

## SALE AND SUPPLY OF GOODS

### Terms and Conditions

*Capitalised terms shall have the meaning given to those terms in Exhibit A.*

#### 1. Agreement

- 1.1. This Agreement will govern the contractual relationship between the Supplier and the Customer in respect of the sale and/or supply of Goods by the Supplier to the Customer and/or the Ordering of Goods by the Customer from the Supplier.
- 1.2. This Agreement supersedes all previous terms, conditions and/or agreements relating to the sale and/or supply of Goods by the Supplier to the Customer and/or the Ordering of Goods by the Customer from the Supplier.

#### 2. Orders and Fees

- 2.1. All Orders are subject to approval and acceptance by the Supplier. The Supplier is not obliged to accept any Order, nor will the Supplier be liable for any claim of any nature whatsoever which may arise by virtue of its failure, neglect and/or refusal to accept any Order. An Order will only become binding on, and irrevocable by, the Customer upon the Supplier accepting such Order in writing. Once an Order has become binding and irrevocable as described above, cancellation of such Order by the Customer can only be affected with the written consent of the Supplier.
- 2.2. The Fees in respect of the Goods specified and/or quoted for by the Supplier are in South African Rands and are exclusive of VAT and delivery charges (where applicable). The Supplier reserves the right to vary the Fees from time to time.
- 2.3. The Supplier reserves the right to vary any quoted Fees prior to the Delivery of the Goods concerned by adding thereto increased costs which are beyond its control and that arise between the date of the quoted Fees and the Delivery of the Goods concerned. The Customer will be notified in writing by the Supplier of any such increase.

#### 3. Delivery

- 3.1. If the Parties agree that the Supplier is to deliver the Goods to the Customer's nominated delivery address as per the Order Form ("the premises"), the Customer undertakes to grant to the Supplier or its subcontractors (as the case may be) unhindered access to the premises for purposes of Delivery of the Goods. Neither the Supplier nor its subcontractors will be liable for any losses and/or damages suffered by the Customer and/or any other person as a result of the Supplier or its subcontractors not being able to gain access to the premises to effect Delivery of the Goods.
- 3.2. Any third party who collects the Goods from the Supplier on behalf of the Customer will be deemed to be duly authorised thereto and the Customer's agent for that purpose.

- 3.3. If the Customer refuses to accept Delivery of the Goods and/or delays Delivery of the Goods, then:
- 3.3.1. the Supplier will be entitled to payment of the Fees and all other amounts due in respect of the Goods that form the subject matter of such Delivery; and
  - 3.3.2. the Customer will be liable for any loss, damage and/or expense incurred and/or sustained by the Supplier as a result of the Customer's refusal and/or delay; and
  - 3.3.3. the Supplier may cancel the transaction in respect of the Goods.
- 3.4. Should the Supplier accept an Order from the Customer, the Supplier shall effect Delivery of the Goods to the Customer as soon as reasonably possible, but no later than 60 (sixty) days of receipt of the Purchase Consideration ("Delivery Period"). If the Supplier cannot deliver the Goods within the Delivery Period, the Supplier will notify the Customer thereof in writing. The Delivery Period will not constitute a binding undertaking and/or guarantee by the Supplier and the Supplier will not be liable for any direct, indirect, special, general and/or consequential losses and/or damages arising directly and/or indirectly from any delay in the Delivery Period, irrespective of the cause of such delay. Furthermore, the Customer will not be entitled to cancel its Order with the Supplier in respect of any Goods, nor vary the terms thereof, in the event of the Supplier not Delivering the Goods within the Delivery Period.
- 3.5. The Supplier's obligation to Deliver the Goods to the Customer will be deemed to have been fulfilled when the Supplier delivers the Goods to the premises or attempts to deliver the Goods to the premises, but is unable to do so due the Customer's failure to comply with clause 3.1 above. The Supplier is not responsible for any loss or unauthorised use of the Goods, after it has delivered or attempted to deliver the Goods to the premises.
- 3.6. The Customer warrants that the signatory to any Delivery Note or any other documentation of the Supplier made out in the name of the Customer is duly authorised to bind the Customer, with such signature constituting *prima facie* proof of the Delivery of the Goods to the Customer.
- 3.7. It is the duty of the Customer to inspect the Goods on Delivery. By signing the Delivery Note the Customer will be deemed to have confirmed receipt of the Goods in good order, except to the extent of any damage thereto which is endorsed on the Delivery Note or to the extent of the Customer invoking the provisions of clause 5.

