



4 Einstein Street, Highveld, Centurion, 0157
www.watcher.co.za
 012-0061047

TERMS AND CONDITIONS 3.0

Between:

WATCHER SURVEILLANCE SOLUTIONS (PTY) LTD

Registration Number: 2018/362351/07
 (Hereinafter referred to as "WATCHER")

and

The CLIENT who has entered into the FOUNDING AGREEMENT

(Hereinafter referred to as the "CLIENT")

WATCHER and the CLIENT agree as follows:

1. In the AGREEMENT:

DEFINITIONS AND INTERPRETATION

In the AGREEMENT, the following words shall, unless otherwise stated or inconsistent with the context in which they appear, bear the following meanings and other words derived from the same origins as such words (that is, cognate words) shall bear corresponding meanings:

- 1.1. "ACTIVATION DATE" means the date on which WATCHER starts to deliver the SERVICES.
- 1.2. "ADDRESS" means the address listed on the FOUNDING AGREEMENT.
- 1.3. "AGREEMENT" means the FOUNDING AGREEMENT which incorporates this TERMS AND CONDITIONS 3.0.
- 1.4. "BUSINESS DAY" means any day other than a Saturday, Sunday, or gazetted national public holiday in the Republic of South Africa.
- 1.5. "CONNECTIVITY" means the connectivity required to activate and maintain the SERVICES.
- 1.6. "DATE OF AGREEMENT" the date on which this AGREEMENT is signed by the last PARTY thereto.
- 1.7. "DATE OF DEFAULT" means the following: If the CLIENT has been notified of a payment breach and given seven days to rectify it, as provided by clause 10, and the CLIENT fails to remedy the breach within this period, then the DATE OF DEFAULT is the first day after the expiration of the seven-day period.
- 1.8. "DEEMED ACTIVATION DATE" means 10 days after the date on which WATCHER have informed the CLIENT in terms of clause 7.1 that the CLIENT is causing a delay and thereby preventing the ACTIVATION DATE to occur. There will be no DEEMED ACTIVATION DATE if the DEEMED ACTIVATION DATE occurs on a date after the ACTIVATION DATE.
- 1.9. "DEEMED ACTIVATION PERIOD" means the period from the DEEMED ACTIVATION DATE until the ACTIVATION DATE. There will be no DEEMED ACTIVATION PERIOD if the DEEMED ACTIVATION DATE occurs on a date after the ACTIVATION DATE.
- 1.10. "CAMERA EQUIPMENT" means the cameras, camera network equipment (including switches and routers), infrastructure (including poles, cabinets and wiring) and back-up power systems, required to provide the SERVICES.

- 1.11. "FOUNDING AGREEMENT" the subject agreement entered into by WATCHER and the CLIENT which incorporates this TERMS AND CONDITIONS 3.0 to form part thereof.
- 1.12. "INITIAL TERM OF AGREEMENT" shall mean the term as set out in the FOUNDING AGREEMENT. The term will start on the ACTIVATION DATE and endure for the term as set out in the FOUNDING AGREEMENT. If the FOUNDING AGREEMENT does not indicate a term, then the INITIAL TERM OF AGREEMENT will be 36 months.
- 1.13. "PRICE ESCALATION RATE" shall mean the percentage increase of the monthly MONTHLY SERVICE FEE, exclusive of VAT, per year on the anniversary of the ACTIVATION DATE. If a price escalation rate is not listed on the FOUNDING AGREEMENT, then the price escalation rate will be the official South African Consumer Price Index (CPI) percentage as published from time to time by STATS SA, which is valid on the anniversary date of the AGREEMENT.
- 1.14. "MONTHLY SERVICE FEE" means the monthly fee as set out on the FOUNDING AGREEMENT.
- 1.15. "PARTY(IES)" means a party or the parties to the AGREEMENT.
- 1.16. "RECONNECTION FEE" means the fee to reconnect a CLIENT. The reconnection fee shall be calculated at R100.00 per camera related to the AGREEMENT.
- 1.17. "REMAINING PERIOD" means the period starting on the DATE OF DEFAULT and continuing until the last day of the TERM OF AGREEMENT.
- 1.18. "SERVICES" mean: The services which WATCHER will deliver to the CLIENT as set out in the FOUNDING AGREEMENT.
- 1.19. "SUSPENSION PERIOD" shall mean a period for which the AGREEMENT is suspended as a result of the CLIENT'S failure to pay the MONTHLY SERVICE FEE and/or any RECONNECTION FEE.
- 1.20. "TERM OF AGREEMENT" shall mean the DEEMED ACTIVATION PERIOD (If applicable) together with the INITIAL TERM OF AGREEMENT.

