

## TERMS AND CONDITIONS AGREEMENT

between Go Waterfall Digital Proprietary Limited ("Go Waterfall") (Registration Number: 2016 / 216116 / 07)  
and the Customer (whose details appear on the Proposal) ("Customer")

Collectively ("Party" and/or "Parties")

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### 1 ACCEPTANCE OF PROPOSAL

- 1.1 By accepting a Go Waterfall quote or proposal, in writing, for (i) Implementation; (ii) use of, or access to, the Solution; or (iii) any other Services or products stipulated in such proposal ("Offering") ("Proposal"), you agree to comply with and be legally bound by the terms and conditions of this Terms and Conditions Agreement ("Agreement").
- 1.2 This Agreement governs all aspects (including use) of the Solution and/or Offering and constitutes a binding legal agreement between the Customer and Go Waterfall. If the Customer does not agree to the terms and conditions set out in this Agreement, then it is not entitled to use or continue using the Solution and/or Offering.

### 2 INTERPRETATION

In this Agreement (as hereinafter defined) -

- 2.1 no provision shall be construed against or interpreted to the disadvantage of any Party by reason of such Party having or being deemed to have structured or drafted such provision;
- 2.2 any reference to "days" shall be construed as being a reference to calendar days unless qualified by the word "business" in which instance a "business day" shall be any day other than a Saturday, Sunday and/or a public holiday as gazetted by the government of the Republic of South Africa from time to time;
- 2.3 any reference to "business hours" shall be construed as being the hours between 08h00 and 17h00 on any business day. Any reference to time shall be based upon South African standard time being Greenwich Mean Time plus 2 (two) hours;
- 2.4 any substantive provision, conferring rights or imposing obligations on a Party and appearing in any of the definitions in clause 3 or elsewhere within the Agreement, shall be given effect to as if it were a substantive provision within the body of the Agreement;
- 2.5 terms other than those defined in the Agreement and terms appearing in the lower case but which in the title case are defined in the Agreement, will be given their plain English meaning and those terms

known in the information technology industry will be interpreted in accordance with their generally accepted meanings, unless the context otherwise indicates; and

2.6 where figures are referred to in numerals and in words, and there is any conflict between the two, the words shall prevail.

### 3 DEFINITIONS

As used in this Agreement the following words bear the following meanings-

3.1 **“Acceptance Criteria”** shall have the meaning given to that term in clause 10.2;

3.2 **“Acceptance Testing”** shall have the meaning given to that term in clause 10.1;

3.3 **“AFSA”** shall have the meaning given to that term in clause 26.1;

3.4 **“Agreement”** means this Terms and Conditions Agreement together with any attachments hereto;

3.5 **“Amendments”** shall have the meaning given to that term in clause 7.1;

3.6 **“Amended Implementation Plan”** shall have the meaning given to that term in clause 7.7;

3.7 **“Approved Sprint Schedule”** shall have the meaning given to that term in clause 8.3;

3.8 **“Business Day”** shall have the meaning given to that term in the Companies Act 71 of 2008;

3.9 **“Confidential Information”** means all information disclosed in pursuance of the Proposal and/or the purpose of this Agreement whether in writing or orally;

3.10 **“Customizations”** means plug-ins, business models, templates, web applications, mobile applications or other elements that have been customized (including the source code thereof) for use with the Go Waterfall Platform in order to meet the business objectives of the Project;

3.11 **“Customer Amendment Request”** shall have the meaning given to that term in clause 7.2;

3.12 **“Deliverables”** means the user stories described in the Accepted Implementation Plan, and **“Deliverable”** shall refer to any one of them as the context may require;

3.13 **“Dependencies”** means the dependencies to be satisfied for the delivery of a Deliverable in accordance with the Sprint Schedule;

3.14 **“Documentation”** means, in respect of the Solution, the documentation prepared by Go Waterfall;

3.15 **“Disclosing Party”** means the Party disclosing the Confidential Information;

3.16 **“Dispute”** shall have the meaning given to that term in clause 26.1;

- 3.17 **“Effective Date”** means the date stipulated in the Proposal, notwithstanding acceptance of the Proposal and the terms of this Agreement by the Customer;
- 3.18 **“End Users”** means those persons and/or juristic persons that are able to log on to, and make use of, the Solution including the Customer’s clients, admin users and service providers;
- 3.19 **“End User Customer”** means any person or juristic person that purchases services through the Solution;
- 3.20 **“Exclusions”** means those items that are excluded from Implementation, as more fully set out in the Implementation Plan;
- 3.21 **“Fees”** means the (i) Licence Fee; (ii) Managed Service Fee; (iii) the Implementation Cost; (iv) if applicable, the Transaction Fees; and (v) if applicable, the Service Fees;
- 3.22 **“Final Acceptance”** means, following completion of the Final Testing Period, final acceptance of the Customizations by the Customer, in terms of which the Customer has tested and accepted (i) all Deliverables set out in the Implementation Plan and/or Sprint Schedules and/or the Final Sprint Schedule as the case may be; as well as (ii) the Customizations.
- 3.23 **“Force Majeure”** shall have the meaning given to that term in clause 25;
- 3.24 **“Functional Specifications”** means those high level functional specifications listed in the Proposal;
- 3.25 **“Hosting”** means the hosting of the Solution provided by Go Waterfall in terms of clause 15.1, and the word **“Host”** shall have the corresponding meaning;
- 3.26 **“Implementation”** means (i) development, configuration and/or Customization of plug-ins, business models, templates, web applications, mobile applications and other elements; as well as (ii) integration of third party products (including the source code), for use with the Platform, and the word **“Implement”** and **“Implementing”** shall have the corresponding meanings;
- 3.1 **“Implementation Cost”** shall have the meaning given to that term in the Proposal;
- 3.2 **“Implementation Plan”** means the project plan compiled by Go Waterfall governing execution of the Implementation, which Implementation Plan shall be sent by Go Waterfall to the Customer for written approval;
- 3.3 **“Initial Licence Term”** shall have the meaning given to that term in the Proposal;
- 3.4 **“Intellectual Property”** means any know-how (not in the public domain), invention (whether patented or not), design, trade mark (whether or not registered), or copyright material (whether or not registered), processes, process methodology (whether patented or not), and all other identical or similar intellectual property as may exist anywhere in the world which is not in the public domain and

any applications for registration of such intellectual property;