#### **4. Fees and Payment**

- 4.1. The supply of Goods by the Supplier to the Customer shall, at all times, be subject to the payment of the Fees. The Customer shall pay the Fees on the relevant payment dates stipulated in the Order or an invoice issued by the Supplier, whichever is the earlier.
- 4.2. All payments to be made by the Customer to the Supplier are to be made without deduction, demand or set-off, unless agreed otherwise in writing between the Parties.

- 4.3. Except as expressly provided for in this Agreement, the Customer shall not be entitled to a refund in respect of any Fees. Any late payment of Fees in terms of this Agreement shall accrue interest at a rate of 15% (fifteen percent) per annum from the date on which payment was due.

## **5. Return of Goods**

- 5.1. Save as envisaged in this clause 5, the Customer will not be entitled to return any Goods to the Supplier without the Supplier's prior written consent thereto.
- 5.2. No claim in respect of shortages, damages and/or defects in and to the Goods will be considered by the Supplier unless made in writing by the Customer and received by the Supplier within 2 (two) business days from date of Delivery of the Goods. Failing such written notification, the Customer will have no claim whatsoever in respect thereof against the Supplier. In the event of shortages, damage and/or defects in and to the Goods being proved to the Supplier's satisfaction and upon being properly notified as described above, the Supplier will at its option (but subject to clause 5.4):
- 5.2.1. either exchange the Goods for the same or similar Goods; or
  - 5.2.2. take back the Goods and refund the applicable Fees therefor (if the applicable Fees have already been paid) or pass a credit therefor (if the applicable Fees have not been paid). No further claims of whatsoever nature will be entertained by the Supplier in respect of such Goods, with the Customer hereby waiving any such further claims.
- 5.3. In the event of the Customer incorrectly Ordering Goods from the Supplier and wishing to return them to the Supplier, the Supplier will not be obliged to agree to the return of such Goods. In the event of the Supplier agreeing to accept the return of such Goods (in the exercise of its sole discretion in this regard) for credit, such return will be subject to the provisions of clause 5.4 and a handling fee equivalent to 10% (ten percent) of the Fees in respect of such Goods, which handling fee will immediately be due, owing and payable by the Customer to the Supplier. In the event of the Supplier not authorising the return of the Goods, the Customer will have no right whatsoever to return the Goods to the Supplier and a binding sale will be deemed to have been concluded in respect thereof.
- 5.4. The Supplier reserves the right, in its sole discretion, not to accept any Goods returned and/or exchanged if they are not in their original condition as delivered, complete with all manuals, accessories, cables and packaging.

## **6. Ownership and Risk**

- 6.1. Risk in and to any Goods supplied by the Supplier to the Customer will pass on Delivery, however, ownership and dominium in such Goods will remain vested in the Supplier until the Fees in respect thereof as well as any overdue interest and/or associated costs and/or charges payable thereon and/or in respect thereof have been paid by the Customer to the Supplier in full.
- 6.2. The following will apply from the time of Delivery of Goods Ordered up until full payment by the Customer of the purchase price in respect thereof as well as any overdue interest and/or costs and/or charges payable thereon and/or in respect thereof:

- 6.2.1. the Customer will keep the Goods concerned free of any lien, hypothec and/or any other security interest and/or attachment;
  - 6.2.2. the Customer will give appropriate written notice of the Supplier's reservation of ownership in the Goods to the landlord whereat the Goods are situated and to any other third parties who, through the operation of law or otherwise, may obtain a lien, hypothec and/or other security interest and/or attachment in and/or over the Goods concerned; and
  - 6.2.3. the Customer will be obliged to comprehensively insure the Goods concerned against any and all risks.
- 6.3. The Customer hereby authorises, and consents to, the Supplier entering the Customer's premises in the event of the Customer breaching any terms of this Agreement, for the purposes of repossessing Goods for which no payment has been received in respect of which ownership vests in the Supplier in terms hereof.