2. IN THE AGREEMENT:

- 2.1. The headings to the clauses are for the purposes of convenience and reference only and shall not be used in the interpretation of nor modify or amplify the terms of the AGREEMENT nor any clause.
- 2.2. References to a statutory provision include any subordinate legislation made from time to time under that provision and include that provision as modified or re-enacted from time to time.
- 2.3. Words importing the masculine gender include the feminine and neuter genders and vice versa; the singular includes the plural and vice versa; and natural persons include artificial persons and vice versa.
- 2.4. References to a "person" include a natural person, company, close corporation or any other juristic person or other corporate entity, a charity, trust, partnership, joint venture, syndicate, or any other association of persons.
- 2.5. If a definition imposes substantive rights and obligations on a PARTY, such rights and obligations shall be given effect to and shall be enforceable, notwithstanding that they are contained in a definition.
- 2.6. Any definition, wherever it appears in the AGREEMENT, shall bear the same meaning, and apply throughout the AGREEMENT unless otherwise stated or inconsistent with the context in which it appears.
- 2.7. If there is any conflict between any definitions in the AGREEMENT then, for purposes of interpreting any clause of the AGREEMENT, the definition appearing in that clause or paragraph shall prevail over any other conflicting definition appearing elsewhere in the AGREEMENT.
- 2.8. Where any number of days is prescribed, those days 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.
- 2.9. Where the day upon or by which any act is required to be performed is not a BUSINESS DAY, the PARTIES shall be deemed to have intended such act to be performed upon or by the next succeeding BUSINESS DAY.
- 2.10. Any provision in the AGREEMENT which is or may become illegal, invalid or unenforceable in any jurisdiction affected by the AGREEMENT shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability and shall be treated as having not been written (i.e. pro non scripto) and severed from the balance of the AGREEMENT, without

invalidating the remaining provisions of the AGREEMENT or affecting the validity or enforceability of such provision in any other jurisdiction;

2.11. *The rule of construction that if general words or terms are used in association with specific words or terms which are a species of a particular genus or class, the meaning of the general words or terms shall be restricted to that same class (i.e. the eiusdem generis rule) shall not apply, and whenever the word "including" is used followed by specific examples, such examples shall not be interpreted so as to limit the meaning of any word or term to the same genus or class as the examples given.*

2.12. *The expiration or termination of the AGREEMENT shall not affect such of the provisions of the AGREEMENT which are provided to operate after any such expiration or termination, or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the relevant provisions themselves do not provide for this.*

2.13. *Each of the provisions of the AGREEMENT has been negotiated by the PARTIES and drafted for the benefit of the PARTIES, and accordingly the rule of construction that the contract shall be interpreted against or to the disadvantage of the PARTY responsible for the drafting or preparation of the AGREEMENT (i.e., the contra preferentum rule), shall not apply.*

2.14. *References to any amount shall mean that amount exclusive of VAT, unless the amount expressly includes VAT.*

3. AGREEMENT

3.1. The PARTIES agree that the AGREEMENT will come into force and effect on the DATE OF AGREEMENT.

3.2. With effect from the ACTIVATION DATE, WATCHER hereby agrees to deliver the SERVICES to the CLIENT for the INITIAL TERM OF AGREEMENT. The CLIENT agrees to pay the MONTHLY SERVICE FEE for the TERM OF AGREEMENT.

4. FEES AND PAYMENT

4.1. The CLIENT will be liable for payment of the MONTHLY SERVICE FEE to WATCHER.

4.2. The CLIENT will pay the MONTHLY SERVICE FEE monthly in advance on or before the first day of every month for the TERM OF AGREEMENT.

4.3. The CLIENT will be liable to WATCHER on a pro-rata basis for the portion of the month where SERVICES are rendered or deemed to be rendered, should the DEEMED ACTIVATION DATE (if applicable) or the ACTIVATION DATE fall on any other day than the first day of a month.

4.4. WATCHER will invoice the CLIENT monthly in advance and the CLIENT will effect payment monthly in advance on or before the first day of every month.

4.5. WATCHER will not be under any obligation to deliver any SERVICES during any SUSPENSION PERIOD and the CLIENT will remain liable to pay the MONTHLY SERVICE FEE during the SUSPENSION PERIOD.

