

**Equity Value Consulting Proprietary Limited trading as Futuresense  
(the "Service Provider")  
Standard Terms and Conditions of Service  
Version: 1.0**

By using the Services, the Client agrees that it has read, understands and is bound by the following standard terms and conditions (the "**Standard Terms**") and any specific terms and conditions contained in the contract particulars signed by the Client (the "**Contract Particulars**"). These Standard Terms and the Contract Particulars shall hereinafter be referred to collectively as the "**Agreement**".

The Client's signature of the Contract Particulars and/or use of the Services indicate the Client's acceptance, without modification by the Client, of the Agreement.

**1 Interpretation**

In the Agreement:

- (a) words importing natural persons shall include a reference to bodies corporate and other legal persons and vice versa;
- (b) a reference to any one gender shall include a reference to the other two genders;
- (c) a reference to the singular shall include a reference to the plural and vice versa;
- (d) annexures, schedules and addenda to the Agreement shall be deemed to have been incorporated herein and shall form an integral part hereof;
- (e) a reference to a Party shall include a reference to that Party's successors and assigns;
- (f) any reference to an enactment is to that enactment as at the Signature Date and as amended or re-enacted from time to time;
- (g) where the day on or by which anything is to be done is not a Business Day, it shall be done on or by the first Business Day thereafter.
- (h) when any number of days is prescribed in the Agreement, same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a day which is not a Business Day, in which event the last day shall be the following Business Day;
- (i) the Agreement shall be binding and enforceable by the administrators, trustees or liquidators of the Parties as fully and effectually as if they had signed the Agreement in the first instance and reference to any Party shall be deemed to include such Party's administrators, trustees or liquidators, as the case may be;
- (j) the rule of interpretation that an Agreement will be interpreted against the Party responsible for the drafting shall not apply to the Agreement; and
- (k) the termination or expiry of the Agreement shall not affect those provisions of the Agreement which expressly provide that they will operate after such expiry or termination, or those which of necessity must continue to have effect after such expiry or termination,

notwithstanding that the clauses themselves do not expressly provide for this.

## 2 Definitions

Unless the context indicates otherwise, the following expressions shall have the corresponding meanings:

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

**Client** means the entity entering into this Agreement with the Service Provider, the details of whom are set out in the Contract Particulars;

**Commencement Date** means the commencement date specified in the Contract Particulars;

**Confidential Information** means all confidential and proprietary information disclosed by the Disclosing Party to the Receiving Party whether prior to or after the Signature Date and shall include, without limiting its ordinary meaning, and in respect of the Parties' respective business affairs and technologies, oral, written, printed, photographically and electronically recorded information of all types, documents, letters, agreements, undertakings, messages, codes, data, formulae, specifications, blueprints, plans, processes, marketing methods, Know-How, methodology, Intellectual Property, trade secrets, projects, projections, cash flow charts, software and copies, notes and extracts, and the strategic plans, financial plans and financial planning process, the direction, manner, timing and implementation of any projects to be undertaken, as well as any information, economic as well as financial, regarding the affairs of a Party which comes to the attention of the other Party pursuant to the Agreement. **Confidential Information** shall not include information which:

- (a) now or hereafter becomes generally known or available to the public through no act or omission on the part of the Receiving Party;
- (b) was acquired by the Receiving Party before receiving such information from the Disclosing Party (without restriction as to use or disclosure);
- (c) is rightfully furnished to the Receiving Party by a third party without restriction as to use or disclosure;
- (d) the Receiving Party can show was independently developed by it without a breach of any obligation of the Agreement; or
- (e) is required to be disclosed by the provisions of any law, statute, regulation, or the Listings Requirements of the JSE Limited (where applicable), or by order of any court of law;

**CPI** means the annual rate of change in the "Consumer Price Index, all items" and all urban areas, expressed as a percentage, as published by Statistics South Africa (or any body authorised in its stead in terms of the Statistics Act No 66 of 1976, as amended, or any statute replacing such Act, to compile and publish national statistics) for the relevant month, over the Consumer Price Index, all items and all urban areas, published for the corresponding month in the previous year. The rate used shall be the latest available published rate;