- 3.5 **"Intellectual Property Rights"** means, in relation to any Intellectual Property, all and any: (i) proprietary rights thereto; or (ii) any other right, title, authority or entitlement held by any party in respect thereof, whether under license or otherwise;
- 3.6 **"Licence"** shall have the meaning given to that term in clause 14.1;
- 3.7 **"Licence Fee"** means the fee payable by the Customer to Go Waterfall for the Licence, Maintenance, and Hosting;
- 3.8 **"Licence Keys"** means a software licencing management and security tool or other device that allows the Customer to access the Solution, which tool or other device may have an expiration date;
- 3.9 **"Licence Period"** means the period during which the Solution is licenced by Go Waterfall to the Customer, which period shall commence on the date of the first Sprint Kick Off Meeting and shall endure until such time as (i) the Initial Licence Term or the Subsequent Licence Term(s) expire(s); and (ii) the Customer has not renewed the Licence for a Subsequent Licence Term in accordance with the provisions of clause 14.1;
- 3.10 **"Limits"** refers to any limits imposed by Go Waterfall on the Implementation, as more fully set out in the Implementation Plan;
- 3.11 **"Maintenance"** means maintenance and support of the Solution as provided by Go Waterfall in terms of clause 15.3, and the word **"Maintain"** shall have the corresponding meaning;
- 3.12 **"Managed Service"** means the managed service provided by Go Waterfall to the Customer, which managed service includes a specified number of hours of work for the implementation of any amendments, changes and/or improvements to the Solution as more fully contemplated in the Proposal;
- 3.13 **"Managed Service Fee"** means the fee payable by the Customer to Go Waterfall for the Managed Service, which fee is more fully set out in the Proposal;
- 3.14 **"Parties"** means the parties to this Agreement, being –
- 3.14.1 **"Go Waterfall"** means Go Waterfall Digital Proprietary Limited (Registration Number 2016 / 216116 / 07) and its successors in title and assigns with its registered office at First Floor, Mac Mac Building, Maxwell Office Park, Magwa Crescent West, Waterfall City, Jukskei View, Johannesburg, South Africa;
- 3.14.2 **"Customer"** means the customer identified in the Proposal;

- 3.15 **“Platform”** means the Go Waterfall on demand platform and/or any other software or software platform defined in the Proposal;
- 3.16 **“Project”** shall have the meaning given to that term in the Proposal;
- 3.17 **“Receiving Party”** means the Party receiving the Confidential Information in terms of a disclosure made by the Disclosing Party;
- 3.18 **“Related Party”** shall mean any person or juristic person related to Go Waterfall as contemplated in section 2(1) of the Companies Act No. 71 of 2008;
- 3.19 **“Response to the Customer’s Amendment Request”** shall have the meaning given to that term in clause 7.3;
- 3.20 **“Representatives”** means, in respect of a Party, its directors, prescribed company officers, employees, professional advisors, partners or funders or any other person that (i) has a need to know the Confidential Information; and (ii) has agreed in writing to comply with the terms of this document;
- 3.21 **“Services”** means those services defined in the Proposal;
- 3.22 **“Service Fees”** means the fees payable by the Customer to Go Waterfall for the Services;
- 3.23 **“Scope of Work”** means the scope of work agreed between the Parties, which scope of work is more fully described in the Implementation Plan;
- 3.24 **“Solution”** means the packaged software solution to be used by End Users, being the Platform and the Customizations;
- 3.25 **“Sprint”** means an Implementation sprint during which Go Waterfall Implements particular Deliverable/s as identified by the Customer in the Sprint Kick Off Meeting;
- 3.26 **“Sprint Kick Off Meeting”** means the kick off meeting(s) to be held between the Parties, in terms of which the Parties agree to, among other things, prioritise certain Deliverables;
- 3.27 **“Subsequent Licence Term”** shall have the meaning given to that term in clause 14.1;
- 3.28 **“Subsidiary”** means any subsidiary company of the Customer, being a company of which the Customer holds 51% (fifty one percent) of the shareholding;
- 3.29 **“Go Waterfall Amendment Request”** shall have the meaning given to that term in clause 7.4;
- 3.30 **“Transaction”** means any transaction in terms of which the Customer or an End User receives payment from an End User Customer as a result of an End User Customer’s engagement with the Solution;

3.31 **“Transaction Fees”** means, if applicable, the transaction fees set out in the Proposal; and

#### 4 **COMMENCEMENT AND DURATION**

4.1 This Agreement shall commence on the Effective Date and shall continue to remain of full force and effect until such time as the Licence Period comes to an end.

4.2 Notwithstanding termination of this Agreement, the provisions set out in clauses 12.2 (non-solicitation of Go Waterfall’s *employees*), 13 (Intellectual Property Rights), 21 (Limitation of Liability) and 22 (Confidentiality) shall continue to be of full force and effect indefinitely.

#### 5 **RECORDAL**

5.1 The Customer wishes to use the Platform for the Project. In order to give effect to this –

5.1.1 Go Waterfall must complete the Implementation;

5.1.2 The Customer must acquire a Licence;

5.1.3 Go Waterfall must Maintain and Host the Solution; and

5.1.4 Go Waterfall may deliver the Managed Service.

#### 6 **IMPLEMENTATION**

6.1 Implementation requires (i) development, configuration and/or Customization of plug-ins, business models, templates, web applications, mobile applications and other elements; as well as (ii) integration of third party products (including the source code), for use with the Platform.

6.2 The Implementation Plan governs delivery of the Deliverables required to complete Implementation. As more fully explained in clause 8, the Deliverables must satisfy the Acceptance Criteria defined in the various Accepted Sprint Schedules.

6.3 Implementation (including the Implementation Cost) is subject to the Limits and Exclusions listed in the Implementation Plan.

#### 7 **CHANGES TO THE IMPLEMENTATION PLAN**

7.1 During Implementation, Go Waterfall or the Customer may request an amendment and/or addition to the Implementation Plan (“Amendments”).

7.2 To the extent that an Amendment is required by the Customer, the Customer shall send Go Waterfall a written proposal specifying the Amendments to the Implementation Plan (the “Customer Amendment Request”).

7.3 Go Waterfall shall consider each Customer Amendment Request and shall further provide the

Customer with a formal written response thereto within 10 (ten) business days of receipt of such request (the "Response to the Customer's Amendment Request").

- 7.4 To the extent that an Amendment is required by Go Waterfall, Go Waterfall shall send the Customer a written proposal specifying the Amendments to the Implementation Plan (the "Go Waterfall Amendment Request").
- 7.5 The Go Waterfall Amendment Request or the Response to the Customer's Amendment Request shall include the following information –
- 7.5.1 a summary of the work (amendments / additions) required;
  - 7.5.2 reasons for inclusion;
  - 7.5.3 a statement of the availability of Go Waterfall's personnel and resources;
  - 7.5.4 the impact the Amendments will have on (i) the Scope of Work; (ii) the due dates for delivery of the Deliverables as contemplated in an Approved Sprint Schedule; and/or (iii) completion of Implementation; and
  - 7.5.5 the impact the Amendments will have on the Implementation Cost.
- 7.6 Upon receipt of the Go Waterfall Amendment Request or the Response to the Customer's Amendment Request, the Customer shall have 5 (five) business days to review and advise Go Waterfall, in writing, of its acceptance or refusal to proceed with the Amendments.
- 7.7 Should the Customer wish to proceed with the Amendments on the terms set out in the Go Waterfall Amendment Request or the Response to the Customer's Amendment Request, Go Waterfall shall amend the Implementation Plan appropriately to incorporate and reflect (i) the Amendments; and (ii) the contents of the Go Waterfall Amendment Request or the Response to the Customer's Amendment Request, as the case may be (the "Amended Implementation Plan").
- 7.8 The Parties shall execute the Amended Implementation Plan, which project plan shall be deemed to form part of this Agreement. Following signature of the Amended Implementation Plan –
- 7.8.1 Go Waterfall shall continue with Implementation of the Customizations in accordance with the provisions thereof; and
  - 7.8.2 all references in this Agreement to Implementation Plan shall be deemed to refer to the Amended Implementation Plan.
- 7.9 For the avoidance of doubt, it is agreed between the Parties that, until such time as the Amended Implementation Plan is signed by both Parties, Go Waterfall shall not be required to Implement the

Customizations in accordance with, or perform any services other than those described in, the Implementation Plan.

