

TERMS AND CONDITIONS FOR THE PROVISION OF SERVICES

by

WATCHER SURVEILLANCE SOLUTIONS PROPRIETARY LIMITED

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1 INTERPRETATION

In the Terms and Conditions –

- 1.1 headings and sub-headings are inserted for information purposes only and shall not be used in the interpretation of the Terms and Conditions;
- 1.2 words importing natural persons shall include a reference to artificial or juristic persons and *vice versa*;
- 1.3 a reference to any one gender shall include a reference to the other genders;
- 1.4 a reference to the singular shall include a reference to the plural and *vice versa*;
- 1.5 a reference to a Party shall include a reference to that Party's successors and assigns;
- 1.6 Annexures to the Terms and Conditions shall be deemed to have been incorporated herein and shall form an integral part hereof. If any conflict arises in respect of the provisions contained in the Terms and Conditions and any annexure attached hereto, the provisions contained in the Terms and Conditions shall take precedence;
- 1.7 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;
- 1.8 when any number of days is prescribed in the Terms and Conditions, 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 next succeeding Business Day;
- 1.9 any reference to days (other than a reference to Business Days), months or years shall be a reference to calendar days, calendar months or calendar years, respectively;
- 1.10 where any term is defined within the context of any particular clause in the Terms and Conditions, the term so defined shall, unless it appears clearly from the clause in question that such term has limited application to the relevant clause, bear the meaning ascribed to it for all purposes in terms of the Terms and Conditions;
- 1.11 expressions defined in clause 1.19 shall bear the same meanings in the Proposal and Annexures to the Terms and Conditions;

- 1.12 the rule of construction that the Terms and Conditions shall be interpreted against the Party responsible for the drafting or preparation of the Terms and Conditions, shall not apply;
- 1.13 reference to Proposal will include the Terms and Conditions and *vice versa* as the context may require;
- 1.14 the termination of the Terms and Conditions shall not affect those provisions of the Terms and Conditions which expressly provide that they will operate after such termination, or those which of necessity must continue to have effect after such termination, notwithstanding that the clauses themselves do not expressly provide for this;
- 1.15 any reference to any statute, regulation or other legislation shall be a reference to that statute, regulation or other legislation as at the Commencement Date, and as amended or substituted from time to time;
- 1.16 if any provision in a definition is a substantive provision conferring a right or imposing an obligation on either Party then, notwithstanding that it is only in a definition, effect shall be given to that provision as if it were a substantive provision in the body of the Terms and Conditions;
- 1.17 any term which refers to a South African legal concept or process (for example, without limiting the foregoing, winding-up or curatorship) shall be deemed to include a reference to the equivalent or analogous concept or process in any other jurisdiction in which the Terms and Conditions may apply or to the laws of which a Party may be or become subject; and
- 1.18 the use of the word “**including**”, “**includes**” or “**include**” followed by a specific example/s shall not be construed as limiting the meaning of the general wording preceding it and the *eiusdem generis* rule shall not be applied in the interpretation of such general wording or such specific example/s.
- 1.19 the following words and expressions shall have the meanings set out below and cognate words and expressions have corresponding meanings –
- 1.19.1 “**AFSA**” – the Arbitration Foundation of Southern Africa, or its successor in title;
- 1.19.2 “**BCEA**” – the Basic Conditions of Employment Act, 75 of 1997;
- 1.19.3 “**Business Days**” - any day other than a Saturday, Sunday or public holiday in South Africa within the meaning of the Public Holidays Act, 36 of 1994;

- 1.19.4 **“Commencement Date”** – means date of signature of the Proposal by the Customer;
- 1.19.5 **“Commissioning Date”** – date upon which the Service Provider has commissioned all of the equipment installed in accordance with the Services and has given final approval in writing for the commencement of the Services, unless where otherwise agreed between the Parties;
- 1.19.6 **“Confidential Information”** – information or data in whatsoever form or medium which is disclosed by the disclosing party or otherwise comes to the knowledge of the receiving party during the course of acting pursuant to the Proposal and/or Terms and Conditions, that is identified as being confidential or proprietary at the time of disclosure or which by its nature would generally be deemed to be of a confidential nature and includes, without limitation the terms and conditions of the Terms and Conditions and any information relating to a Party’s –
- 1.19.6.1 business, business policies, business plans, business strategies, pricing models and other business and commercial information; and
- 1.19.6.2 know-how, trade secrets, specifications, drawings, sketches, models, samples, data, diagrams and flow charts, and
- 1.19.6.3 potential customers, customer lists, sales, sales figures and products; and
- 1.19.6.4 technical information, including use of technology, systems, hardware, software (and the incidence of any faults therein) and related material and documentation; and
- 1.19.6.5 past, present and future research and development;
- 1.19.7 **“Customer”** – as set out in Proposal;
- 1.19.8 **“Data Protection Legislation”** - the Protection of Personal Information Act No 4 of 2013, the EU General Data Protection Regulation 2016/679 and any applicable data protection laws that may be in force in South Africa from time to time;
- 1.19.9 **“EEA”** – the Employment Equity Act, 55 of 1998;