4.6. WATCHER is not obligated to provide any SERVICES during the REMAINING PERIOD unless the CLIENT has paid all outstanding MONTHLY SERVICE FEES, including any applicable RECONNECTION FEE up and to the day before DATE OF DEFAULT; and

4.7. Once all the fees referred to in clauses 4.5 and 4.6 are paid, WATCHER will resume the delivery of SERVICES. However, WATCHER is not obligated to provide any SERVICES beyond the last day of the TERM OF AGREEMENT.

4.8. The MONTHLY SERVICE FEE will escalate annually, on the anniversary date(s) of the INITIAL TERM OF AGREEMENT, with the PRICE ESCALATION RATE.

5. SERVICES

WATCHER will deliver the SERVICES to the CLIENT for the INITIAL TERM OF AGREEMENT.

6. TERM OF AGREEMENT

6.1. The AGREEMENT will endure for the TERM OF AGREEMENT.

6.2. The AGREEMENT will endure after the TERM OF AGREEMENT on a month-to-month basis.

6.3. Any PARTY shall have the right to terminate the AGREEMENT with 3 (three) months prior written notice subject to the following: The date of termination may not be during the TERM OF AGREEMENT.

7. MISCELLANEOUS

7.1. The CLIENT must provide WATCHER access to all necessary infrastructure, CAMERA EQUIPMENT, data, and information required to activate the SERVICES. If the CLIENT fails to do so, WATCHER may request in writing that the CLIENT provide the required access to infrastructure, data, and information within 10 (ten) days. If the CLIENT does not comply within this 10-day period, WATCHER will be deemed to have started to deliver the SERVICES, and the CLIENT will be responsible for paying the SERVICE FEE from the DEEMED ACTIVATION DATE.

7.2. Unless explicitly stated in the FOUNDING AGREEMENT:

7.2.1. The CLIENT will be under obligation to provide and maintain the CONNECTIVITY and CAMERA EQUIPMENT at its own cost.

7.2.2. The CLIENT will be solely responsible for the functioning and maintenance of the CONNECTIVITY and/or CAMERA EQUIPMENT.

7.2.3. WATCHER is not responsible for maintaining any CAMERA EQUIPMENT and/or CONNECTIVITY.

7.2.4. WATCHER will not be obligated to provide SERVICES if the CONNECTIVITY is not adequate and/or if the CAMERA EQUIPMENT does not function properly.

7.3. The CLIENT will continue to be liable for payment of the MONTHLY SERVICE FEE, in terms of this AGREEMENT, under circumstances where there are interruptions or disruptions to the functionality of the CONNECTIVITY and/or CAMERA EQUIPMENT under circumstances where the CLIENT is under obligation to maintain the CONNECTIVITY and/or the CAMERA EQUIPMENT.

8. SUSPENSION OF SERVICES

8.1. If any MONTHLY SERVICE FEE is in arrears, then WATCHER may, without any prior notice suspend the SERVICES to the CLIENT until all arrear amounts have been paid in full.

8.2. WATCHER will reconnect the SERVICES within 5 (five) business days, once all outstanding arrears and the RECONNECTION FEE have been paid.

9. CESSION

9.1. If WATCHER provides SERVICES under this AGREEMENT on behalf of the CLIENT to a third party (referred to as the "DESIGNATED CLIENT"), the CLIENT agrees to cede transfer and assign to WATCHER, as security for payment, all rights, title, and interest in any money owed or to be owed by the DESIGNATED CLIENT to the CLIENT under their agreement. This cession will take effect on the date WATCHER notifies the DESIGNATED CLIENT of the cession:

9.1.1. If the CLIENT does not remedy a breach related to the non-payment of the MONTHLY SERVICE FEE and/or RECONNECTION FEE within 7 (seven) days of receiving notice as provided for in clause 10, WATCHER may notify the DESIGNATED CLIENT of the cession at any time thereafter.

9.2. Upon being notified of the cession, the DESIGNATED CLIENT shall promptly pay all amounts due to the CLIENT under their agreement directly to WATCHER. Any amounts received from the DESIGNATED CLIENT will be deducted from WATCHER'S claim against the CLIENT.

9.3. The CLIENT agrees not to enter into any agreement with the DESIGNATED CLIENT that could compromise or impede the enforceability of the cession under this AGREEMENT.