## 8 **SPRINTS**

8.1 Implementation shall be conducted by Go Waterfall in accordance with a sprint methodology. As such, Go Waterfall will undertake numerous Sprints in order to deliver the Deliverables. At the commencement of each Sprint, the Parties shall meet for a Sprint Kick Off Meeting.

8.2 At the Sprint Kick Off Meeting, the Parties shall agree –

8.2.1 the Deliverables to be prioritised by Go Waterfall during the Sprint;

8.2.2 the Dependencies for each Deliverable;

8.2.3 if applicable, the Acceptance Criteria for each Deliverable; and

8.2.4 the due date for delivery of each Deliverable.

8.3 Within 2 (two) business days of conclusion of the Sprint Kick Off Meeting, Go Waterfall shall prepare and send to the Customer a Sprint Schedule for written approval. The Customer shall be required to provide Go Waterfall with written approval of the Sprint Schedule within 3 (three) business days of receipt thereof (“Approved Sprint Schedule”).

8.4 Following receipt of written approval of the Approved Sprint Schedule from the Customer, Go Waterfall shall commence with Implementation of the Deliverables identified therein for delivery to the Customer.

## 9 **DELAYS**

9.1 Go Waterfall shall use all reasonable efforts to deliver each Deliverable in accordance with the Approved Sprint Schedule.

9.2 The Customer acknowledges and agrees that the delivery of each Deliverable in accordance with the Approved Sprint Schedule is subject to satisfaction of certain Dependencies stipulated therein. To the extent that certain Dependencies have not been satisfied, the due date for delivery of a Deliverable shall be moved out by the corresponding number of days during which the Dependency remained unsatisfied.

9.3 Go Waterfall may, at its option, extend the due date for delivery of a Deliverable by giving written notice to the Customer. Collectively, such extensions shall not exceed 90 (ninety) days.

9.4 For the avoidance of doubt, failure by Go Waterfall to deliver a Deliverable in accordance with the Approved Sprint Schedule shall not be deemed to constitute a breach of this Agreement where –



- 9.4.1 such failure is as a result of an unsatisfied Dependency;
- 9.4.2 such failure is as a result of a Force Majeure;
- 9.4.3 Go Waterfall has extended the due date for delivery in accordance with the provisions of clause 9.3;
- 9.4.4 the Customer has issued Go Waterfall with written notice regarding its failure to deliver a Deliverable in accordance with the Approved Sprint Schedule and Go Waterfall has remedied such failure within 14 (fourteen) days of receipt of such notice; or
- 9.4.5 the Parties have agreed to extend the due date for delivery in writing (including by way of electronic communication).

## 10 ACCEPTANCE

- 10.1 Following completion of each Sprint, the Customer shall, where applicable, test the relevant Deliverable/s for purposes of acceptance ("Acceptance Testing"). On the due date for delivery, Go Waterfall shall notify the Customer in writing that certain Deliverable/s are available for testing. The Customer shall be entitled to test the relevant Deliverable/s over a period of 5 (five) business days from the date of receipt of written notice from Go Waterfall.
- 10.2 The acceptance criteria for each Deliverable shall be the acceptance criteria identified in the Approved Sprint Schedule for the relevant Sprint ("Acceptance Criteria").
- 10.3 If the Deliverable/s –
  - 10.3.1 satisfy the Acceptance Criteria, the Deliverable/s shall be deemed to be satisfactory and the Customer shall promptly, and not later than the time period contemplated in clause 10.1, notify Go Waterfall of its acceptance of the Deliverable/s in writing.
  - 10.3.2 do not satisfy the Acceptance Criteria, the Customer shall promptly, and not later than the time period contemplated in clause 10.1, provide Go Waterfall with written notice setting out which Acceptance Criteria the Deliverable/s have failed to meet.
- 10.4 Following receipt of the notice referred to in clause 10.3.2, Go Waterfall shall have 5 (five) business days to correct the deficiencies in the Deliverable/s. Thereafter, Go Waterfall shall notify the Customer in writing that the corrected Deliverable/s are available for testing. The Customer shall test the corrected Deliverable/s over a period of 5 (five) business days from the date of receipt of written notice from Go Waterfall.
- 10.5 If the corrected Deliverable/s –
  - 10.5.1 satisfy the Acceptance Criteria, the corrected Deliverable/s shall be deemed to be

satisfactory and the Customer shall promptly notify Go Waterfall of its acceptance of the corrected Deliverable/s in writing; or

10.5.2 do not satisfy the Acceptance Criteria, the Parties shall be entitled to repeat the procedure described in clauses 10.3.2 and 10.4.

10.6 Should Go Waterfall, after repeating the procedure described in clauses 10.3.2 and 10.4 above four times, fail to deliver corrected Deliverable/s to the Customer, the Customer shall be entitled to cancel this Agreement in accordance with clause 24.

10.7 Following acceptance of all Deliverables (as specified in the Implementation Plan and/or Agreed Sprint Schedules) by the Customer, the Customer shall be entitled to test the Customizations and/or Solution for a period of 1 (one) calendar month ("Final Testing Period").

10.8 Following completion of the Final Testing Period, the Customer shall –

10.8.1 furnish Go Waterfall with written notice confirming Final Acceptance; or

10.8.2 meet with Go Waterfall to agree a list of items that require resolution, which items shall be captured and recorded in the final Sprint Schedule. The Customer shall be required to approval the final Sprint Schedule in writing within 3 (three) business days of receipt thereof ("Final Sprint Schedule").

10.9 The Final Sprint Schedule shall specify the due dates for delivery of each of the Deliverable/s, as well as any Dependencies and Acceptance Criteria. Implementation undertaken by Go Waterfall in relation to the Final Sprint Schedule shall (i) not include any deliverables other than those set out in the Scope of Work; and (ii) be capped at a total number of 16 (sixteen) hours, whereafter, Go Waterfall shall provide the Customer with a quote for the remaining Implementation required for Final Acceptance.