- 1.19.10 **“Entity”** – includes any natural or juristic person, association, body corporate, business, close corporation, company, concern, enterprise, firm, joint venture, partnership, trust, undertaking, voluntary association and any similar entity;
- 1.19.11 **“Equipment”** – any equipment, together with its software, to be installed by the Service Provider as part of the Services;
- 1.19.12 **“Fees”** – the consideration to be paid by the Customer to the Service Provider in consideration for the provision of the Services as set out in the Proposal;
- 1.19.13 **“Insolvency Act”** – the Insolvency Act, 24 of 1936;
- 1.19.14 **“Insolvency Event”** – in relation to any person or Entity, the occurrence of any of the following events or circumstances –
- 1.19.14.1 a meeting of that person or Entity being convened to consider or pass a resolution, or a declaration is made in respect of that person or Entity, a petition is presented in respect of that person or Entity, legal proceedings are commenced by or in respect of that person or Entity or any other step is taken, for the provisional or final winding-up, curatorship or dissolution of such person’s or Entity’s assets, business, undertaking or estate, or with a view to a composition, assignment or arrangement with such person’s or Entity’s creditors;
- 1.19.14.2 such person or Entity being or becoming unable (or admitting its inability) to pay its debts generally as they fall due or being (or admitting to being) otherwise insolvent or stopping, suspending or threatening to stop or suspend payment of all or a material part of its debts or making a general assignment or arrangement or composition with, or for the benefit of, its creditors (or any class of them) or a moratorium is agreed or declared in respect of, or affecting, all or a part of its indebtedness;
- 1.19.14.3 such person or Entity commencing negotiations or taking any proceeding or other step with a view to the general readjustment, rescheduling or deferral of its indebtedness (or any part thereof) in circumstances where it is unable to meet its obligations as and when they fall due, or such person or Entity proposing to commence any such negotiations or take any such steps;
- 1.19.14.4 such person’s or Entity’s liabilities exceed its assets (fairly valued);

- 1.19.14.5 any business rescue proceedings being commenced against it or a resolution being proposed to place that person or Entity under supervision at any duly convened meeting of the shareholders or board of directors of that person or Entity;
- 1.19.14.6 a meeting of that person or Entity being convened to consider or pass a resolution, or a declaration being made in respect of that person or Entity, a petition being presented in respect of that person or Entity, legal proceedings being commenced by or in respect of that person or Entity or any other step being taken, to commence business rescue proceedings in respect of that person or Entity;
- 1.19.14.7 any liquidator, curator, judicial manager, business rescue practitioner or similar officer being appointed in respect of such person or Entity or any part of its assets, undertaking, business or estate or such person or Entity (or any organ of that person or Entity) requests such appointment;
- 1.19.14.8 that person or Entity ceasing to be in a position to pay its debts and meet its other obligations as and when they fall due in the normal course of business;
- 1.19.14.9 that person or Entity committing any act which, if it were a natural person, would be an act of insolvency as contemplated in the Insolvency Act; or
- 1.19.14.10 any event occurring or circumstance arising which is analogous to any of the events referred to in clauses 1.19.14.1 to 1.19.14.9 (both clauses inclusive);
- 1.19.15 **"Intellectual Property Rights"** – all -
- 1.19.15.1 copyright, patents, know-how, confidential information, database rights, and rights in trademarks and designs (whether registered or unregistered);
- 1.19.15.2 applications for registration and the rights to apply for registration, for any of the above; and
- 1.19.15.3 other intellectual property rights and equivalent or similar forms of protection existing anywhere in the world;
- 1.19.16 **"LRA"** - the Labour Relations Act, 66 of 1995;