## **7. Force Majeure**

If the Supplier's ability to perform in terms of this Agreement is limited, delayed and/or prevented in whole or in part by any cause not reasonably within its control (including fire; flood; war; hostilities; riots; civil disputes; lockouts; strikes; accident to plant and/or machinery; shortage of any material, labour, electricity and/or other supply; any law, rule and/or other action of any public authority; transportation delays and/or the refusal and/or delay in granting any necessary export and/or import licence) the Supplier will be excused, discharged and released without penalty and/or liability from performance of any such obligations to the extent that such performance is so limited, delayed and/or prevented. In such event and if some of the Goods have been Delivered, the Customer will pay to the Supplier a proportion of the Fees in respect of the Goods which have been Delivered. If no such Goods have been Delivered and the Order becomes impossible to perform as described above for reasons not reasonably within the Supplier's control, the Supplier's liability will be limited to repayment to the Customer of any Fees paid by it to the Supplier in advance for any Goods not yet Delivered.

## **8. Warranties and Representations**

- 8.1. The only warranty in respect of the Goods is limited to the written warranty, if any, given by the manufacturer of the Goods.
- 8.2. Save for the manufacturer's warranty, the Goods are sold voetstoots by the Supplier to the Customer and the Supplier makes no other warranties whatsoever in respect of the Goods, whether express, tacit or implied and whether relating to their marketability, quality and/or fitness for any particular use and/or purpose.
- 8.3. The Customer acknowledges that it does not, and will not at any stage in the future, rely on any representations made by the Supplier in respect of the Goods and/or any of their qualities, other than the written warranty, if any, given by the manufacturer of the Goods. Any other recommendation, formula, advice, dimension, weight, specification, price list, performance figure, advertisement, brochure and/or other technical data and/or other information furnished by the Supplier in respect of the Goods, is

approximate and for information only and will not form part of this Agreement in any way, with it being the responsibility of the Customer to determine that the Goods ordered are suitable for the purposes of their intended use.

## **9. Software Licence**

- 9.1. If the Order contains any items of Software, the Supplier hereby grants the Customer, during the Term, a non-exclusive, non-transferable licence to use the Software subject to the Customer's compliance with the provisions of this Agreement.
- 9.2. Upon the expiry of this Agreement, the Customer will no longer have access to the Software.
- 9.3. The terms and conditions set out below govern the use of, and access to, the Software and the basis on which it is licensed to the Customer. By contracting with Supplier, the Customer is lawfully regarded as having agreed to the following:
  - 9.3.1. The Software, including without limitation, its object code and source code, whether or not provided to the Customer, constitutes Confidential Information. The Supplier owns exclusively and reserves all – and the Customer may not exercise any – right, title, and interest in and to the Software, including without limitation, all Intellectual Property Rights in and to the Software except to the extent of the limited Software use licence granted to the Customer.
  - 9.3.2. This Agreement does not constitute an agreement of sale and no title, Intellectual Property Rights or ownership rights to the Software are transferred to the Customer pursuant to this Agreement. The Customer acknowledges and agrees that the Software and all ideas, methods, algorithms, formulae, processes and concepts used in developing or incorporated in the Software, all future updates or upgrades to the Software, and all other improvements, revisions, corrections, bug fixes, hot fixes, patches, modifications, enhancements, releases, DATS, signature sets, upgrades and policy and database updates or other updates in, of, or to the Software, all derivative works based on any of the foregoing and all copies of the foregoing are trade secrets and proprietary property of Supplier, having great commercial value to Supplier.
  - 9.3.3. The use of the Software depends on the nature of the licence purchased and may be subject to a particular number of Users set forth in the Order Form.
  - 9.3.4. The Customer may permit an authorised third party to access the Software so long as such third party (i) is accessing the Software solely on behalf of the Customer; and (ii) is subject to the terms set out in this Agreement. In addition to the foregoing, the Customer (i) shall provide Supplier with a written notice confirming that an authorized third party will be using the Software on behalf of the Customer; and (ii) acknowledges that it is responsible for any breach of the terms of this Agreement by the authorized third party.