10.10 For the avoidance of doubt, where the Customer fails to issue Go Waterfall with written notice in accordance with the provisions of this clause 10, the Customer shall, as contemplated in clause 10.3.1 or clause 10.8.1, be deemed to have accepted the Deliverable/s and/or the Customizations and/or the Solution as the case may be.

## 11 FEES, PAYMENT AND INVOICING

11.1 The Fees are stipulated in the Proposal. Go Waterfall will invoice the Customer for -

11.1.1 the Licence Fee, for the period concerned, at the commencement of the Initial Licence Term and/or Subsequent Licence Term(s), as the case may be;

11.1.2 portions of the Implementation Cost at certain intervals and on completion of certain Deliverables as more fully set out in the Proposal;

11.1.3 the Managed Service Fee at the end of each calendar month following Final Acceptance;  
and

11.1.4 the Transaction Fees at the end of each calendar month following Final Acceptance.

11.2 In regard to the Transaction Fees and the Managed Service Fee, on the last Business Day of each calendar month Go Waterfall shall provide the Customer with a written report and/or invoice detailing (i) the total number of Transactions that occurred during the course of the previous month; (ii) the cost payable per Transaction as set out in the Proposal; (iii) the total number of hours spent delivering the Managed Service; and (iv) if applicable, any additional hours of work not covered by the Managed Service Fee that require payment from the Customer.

11.3 The Customer shall make payment to Go Waterfall of any Fees stipulated in any invoice(s) within 30 (thirty) business days of receipt thereof. If a deposit is required in order for Implementation to commence, the Parties shall agree on such deposit amount in writing and payment thereof shall be made within 15 (fifteen) days of receipt of the deposit invoice by the Customer.

11.4 Any late payments shall accrue interest at a rate of 15% (fifteen percent) per annum from the date on which payment was due unless otherwise agreed to by the Parties in writing.

## 12 **OBLIGATIONS OF THE CUSTOMER**

12.1 The Customer hereby undertakes to use all reasonable and commercial efforts necessary to assist Go Waterfall in its performance of its duties and/or obligations under and in terms of this Agreement including, but not limited to, satisfying and/or facilitating the satisfaction of any Dependencies identified in the Implementation Plan.

12.2 The Customer warrants, represents and undertakes that it shall not, and the Customer warrants, represents and undertakes that it shall procure that its Representatives shall not, without the prior written approval of a duly authorised director of Go Waterfall, at any time for the duration of the Agreement and a period of 18 (eighteen) months following the termination of this Agreement, 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:

12.2.1 encourage or entice or incite or persuade or induce any employee of Go Waterfall to terminate his employment by Go Waterfall; or

12.2.2 furnish any information or advice to any employee then employed by Go Waterfall or to any prospective employer of such employee or use any other means which are directly or indirectly designed, or in the ordinary course of events calculated, to result in any such employee terminating his employment by Go Waterfall 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.

- 12.3 To the extent that a Go Waterfall employee is successfully recruited by the Customer during the period described in clause 12.2, the Customer shall pay Go Waterfall R 1 000 000.00 (one million Rand).

### 13 **INTELLECTUAL PROPERTY RIGHTS**

- 13.1 The Customer retains all right, title and interest in and to the Customer's Intellectual Property that is used in connection with the Implementation. For the avoidance of doubt, this shall include the Customer's work flows, customer journeys, business process and business solutions that were shared with Go Waterfall during this course of this Agreement.
- 13.2 Subject to the Intellectual Property Rights of any third party, Go Waterfall and/or any Related Party retain(s) all right, title and interest in and to (i) Go Waterfall's and/or Related Party's Intellectual Property; (ii) Go Waterfall's and/or Related Party's Intellectual Property that is used in connection with and/or is embedded in the Solution; (iii) the Platform and related documentation; and (iv) the Customizations and related documentation.
- 13.3 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 Go Waterfall and/or Related Party in regard to the Solution, nor to assist any third party directly or indirectly to do so.
- 13.4 Go Waterfall hereby undertakes not to knowingly infringe on the Intellectual Property Rights of any third parties. To the extent that any material used by Go Waterfall in (i) the Platform; and/or (ii) the Customizations, belongs to a third party, Go Waterfall shall obtain a licence from such third party permitting the use of such matter and granting Go Waterfall the right to sub-licence use. To reduce or mitigate damages, it is agreed between the Parties that Go Waterfall may replace the Solution with a non-infringing product.

### 14 **LICENCE**

- 14.1 During the Licence Period, Go Waterfall hereby grants the Customer a non-exclusive, non-transferable right to use the Solution ("Licence") subject to the Customer's compliance with the provisions of this Agreement. The Customer shall be entitled, on the same terms and conditions set out in this Agreement, to renew the Licence for an additional Licence Term ("Subsequent Licence Term") on 30 (thirty) days written notice to Go Waterfall ("Subsequent Licence Notice"). Upon expiry of this Agreement, the Customer will no longer have access to the Solution. In order to allow the Customer to use the Solution and access the Platform for the Licence Period, Go Waterfall shall deliver Licence Keys to the Customer.

- 14.2 Following receipt of the Subsequent Licence Notice by Go Waterfall and within 30 (thirty) days thereof, Go Waterfall shall advise the Customer, in writing, of the Licence Fee to be paid by the Customer for the Subsequent Licence Term.
- 14.3 The terms and conditions set out below govern the use of, and access to, the Solution and the basis on which it is licensed to the Customer. By contracting with Go Waterfall, the Customer is lawfully regarded as having agreed to the following:
- 14.3.1 The Solution, including without limitation, its object code and source code, whether or not provided to the Customer, constitutes Confidential Information. Go Waterfall owns exclusively and reserves all – and the Customer may not exercise any – right, title, and interest in and to the Solution, including without limitation, all Intellectual Property Rights in and to the Solution except to the extent of the limited Solution use licence granted to the Customer.
- 14.3.2 This Agreement does not constitute an agreement of sale and no title, Intellectual Property Rights or ownership rights to the Solution are transferred to the Customer pursuant to this Agreement. The Customer acknowledges and agrees that the Solution and all ideas, methods, algorithms, formulae, processes and concepts used in developing or incorporated in the Solution, all future updates or upgrades to the Solution, 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 Solution, all derivative works based on any of the foregoing and all copies of the foregoing are trade secrets and proprietary property of Go Waterfall, having great commercial value to Go Waterfall.
- 14.3.3 The use of the Solution depends on the nature of the licence purchased and may be subject to a particular number of Affiliates set forth in the Proposal.
- 14.3.4 The Customer may permit the use of the Solution in accordance with the terms of this Agreement by a Subsidiary only for so long as such entity remains a Subsidiary of the Customer. The Customer may also permit an authorised third party to access the Solution so long as such third party (i) is accessing the Solution 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 Go Waterfall with a written notice confirming that a Subsidiary and. or authorized third party shall be using the Solution 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 or Subsidiary.
- 14.3.5 The Customer may not, and may not permit any third party to (i) decompile, disassemble or reverse engineer the Solution; or create or recreate the source code for the Solution; (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 Solution or Documentation; or fail to preserve all copyright and other proprietary notices in respect of the Solution and Documentation; (iii) lease, lend or use the Solution for timesharing purposes, sell, market, licence, sublicense, distribute, or otherwise grant to any person or entity any right to use the Solution except to the extent expressly permitted in this Agreement; or use the Solution 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 Solution or the Documentation; combine, merge any part of the Solution or Documentation with or into any other software or documentation; or refer to or otherwise use the Solution 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 Solution or to compete with Go Waterfall or its Related Parties; (v) except with Go Waterfall's prior written permission, publish any performance or benchmark tests or analysis relating to the Solution; or (vi) attempt to do any of the foregoing.

