedies shall be the Customer's sole remedies in respect of any breach of this warranty.
- 13.2 **Exclusions.** The Service Provider shall not be liable under the provisions of this clause 13.1 for any claim which arises out of the provision by the Service Provider of Products and/or Services to the Customer which are procured from or proprietary to third parties.
- 13.3 **Disclaimer of warranties.** The Service Provider hereby excludes and disclaims all warranties, whether express or implied, statutory or otherwise, except those warranties expressly made in this Agreement. Without limiting the foregoing the Service Provider hereby disclaims all warranties including but not limited to any conditions or warranty for, fitness for particular purpose, satisfactory quality, usefulness or timeliness.
- 13.4 **Flow down warranties.** The Service Provider may from time to time provide certain equipment for which the Service Provider is entitled to warranties and indemnities from the manufacturers, lessors or licensors of such items the Service Provider shall: (i) pass through to the Customer the benefits of such warranties and indemnities to the extent that the Service Provider is permitted to do so under any agreements between the Service Provider and such manufacturers, lessors or licensors, and (ii) enforce such warranties and indemnities as directed by the Customer. Both Parties shall comply with all terms and conditions of agreements with such manufacturers, lessors or licensors.
- 13.5 **Survival.** This clause 13 shall survive termination of this Agreement.

14 CONFIDENTIAL INFORMATION

- 14.1 **Confidentiality obligation.** Each Party ("**the Receiving Party**") must treat and hold as confidential all Confidential Information of the other Party ("**the Disclosing Party**") to which they have access or which otherwise becomes known to them during the currency of this Agreement.
- 14.2 **Exceptions.** The obligations of confidentiality contained herein shall not apply to any confidential information which the Receiving Party thereof can show (and it shall be for the Receiving Party to prove this by documentary evidence) -
- 14.2.1 is, at the time of disclosure to the Receiving Party by the Disclosing Party, within the public domain and could be obtained by any person with no more than reasonable diligence; or
- 14.2.2 comes into the public domain and could be obtained after such disclosure, otherwise than by reason of a breach of any of the undertakings contained in this Agreement; or
- 14.2.3 is, at the time of such disclosure, already within the possession of the Receiving Party, or it has been independently developed by the Receiving Party; or
- 14.2.4 is subsequently provided to the Receiving Party by a person who has not obtained such information from the Disclosing Party, provided that, in any such case, such information was not obtained illegally or disclosed by any person in breach of any undertaking or duty as to confidentiality, whether express or implied; or
- 14.2.5 is disclosed with the written approval of the Disclosing Party; or
- 14.2.6 is or becomes available to a third party from the Disclosing Party on an unrestricted basis; or
- 14.2.7 is obliged to be reproduced under order of a court or government agency of competent jurisdiction or in satisfaction of the requirements of any stock exchange or other regulatory authority.
- 14.3 **Duties of Parties.** The Receiving Party therefore agrees to hold such Confidential Information in the strictest confidence, not to make use thereof other than for the performance of the obligations under this Agreement, to release it only to Staff and professional advisors requiring such information on a need-to-know basis and not to release or disclose it to any other person.
- 14.4 **Obligation prior to disclosure.** The Receiving Party shall procure that any party to whom it validly discloses the confidential information of the Disclosing Party, as contemplated in this clause 14.3 undertakes to respect the secret, confidential and proprietary nature thereof.
- 14.5 **Survival.** The Parties agree that the provisions of this clause will survive the termination of this Agreement for a period of 2 (two) years from date of termination of this Agreement.