**Data** means the data to which the Service Provider may have access as a result of or in relation to the rendering of the Services, including Personal Information of the Client and the Client's customers (where applicable);

**Disclosing Party** means the Party who discloses Confidential Information to the Receiving Party;

**Fees** means the fees payable to the Service Provider by the Client for rendering the Services under the Agreement, including standby and overtime fees, which is set out in the Contract Particulars;

**Force Majeure Event** means the occurrence of an event which is beyond the reasonable control of a Party, which shall include without limitation, an event or related circumstances which relates to: acts of God; war, civil war, hostilities, riots, civil or military insurrection and like political disturbances; natural disasters such as earthquakes, fires, floods and storms; strikes, labour unrest, lock-outs, labour disputes, acts or omissions by Governments (central, federal, regional, provincial, local, municipal) and state organs or public authorities, terrorism or sabotage and anything else that may reasonably be outside the control of a Party;

**Initial Period** has the meaning given to this term in Clause 4;

**Intellectual Property** means, without limitation, all patents, trademarks, designs, design rights, copyright (including all copyright in any designs and computer software), source code, background code, any other software code, proprietary material, Know-How, ideas, concepts, trade secrets, methods, techniques, rights in databases, Confidential Information and all other intellectual property rights and rights of a similar character whether registered or capable of registration, rights in the nature of any of the aforesaid items in any country or jurisdiction and all applications and rights to apply for protection of any of the same;

**Know-How** shall mean all proprietary information relating to the business of the Disclosing Party, whether confidential or not, as well as any information reduced to material form and compiled in the design, manufacture, distribution, marketing and sale of the Disclosing Party's products and/or services and shall include information available to the public but compiled into a usable and/or valuable format by the use of labour, skill and effort;

**Parties** mean the Service Provider and the Client collectively and **Party** refers to either of them individually as the context dictates;

**Personal Information** has the meaning given to this term in Section 1 of POPIA;

**POPIA** means the Protection of Personal Information Act 4 of 2013;

**Prime Rate** means the published prime overdraft rate of interest ruling from time to time, expressed as a rate per annum and applied as a rate of compound interest, at which the Service Provider's bank lends on overdraft to its customers, as certified by any manager of the Service Provider's bank, whose appointment it shall not be necessary to prove;

**Receiving Party** means the Party who receives Confidential Information from the Disclosing Party;

**Renewal Period** has the meaning given to this term in Clause 4;

**Services** means the services contemplated in the Contract Particulars;

**Signature Date** means the date of signature of the Contract Particulars by the last-signing Party;

**Software** means the software identified in the Contract Particulars, which the Client obtains a licence to use or access rights from the Third Party Provider;

**Term** means the Initial Period and the Renewal Period, collectively;

**Third Party Provider** has the meaning given to this term in Clause 8.1; and

**VAT** means the Value Added Tax levied in accordance with the Value-Added Tax Act, Act 89 of 1991 (as amended).

### 3 **Appointment**

3.1 The Client hereby appoints the Service Provider as an independent contractor, to render the Services in accordance with the provisions of the Agreement.

3.2 Notwithstanding anything to the contrary, the Agreement does not constitute an agreement of employment, partnership, joint venture or agency between the Service Provider and the Client and shall not give rise to any relationship of employer and employee between the Client and any employee, agent, consultant or sub-contractor of the Service Provider.

3.3 Except as otherwise provided for in this Agreement, neither Party shall, have the power to make a contract in the name of the other, to grant or pledge the credit of the other, to incur liabilities on behalf of the other, or to employ any person on behalf of the other and neither Party shall, save as expressly authorised in writing, hold itself out to have such power.