- 14.3.6 Go Waterfall 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 Go Waterfall; or (ii) modifications or programming to the Solution that were made by anyone other than Go Waterfall.
- 14.3.7 The Customer hereby indemnifies and holds Go Waterfall 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 and/or the use terms of the Solution by the Customer, an End User, a Subsidiary and/or an authorized third party.

## 15 MAINTENANCE AND HOSTING

- 15.1 As from the date of Final Acceptance and subject to the Customer's compliance with the provisions of this Agreement, Go Waterfall shall Host and Maintain the Solution for the duration of the Licence Period.

### Hosting

- 15.2 The terms and conditions set out below govern the use of the Solution domain and the Hosting services. By contracting with Go Waterfall, the Customer is lawfully regarded as having agreed to the following:
- 15.2.1 Go Waterfall reserves the right to move the Solution between web servers and internet backbones, both within South Africa and internationally as it deems necessary. If continued operation of the Solution gives rise to excessive traffic or use of system resources, various

options for alternate arrangements will be presented by Go Waterfall to the Customer. Go Waterfall shall determine the best course of action for system use having regard to the views expressed by the Customer.

- 15.2.2 Go Waterfall reserves the right (but does not assume any obligation) to inspect the contents of data that the Solution transmits, receives or stores to ensure compliance with any application laws or industry codes of good practice.
- 15.2.3 The Customer is required to immediately and adequately respond to a denial of service attack (DOS/DDOS). If the Solution's facilities are targeted by a DOS attack that affects Go Waterfall's network, Go Waterfall shall be entitled to suspend the operation of the Solution for so long as is reasonably required to deal with such attack with such period not exceeding 72 hours without an alternative service in place.
- 15.2.4 Go Waterfall undertakes to back up the Customer's data. Such back-ups will be made available to the Customer on reasonable written request, as and when such back-ups are available. Go Waterfall hereby undertakes to do all things reasonably necessary (including compliance with best industry practice) to ensure accurate, complete and up to date backups take place no less than once a day.
- 15.2.5 Go Waterfall will not be liable for any losses or damages relating to any incidents arising from such back-ups being provided (or not provided) to the Customer on request.
- 15.2.6 Go Waterfall reserves the right to manage the cloud environment according to international best practices for the overall benefit of all cloud hosted clients. In the event where the Solution use is negatively affecting the overall cloud environment, Go Waterfall shall notify in writing the Customer of such effect together with required actions the Customer must take to remedy such effect. Should the Customer fail to take reasonable actions within the period stipulated in the notice, Go Waterfall may, at its discretion, restrict server to limited IOPS (Input Output Operations per Second) where the Solution use is negatively affecting the overall cloud environment.
- 15.2.7 Go Waterfall guarantees that its hosting services will attain 99% (ninety-nine percent) availability (the "Uptime Guarantee"), subject to what is set out below.
- 15.2.8 The Uptime Guarantee is applicable only if the web server on which the Solution resides crashes or goes down at an unscheduled time. The Guarantee is not valid if there is any network problem between the Customer or End Users and the web server which prevents the Customer or the End User from seeing the web server (for instance). If the Customer or the End User's ISP's link to the respective data centre goes down or is faulty, but the web server that Go Waterfall hosts is still up, Go Waterfall is not responsible for the Customer or the End User not being able to reach the Solution.

- 15.2.9 Go Waterfall is not responsible if any third party operated network or service experiences problems and outages (i.e. all network solution and links, Customer or End User's internet connection, firewall services managed by external parties). If applicable web server is up and running 98.49% of the time then the website will be deemed to have achieved 99% uptime.
- 15.2.10 The Guarantee does not apply to any scheduled downtime for maintenance of any of Go Waterfalls web servers. If there is scheduled maintenance to be done, the Customer will be notified at least 24 hours in advance. In the event of an important security vulnerability update being required, this may result in the notification period being shortened, dependent upon the severity of the security vulnerability identified. The Customer will be kept informed of the progress of the update. The scheduled maintenance will as far as is reasonably possible be done after hours and the web server downtime will be kept to a minimum.
- 15.2.11 The Guarantee does not apply if Go Waterfall suspends the service of the Solution as a result of the Customer's breach of the terms and conditions of the Agreement.
- 15.2.12 Third party monitoring service reports may not be used for justification due to a variety of factors including the monitor's network capacity / transit availability. The uptime of the server is defined as the reported uptime from the operating system and the applicable Web Server which may differ from the uptime reported by other individual services.
- 15.2.13 Disputes arising from this clause 15.2 must be submitted in writing and shall not exceed the fees paid to Go Waterfall for hosting services. No direct or indirect losses or damages may be claimed.
- 15.2.14 Go Waterfall will not be liable for any loss or damage, interruption of business, or any indirect, special, incidental, or consequential damages of any kind (including lost profits), regardless of the form of action, whether in contract, delict, or otherwise which may be suffered as a result of or which may be attributable, directly or indirectly, to the operation of the Solution.
- 15.2.15 Go Waterfall will not be liable for any indirect or consequential loss, damage, cost or expense of any kind, irrespective of how such damage or loss was caused, whether arising under contract, delict or otherwise, including, and not limited to, data loss or corruption, loss of profits, contracts, operation time and goodwill.
- 15.2.16 Neither Go Waterfall, nor its employees, affiliates, agents, third party information providers, merchants, licensors or the like, warrant that its hosting service will not be interrupted or error-free; nor do they make any warranty as to the results that may be obtained from the use of the service or as to the accuracy, reliability or content of any information service or merchandise contained in or provided through the service.
- 15.2.17 Go Waterfall expressly limits its liability to the Customer for damages suffered due to any



non-accessibility time or other down time to the pro-rata monthly hosting fee during the system unavailability. Go Waterfall specifically denies any responsibilities for any damages arising as a consequence of such unavailability.

## **Maintenance**

15.3 The terms and conditions set out below govern the Maintenance of the Solution by Go Waterfall. By contracting with Go Waterfall the Customer is lawfully regarded as having agreed to the terms and conditions set out below:

15.3.1 Go Waterfall will install updates, patches, upgrades and bug fixes in respect of the Solution as and when these become available.