15 LIMITATION OF LIABILITY

- 15.1 **Direct damages limited.** Notwithstanding the form (whether in contract, delict, or otherwise) in which any legal action may be brought, the Service Provider's maximum liability for general and/or direct damages for any breach of this Agreement or any wilful or negligent misconduct or omission arising during the course and scope of fulfilling its obligations in terms of this Agreement, shall, in respect of the Services, be equal to an aggregate amount of the Service Fees paid by the Customer over the previous 12 (twelve) months pursuant hereto. Such maximum amount shall be an aggregate amount for all claims arising out of this Agreement.
- 15.2 **Consequential damages excluded.** Neither Party shall be liable for any loss of profits, goodwill, business, clients, contracts, revenue, the use of money, contractual penalties imposed by third parties, anticipated savings or loss or corruption of data or information; or any special, indirect or consequential loss and such liability is excluded whether it is foreseen, foreseeable, known or otherwise.

16 BREACH

- 16.1 **Material Breach.** Either party may terminate this Agreement on 7 (seven) Business Days' written notice to the other in the event that the other party:
- 16.1.1 Fails to pay any amount validly due hereunder; and/or

Customer initial

Service Provider initial

16.1.2 Breaches any material term of this Agreement and such breach is incapable of remedy or, if the breach is remediable, it continues for a period of 30 (thirty) days after written notice requiring the same to be remedied has been given to the party in breach;

16.2 **Winding Up.** Either party may terminate this Agreement on 30 (thirty) Business Days' written notice to the other in the event that in respect of the other party:

16.2.1 A winding-up order or resolution is made or passed;

16.2.2 A provisional liquidator is appointed, an administration order is made, a receiver is appointed in respect of it or all or any of its assets, it is unable to pay any of its debts within the meaning of applicable insolvency laws, or any voluntary arrangement is proposed or in any situation which is the same as the foregoing;

17 EFFECT OF TERMINATION

17.1 As described above, each Schedule of Services (and/or Line Item Service as the case may be) can survive and/or be terminated on its own, informed by these terms and conditions.

17.2 On termination of the Agreement, a Schedule of Services or any Line Item Service all amounts due and payable, including unamortised expenses and reasonable costs incurred as a consequence of the termination shall become due and payable even if they have not been invoiced. Such amounts may not be withheld for any reason.

17.3 Upon termination, cancellation or expiry of this Agreement:

17.3.1 The provision of all Services shall forthwith cease; and

17.3.2 Any Products and/or equipment belonging to the Service Provider and utilised by the Customer during the term of the Agreement shall be returned to the Service Provider

17.3.3 Each Party will deliver to the other Party, or at the other Party's option destroy, and procure the delivery of or destruction of all originals or copies of Confidential Information and proprietary materials in its possession or under its control.

17.4 Termination of this Agreement shall not affect the enforceability of the provisions which are intended to operate after such expiry or termination.

18 DISPUTE RESOLUTION

18.1 In the event of a dispute arising in terms of this Agreement, the Parties shall firstly submit such dispute to their respective chief executive officers or authorised representatives for purpose of resolution. Should the chief executive officers or authorised representatives of the Parties fail to resolve the dispute referred to them within 10 (ten) Business Days, the Parties agree to attempt to resolve the dispute by mediation.

18.2 The Parties shall, by agreement to be reached within 10 (ten) Business Days following the decision of the Parties to refer the dispute to mediation, appoint a third party to act as a mediator, and not as an arbitrator, to mediate in the resolution of the dispute. The Parties agree that the mediator shall be an advocate of the Johannesburg Bar Council of not less than 10 (ten) years in practice. Should the Parties not be able to agree on the mediator, then the mediator shall be selected by the chairman for the time being of AFSA. Such mediation shall be held in English, in Sandton, and in accordance with the rules determined by the mediator and the timeframes agreed to by the Parties and the mediator.

18.3 In the event that the Parties fail to resolve the dispute by way of mediation then that dispute shall be submitted to a court of competent jurisdiction.

19 DOMICILIA AND NOTICES

19.1 **Addresses.** The Parties select as their respective *domicilia citandi et executandi* the physical addresses set out on the cover sheet. Likewise the Parties choose all the addresses set out on the cover sheet for the purposes of giving or sending any other notice provided for or required hereunder, or such other address or fax number as may be substituted by notice given as herein required.