### 4 **Term**

4.1 Subject to Clauses 19 and 20, this Agreement shall commence on the Commencement Date and shall continue for a period of 12 (twelve) months thereafter (the "**Initial Period**") and shall be automatically renewed on the same terms and conditions, subject to clause 4.2 for a further 12 (twelve) month period (the "**Renewal Period**"), unless either Party provides written notice of termination to the other Party at least 30 (thirty) days prior to the expiry of the Initial Period.

4.2 The Client agrees that the Fees payable to the Service Provider during the Renewal Period shall be increased in line with the percentage increase in the CPI in the preceding 12 (twelve) month period.

### 5 **Services**

5.1 The Service Provider shall provide the Services as set out in the Contract Particulars. The Service Provider shall endeavour to:

- (a) comply in all respects with all laws and all security regulatory obligations imposed upon it in terms of any laws or industry guidelines;
- (b) appoint the Service Provider representative specified in the Contract Particulars who shall be responsible for liaising with the Client on all aspects pertaining to the Agreement;

- (c) ensure that all permits or other consents or approvals required are obtained from the relevant authorities for the provision of the Services;
- (d) perform the Services with promptness and diligence and in a workmanlike manner and in accordance with best industry practices;
- (e) ensure that it at all times has sufficient suitably qualified, trained and skilled personnel to provide the Services;
- (f) comply with any reasonable and lawful instructions given by the Client;
- (g) attend such meetings as may be reasonably required by the Client;
- (h) ensure that the Service Provider's staff as well as any of its sub-contractors involved either directly or indirectly in the implementation of the Agreement, co-operate with the Client in the provision of the Services;
- (i) be responsible for the identification of, interpretation of, and compliance with any applicable laws, regulations and statutes that affect the Service Provider's systems and business; and
- (j) comply with the obligations as set out in the Agreement.

5.2 The Services performed by the Service Provider shall support the Software and specific version specified in the Contract Particulars. The Service Provider shall not be required to perform the Services in respect of any other Software or version unless specifically agreed to by the Service Provider in writing.

## 6 **Client obligations**

The Client shall:

- 6.1 comply in all respects with all laws and all security regulatory obligations imposed upon it in terms of any laws or industry guidelines;
- 6.2 appoint the Client representative specified in the Contract Particulars who shall be responsible for liaising with the Service Provider on all aspects pertaining to the Agreement;
- 6.3 ensure that all permits or other consents or approvals required are obtained from the relevant authorities for the Client's business operations;
- 6.4 attend such meetings as may be reasonably required by the Service Provider;
- 6.5 ensure that the Client's staff as well as any of its sub-contractors involved either directly or indirectly in the implementation of the Agreement, co-operate with the Service Provider;
- 6.6 be responsible for the identification of, interpretation of, and compliance with any applicable laws, regulations and statutes that affect the Client's systems and business;
- 6.7 ensure that its network and systems comply with the relevant specifications provided by the Service Provider from time to time;
- 6.8 be solely responsible for procuring and maintaining its network connections and telecommunications links and all problems, conditions, delays, delivery

failures and all other loss or damage arising from or relating to the Client's network connections or telecommunications links or caused by the internet;

- 6.9 inform the Service Provider immediately of any changes in ownership or Control of the Client, and of any change in its organisation or method of doing business which might affect the performance of the Client's or the Service Provider's duties in this Agreement; and
- 6.10 comply with the obligations as set out in the Agreement.