9.4. The CLIENT agrees that, once the DESIGNATED CLIENT has been notified of the cession, all payments owed to the CLIENT shall be directed to WATCHER. The CLIENT further agrees that the DESIGNATED CLIENT may without any penalty direct all payments owed to the CLIENT to WATCHER, once the DESIGNATED CLIENT have been informed of the cession.

9.5. The CLIENT shall not be allowed to institute any legal action to prevent any payment by the DESIGNATED CLIENT to WATCHER, unless the CLIENT can show with bank statements that the CLIENT has paid WATCHER punctually in terms of this AGREEMENT.

9.6. The onus of proof regarding the right of WATCHER to enforce the cession will always be on the CLIENT.

9.7. WATCHER shall, disregarding anything to the contrary in this AGREEMENT have the right to contact and discuss any issue with the DESIGNATED CLIENT if:

9.7.1. The CLIENT is in arrears with any amount payable in terms of this AGREEMENT.

9.8. WATCHER shall, disregarding anything to the contrary in this AGREEMENT have the right to enter into any agreement with the DESIGNATED CLIENT if:

9.8.1. The CLIENT fails to remedy a breach of this AGREEMENT related to the non-payment of any MONTHLY SERVICE FEE and/or RECONNECTION FEE within 7 (seven) days of receiving notice to rectify such breach as per clause 10.

10. BREACH AND TERMINATION

10.1. If any PARTY commits a material breach (The PARTIES agree that failure to pay any amount payable in terms of the AGREEMENT will be regarded as a material breach) of any of the provisions of the AGREEMENT and fails to remedy such breach within 7 (seven) days after receipt of written notice from the other PARTY calling upon it to remedy such breach, then the innocent PARTY shall be entitled, without prejudice to any other rights which it may have in law and in terms of the AGREEMENT, to:

10.1.1. Claim immediate fulfilment of all obligations by the defaulting PARTY under the AGREEMENT, regardless of whether the due date for performance has arrived; and/or

10.1.2. Claim immediate payment of all outstanding MONTHLY SERVICE FEE and if applicable outstanding RECONNECTION FEE calculated up and to the day before the DATE OF DEFAULT; plus

10.1.3. Cancel the AGREEMENT and claim damages, including the total MONTHLY SERVICE FEE (Escalation included) which would become payable during the REMAINING PERIOD.

11. CERTIFICATE OF INDEBTEDNESS

The nature and amount of any indebtedness of the CLIENT in terms of the AGREEMENT shall at any time be determined and proved by a written certificate provided under oath purporting to have been signed by any director or accountant for the time being of WATCHER, whose capacity or authority it will not be necessary to prove, which certificate shall be binding on the CLIENT and be prima facie proof, in any legal proceedings against the CLIENT, of the contents thereof and of the fact that such amount is due and payable.

12. WARRANTIES

12.1. The CLIENT hereby warrants that:

12.1.1. All their agreements with WATCHER have been authorised by means of a proper resolution(s) and that the person(s) who have executed the agreement(s) with WATCHER has proper representative capacity.

13. INDEMNITY AND LIMITATION OF LIABILITY

13.1. The CLIENT hereby indemnifies WATCHER, 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 WATCHER may incur or suffer, as a result of a breach of any of the provisions of this AGREEMENT and any other agreements entered into as a direct foreseeable consequence of this AGREEMENT, by the CLIENT and/or the negligence or wilful misconduct of the CLIENT and/or its PERSONNEL.

13.2. WATCHER shall not be liable for any consequential damages and the CLIENT hereby indemnifies WATCHER against any such claims.

13.3. WATCHER will not be liable to a third party for any indirect, special, or consequential damages, whether foreseen or unforeseen, (indirect or consequential loss of profits, business, revenue, goodwill or anticipated savings of an indirect nature) arising out of or related to breach of any of the provisions of this AGREEMENT and any other agreements entered into as a direct foreseeable consequence of this AGREEMENT. The CLIENT hereby indemnifies WATCHER against any such claims.

13.4. Notwithstanding anything contrary in the AGREEMENT, WATCHER'S total liability to the CLIENT for damages as a result of any cause whatsoever shall be limited to an amount equal to the MONTHLY SERVICE FEE multiplied by 3 (three).

13.5. WATCHER will be absolved from all liability resulting from damages caused as a result of any service interruptions due to service interruptions by 3rd parties.