- 9.3.5. The Customer may not, and may not permit any third party to (i) decompile, disassemble or reverse engineer the Software; or create or recreate the source code for the Software; (ii) remove, erase, obscure or tamper with any copyright or any other product identification or proprietary rights notices, seal, or instruction that may appear in relation to the Software; or fail to preserve all copyright and other proprietary notices in respect of the Software; (iii) lease, lend or use the Software for timesharing purposes, sell, market, licence, sublicense, distribute, or otherwise grant to any person or entity any right to use the Software except to the extent expressly permitted in this Agreement; or use the Software to provide, alone or in combination with any other product or device, any product or service to any person or entity, whether on a fee basis or otherwise; (iv) modify, adapt tamper with, translate, or create derivative works of the Software; combine, merge any part of the Software with or into any other software or documentation; or refer to or otherwise use the Software as part of any effort to develop software (including without limitation any routine, script, code or program) having any functional attributes, visual expressions or other features similar to those of the Software or to compete with Supplier or its Related Parties; (v) except with Supplier's prior written permission, publish any performance or benchmark tests or analysis relating to the Software; or (vi) attempt to do any of the foregoing.
- 9.3.6. The Supplier has no obligation to indemnify or defend any claims asserted, in whole or in part, against (i) technology or designs that the Customer gave to Supplier; or (ii) modifications or programming to the Software that were made by anyone other than Supplier.
- 9.3.7. The Customer hereby indemnifies and holds Supplier or any Related Party harmless from any damages and costs which either of them may incur as a consequence of any infringements of Intellectual Property Rights of third parties caused by breach of this Agreement by the Customer; Users and/or an authorized third party.

## **10. Confidential Information**

- 10.1. Confidential Information shall not be reproduced in any form except as required to accomplish the intent of this Agreement. The Receiving Party shall (i) take all reasonable steps to keep Confidential Information strictly confidential; (ii) not disclose any Confidential Information to any person other than its Representatives who are involved in the performance of this Agreement; (iii) not use Confidential Information for any purpose other than in connection with the Parties' performance of this Agreement; and (iv) not disclose to any person (other than its Representatives) any information about this Agreement.
- 10.2. The Receiving Party shall be responsible for any breach of the terms of clause 10.1 by it or its Representatives. The above restrictions on the use or disclosure of the Confidential Information shall not apply to any Confidential Information that: (i) is independently developed by Receiving Party without reference to the Disclosing Party's Confidential Information; (ii) is lawfully received free of restriction from a third party having the right to furnish such Confidential Information; (iii) has become generally available to the public without breach of this Agreement; (iv) at the time of disclosure was known to the Receiving Party free of restriction; or (v) the Disclosing Party agrees in writing is free of such restrictions.

- 10.3. In the event that the Receiving Party or any of its Representatives are requested pursuant to, or required by, applicable law or regulation or by legal process to disclose any Confidential Information, the Receiving Party shall provide the Disclosing Party with prompt notice of such request or requirement in order to enable the Disclosing Party: (i) to seek an appropriate protective order or other remedy; (ii) to consult with the Receiving Party with respect to the Disclosing Party's taking steps to resist or narrow the scope of such request or legal process; or (iii) to waive compliance, in whole or in part, with the terms of this Agreement. In the event that such protective order or other remedy is not obtained, the Receiving Party or its Representatives shall use commercially reasonable efforts to disclose only that portion of the Confidential Information which is legally required to be disclosed and to require that all Confidential Information that is so disclosed will be accorded confidential treatment. Either Party's liability for any breach of the foregoing confidentiality undertakings shall not be subject to any liability limitation otherwise applicable under this Agreement.

## **11. Intellectual Property Rights**

- 11.1. The Software and all Intellectual Property Rights embodied therein, shall be the sole and exclusive property of the Supplier or its Related Parties, or their licensors. All rights not expressly granted in this Agreement are reserved by the Supplier.
- 11.2. The Customer undertakes, while this Agreement is in force and at any time thereafter, not to challenge the right, title and interest (including the Intellectual Property Rights) of the Supplier and/or its Related Parties in respect of the Software, nor to assist any third party directly or indirectly to do so.
- 11.3. The Customer shall promptly notify the Supplier if it becomes aware of any third party that has acquired or markets, sells or uses the Software without authorization. In such event, the Customer must reasonably assist the Supplier or its licensors in the pursuance of its rights.