## 7 Fees and payment

- 7.1 In exchange for the rendering of the Services, the Client shall pay to the Service Provider the Fees set out in the Contract Particulars.
- 7.2 The Fees exclude VAT and any other applicable taxes, levies and duties, and excludes all recoverable outlays for items such as travel, and office costs incurred, as well as tools, equipment, materials or any other specific items which may be required for the provision of the Services and any other costs contemplated in the Contract Particulars, which will be billed at cost, unless otherwise agreed in writing between the Parties.
- 7.3 The Service Provider will invoice the Client at the frequency specified in the Contract Particulars.
- 7.4 The Client shall pay all invoices in full upon presentation.
- 7.5 All amounts due to the Service Provider shall be paid by the Client to the Service Provider by electronic funds transfer in full without any set-off, counterclaim, deduction or withholding.
- 7.6 All payments shall be made in South African Rand.
- 7.7 If the Client fails to make any payment due to the Service Provider under this Agreement timeously, then, without limiting the Service Provider's other rights and remedies under this Agreement and at law, the Service Provider expressly reserves the right to:
  - (a) suspend the provision of the Services pending receipt of all outstanding Fees, expenses and/or costs due under this Agreement, or to terminate the Agreement without prejudice to the right to claim damages or any other remedy available to the Service Provider; and/or
  - (b) claim interest on the overdue amount at the rate of 1% (one percent) per annum above the Prime Rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Client shall pay the interest together with the overdue amount.

## 8 Third party agreements

- 8.1 The Client specifically agrees that the Service Provider is not responsible for providing the Client with a licence to use or giving access rights to the Client in respect of the Software, and the Client shall be required to procure such licence or access rights directly from the licensor or proprietor of the Software (the "**Third Party Provider**"). The Client accordingly agrees that any claim that it has under or in relation to the Software must be brought by it against the Third Party Provider and not against the Service Provider.

8.2 The Service Provider makes no representation, warranty or commitment in respect of the Software and does not warrant that the Client's use of the Software will be uninterrupted or error-free, or that the Software will meet the Client's requirements.

8.3 The Service Provider shall have no liability or obligation whatsoever in relation to any contract concluded between the Client and any Third Party Provider. The Service Provider does not endorse or approve any Software or any Third Party Provider.

## 9 **Non-solicitation**

9.1 The Client undertakes in favour of the Service Provider that it shall not, for the duration of the Term and a period of [12 (twelve) months] thereafter, directly or indirectly, whether intentionally, innocently or otherwise, and whether alone or with others, and whether for its or others' sole or partial benefit, engage or employ (or induce others to do so), or solicit or entice away, or endeavour to solicit or entice away, or cause to be solicited or enticed away, from the Service Provider any of the Service Provider's employees.

9.2 The Client agrees that the provisions of this Clause 9 are reasonable and are in line with public policy, both in their express provisions and extent, and their purport and purpose. The Client has had the opportunity to raise all questions and concerns regarding any aspect of this Clause 9 during the negotiation of this Agreement, and confirms that by signing the Contract Particulars or using the Services, it agrees to be bound by all of the provisions this Clause 9.

9.3 The restraint in this Clause 9 may, notwithstanding the fact that the Parties agree that the provisions of this Clause 9 are reasonable and in line with public policy and are enforceable, nevertheless be enforced by a court to such lesser extent as may be required to be enforceable and shall be interpreted accordingly.

## 10 **Confidentiality**

10.1 The Receiving Party:

- (a) acknowledges that the Confidential Information of the Disclosing Party is a valuable, special and unique asset belonging to the Disclosing Party and accordingly, that it is not to be used to advance the interests of any person other than the Disclosing Party;
- (b) shall treat all the Confidential Information obtained or received from the Disclosing Party (howsoever such Confidential Information may be disclosed to the Receiving Party including, without limiting the foregoing, whether orally, visually or in electronic media, printed media, or by reason of inspection of documentation or other matter on or at the Disclosing Party's premises, or at any other premises), as confidential and same shall be used solely for the purpose of the Agreement, and shall not be used and/or disclosed to any third party by the Receiving Party. The Confidential Information shall accordingly not be used for any other reason or purpose whatsoever without the prior written consent of the Disclosing Party, which consent may be withheld for any reason whatsoever;