- 1.19.17 **"Parties"** - the Customer and Service Provider and **"Party"** means either one of them;
- 1.19.18 **"Personal Data"** – any information defined as such or information treated as personal information or data under the Data Protection Legislation;
- 1.19.19 **"Proposal"** – each proposal as agreed between the Parties which sets out the Equipment and Services to be provided by the Service Provider and the Fees, to which the Terms and Conditions are incorporated by reference;
- 1.19.20 **"Representative"** - has the meaning given to it in clause 13.1;
- 1.19.21 **"Services"** - any services to be supplied by Service Provider to the Customer, as more fully described in the Proposal, in accordance with the SLA;
- 1.19.22 **"Service Levels"** - the service levels which will apply to the provision of the Services by Service Provider more fully described in the SLA (where applicable);
- 1.19.23 **"Service Provider"** – Watcher Surveillance Solutions Proprietary Limited, registration number 2018/362351/07, a private company registered and incorporated in accordance with the laws of South Africa;
- 1.19.24 **"Service Provider's Personnel"** - any partner, employee, freelancers, agent, consultant, independent associate, service provider, sub-contractor and the staff of such sub-contractor, or any other authorised representatives of Service Provider;
- 1.19.25 **"SLA"** – service level agreement which sets out the Service Levels, as may be amended by Watcher from time to time, which is accessible of the Service Provider's website [INSERT HYPERLINK] or which will be provided to the Customer upon request;
- 1.19.26 **"South Africa"** – the Republic of South Africa;
- 1.19.27 **"Tax Invoice"** - the document as required by Section 20 of the VAT Act;
- 1.19.28 **"Terms and Conditions"** – these written Terms and Conditions for the Provision of Services, together with its Annexures, SLA and Proposal each as amended from time to time;

- 1.19.29 **"TES"** - a Temporary Employment Service as defined in the LRA;
- 1.19.30 **"Termination Date"** – as set out in each Proposal;
- 1.19.31 **"VAT"** - Value-Added Tax levied in terms of the VAT Act;
- 1.19.32 **"VAT Act"** – the Value Added Tax Act, 89 of 1991.

2 COMMENCEMENT DATE AND PERIOD

- 2.1 The Terms and Conditions will commence on the Commencement Date and terminate on the Termination Date where either Party has provided written notice to terminate to the other Party at least 2 (two) months prior to the Termination Date, unless where the Terms and Conditions is terminated earlier in accordance with the provisions hereof.
- 2.2 Where no notice has been provided in terms of clause 2.1, the Terms and Conditions will automatically renew for further 1 (one) year periods.

3 PROVISION OF THE SERVICES

- 3.1 The Proposal and the Terms and Conditions (as incorporated in the Proposal by reference) is the only basis upon which the Service Provider is prepared to contract with the Customer, and this shall govern the relationship between the Parties to the exclusion of all other terms or conditions.
- 3.2 In order to enable the effective management of the expectations of the Parties relating to any Services and the management of the quality of the Service Levels, the Services will be provided in accordance with the provisions of the SLA.
- 3.3 In the event the Services as described in the Proposal is amended and/or updated after the commencement of such Proposal, the Parties may conclude a new Proposal setting out the amended Services as agreed to and signed by the Parties, which new Proposal will supersede and replace the previous Proposal in whole.

4 THE CUSTOMER'S OBLIGATIONS

The Customer undertakes to –

- 4.1 promptly comply with any reasonable request by Service Provider for information; and
- 4.2 subject to the provisions of clause 9, provide Service Provider and Service Provider's Personnel with reasonable access to its facilities as may be necessary to allow Service Provider to provide Services and perform its obligations under the Proposal;
- 4.3 pay the Service Provider the Fees for the provision of the Services;
- 4.4 reimburse the Service Provider for any and all damages that may occur as a result of the negligence of the Customer and/or any of its workers and/or affiliates, to the property of the Service Provider.

5 SERVICE PROVIDER'S OBLIGATIONS

- 5.1 The Service Provider shall provide the Services to the Customer.
- 5.2 In providing the Services, the Service Provider warrants, represents and undertakes that the Services shall -
 - 5.2.1 comply with all other warranties implied or provided for by the laws applicable at the place of business of Service Provider and the Customer;
 - 5.2.2 respond promptly to all enquiries from the Customer;
 - 5.2.3 conduct its business in a professional manner and provide Services and perform its duties with honesty and integrity;
 - 5.2.4 provide standards of service and professionalism in line with industry practice, with a reasonable degree of care and diligence;
 - 5.2.5 keep full records clearly indicating all transactions concluded by Service Provider relating to the Services for a period of at least 5 (five) years from the date of each such transaction;