## **12. Indemnification**

### **12.1. Third Party Intellectual Property Claims**

12.1.1. The Supplier shall defend the Customer against claims brought against the Customer in the Territory to the extent that such claim: (i) is brought by a third party owner of the intellectual property giving rise to the claim; and (ii) alleges that the Customer's use of the Software in accordance with the terms and conditions of this Agreement constitutes a direct infringement or misappropriation of a patent claim(s), copyright, trademark or trade secrets rights.

12.1.2. The Supplier shall pay damages finally awarded against the Customer (or the amount of any settlement the Supplier enters into) with respect to such claim. The Supplier's obligations under clause 12.1.1 and this clause 12.1.2 are conditioned upon:

12.1.2.1. the Customer notifying the Supplier in writing of any such alleged claim without undue delay; and

- 12.1.2.2. the Customer authorizing the Supplier and/or its licensors to have sole control over the defence or settlement of any such claim; and
    - 12.1.2.3. the Customer cooperating fully in the defence of such claim and providing the Supplier with all relevant information and reasonable support; and
    - 12.1.2.4. the Customer not undertaking any action in response to any infringement, or alleged infringement, of the Software that is prejudicial to the rights of the Supplier or its licensors.
  - 12.1.3. The Supplier expressly reserves the right to cease such defence of any claim(s) in the event that the Software is no longer alleged to infringe or misappropriate or is held not to infringe or misappropriate the third party's rights.
  - 12.1.4. The Supplier shall have no obligation under clause 12.1 if the claim results from (i) Software that has been altered or modified by anyone other than the Supplier; or (ii) failure to use a new release promptly provided by the Supplier if such infringement or misappropriation could have been avoided by use of the new release; or (iii) unlicensed activities by the Customer; or (iv) failure to use the Software in accordance with the terms of this Agreement. Further, the Supplier shall have no obligation under clause 12.1 for a claim that could have been avoided if the Customer had not used the Software in combination or conjunction with any software, data or systems not provided by the Supplier.
  - 12.1.5. The Supplier will not indemnify Customer for any infringement claim based on: (i) a patent that Customer was aware of prior to the commencement of the Term; or (ii) the Customer's actions prior to the commencement of the Term.
  - 12.1.6. If an infringement or misappropriation of the intellectual property rights of a third party by the Software in accordance with clause 12.1 above is alleged or, in the reasonable opinion of the Supplier, an infringement or misappropriation of the intellectual property rights of a third party is likely to occur or be alleged, the Supplier may, at its discretion –
    - 12.1.6.1. procure for the Customer the continued right to use the Software at no additional cost to the Customer; or
    - 12.1.6.2. modify the Software or substitute alternative substantially equivalent non-infringing programs for the Software; or
    - 12.1.6.3. if none of the foregoing alternatives can be achieved at a reasonable cost, Supplier may terminate the Agreement and refund the applicable Fees paid by the Customer less an appropriate amount covering the period of actual use of the Software by the Customer.
- 12.2. The provisions of clause 12.1 state the sole, exclusive and entire liability and obligation of the Supplier to the Customer, and the Customer's sole remedy with respect to any claims of infringement of third party Intellectual Property Rights that may arise or in any way related to the Software. The liability limitations



contained in clause 13 shall apply to all claims made under clause 12.1. Any limitations to the liability and obligations of the Supplier shall also apply for the benefit of the Supplier's Related Parties and their respective licensors (if applicable).