19.2 **Change of Address.** Either Party may give written notice to the other, change its domicilium to any other physical address in the Republic of South Africa and its fax number to any other South African number, provided that such change shall take effect fourteen 14 (fourteen) days after delivery of such written notice.

19.3 **Deemed Receipt.** Any notice to be given by either Party to the other shall be deemed to have been duly received by the other Party -

19.3.1 if addressed to the addressee at its domicilium and posted by pre-paid registered post on the 10th day after the date of posting thereof; or

19.3.2 if delivered to the addressee's domicilium by hand to a responsible person apparently in charge of the addressee's premises, during Business Hours on a Business Day, on the date of delivery thereof; or

19.3.3 if sent by fax to the addressee on the first Business Day following the date of sending thereof.

19.4 **Use of email.** The Parties record that whilst they may correspond via email during the currency of this Agreement for operational reasons, no formal notice required in terms of this Agreement, may be given via email.

19.5 It is recorded that nothing in this clause shall operate so as to invalidate the giving or receipt of any written notice which is actually received by the addressee other than by a method referred to in this clause.

20 FORCE MAJEURE AND MATTERS OUTSIDE THE SERVICE PROVIDERS REASONABLE CONTROL

20.1 **Failure to Fulfil Obligations.** Neither Party shall be liable for any failure to fulfil its obligations under this Agreement (except an obligation to pay money) if such failure is caused by any circumstances beyond its reasonable control, including flood, earthquakes, war (whether declared or not), terrorism, sabotage, revolution, invasion, insurrection, strike, lock-out or

Customer initial

Service Provider initial

any other industrial action, riot, civil commotion, mob violence, blockade, embargo, boycott, exercise of military power, fire, explosion, quarantine, theft, acts or restraints of government including the imposition or restrictions of or embargos on imports or exports and/or services, and electricity failures or blackouts.

20.2 **Right to Cancel the Agreement.** Should either Party be unable to fulfil a material part of its obligations under this Agreement for a period in excess of 30 (thirty) days due to circumstances beyond its reasonable control, as recorded in clause 22.1 above, the other Party may cancel this Agreement forthwith by written notice.

20.3 **Matters outside the reasonable control of the Service Provider.** The Service Provider will have no liability to the Customer for failure to supply the Service or a Product if (a) a third person is unable or refuses to supply or delays supplying a service or product to the Service Provider and there is no alternative available to the Service Provider at a reasonable cost; or (b) the Service Provider is prevented by legal or regulatory restrictions from supplying the Service or a Product.

21 NON – SOLICITATION

21.1 The Customer shall not during the currency of the Agreement and for a period of 12 (twelve) months following the termination thereof directly or indirectly solicit, engage, employ or offer employment to any Staff member of the Service Provider who was involved in the implementation or execution of the Agreement, and shall not engage, employ or contract in any manner with any such Staff.

22 DATA PROTECTION

22.1 **Location of Customer Data.** Notwithstanding any other provision in this Agreement, the Customer agrees that, for the Service Provider to provide the Services, the Customer's Data may be:

22.1.1 held on a variety of systems, networks and facilities worldwide including systems and databases used by Service Provider help desks, service desks and/or network management centres used for providing the Service/s and/or used for billing, sales, technical, commercial and/or procurement purposes;

22.1.2 located, hosted, managed, accessed or transferred worldwide; and

22.1.3 provided or transferred by the Service Provider to any Affiliated Company, subcontractor or supplier worldwide to the extent necessary to allow that Affiliated Company, subcontractor or supplier to perform its obligations in respect of the Service/s.

22.2 **Process of Customer Data.** The Customer shall advise the Service Provider what Personal Data, if any, is included in the Data provided by the Customer ("Customer Personal Data"). Therefore:

22.2.1 The Service Provider shall comply with any Data Protection Laws applicable to it in its Processing of Customer Personal Data under or by virtue of this Agreement.