- 5.2.6 obtain, and at all times maintain in full force and effect, any and all licences, permits and the like required under applicable laws for the provision of the Services and the conduct of the business and activities of Service Provider;
- 5.2.7 comply with all reasonable regulations, relevant policies, systems or procedures of the Customer, as notified to Service Provider from time to time. Where such regulations, policies, systems or procedures have not been notified to the Service Provider in writing, the Service Provider will not be held liable for any breach in terms thereof;;
- 5.2.8 not allow a conflict of interest to develop between its own interests and the interests of the Customer;
- 5.2.9 not accept or offer, nor allow, induce or promote the acceptance or offering of any gratuity, enticement, incentive or gift that could reasonably be regarded as bribery or an attempt to otherwise exert undue influence over the recipient; and
- 5.2.10 report to the Customer any unethical, fraudulent or otherwise unlawful conduct of which it becomes aware in connection with the Customer or the provision of the Services.

6 SUPPLY OF SERVICES

Service Provider shall provide the Services as an independent contractor as set out in the Proposal.

7 SERVICE PROVIDER'S REMUNERATION AND PAYMENT

- 7.1 In consideration for the provision of the Services by the Service Provider to the Customer, the Customer shall pay the Fees to Service Provider.
- 7.2 The Fees shall be set out in the Tax Invoice and Proposal.
- 7.3 The Fees shall be payable monthly in advance.
- 7.4 The Fees will be fixed for 1 (one) year, whereafter the Parties may renegotiate the Fees.
- 7.5 The Customer will reimburse to the Service Provider all reasonable expenses incurred directly and solely in connection with the provision of the Services, provided that all such expenses are substantiated by the relevant proof of payment.

- 7.6 All Tax Invoices relating to the Fees, actual out of pocket expenses, actual travel and accommodation costs, where applicable, and the Tax Invoice will, where applicable, include VAT as a separate item.
- 7.7 Tax Invoices shall be issued by the 15th (fifteenth) day of the current month for the following month's Services and payment thereof is due by the Customer on the first day of the month in which the Services will be provided. The first Tax Invoice shall be issued directly after Commissioning Date.
- 7.8 In the event that the Customer disputes any Tax Invoice it shall notify Service Provider of the disputed items in writing within 10 (ten) Business Days of receipt of the relevant Tax Invoice and shall make payment to Service Provider in respect of the undisputed items in accordance with the provisions of clause 7.7. Any dispute in relation to a Tax Invoice shall be resolved in accordance with the provisions of clause 18.

8 VALUE-ADDED TAX

- 8.1 Unless the context of the clause concerned clearly indicates that the amount concerned is inclusive of VAT, the Fees, and all other amounts to be paid in terms of the Terms and Conditions, shall be exclusive of VAT.
- 8.2 All or any VAT arising from the provision of the Services by Service Provider in terms of the Terms and Conditions shall become due for payment and shall be paid by the Customer simultaneously with payment of the invoices in accordance with the provisions of clause 7.
- 8.3 Any dispute which may arise between Service Provider and the Customer as to the liability for and/or payment of VAT (or the amount thereof) in terms of the preceding provisions of this clause shall be referred to an independent auditor appointed by agreement between the Parties (and failing agreement between the Parties within a period of 10 (ten) Business Days following the written request for such agreement by either Party, appointed by the President for the time being of the South African Institute of Chartered Accountants at the request of either Party) and the independent auditor's decision shall be final and binding between the Parties and carried into effect.

9 SERVICE PROVIDER'S PERSONNEL

- 9.1 Service Provider's Personnel shall at all times be regarded as employees, agents or sub-contractors of Service Provider and no relationship of employer and employee shall arise between the Customer and Service Provider's Personnel under any circumstances

regardless of the degree of supervision that may be exercised over Service Provider's Personnel by the Customer.

- 9.2 Unless specifically agreed otherwise between the Parties, Service Provider's Personnel shall at all times be subject to and work under the direction and control of Service Provider and the Service Provider shall nominate management representative/s to interface with the Customer's management to ensure that the lines of control remain distinct and separate.
- 9.3 Service Provider warrants that Service Provider's Personnel have the necessary training, expertise, work permits and qualifications to provide the Services and are entitled to work in South Africa.
- 9.4 The Customer may from time to time require the Services to be rendered by the Service Provider's Personnel at the Customer's site.