### **13. Limitation of Liability and Exclusions**

- 13.1. Under no circumstances shall the Supplier or the Supplier's Related Parties and their respective licensors (if applicable) be liable to the Customer or any other entity or person for –
- 13.1.1. an amount of damages, in aggregate, in excess of (a) the Fees paid by the Customer to the Supplier during the 12 (twelve) month period immediately preceding the date on which the claim was made;
  - 13.1.2. loss of goodwill or business profits, work stoppage, data loss, computer failure or malfunction;
  - 13.1.3. loss of the use or performance of hardware or products;
  - 13.1.4. claims or damages arising from inherently dangerous use of the Software;
  - 13.1.5. claims or damages arising from damage to data; or
  - 13.1.6. special or incidental, consequential or indirect damages or exemplary or punitive damages.
- 13.2. It is expressly understood and agreed that each and every provision of this Agreement which provides for a limitation of liability, disclaimer, warranties or exclusion of damages is intended by the Parties to be severable and independent of any other provision and shall be enforced as such. This clause 13 shall apply even if an exclusive remedy of the Customer under the Agreement has failed its essential purpose.
- 13.3. The limitations and exclusions set out in clause 13.1 shall not apply to (i) wilful misconduct, fraud, personal injury or death caused by negligence; (ii) unauthorized use or disclosure of Confidential Information; (iii) any other liability which cannot be excluded or limited by applicable law.

### **14. Data Protection**

The Supplier expressly reserves the right to collect, process and store Data relating to the Customer's use of the Software. For the avoidance of doubt the Parties record that it is not the intention under this Agreement for the Supplier to process Data of the Customer. Rather, processing of Customer Data will take place only in exceptional circumstances as an incidental effect of the Supplier's performance of its contractual duties. To the extent the Supplier does process Data of the Customer, such processing shall maintain safeguards for protection of Customer Data. Those safeguards will prevent access, use, modification and disclosure of Customer Data (i) as compelled by law or (ii) as the Customer expressly permits in writing.

### **15. Non-Solicitation**

- 15.1. Each Party warrants, represents and undertakes that it shall not, and it warrants, represents and undertakes that it shall procure that its Representatives shall not, without the prior written approval of a

duly authorised director of the other Party, at any time for the Term and for a period of 12 (twelve) months thereafter, whether as proprietor, partner, director, shareholder, member, employee, consultant, contractor, financier, agent, representative, assistant, trustee or beneficiary of a trust, controller of any entity or otherwise and whether for reward or not, directly or indirectly:

15.1.1. encourage or entice or incite or persuade or induce any employee of the other Party to terminate his employment with such Party; or

15.1.2. furnish any information or advice to any employee then employed by the other Party or use any other means which are, in the ordinary course of events, calculated to result in any such employee terminating his employment with such Party and/or becoming employed by, or directly or indirectly in any way interested in or associated with any other company, close corporation, firm, undertaking or concern;

or attempt to do so.

15.2. To the extent that an employee is successfully recruited by a Party during the period described in clause 15.1, and only if the other Party consents to such recruitment in writing, the recruiting Party shall pay the other Party a fee equal to 300% (three hundred percent) of the gross annual package (including any quantifiable bonuses or incentives and annualised if necessary) paid by the other Party to the employee concerned.

## **16. Termination**

In addition to any other rights and/or remedies that a Party may have in terms of this Agreement, this Agreement may be terminated -

16.1. by the Customer, if the Supplier commits a breach of this Agreement and the Supplier fails to remedy such breach within 14 (fourteen) days of written notice thereof from the Customer;

16.2. by the Supplier, if the Customer commits a breach of this Agreement and the Customer fails to remedy such breach within 14 (fourteen) days of written notice thereof from the Supplier;

16.3. immediately by either Party if the other Party (i) is placed in provisional or final liquidation; (ii) passes a resolution for the voluntary winding up of the business; (iii) takes steps to wind up on the grounds of its inability to pay its debts; (iv) compromises with its creditors; (v) resolves voluntarily to begin business rescue proceedings or has an order granted placing it in business rescue; or (vi) makes an assignment for the benefit of its creditors;

16.4. immediately by the Supplier if the Customer fails to (i) pay the Fees; or (ii) comply with this Agreement;

16.5. by the Supplier on 30 (thirty) days written notice to the Customer.

## **17. Effect of Termination**

17.1. In the event of termination of this Agreement in terms of clause 16.2, clause 16.3 or clause 16.4, the Customer shall not be relieved of its obligation to pay Fees that remain unpaid. The Fees that would have,

but for termination, become payable by the Customer for the remainder of the Term shall become immediately due, owing and payable. The Customer shall be required to make payment of the full amount owing to the Supplier within 30 (thirty) days of termination of this Agreement.