22.2.2 The Service Provider will only Process Customer Personal Data to the extent necessary to provide the Services in accordance with this Agreement and will:

22.2.2.1 implement and take appropriate and reasonable technical and organisational measures, in accordance with its security policies as amended from time to time, to protect Customer Personal Data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access; and

22.2.2.2 transfer Customer Personal Data outside of South Africa, including to Affiliated Company, subcontractors or suppliers where required to provide the Services.

22.2.3 The Customer shall provide sufficient notice and obtain sufficient consent and authorisation, under any applicable laws, from any relevant data subject (as defined in terms of Data Protection Laws) to permit the Processing of any Customer Personal Data by the Service Provider, its respective Affiliated Companies, subcontractors or suppliers as provided for in this Agreement.

22.3 **Exemption of liability.** The Customer agrees that the Service Provider, to the extent permitted by law, will not be liable for any complaint, claim or action brought by a data subject (as defined in terms of Data Protection Laws) arising from any action or omission by the Service Provider to the extent that such action or omission:

22.3.1 resulted from any failure by the Customer to comply with this clause 22; or

22.3.2 resulted from the Service Provider complying with any instructions of Customer or acting on behalf of the Customer in accordance with those instructions,

and the Customer shall indemnify, hold harmless and defend the Service Provider from and against any such claims or actions brought against the Service Provider;

22.4 **Compliance.** The Service Provider shall at all times strictly comply with all applicable Data Protection Laws which may be in force from time to time;

22.5 **Warranty.** The Service Provider hereby warrants, represents and undertakes that it:

22.5.1 shall not, at any time Process Data for any purpose other than with the express prior written consent of the Customer, and to the extent necessary to provide the Services;

Customer initial

Service Provider initial

- 22.5.2 shall ensure that all its systems and operations which it uses to provide the Services including all systems on which Data is Processed as part of providing the Services, shall at all times be of a minimum standard required by all applicable Data Protection Laws;
- 22.6 **Identification of risks.** The Service Provider shall take reasonable steps to identify all reasonably foreseeable internal and external risks posed to Data under the Service Provider's possession or control and establish and maintain appropriate safeguards against any risks identified;
- 22.7 **Discovery of Data Breach.** The Service Provider shall provide the Customer with prompt reasonably detailed written notice in case the Service Provider discovers any Data Breach, or any actual, pending or threatened enforcement proceeding, action, notification of breach, lawsuit against the Service Provider, or a Service Provider subcontractor, relating to Data. To the extent the Data Protection Laws require that an individual or authority be notified of a Data Breach, the Service Provider shall at the Customer's request and subject to the Customer's prior approval of the content, form and timing, provide any notices to such an individual or governmental authority containing the information as mandated by the Data Protection Laws. The Service Provider shall provide remediation services and other reasonable assistance to individuals impacted by the Data Breach directly or through a third party as required under the Data Protection Laws, or required by governmental authorities, or agreed by the Parties in writing. Upon Customer's request, the Service Provider shall cooperate and provide the Customer with information about the nature, circumstances and causes of the event at issue. The Service Provider will take all necessary actions to prevent further losses and otherwise limit the consequences of the event at issue.
- 22.8 **Return of Data.** At any time during the term of this Agreement at the Customer's written request or upon the termination or expiration of this Agreement for any reason, the Service Provider shall promptly return to the Customer all copies, whether in written, electronic or other form or media, of Customer Personal Data in its possession, or securely dispose of all such copies, and certify in writing to the Customer that such Customer Personal Data has been returned to Customer or disposed of securely. Service Provider shall comply with all reasonable directions provided by Customer with respect to the return or disposal of Customer Personal Data