10 WARRANTIES

- 10.1 The Parties hereby warrant in favour of each other that -
- 10.1.1 they have full capacity and authority to enter into and to perform in accordance with the Terms and Conditions and that the Proposal and Terms and Conditions is executed by a duly authorised representative;
- 10.1.2 in proceeding with the execution of their obligations under and in terms of this Terms and Conditions they will comply with all statutory requirements imposed on them in terms of the appropriate legislation of South Africa.

11 INDEMNITY AND LIMITATION OF LIABILITY

- 11.1 Each Party ("defaulting Party") hereby indemnifies the other Party, its directors, officers, agents and employees and holds them harmless in respect of all claims, damages, expenses, deaths, injuries, loss of property and/or thefts of whatsoever nature and howsoever arising, as well as any legal costs incurred (calculated on the attorney and own client scale) which the other Party may incur or suffer, as a result of a breach of the provisions of the Terms and Conditions by the defaulting Party and/or the negligence or wilful misconduct of the defaulting Party.
- 11.2 Notwithstanding clause 11.1 above, the Supplier's total liability per incident shall be limited to the aggregate amount of no more than 3 (three) months' Fees.

- 11.3 Neither Party will be liable to the other Party or a third party claiming through or on behalf of such Party for any indirect, special or consequential damages, whether foreseen or unforeseen (including indirect or consequential loss of profits, business, revenue, goodwill or anticipated savings of an indirect nature) arising out of or related to the Terms and Conditions.
- 11.4 The Parties acknowledge and agree that the exclusions contemplated in clauses 11.2 and 11.3 shall not apply in respect of any death or personal injury to any person.

12 SUB-CONTRACTING AND REPRESENTATION

- 12.1 The Service Provider may use or employ sub-contractors without obtaining the prior written consent of the Customer.
- 12.2 In any and all instances where Service Provider appoints sub-contractors, in accordance with the provisions of clause 12.1, Service Provider shall remain principally liable for all acts and omissions by its sub-contractors and for the provision of the Services under and in terms of the Terms and Conditions.

13 REPRESENTATIVES

- 13.1 For purposes of dealing with operational issues relating to the Services, each Party shall appoint Representative/s from time to time.
- 13.2 Either Party shall be entitled, from time to time, by written notice to the other to replace such Representative or to appoint additional Representatives.
- 13.3 The Party's hereby warrant to each other that each of their Representatives have the necessary authority to represent such Party in all matters relating to day to day operational issues arising out of this Terms and Conditions and to bind such Party to any decisions which are made by such Representative.

14 CONFIDENTIAL INFORMATION

- 14.1 Save for the exclusions set out in clause 14.3, each Party acknowledges that all material and information which has or will come into the possession or knowledge of the other in connection with the Proposal and/or Terms and Conditions or the performance of the

obligations hereunder, consists of confidential and proprietary information, which, if disclosed to third parties, will be damaging.

- 14.2 Each Party ("**Receiving Party**") must treat and hold as confidential all Confidential Information of the other Party ("**Disclosing Party**") to which they have access, or which otherwise becomes known to them during the currency of the Terms and Conditions.
- 14.3 The obligations of confidentiality contained herein shall not apply to any Confidential Information which the Receiving Party can show (and it shall be for the Receiving Party to prove this by documentary evidence) -
- 14.3.1 is, at the time of disclosure to the Receiving Party by the Disclosing Party, within the public domain and could be obtained by any person with no more than reasonable diligence; or
- 14.3.2 comes into the public domain and could be obtained after such disclosure, otherwise than by reason of a breach of any of the undertakings contained in this Terms and Conditions; or
- 14.3.3 is, at the time of such disclosure, already within the possession of the Receiving Party, or it has been independently developed by the Receiving Party; or
- 14.3.4 is subsequently provided to the Receiving Party by a person who has not obtained such information from the Disclosing Party, provided that, in any such case, such information was not obtained illegally or disclosed by any person in breach of any undertaking or duty as to confidentiality, whether express or implied; or
- 14.3.5 is disclosed with the written approval of the Disclosing Party; or
- 14.3.6 is or becomes available to a third party from the Disclosing Party on an unrestricted basis; or
- 14.3.7 is obliged to be reproduced under order of a court or government agency of competent jurisdiction or in satisfaction of the requirements of any stock exchange or other regulatory authority.
- 14.4 The Receiving Party therefore agrees to hold such Confidential Information in the strictest confidence, not to make use thereof other than for the performance of the obligations under this Terms and Conditions, to release it only to personnel and professional advisors

requiring such information on a need-to-know basis and not to release or disclose it to any other person.