17.2. In the event of termination of this Agreement in terms of clause 16.1 or clause 16.5, the Customer shall be entitled to receive a *pro rata* refund for prepaid Fees for the Goods that have not yet been Delivered.

17.3. In the event of termination of this Agreement in terms of clause 16 -

17.3.1. the Customer shall cease use of the Software;

17.3.2. the Software shall be removed from the Customer's hardware;

17.3.3. the Customer will return to the Supplier any Goods to which the Fees have not been fully paid;

17.3.4. within 30 (thirty) days of termination or expiration of this Agreement, the Customer shall (i) destroy or, upon the Supplier's request, deliver to the Supplier all copies of the Supplier's Confidential Information; and (ii) provide the Supplier with written notice regarding its compliance with its obligations under this clause 17.

## **18. Representation on Authority of Parties/Signatories.**

Each person signing or accepting the Agreement represents and warrants that he or she is a duly authorized signatory, has legal capacity and the express or implied authority to execute this Agreement and, the performance of such Party's obligations hereunder have been duly authorized and, that the Agreement is a valid and legal Agreement binding on such Party and enforceable in accordance with its terms.

## EXHIBIT A – DEFINITIONS, INTERPRETATION AND GENERAL

### 1. Definitions

The following terms shall have the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings, namely -

- 1.1. **“Agreement”** means these sale and supply of goods terms and conditions together with the Order Form, including all exhibits, appendices, schedules, annexes, amendments, addenda and any other documents attached thereto, or incorporated by reference;
- 1.2. **“Confidential Information”** means any and all information, oral or written, of a confidential or proprietary nature, disclosed by the Disclosing Party to the Receiving Party in connection with this Agreement, which information is designated as confidential at the time of the disclosure or should be reasonably understood to be confidential given the nature of the information and the nature of the circumstances surrounding the disclosure including but not limited to all information which the Disclosing Party protects against unrestricted disclosure to others, the Software, and/or information related to the Software;
- 1.3. **“Data”** means all data of whatsoever nature including –
  - 1.3.1. all personal information as defined by the Protection of Personal Information Act 4 of 2013 and amplified by the definition thereof set out in the Electronic Communications and Transactions Act 25 of 2002;
  - 1.3.2. all personal data by and within the scope of the EU Data Protection Directive 95/46/EC and any national law implementing that directive;
- 1.4. **“Delivery”** means
  - 1.4.1. the delivery of Goods to the Customer (or to another party stipulated by the Customer for such Delivery) by or on behalf of the Supplier, as evidenced by the Supplier’s Delivery Note in respect thereof; or
  - 1.4.2. the Supplier making the Goods available for collection by the Customer at, and the collection by or on behalf of the Customer from, either the physical address of the Supplier or any collection points specified by the Supplier;
- 1.5. **“Delivery Note”** means any document on which the Customer has signed, or is required and/or entitled to sign, for receipt of Goods delivered;
- 1.6. **“Disclosing Party”** means the Party disclosing the Confidential Information;
- 1.7. **“Customer”** means the company purchasing the Goods, as identified in the Order Form;
- 1.8. **“Fees”** shall mean the amount payable by the Customer to the Supplier in respect of the Goods as recorded in an Order Form;