23 **ANTI-CORRUPTION**

- 23.1 Neither Party shall engage in any unlawful trade practices or any other practices that are in violation of the Anti-Corruption Laws in connection with any actions or activities associated with this Agreement or in connection with the relationship between the Parties.
- 23.2 Each Party shall ensure that neither it nor its Affiliated Company, subcontractors and agents: either directly or indirectly, seek, receive, accept, give, offer, agree or promise to give any money, facilitation payment, or other thing of value from or to anyone (including but not limited to government or corporate officials or agents) as an improper inducement or reward for or otherwise on account of favourable action or forbearance from action or the exercise of influence; or fail to establish appropriate safeguards to protect against such prohibited actions.
- 23.3 Each Party shall, upon request from the other Party, provide evidence of the steps being taken to avoid prohibited actions, including the establishment of policies, practices, and/or business controls with respect to these laws.
- 23.4 The offending Party shall indemnify, keep indemnified and hold harmless the other Party and its Affiliated Company, its directors, officers, employees, consultants and agents from and against all losses, damages, costs (including but not limited to legal costs and disbursements) arising from or incurred by reason of the offending Party's, or any Staff's breach of the Anti-Corruption Laws.
- 23.5 The provisions of this clause 23 as well as any other clauses in relation thereto shall survive the termination of this Agreement for any reason whatsoever.

24 **ASSIGNMENT AND SUB-CONTRACTING**

- 24.1 **No Assignment.** Neither Party shall be entitled to cede, assign, delegate or otherwise transfer the benefit or burden of all or any part of this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed.
- 24.2 **Sub-contractors.** the Service Provider may sub-contract its obligations under this Agreement to third parties, provided that in such event the Service Provider shall remain liable for the performance by such subcontractor of the Service Provider's obligations in terms of this Agreement.

25 **RELATIONSHIP AND DUTY OF GOOD FAITH**

- 25.1 **No temporary employment service.** Nothing in this Agreement shall be construed as constituting a temporary employment service as contemplated in section 198 of the Labour Relations Act, 1995.
- 25.2 **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 such standard.
- 25.3 **No authority.** Nothing in this Agreement shall be construed as creating a legal partnership between the Parties and neither Party shall have any authority to incur any liability or obligation on behalf of the other or to pledge or bind the credit of the other Party.

Customer initial

Service Provider initial

26 **GENERAL**

- 26.1 **Non-exclusivity.** Nothing in this Agreement shall be construed as precluding or limiting in any way the right of the Service Provider from supplying services of whatsoever nature to other Customers.
- 26.2 **Entire Agreement.** This Agreement and the documents, records or attachments referred to herein or therein, constitute the entire agreement between the Customer and the Service Provider in respect of the subject matter hereof, and supersedes all previous Agreements in respect thereof.
- 26.3 **No Variation.** Subject to the provisions of this clause 26.3, no variation, addition or consensual cancellation of this Agreement or any component thereof shall be of any force or effect unless reduced to writing and signed by the Parties or their duly authorised representatives. For the purposes of clarity no amendment or variation to this Agreement may be concluded via email.
- 26.4 **Waiver.** No granting of time or forbearance shall be or be deemed to be a waiver of any term or condition of this Agreement and no waiver of any breach shall operate a waiver of any continuing or subsequent breach.
- 26.5 **No representations.** The Customer warrants that it has not been induced to enter into this Agreement by any prior representations, warranties or guarantees, whether oral or in writing, except as expressly contained in this Agreement.
- 26.6 **Applicable Law.** This Agreement shall be governed and construed according to the laws of the Republic of South Africa.
- 26.7 **Jurisdiction.** Subject to clause 18, the Parties hereto hereby consent and submit to the jurisdiction of South Gauteng High Court of South Africa.
- 26.8 **Certificate of indebtedness.** A certificate of indebtedness signed by any director or manager of the Service Provider, whose authority or appointment it shall not be necessary to prove, in respect of any indebtedness of the Customer in terms of this Agreement, shall be *prima facie* evidence of the Customer's indebtedness to the Service Provider.
- 26.9 **Publicity.** The Service Provider may cite the Customer as one of its clients in its accounting, marketing and/or associated material.
- 26.10 **Costs.** Each Party shall bear and pay its own fees and costs of and incidental to the negotiation, drafting, preparation and execution of this Agreement.

Customer initial

Service Provider initial

Annexure 1
Schedule of Services

Annexure 2
Service Definitions