14.5 The Parties agree that the provisions of this clause 14 will survive the termination of this Terms and Conditions.

14.6 The Receiving Party shall procure that any party to whom it validly discloses the Confidential Information of the Disclosing Party, as contemplated in this clause 14 undertakes to respect the secret, confidential and proprietary nature thereof.

15 DATA PROTECTION

15.1 The Parties shall comply with the Data Protection Legislation when processing Personal Data.

15.1 Each Party warrants and undertakes in respect of all Personal Data that it may process on behalf of the other ("**Customer Data**") that it shall -

15.1.1 only process Customer Data for the purposes provided for in the Terms and Conditions and, in so doing, shall act solely on the instructions of the other Party. In particular, a Party shall not itself exercise control, nor shall they transfer, or purport to transfer, control of Customer Data to a third party, except as it may be specifically instructed to do so by the other Party or as may be agreed by the Parties;

15.1.2 keep Customer Data logically separate to data processed on behalf of any third party;

15.1.3 not process, apply or use Customer Data for any purpose other than as required for purposes of this Terms and Conditions;

15.1.4 maintain appropriate and sufficient technical and organisational security measures to protect Customer Data against accidental or unlawful destruction or accidental loss, damage, alteration, unauthorised disclosure or access, in compliance with the provisions of this Terms and Conditions, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing; and

15.1.5 grant the other Party such reasonable access to its premises, computer, media and other information systems and records as may be reasonably required to enable the

other Party to satisfy itself that it is complying with its obligations under this Terms and Conditions.

- 15.2 Each Party acknowledges and agrees that the other Party (the "**Disclosing Party**") may receive legally binding demands from a law enforcement authority for the disclosure of, or other assistance in respect of, Customer Data, or be required by law, court order, warrant, subpoena, or other legal judicial process to disclose Customer Data to any person other than to it and that the Disclosing Party will not be in breach of this Terms and Conditions for complying with such obligations to the extent legally bound. The Disclosing Party shall notify the other Party as soon as reasonably possible of any such demand unless otherwise prohibited, such as a prohibition under criminal law to preserve the confidentiality of a law enforcement investigation.
- 15.3 In order to ensure that all members of the public entering any area in which the CCTV surveillance network operates are informed of the surveillance, prominent signs will be posted in these areas.
- 15.4 Only specific persons within the Service Provider and Customer will have the ability to access and review data recorded by the CCTV surveillance network, to the extent in order to provide and/or utilise the Services. The Service Provider and/or the Customer will ensure such persons comply with the confidentiality obligations as set out in this clause 15.
- 15.4.1 The persons described in clause 15.4 may include, from time to time:
- 15.4.1.1 the Chief Executive Officer (or person in a similar position) of the Service Provider;
 - the Service Provider's Personnel who are required to support or maintain the system used in relation to the Services;
 - 15.4.1.2 nominated Representatives of the Customer;
 - 15.4.1.3 specified employees of third party service providers who have been sub-contracted by the Service Provider to monitor and/or retrieve data in accordance with the Services.

16 **BREACH AND TERMINATION**

- 16.1 In the event of either Party ("**Defaulting Party**") committing a breach of any provisions of the Proposal and/or Terms and Conditions and failing to remedy such breach by no later than 14 (fourteen) days after having received written notice from the other Party ("**Aggrieved Party**") to remedy such breach, the Aggrieved Party shall be entitled to terminate the Proposal immediately by notice in writing to the Defaulting Party, without

prejudice to its claim to recover damages from the Defaulting Party in respect of such breach.

16.2 Notwithstanding the provisions of clause 16.1, either Party may terminate the Proposal forthwith by notice in writing to the other Party in the event that the other Party –

16.2.1 is subject to an Insolvency Event; or

16.2.2 is unable to continue operating its business due to any licence, permit, certificate, consent, exemption or other legal requirement of a material nature expiring or being withdrawn, terminated or refused for any reason whatsoever.

16.3 Any termination of the accepted Proposal pursuant to the remaining provisions of the Terms and Conditions will be without prejudice to any claim which any Party may have in respect of any prior breach of the terms and conditions of the Terms and Conditions by the other Party.

17 CONSEQUENCE OF TERMINATION

17.1 The termination of the Proposal in accordance with the provisions of clause 15 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to either Party and all provisions which are to survive the Terms and Conditions or impliedly do so, shall remain in force and in effect.

17.2 The termination of the Proposal will result in the automatic termination of the Terms and Conditions.

17.3 Upon termination of the Proposal, the Customer will immediately deliver to the Service Provider all deliverables and property belonging to the Service Provider, which may be in the possession of, or under the control of the Customer and certify to the Customer in writing that such deliverables and property has been returned.