15.3.2 Go Waterfall will provide telephonic and online support to the Customer in respect of the Solution during the term of this Agreement ("Support"). Such Support shall comprise telephonic support and, if necessary, on-site support. Support shall address (i) any technical questions that the Customer may have regarding the use and operation of the Solution; as well as (ii) any problems that the Customer may experience when using or operating the Solution (the "Support Objectives").

15.3.3 Telephonic support

Go Waterfall shall provide a telephone support desk staffed by support personnel who shall be available on Business Days during the hours of 08h30 to 17h00 Central African Time to address the Support Objectives.

Office hours: 08h30 – 17h00

Contact Person: Lucas Bron

Contact number: +2711 804 3740

Email: [support@gowaterfall.co.za](mailto:support@gowaterfall.co.za)

15.3.4 Onsite support

If there is a request for on-site support at the Customer's premises to resolve any Support Objectives, such request should ideally be made by the Customer in writing at least 3 (three) Business Days in advance to allow for travel and staffing arrangements to be made.

15.3.5 Process to follow when logging a call for Support

15.3.5.1 Should a Customer experience any problems relating to the Solution and require Support, the Customer shall follow the procedure set out in this clause 15.3.5;

15.3.5.2 The Customer shall forward a detailed problem description to [support@gowaterfall.co.za](mailto:support@gowaterfall.co.za) and include available information to best describe the issue. The following information shall, where possible, be included in the problem description –

15.3.5.2.1 the impact the problem has on the Customer's environment and business;

15.3.5.2.2 relevant database or system logs where possible;

15.3.5.2.3 screen prints of error messages displayed;

15.3.5.2.4 any recent changes that may have contributed to the problem.

15.3.5.3 Upon receiving an email from the Customer requesting Support, the call will be logged with Go Waterfall's call logging system, it will be assigned a priority in accordance with clause 15.3.5.4 and it shall be assigned to appropriate personnel for resolution. Such individual will call the Customer within the timeframe allocated to the priority of the Customer's case.

15.3.5.4 Priorities are as follows:

Priority	Type	First Response Within	Customer Update
1 – Very High	Platform failure	1 hour	3 hours
2 - High	Urgent	2 hours	3 hours
3 - Medium	High Priority	3 hours	3 hours
4 - Low	Pending Service	Same day	As needed

15.3.5.5 The Customer hereby acknowledges that:

15.3.5.6 technical and software engineers as well as any software developers should not be contacted directly; and

15.3.5.7 the relevant project manager or Go Waterfall lead should be contacted regarding the Support required; and

15.3.5.8 the agreed procedures should be followed when any technical or other problems need to be logged with Go Waterfall as this will allow for the correct issue recording and management of client feedback.

15.3.6 Priorities are assigned based on problem urgency and the effect the situation has on the Customer's business. The priority of the case will determine the targeted initial response time. The recording of the support issue must record the impact the problem has on the Customer's environment. Such recordal will allow the technical support contact and other personnel to best address the problem for the Customer's business.

#### 15.3.7 Exclusions

Support does not include any third party software or hardware support services, nor support of any enhancements to any of the foregoing. Upon request and if available, Go Waterfall shall provide the Customer with contact information for applicable third party support service suppliers. Go Waterfall will not be responsible for correcting any errors not reproducible by it on the unmodified Solution or errors caused by: (a) use of the Solution in a manner for which it was not designed or approved by Go Waterfall; or (b) accident, negligence, or misuse of the Solution.

#### 15.3.8 Limitation of Liability

15.3.8.1 Go Waterfall will not be liable for any loss or damage, interruption of business, or any indirect, special, incidental, or consequential damages of any kind (including lost profits), regardless of the form of action, whether in contract, delict, or otherwise which may be suffered as a result of or which may be attributable, directly or indirectly, to the Maintenance of the Solution.

15.3.8.2 Go Waterfall will not be liable for any indirect or consequential loss, damage, cost or expense of any kind, irrespective of how such damage or loss was caused, whether arising under contract, delict or otherwise, including, and not limited to, data loss or corruption, loss of profits, contracts, operation time and goodwill.

15.3.8.3 Neither Go Waterfall, nor its employees, affiliates, agents, third party information providers, merchants, licensors or the like, warrant that the Maintenance will not be interrupted or error-free; nor do they make any warranty as to the results that may be obtained from the use of the service or as to the accuracy, reliability or content of any information service or merchandise contained in or provided through the service.

15.3.8.4 Go Waterfall expressly limits its liability to the Customer for damages suffered due to any Maintenance to the portion of the Licence Fee attributable to the Maintenance.

## 16 **MANAGED SERVICE**

16.1 From the date of Final Acceptance and until such time as this Agreement is terminated in accordance with its terms, Go Waterfall shall provide the Customer with the Managed Service. The scope of the Managed Service shall be agreed between the Parties and defined in the Proposal. In exchange for the Managed Service, the Customer shall pay Go Waterfall the Managed Service Fee in accordance with clause 11.

16.2 The Customer shall notify Go Waterfall in writing of any amendments and/or work it may require pursuant to the Managed Service. Go Waterfall shall, within 3 (three) business days of receipt of such notice, notify the Customer of the intended due dates for delivery of the work required. If necessary and depending on the nature of the work required to be delivered pursuant to the Managed Service, Go Waterfall shall be entitled to invoke the sprint methodology defined in clause 8. As such, the provisions of clauses 8, 9 and 10 shall govern the relationship between the Parties in such instances.

## 17 **SERVICES**

17.1 The scope of the Services is defined in the Proposal. Go Waterfall warrants that it will take all reasonable steps to ensure that the Services will be performed by qualified personnel in a professional manner conforming with the generally accepted industry standards and practices.

17.2 Except as expressly set out in the Proposal, all warranties, conditions, representations and terms whether express or implied by statute, common law, custom, trade usage, or otherwise, including without limitation any implied terms, conditions or warranties of satisfaction quality, fitness for a particular purpose or non-infringement are hereby excluded to the fullest extent permitted by law. As such, Go Waterfall does not warrant the results of any Services.

17.3 To the extent that the Customer suffers any direct loss under or in connection with the Services or (whether under statute, contract, indemnity, delict or otherwise) which is not pursuant to this Agreement and for which Go Waterfall is liable in law, the total aggregate liability (direct loss only) of Go Waterfall to the Customer shall not exceed the Service Fees.

17.4 Go Waterfall may use certain Go Waterfall proprietary software and documentation ("Go Waterfall Toolkit") in performing the Services. The Go Waterfall Toolkit is owned by Go Waterfall or its Related Parties, who shall at all times retain all rights, title and interest therein. The Customer agrees not to use it for any purpose, relicense, copy in whole or in part, (except for an archival copy or copies made in the course of automatic backups), modify, reverse engineer, decompile or disassemble the Go Waterfall Toolkit.

## 18 **NON-CIRCUMVENTION**

It is the intention of the Parties to, acting together, pursue the Project and/or the intention of the Proposal. Accordingly, the Parties hereby acknowledge and agree that neither of them shall, during

the term of this Agreement Circumvent the other or take any action which would adversely affect or otherwise hinder or frustrate the Project and/or the intention of the Proposal.