- (c) acknowledges that the Confidential Information is being made available to the Receiving Party and/or will otherwise come into the Receiving Party's possession solely for the Agreement, and that such information would not have been made available to the Receiving Party but for this undertaking;
- (d) shall ensure that each of its officers, employees, agents and sub-contractors, as well as all entities associated with the Receiving Party and such associated entities' officers, employees, agents and sub-contractors involved directly or indirectly with the performance of the Receiving Party's obligations in terms of the Agreement, shall be individually bound not to disclose any of the Disclosing Party's Confidential Information to any third party and each such individual shall remain so bound notwithstanding the fact that such officer, employee, agent and/or sub-contractor shall have ceased to be an officer, employee, agent or sub-contractor of the Receiving Party or any of its associated entities;
- (e) shall securely store all documents, papers and other matter furnished to it by the Disclosing Party in connection with or which constitutes Confidential Information in such a manner as to ensure that only individuals entitled to access thereto and who are bound in terms of this clause shall be able to access same;
- (f) shall in the event of being compelled in law to disclose any of the Confidential Information to any third party, shall immediately notify the disclosing party thereof to enable the Disclosing Party to seek an appropriate protective order or waive compliance with such provisions of this clause as would prevent compliance in law or give its consent thereto, and such waiver or consent shall not constitute a breach of this clause;
- (g) undertakes to protect the Disclosing Party's Confidential Information using not less than the same standard of care that it would apply in respect of its own proprietary, secret or Confidential Information and that the Disclosing Party's Confidential Information shall be stored by the Receiving Party in such a way as to prevent unauthorised disclosure;
- (h) agrees that any documents and information, whether confidential or otherwise, made available as contemplated in this undertaking will not constitute any offer or invitation by the Disclosing Party, nor will those documents nor the information contained in them form the basis of, or any representation, warranty or undertaking in relation to, any contract whether it induced a contract or not and/or whether it was negligent or not unless specifically stipulated otherwise in writing; and
- (i) agree not to contact any of the service providers, agents and/or attorneys contracted and/or mandated by the Disclosing Party, unless the Receiving Party is authorised by the Disclosing Party to do so.

10.2 The provisions of this Clause 10 shall survive termination of the Agreement for whatever reason.

## 11 **Data Protection**

- 11.1 For the purposes of this Clause 11, "**Processing**" shall have the meaning given to them in the POPIA (when all of the provisions thereof are fully in force and effect) or to any equivalent terms under any other applicable laws relating to data protection (such applicable laws together with POPIA (when all of the provisions thereof are fully in force and effect) (the "**Data Protection Laws**").
- 11.2 The Parties agree to comply with their respective obligations as specified in the Data Protection Laws. This Clause 11 is in addition to, and does not relieve, remove or replace, a Party's obligations or rights under the Data Protection Laws.
- 11.3 The Client hereby consents to the Service Provider Processing the Client's Data, for the purpose of enabling the Service Provider to perform its obligations in terms of this Agreement.
- 11.4 The Client consents to the Service Provider transferring its Data to various third parties (including third parties outside of South Africa) for the purposes of enabling the Service Provider to troubleshoot problems regarding the Software.
- 11.5 The Client shall ensure that it obtains all required consents from its customers in order to transfer such customers' Data to the Service Provider (and for the Service Provider to transfer same outside of South Africa).
- 11.6 The Client hereby indemnifies the Service Provider and holds it harmless against any costs, damages, expenses and other losses arising out of or in relation to the failure by the Client to comply with its obligations under clause 11.511.4.

## 12 **Intellectual Property Rights**

- 12.1 All Intellectual Property owned or controlled by a Party before entering into the Agreement and throughout the Term, will remain the property of such Party.
- 12.2 Neither Party shall, without the prior written consent of the other Party, in any way use the Intellectual Property of the other Party, and each of the Parties acknowledges that the use of any of the foregoing, in the event that the affected Party grants such consent, shall not confer any proprietary rights or entitlement or license upon the other Party in respect thereof and that it shall not be entitled to use the foregoing other than directly in relation to the performance of its obligations in terms of the Agreement.
- 12.3 The provisions of this Clause 1211 shall survive termination of the Agreement for whatever reason.