17.4 In the event that the Proposal is terminated prior to the Termination Date for any reason whatsoever, unless where such termination is due to the Service Provider's breach in terms of clause 16.1, the Customer will be liable for payment to the Service Provider of the total residual of the Fees up until the Termination Date as set out in the Proposal, unless where otherwise agreed between the Parties.

18 DISPUTE RESOLUTION

- 18.1 This clause is a separate, divisible agreement from the remainder of the Terms and Conditions and shall not be or become void, voidable or unenforceable by reason only of any alleged misrepresentation, mistake, duress, undue influence, impossibility (initial or supervening), illegality, immorality, absence or consensus, lack of authority or other cause relating in substance to the remainder of the Terms and Conditions and not to this clause.
- 18.2 Subject to the provisions of clause 18.3, the Parties agree that any dispute arising out of or in connection with the Terms and Conditions or the subject matter of the Terms and Conditions including, without limitation, any dispute concerning -
- 18.2.1 the existence of the Terms and Conditions apart from this clause;
 - 18.2.2 the interpretation and effect of the Terms and Conditions;
 - 18.2.3 the Parties' respective rights or obligations under the Terms and Conditions;
 - 18.2.4 the rectification of the Terms and Conditions;
 - 18.2.5 the breach, or any matter arising out of the breach of the Terms and Conditions;
 - 18.2.6 damages in delict, compensation for unjust enrichment or any other claim, whether or not the rest of the Terms and Conditions apart from this clause is valid and enforceable,
- shall be referred for resolution to the Managing Directors (or person in a similar position) of each Party, who shall attempt to try and resolve the dispute by negotiation within 10 (ten) Business Days of such dispute being referred to them for resolution.
- 18.3 In the event that the dispute has not been resolved within the 10 (ten) Business Day period referred to in clause 18.2, the Parties agree that either Party may refer the dispute, in writing, for resolution by arbitration in accordance with the remaining provisions of this clause 18.
- 18.4 The Parties shall agree on the arbitrator. If agreement regarding the appointment of the arbitrator is not reached within 10 (ten) days after the matter having been referred to arbitration, the arbitrator shall be an attorney or advocate nominated by the Registrar of AFSA for the time being.
- 18.5 The arbitration shall be held in Sandton and the Parties shall endeavour to ensure that it is completed within 90 (ninety) days after notice requiring the dispute to be referred to arbitration is given.
- 18.6 The arbitration shall be governed by the Arbitration Act, 42 of 1965 and shall take place in accordance with the Commercial Arbitration Rules of AFSA.

18.7 The decision of the arbitrator shall be final and binding on the Parties.

18.8 Notwithstanding the provisions of this clause 18, either Party may approach a Court of competent jurisdiction for urgent relief.

19 **VIS MAJOR**

19.1 Subject to clauses **Error! Reference source not found.** and 19.2, should either Party be unable to perform any of its obligations in terms of the Proposal as a result of any cause beyond its reasonable control, such as, but not limited to any act of God, war, protected strike, lock-out, fire, flood or legislation ("**Vis Major Event**"), then the other Party shall not be entitled to terminate the Proposal nor shall the other Party have any claim for damages of whatsoever nature against the Party unable to perform its obligations.

19.2 The Party claiming Vis Major shall -

19.2.1 immediately give notice to the other Party detailing the circumstances on which it relies and an estimate of the likely duration of its inability to perform its obligations under the Terms and Conditions; and

19.2.2 when that Party knows that such inability to perform its obligations under the Terms and Conditions is likely to terminate and again when it actually terminates, immediately give notice thereof to the other Party.

19.3 The Parties shall co-operate and use all reasonable endeavours to overcome, or failing which, to minimise the effect of such inability of either Party to perform its obligations under the Terms and Conditions due to a Vis Major Event.

20 **ASSIGNMENT**

Neither Party may cede, assign, delegate or otherwise transfer any of its rights and/or obligations in terms of this Terms and Conditions to any third party without the prior written consent of the other Party.

21 **SEVERABILITY**

All the provisions of the Terms and Conditions are, notwithstanding the manner in which they have been grouped together or linked grammatically, severable from each other. Any provision of the Terms and Conditions which is or becomes unenforceable, whether due to voidness, invalidity, illegality, unlawfulness or for any other reason whatsoever, shall, only to the extent that it is so unenforceable, be treated as *pro non scripto* and the remaining provisions of the Terms and Conditions shall remain of full force and effect. The parties declare that it is their intention that the Terms and Conditions would be executed without such unenforceable provision if they were aware of such unenforceability at the time of execution hereof.