## 19 **GO WATERFALL'S WARRANTIES**

19.1 Go Waterfall warrants that –

19.1.1 it has sufficient right, title and interest in and to the Solution and Documentation to grant the licenses as set forth in this Agreement;

19.1.2 as at the date of Final Acceptance of the Solution, the Solution shall be free from material reproducible programming errors and defects in workmanship and materials and shall substantially conform to the Functional Specifications when maintained and operated in accordance with the Go Waterfall's instructions and/or the Documentation.

19.2 The warranties set out in this Agreement are the only warranties granted by Go Waterfall. Accordingly, Go Waterfall disclaims all other warranties express or implied including but not limited to any implied warranties or merchantability or fitness for a particular purpose.

## 20 **ESCROW**

20.1 It is agreed between the Parties that –

20.1.1 the Parties may, at the election of the Customer, enter into an escrow agreement with an escrow agent, being a financial institution agreed to between the Parties in writing, for purposes of regulating their relationship in respect of the Customization or other source code;

20.1.2 the Parties shall negotiate and in good faith agree those events which shall give rise to the release of the Customization or other source code by the escrow agent in the escrow agreement;

20.1.3 Go Waterfall shall, within 7 (seven) days, deliver a copy of the Customization or other source code to the escrow agent following conclusion of the escrow agreement;

20.1.4 for the duration of the escrow agreement, Go Waterfall shall deposit all updates, enhancements and modifications relating to the Customization or other source code as well as associated documentation with the escrow agent; and

20.1.5 the Customer hereby agrees and undertakes to pay for all fees and/or costs associated with formalising the escrow agreement, including, but not limited to, the payment of any fees to the escrow agent for the duration of the escrow agreement.

- 20.2 Failing conclusion of an escrow agreement between the Parties, Go Waterfall shall, in exchange for a reasonable fee (being the cost required to repackaged the Customizations or other source code for purposes of delivery to the Customer), release the source code for the Customizations or otherwise to the Customer where Go Waterfall –
- 20.2.1 ceases to carry on business;
  - 20.2.2 is placed under provisional or final liquidation;
  - 20.2.3 passes a resolution for voluntary winding-up;
  - 20.2.4 takes steps to wind-up on the grounds of its inability to pay its debts;
  - 20.2.5 compromises with its creditors;
  - 20.2.6 resolves voluntarily to begin business rescue proceedings or has business rescue proceedings commenced against it as contemplated in the Companies Act, 2008; or
  - 20.2.7 makes an assignment for the benefit of creditors.

## 21 **LIMITATION OF LIABILITY**

- 21.1 The Parties agree that they shall be liable to the other for -
- 21.1.1 losses which constitute direct damages where such damages are caused by a breach of any Intellectual Property and/or Confidential Information undertaking contained in this Agreement; and
  - 21.1.2 all losses which arise out of their dishonesty or gross negligence regardless of whether such losses arise out of contract or delict.
- 21.2 It is agreed further between the Parties that the maximum aggregate liability, if any, of Go Waterfall under or in connection with this Agreement (whether arising under any indemnity, in contract, breach of warranty, claims by third parties or otherwise) shall –
- 21.2.1 in the case of Services, not exceed the Service Fees;
  - 21.2.2 in the case of Implementation, not exceed the Implementation Cost;
  - 21.2.3 in the case of the Licence, not exceed the portion of the Licence Fees allocated to the Licence;
  - 21.2.4 in the case of Hosting, not exceed the portion of the Licence Fees allocated to Hosting;
  - 21.2.5 in the case of Maintenance, not exceed the portion of the Licence Fees allocated to Maintenance,

paid by the Customer to Go Waterfall under and in terms of this Agreement.

## 22 CONFIDENTIALITY

### 22.1 The Receiving Party undertakes -

22.1.1 to treat as strictly confidential and not to divulge or permit to be divulged, in any other manner, to any third party any of the Confidential Information without the prior written consent of the Disclosing Party other than to its Representatives.

22.1.2 to take all reasonable steps to protect the Confidential Information and keep it secure from unauthorised persons, adopting reasonable standards of care and safeguards; and

22.1.3 not to use or exploit the Confidential Information for any purpose whatsoever other than strictly in relation to and for the purposes of considering, evaluating, negotiating or advancing the Potential Transaction.

### 22.2 The above undertakings shall not apply to -

22.2.1 Confidential Information which at the time of disclosure by the Disclosing Party is published or is otherwise generally available to the public;

22.2.2 Confidential Information which after disclosure by the Disclosing Party is published or otherwise becomes generally available to the public otherwise than through any breach of the terms of this document by the Receiving Party or its Representatives;

22.2.3 Confidential Information which the Receiving Party demonstrates was known by the Receiving Party before the date the Confidential Information is disclosed to it by the Disclosing Party and which the Receiving Party is entitled to freely disclose to third parties;

22.2.4 Confidential Information which the Receiving Party demonstrates was rightfully acquired from others who do not owe a confidentiality obligation to the Disclosing Party; or

22.2.5 Confidential Information which the Receiving Party is required to disclose by applicable law.

22.3 Unless absolutely necessary, the Customer shall not disclose to Go Waterfall any personally identifiable information related to the Customer's employees or clients or otherwise ("Personal Information"). When the Customer is required to provide Personal Information to Go Waterfall, the Customer shall notify Go Waterfall and comply with all applicable laws and either (i) convert the Personal information into fictitious test data; or (ii) encrypt the Personal Information and forward to Go Waterfall the appropriate de-encryption key/ technology.

## 23 **TITLE AND LIMITED RIGHTS**

The disclosure of any Confidential Information to the Receiving Party or the Representatives does not confer upon the Receiving Party or the Representatives any rights or license or proprietary rights of whatsoever nature in and to such Confidential Information.

## 24 **TERMINATION**

24.1 If a Party commits a material breach of this Agreement (the “breaching Party”) and fails to remedy such breach within 14 (fourteen) days of notice thereof from the Party affected by the breach (the “non-breaching Party”), the non-breaching Party shall be entitled, in addition to any other rights and remedies that it may have in terms this Agreement or otherwise, to terminate this Agreement upon written notice to the breaching Party, without prejudice to any claims which the non-breaching Party may have for damages against the other.

24.2 To the extent that this Agreement is terminated by Go Waterfall –

24.2.1 the Customer shall immediately cease use of the Solution;

24.2.2 the Customer shall, within 7 (seven) days of such termination, deliver to Go Waterfall all copies and portions of the Solution and related materials and Documentation in its possession furnished by Go Waterfall under this Agreement;

24.2.3 all amounts payable or accrued to Go Waterfall under this Agreement shall become immediately due and payable; and

24.2.4 all rights and licences granted to the Customer under this Agreement shall immediately terminate.