- 1.9. **“Goods”** means the goods listed in the Order Form;
- 1.10. **“Intellectual Property Rights”** means all intellectual property rights of whatever nature, including without limitation (i) all patents and other patent rights, including divisional and continuation patents and utility models; (ii) rights in inventions whether patentable or not; (iii) the trade marks, rights in trademarks and service marks, logos, slogans, corporate, business and trade names, trade dress, brand names and other indicia of origin; (iv) rights in designs, topography rights, rights in circuit layouts and maskworks; (v) all copyright of whatever nature and in whatever medium embodied, whether now known or later developed, for their full terms including any extensions and renewals, including the rights of reproduction, distribution, preparation of derivative works, public display, public performance, and making available; (vi) moral and economic rights of authors and inventors; (vii) rights in internet domain names, reservations for internet domain names, uniform resource locators and corresponding internet sites; (viii) rights in databases, data collections, platforms, applications and computer software (including source code); and (ix) know-how, show-how, trade secrets and confidential information, in each case whether or not registered and including applications for registration of any of these and the right to apply for the registration of any of these, all claims for past infringements, and all rights or forms of protection of a similar nature or having equivalent or similar effect to any of these which may subsist anywhere in the world;
- 1.11. **“Order(s)”** means an order placed by the Customer on the Supplier for Goods in the form of an Order Form and **“Ordering”** shall have the corresponding meaning;
- 1.12. **“Order Form”** means the order form, proposal, addendum, quote and/or Delivery Note executed by the Parties for the sale, purchase and supply of Goods;
- 1.13. **“Parties”** means the Supplier and the Customer, collectively, and **“Party”** means any one of them, as the context may indicate;
- 1.14. **“Receiving Party(ies)”** means the Party receiving the Confidential Information;
- 1.15. **“Related Parties”** means any legal entity which, directly or indirectly, controls, is controlled by, or is under common control of a Party to this Agreement;
- 1.16. **“Renewal Term”** shall have the meaning given to that term in clause 9.2;
- 1.17. **“Representatives”** means (i) employees of Receiving Party and its Related Parties; (ii) attorneys, accountants, or other professional business advisors; and, (iii) employees of any entity who are directly involved in the performance of obligations under this Agreement;
- 1.18. **“Software”** means the software listed in the Order Form;
- 1.19. **“Supplier”** means the company supplying the Goods, as identified in the Order Form;
- 1.20. **“Term”** shall have the meaning given to that term in the Order Form, and shall include, if applicable, any Renewal Term;
- 1.21. **“Territory”** shall mean the country in which the Goods are Delivered;

- 1.22. **“Users”** shall mean the number of authorised users who may use the Software in terms of the Software license granted to the Customer;
- 1.23. **“VAT”** means value added tax as defined in the VAT Act; and
- 1.24. **“VAT Act”** means the Value-Added Tax Act, 1991 (Act 89 of 1991);

## **2. Interpretation**

If any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, effect shall be given to it as if it were a substantive provision in the body of the Agreement. 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 Saturday, Sunday or Public Holiday, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or Public Holiday. The expiration or termination of this Agreement shall not affect certain provisions of this Agreement which 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. The rule of construction that a contract shall be interpreted against the Party responsible for the drafting or preparation of the contract, shall not apply.

## **3. General**

This Agreement may not be assigned, delegated, pledged or otherwise transferred by the Customer to any party whether voluntarily or by operation of law including by way of sale of assets, merger or consolidation. The Supplier shall be entitled to assign, delegate, pledge or otherwise transfer its rights and/or obligations in terms of this Agreement to any Related Party whether voluntarily or by operation of law including by way of sale of assets, merger or consolidation without prior written notice to the Customer. This Agreement constitutes the entire, conclusive and complete statement of agreement between the Parties in respect of the subject matter hereof. Save for the Order Form, all other representations, discussions and written communications (whether such be master services agreements, statements of work, purchase orders, terms and conditions attaching to orders for goods or services and/or other agreements or documents) are superseded by this Agreement and the Parties disclaim any reliance on such representations, discussion and/or written communications. This Agreement may not be amended or modified and any term or obligation may not be waived except in writing signed by a duly authorized representative of each Party. Save for payment obligations, neither Party shall be liable to the other for its failure to perform any of its obligations hereunder during any period in which such performance is delayed due to circumstances beyond its reasonable control. This Agreement shall be governed by South African law. The exclusive place of jurisdiction for all disputes arising from or in connection with this Agreement is Johannesburg, South Africa. All notices or reports which are required to be given under and in terms of this Agreement will be in writing and will be deemed to be duly given when delivered to the address set out in the Order Form. Customer authorises the Supplier and its Related Parties to store and use Customer’s business contact information wherever it does business, in connection with Suppliers products and services or in furtherance of the Suppliers business relationship with the Customer. If there is a conflict between the provisions of this Agreement and the Order Form, the Order Form shall prevail. The Supplier reserves the right to amend these terms and conditions from time to

time without prior notice to the Customer. In the event of any changes to these terms and conditions, the updated terms and conditions will be published immediately to the Supplier's website.