22 NOTICES AND DOMICILIA

- 22.1 The Parties choose *domicilium citandi et executandi* ("**Domicilium**") for all purposes relating to this Terms and Conditions, including the giving of any notice, the payment of any sum and the serving of any process, as set out in the Proposal.
- 22.2 Either Party shall be entitled, from time to time, by giving written notice to the other, to vary its physical Domicilium to any other physical address (not being a post office box or *poste restante*) in South Africa and to vary its e-mail Domicilium to any other e-mail address.
- 22.3 Any notice given by a Party to the other ("**Addressee**"), which is delivered by hand between the hours of 09:00 and 17:00 on any Business Day to the Addressee's physical Domicilium for the time being, will be deemed (unless the contrary is proved by the Addressee) to have been received by the Addressee at the time of delivery.
- 22.4 Any notice given by a Party to the other, which is successfully transmitted by e-mail to the Addressee's e-mail Domicilium for the time being, will be deemed (unless the contrary is proved by the Addressee) to have been received by the Addressee on the Business Day immediately succeeding the date of successful transmission thereof.
- 22.5 This clause 222 shall not operate so as to invalidate the giving or receipt of any written notice, which is actually received by the Addressee other than by a method referred to in this clause 22.
- 22.6 Any notice in terms of, or in connection with, this Terms and Conditions shall be valid and effective only if in writing and if received or deemed to have been received by the Addressee.

23 RELATIONSHIP AND DUTY OF GOOD FAITH

- 23.1 The Parties shall at all times owe each other a duty of good faith and shall, in all dealings with each other and in respect of the provision of the Services, act according to such standard.
- 23.2 The Service Provider is an independent contracting party and the relationship between the Customer and the Service Provider in terms of the Terms and Conditions does not constitute, nor may be construed as, constituting a fiduciary relationship, a contract of agency, partnership or employment. The Service Provider shall not represent or allow itself to be represented as an employee or agent of the Customer.
- 23.3 Neither Party shall incur any liability of any nature whatsoever for or on behalf of the other Party and such Party shall have no authority to bind the other Party by any representations, statements or agreements made or concluded by it.

24 GENERAL

- 24.1 The provisions of the Terms and Conditions replace and supersede all other agreements and any amendments thereto, which exist or may have existed in any form whatsoever between them, with regard to the subject matter of the Terms and Conditions.
- 24.2 No extension of time or indulgence granted by either Party to the other shall be deemed in any way to affect, prejudice or derogate from the rights of such Party in any respect under the Terms and Conditions, nor shall it in any way be regarded as a waiver of any rights hereunder, or a novation of the Terms and Conditions.
- 24.3 The terms of the Terms and Conditions form the sole contractual relationship between the Parties and no variation of the Terms and Conditions, or this clause shall affect the terms hereof unless such a variation is reduced to writing and signed by both Parties.
- 24.4 Neither Party shall make or issue a formal or informal announcement, advertisement or statement to the media in connection with the Terms and Conditions or otherwise disclose the existence of the Terms and Conditions or the subject matter thereof to any other person, other than a professional advisor or personnel involved in the provision of the Services, without the prior written consent of the other Party.
- 24.5 Prior drafts of the Terms and Conditions shall not be admissible in any proceedings as evidence of any matter relating to any negotiations preceding the Commencement Date.

24.6 For the purposes of the Terms and Conditions -

24.6.1 no data message, as defined in the Electronic Communications and Transactions Act, 25 of 2002 ("**ECTA**"), other than an email shall constitute writing; and

24.6.2 no electronic signature or advanced electronic signature, as defined in ECTA, shall constitute a signature, except for the purposes of varying any date referred to in this Terms and Conditions or giving any consent or approval in terms of this Terms and Conditions.

25 **JURISDICTION AND GOVERNING LAW**

25.1 The Terms and Conditions (including its validity, existence and implementation, the interpretation and application of its provisions, the respective rights and obligations of the Parties in terms of, and arising out of, the conclusion, breach, cancellation and termination of the provisions of this Terms and Conditions) shall be governed by, and interpreted in accordance with, the laws of South Africa.

25.2 The Parties hereby consent and submit to the non-exclusive jurisdiction of the High Court of South Africa, Gauteng Local Division, Johannesburg, for the purposes of clause 18 or having an arbitration award made an order of court.