24.3 It is agreed between the Parties that in the event of termination of this Agreement the Customer shall (i) be entitled to claim a refund for any fees paid by it to Go Waterfall in respect any Deliverables not delivered to it prior to the date of termination of the Parties’ working relationship; (ii) not be entitled to claim a refund for any fees paid by it to Go Waterfall for any and all Licence Fees; and (iii) be required to make payment of the Licence Fee for the duration of the Licence Period stipulated in the Proposal.

## 25 **FORCE MAJEURE**

No Party shall be liable to the other for any losses which are a result of any default or delay in the performance of its obligations under this Agreement if and to the extent such default or delay is caused, directly or indirectly, by: fire, flood, earthquake, elements of nature or acts of God, riots, civil disorders, rebellions or revolutions in any country or any other cause beyond the reasonable control of such Party; provided that: (i) the non-performing Party is without fault in causing such default or delay; and (ii) such default or delay could not have been prevented by reasonable precautions; and



(iii) such default or delay cannot reasonably be circumvented by the non-performing Party through the use of alternate sources, work around plans or other means ("Force Majeure").

## 26 DISPUTE RESOLUTION

26.1 Any disputes arising from or in connection with this Agreement (a "Dispute") shall be finally resolved in accordance with the rules of the Arbitration Foundation of Southern Africa ("AFSA") by an arbitrator agreed to in writing by the Parties or, failing such agreement within 5 (five) business days after it is requested by any Party, appointed by the chair of AFSA. There shall be a right of appeal as provided for in article 22 of the aforesaid rules.

26.2 Each Party to this Agreement -

26.2.1 expressly consents to any arbitration in terms of the aforesaid rules being conducted as a matter of urgency; and

26.2.2 irrevocably authorises the other Party to apply, on behalf of both Parties to such dispute, in writing, to the secretariat of AFSA in terms of article 23(1) of the aforesaid rules for any such arbitration to be conducted on an urgent basis.

26.3 If AFSA no longer exists then the arbitrator shall be appointed by the President for the time being of the Law Society of the Northern Provinces of South Africa and the arbitration shall be conducted in accordance with the Arbitration Act No. 42 of 1965.

26.4 Notwithstanding anything to the contrary in this clause 26, either Party reserves the right to seek relief from a court of competent jurisdiction, including but not limited to injunctive relief or any other equitable remedy, without waiving the right to arbitrate any dispute or claim arising under or in connection with this Agreement. The choice to pursue relief in court shall not prejudice either Party's ability to subsequently initiate arbitration proceedings in accordance with the terms of this Agreement.

26.5 For the purposes of having any award made by the arbitrator being made an order of court, each of the Parties hereby submits itself to the non-exclusive jurisdiction of the Gauteng Local Division, Johannesburg in the High Court of South Africa.

26.6 This clause 26 is severable from the rest of this Agreement and shall remain in full force and effect notwithstanding any termination or cancellation of this Agreement.

## 27 NOTICES AND DOMICILIUM

27.1 The Parties choose as their address for service and execution (domicilium citandi et executandi) for all purposes under this Agreement, whether in respect of court process, notices or other documents or communications of whatsoever nature (including the exercise of any option), the addresses stipulated in the Proposal:

27.2 Any notice or communication required or permitted to be given in terms of this Agreement shall be valid and effective only if in writing but it shall be competent to give notice by email.

- 27.3 Either Party may by notice to the other Party change the physical address chosen for notices and execution to another physical address in South Africa or its email address, provided that the change shall become effective on the 5<sup>th</sup> (fifth) business day from the receipt (or deemed receipt) of the notice by the addressee.
- 27.4 Any notice to a Party -
- 27.4.1 delivered by hand to a responsible person during ordinary business hours at the physical address chosen in clause 27.1 as its address for notices and execution shall be deemed to have been received on the day of delivery; or
- 27.4.2 sent by email to its chosen email address stipulated in clause 27.1, shall be deemed to have been received on the date and at the time recorded by the recipient's email server (unless there is evidence to the contrary that it was delivered on a different date or at a different time).
- 27.5 Notwithstanding anything to the contrary herein contained a written notice or communication actually received by the person named in clause 27.1 on behalf of a Party shall be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen address for notices and execution set out in clause 27.1.

## 28 GENERAL

- 28.1 **Severability:** Any provision in this Agreement which is or may become illegal, invalid or unenforceable in any jurisdiction affected by this Agreement shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability and shall be treated as if it had never been written (pro non scripto) and severed from the balance of this Agreement, without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.
- 28.2 **Governing Law:** This Agreement shall in all respects (including its existence, validity, interpretation, implementation, termination and enforcement) be governed by the law of the Republic of South Africa. For purposes of applying for urgent relief and in respect of any matters which cannot be resolved in accordance with clause 26, the Parties hereby consent and submit to the non-exclusive jurisdiction of the High Court of South Africa (Gauteng Division, Johannesburg), in any dispute arising from or in connection with this Agreement.
- 28.3 **No Cession of Assignment:** Save for a cession or assignment to a Related Party, no Party shall be entitled to cede, assign, transfer, encumber or delegate any of its rights, obligations and/or interest in, under or in terms of this Agreement to any third party.
- 28.4 **Counterparts:** This Agreement may be executed in any number of counterparts and by the different parties hereto on separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts together shall constitute one and the same instrument.

- 28.5 **Whole Agreement:** This Agreement constitutes the sole record of the agreement between the Parties in relation to the subject matter hereof. To the extent permissible by law, no Party shall be bound by any express, tacit or implied term, representation, warranty, promise or the like not recorded herein, whether it induced the contract and/or whether it was negligent or not. This Agreement supersedes and replaces any other discussions, agreements and/or understandings, whether oral or written, between the Parties in respect of the subject matter hereof. No oral undertaking not to sue (pactum de non petendo) shall be of any force or effect.
- 28.6 **No Variation:** No addition to, variation, amendment, novation or agreed cancellation of this Agreement or any provision or term hereof or of any agreement or other document issued or executed pursuant to or in terms of this Agreement and no settlement of any disputes arising under this Agreement and no extension of time, waiver or relaxation or suspension of or agreement not to enforce or to suspend or postpone the enforcement of any of the provisions or terms of this Agreement or of any agreement or other document issued pursuant to or in terms of this Agreement shall be binding unless recorded in a written document signed by the Parties (or in the case of an extension of time, waiver, relaxation or suspension, signed by the Party granting such extension, waiver, relaxation or suspension). Any such extension, waiver, relaxation or suspension which is so given or made shall be strictly construed as relating to the matter in respect whereof it was made or given.
- 28.7 **No Extension of Time or Waiver or Relaxation:** No extension of time or waiver or relaxation of any of the provisions or terms of this Agreement or any agreement or other document issued or executed pursuant to or in terms of this Agreement, shall operate as an estoppel against any Party in respect of its rights under this Agreement, nor shall it operate so as to preclude such Party thereafter from exercising its rights strictly in accordance with this Agreement.