## 13 **Representations and Warranties**

- 13.1 Each Party undertakes, represents and warrants to the other Party that:
- (a) it has the requisite power and authority to enter into this Agreement and to carry out the obligations contemplated herein; and
  - (b) the signing, delivery and performance of this Agreement shall not constitute:

- (i) a violation of any law, judgment, order or decree;
- (ii) a breach under any contract by which it or any of its assets are bound; or
- (iii) an event that would, with notice or lapse of time, or both, constitute such a violation or breach.

13.2 Each of the above shall be construed as a separate warranty or representation on behalf of the Parties and shall not be limited or restricted by reference to, or inference from, the terms of any other warranty or representation or any other terms of this Agreement.

#### 14 **Indemnity**

The Client hereby indemnifies, defends and holds harmless the Service Provider and each of its shareholders, directors, employees, independent contractors and sub-contractors (in whose favour this constitutes a stipulation capable of acceptance in writing at any time) against any claim by any third party for any costs, damages (including, without limitation, indirect, extrinsic, special, penal, punitive or exemplary loss or damage of any kind), penalties, actions, judgements, legal proceedings, expenses, disbursements, fines or other amounts arising, whether directly or indirectly, in connection with or arising out of the Client's use of the Software.

#### 15 **Co-operation**

Each Party undertakes to the other Party, on a reasonable commercial endeavours basis, to:

- (a) co-operate with the other Party;
- (b) do all such things necessary to put into effect the terms of the Agreement; and
- (c) ensure that their respective directors, shareholders, employees, agents, consultants, independent contractors and representatives co-operate with one another to the extent reasonably necessary to give effect to the Agreement.

#### 16 **Force Majeure**

16.1 Failure on the part of a Party ("**Affected Party**") to perform in terms of or comply with the provisions of the Agreement shall not be deemed to be a breach of the Agreement, by the Affected Party, insofar as such failure is due to a Force Majeure event.

16.2 If the Affected Party is, by reason of a Force Majeure event, prevented from fulfilling its obligations under the Agreement, the Affected Party shall immediately notify the other Party in writing thereof. Such notice shall stipulate:

- (a) the cause, nature and extent of the event or circumstances;
- (b) the expected duration of the circumstances or event; and
- (c) the extent to which the performance of the Affected Party has been and/or will be affected.

16.3 To the extent that the Affected Party is prevented by the Force Majeure event from complying with its obligations in terms of the Agreement, the other Party shall not have any claim against the Affected Party.

16.4 In the event that the Force Majeure event exists for a continuous period of 30 (thirty) Business Days or more, then either Party shall be entitled, despite any provision to the contrary contained in the Agreement to terminate the Agreement on 7 (seven) Business Days' written notice to the other Party.

## 17 **Anti-bribery and corruption provision**

The Parties warrant that they shall, at all times during the course of this Agreement fully, comply with the local anti-corruption laws and all other corruption laws that may be applicable to their operations under this Agreement.

## 18 **Liability**

18.1 This clause sets out the entire financial liability of the Parties (including any liability for the acts or omissions of their respective employees, agents and sub-contractors) to each other in respect of:

- (a) any breach of this Agreement however arising;
- (b) any use made by the Client of the Services; and
- (c) any representation, warranty, statement, obligations or delictual act or omission (including negligence) arising under or in connection with this Agreement.

18.2 Except as expressly and specifically provided for in this Agreement, all warranties, conditions and other terms implied by applicable law are, to the fullest extent permitted by applicable law, excluded from this Agreement.

18.3 Notwithstanding any other provision, neither Party shall in any circumstances be liable, whether in delict, contract, misrepresentation (whether innocent or negligent) or otherwise for loss of profits, loss of business, depletion of goodwill or similar losses, loss of anticipated savings, loss of goods, loss of use, loss or corruption of data or information and any special, indirect, consequential or pure economic loss, costs, damages charges or expenses whatsoever.

18.4 Subject to the remaining provisions of this Clause 18, the total aggregate liability of either Party hereunder shall be limited in all circumstances to an amount equivalent to the Fees actually received by the Service Provider from the Client under this Agreement during the Initial Period of this Agreement.

## 19 **Breach**

19.1 Should any Party ("**Defaulting Party**") commit a breach of any of the provisions of the Agreement, then the other Party ("**Aggrieved Party**") shall be entitled to give the Defaulting Party 14 (fourteen) calendar days' written notice to remedy such breach.

19.2 If the Defaulting Party fails to comply with such notice and remedy the breach, the Aggrieved Party shall be entitled, but not obliged, without further notice to the Defaulting Party and without prejudice to any other right or remedy

which may be available to the Aggrieved Party in terms of the Agreement or at law, but subject always to the provisions of Clause 19.1 above:

- (a) to claim specific performance by the Defaulting Party of its obligations in terms of the Agreement or to cancel this Agreement; and/or
- (b) to claim damages from the Defaulting Party.

## 20 Termination

Either Party may terminate the Agreement immediately upon written notice to the other Party, if the other Party:

- 20.1 is liquidated provisionally or finally;
- 20.2 commits an act of insolvency;
- 20.3 enter into or attempts to enter into a compromise with its creditors generally; or
- 20.4 becomes the subject of business rescue proceedings in terms of Chapter 6 of the Companies Act No. 71 of 2008 (as amended).

## 21 Effects of Termination

21.1 Upon termination or expiry of this Agreement for any reason:

- (a) the Service Provider shall have no further obligation to provide the Services to the Client;
- (b) all amounts owing to the Service Provider shall become immediately payable;
- (c) the Client shall promptly return or otherwise dispose of, as the Service Provider may instruct, all technical pamphlets, catalogues, specifications and other materials, documents or papers whatsoever relating to the Services and the Service Provider's business (other than correspondence which has passed between the Parties) which the Client may have in its possession or under its control; and
- (d) the accrued rights of the Parties as at termination or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination shall not be affected or prejudiced.

21.2 The termination of this Agreement shall not of itself give rise to any liability on the part of the Service Provider to pay any compensation to the Client for loss of profits or goodwill, to reimburse the Client for any costs relating to or resulting from such termination, or for any other loss or damage.

## 22 Dispute Resolution

22.1 Any dispute between the Parties shall be referred to the Chief Executive Officers of the Parties who shall endeavour to settle the dispute through *bona fide* negotiations within 7 (seven) calendar days after such a referral.

22.2 In the event that the Chief Executive Officers of the Parties are still unable to reach agreement, then the Parties are free to take appropriate legal action including litigation.

22.3 The provisions of this clause shall not preclude a Party from approaching any court of competent authority at any time for an interdict or other injunctive relief of an urgent nature.

## 23 **Notices and *domicilia***

23.1 The Parties select as their respective *domicilia citandi et executandi* for the purposes of receiving legal notices and legal processes ("**Notices**"), their respective physical addresses set out in the Contract Particulars.

23.2 Notices must be addressed to a Party at its *domicilium citandi et executandi*. Notices may be delivered by hand or may be sent via prepaid registered mail.

23.3 Notices will be presumed, unless the contrary is proved, to have been delivered if posted by prepaid registered mail 5 (five) Business Days after the date of posting and if delivered by hand to a responsible person during business hours on a Business Day, on the date of delivery. Business hours for the purpose of the Agreement shall be between 08h30 and 16h30 on any Business Day.

23.4 Either Party may change its *domicilium citandi et executandi* to any other address in South Africa which is not a post office box or *poste restante* by giving written notice thereof to the other Party. Such change shall be deemed to have become effective within 5 (five) Business Days of receipt of such notice.

23.5 Notwithstanding anything to the contrary contained in the Agreement, a notice actually received by a Party shall be adequate written notice of the communication notwithstanding that it was not sent to, or delivered at the Party's chosen *domicilium citandi et executandi*.

## 24 **Applicable law and jurisdiction**

All matters arising from or in connection with the Agreement, its validity, existence or termination shall be determined in accordance with the laws for the time being of the Republic of South Africa and the Parties agree to the non-exclusive jurisdiction of the South Gauteng High Court (Johannesburg).

## 25 **Counterparts**

This Agreement may be executed in any number of counterparts and by the Parties on separate counterparts, one or more of which may be delivered via e-mail or facsimile, each of which when so executed and delivered shall be an original, but all such counterparts together shall constitute one and the same instrument.

## 26 **Costs**

Each Party shall bear and pay its own fees and costs of and incidental to the negotiation, drafting, preparation and execution of the Agreement.

## 27 **General**

27.1 This Agreement constitutes the sole record of the agreement between the Parties in relation to its subject matter.

27.2 No Party shall be bound by any representation, warranty, promise or the like not recorded in the Agreement.

- 27.3 Where any provision of this Agreement requires either Party to perform any act in writing, this requirement will only be satisfied if such performance is made in a written or printed based paper form. The provisions of the Electronic Communications and Transactions Act No 25 of 2002 ("**ECTA**"), in this regard being expressly excluded from this Agreement, and data messages (as defined in ECTA) are excluded as a valid form of notice in terms hereof.
- 27.4 The Service Provider reserves the right, in its sole discretion, to vary or amend the Standard Terms from time to time and any such amended or varied Standard Terms shall be binding on the Client from the time that the Client is notified thereof. Any subsequent dealings shall be on the Service Provider's amended Standard Terms.
- 27.5 The Client shall not be entitled to assign, cede, delegate, sub-contract or otherwise transfer any of its rights or obligations under this Agreement without the prior written consent of the Service Provider, which the Service Provider shall not unreasonably withhold.
- 27.6 The Service Provider shall be entitled to freely assign, cede, delegate, sub-contract or otherwise transfer any of its rights or obligations under this Agreement.
- 27.7 No indulgence which a Party may grant to another Party shall constitute a waiver of any of the rights of the grantor unless such waiver is in writing and signed by both Parties.
- 27.8 All costs, charges and expenses of any nature whatever which may be incurred by a Party in enforcing its rights in terms of the Agreement, including without limiting the generality of the foregoing, legal costs on the scale of attorney and own client and collection commission, irrespective of whether any action has been instituted, shall be recoverable on demand from the Party against which such rights are successfully enforced and shall be payable on demand.
- 27.9 In the event of any conflict between the Standard Terms and the Contract Particulars, the Standard Terms shall take precedence.
- 27.10 If this Agreement conflicts with any other terms and conditions, including the Client's terms and conditions or any purchase order terms and conditions, then this Agreement will prevail, irrespective of anything to the contrary contained in any conflicting document.
- 27.11 All provisions in the Agreement are, notwithstanding the manner in which they have been put together or linked grammatically, severable from each other. Any provision of the Agreement which is, or becomes, unenforceable whether due to voidness, invalidity, illegality, unlawfulness or for any other reason whatsoever, shall, in such jurisdiction only, and only to the extent that it is so unenforceable, be deemed *pro non scripto*, and the remaining provisions of the Agreement shall be of full force and effect. The Parties declare that it is their intention that the Agreement would be executed without such unenforceable provisions if they were aware of such unenforceability at the time of its execution.
- 27.12 No remedy conferred by the Agreement is intended, unless specifically stated, to be exclusive of any other remedy which is otherwise available at law, by statute or otherwise. Each remedy shall be cumulative and in addition

to every other remedy given hereunder or now or hereafter existing at law, by statute or otherwise. The election of any one or more remedy by a Party shall not constitute a waiver by such Party of the right to pursue any other remedy available at law.

27.13 This Agreement supersedes and cancels all prior agreements and/or arrangements relating to the subject matter hereof.

27.14 Each of the Parties acknowledges that it has been free to secure independent legal and other advice as to the nature and effect of all of the provisions of the Agreement and that it has either taken such independent legal or other advice or dispensed with the necessity of doing so.