14. ADDRESSES AND NOTICES

- 14.1. For the purposes of the AGREEMENT, including the giving of notices and the serving of legal process, the PARTIES choose domicilium citandi et executandi as follows:
- 14.1.1. in the case of WATCHER:
address: 4 Einstein Street, Highveld Techno Park, Centurion.
e-mail: info@watcher.co.za
- 14.1.2. in the case of the CLIENT:
address: The CLIENT'S registered address or, if the CLIENT is not a legal entity the ADDRESS and/or any other address from which the CLIENT does business from.
e-mail: any e-mail address which the CLIENT may present and/or any e-mail address(es) which the CLIENT has used to communicate with WATCHER.
- 14.2. The notice shall be deemed to have been duly given:
- 14.2.1. On delivery, if delivered by hand to the PARTY'S physical between 08h30 and 17h00 on a BUSINESS DAY (or on the first BUSINESS DAY after that if delivered outside such hours).
- 14.2.2. On despatch, if sent to the PARTY'S then e-mail address between 08h30 and 17h00 on a BUSINESS DAY (or on the first BUSINESS DAY after that if despatched outside such hours).
- 14.3. A PARTY may change that PARTY'S address or e-mail address for this purpose by notice in writing to the other PARTY, such change to be effective only on and with effect from the seventh day after the giving of such notice. No PARTY may change his physical address to an address outside the Republic of South Africa.
- 14.4. Notwithstanding anything to the contrary herein contained, a written notice or communication actually received by a PARTY shall be an adequate written notice or communication to that PARTY notwithstanding that it was not sent to or delivered at that PARTY'S chosen address.

15. GENERAL

- 15.1. The AGREEMENT is to be governed, interpreted and implemented in accordance with the laws of the Republic of South Africa.
- 15.2. Each of the PARTIES hereby respectively agrees and acknowledges that:
- 15.2.1. it has been free to secure independent legal advice as to the nature and effect of each provision of the AGREEMENT and that it has either taken such independent legal advice or has dispensed with the necessity of doing so; and
- 15.2.2. each provision of the AGREEMENT is fair and reasonable in all the circumstances and is part of the overall intention of the PARTIES in connection with the AGREEMENT.
- 15.3. The PARTIES shall at all times act in good faith towards each other and shall not bring any of the other PARTIES into disrepute.
- 15.4. Each of the PARTIES undertakes at all times to do all such things, perform all such acts and take all such steps, and to procure the doing of all such things, within its power and control, as may be open to it and necessary for and incidental to the putting into effect or maintenance of the terms, conditions and import of the AGREEMENT.
- 15.5. Except for the cession(s) provided for in the AGREEMENT, the CLIENT may not cede, assign, delegate or otherwise transfer any of its rights and/or obligations in terms of the AGREEMENT and any other agreements entered into as a direct foreseeable consequence of the AGREEMENT to any third party without the prior written consent of WATCHER, which consent may not be unreasonably withheld, but may be given subject to conditions.

16. DATA, DATA PROTECTION AND CONFIDENTIAL INFORMATION
- 16.1. The following word(s) shall, unless otherwise stated or inconsistent with the context in which they appear, bear the following meanings and other words derived from the same origins as such words (that is, cognate words) shall bear corresponding meanings:
- 16.1.1. "CUSTOMER DATA" means PERSONAL DATA which a PARTY may process on behalf of the other PARTY.
- 16.1.2. "CONFIDENTIAL INFORMATION" means 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 this AGREEMENT, 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 but is not limited to the DISCLOSING PARTY'S:
- 16.1.2.1. business, business policies, business plans, business strategies, pricing models and other business and commercial information; and
- 16.1.2.2. know-how, trade secrets, specifications, drawings, sketches, models, samples, data, presentations, spread sheets, diagrams and flow charts, designs, techniques, templates; and
- 16.1.2.3. potential customers, customer lists, sales, sales figures and products; and
- 16.1.2.4. technical information, including use of technology, systems, hardware, software (and the incidence of any faults therein), source codes, reports, notes, generalized features of the structure, user interfaces, screen designs, tools, utilities and routine logic, methods of operational systems, methodology documents and related material and documentation; and
- 16.1.2.5. past, present and future research and development.
- 16.2. "DATA PROTECTION LEGISLATION" means 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.
- 16.3. "DISCLOSING PARTY(IES)" means a PARTY who discloses CONFIDENTIAL INFORMATION. This definition includes employees, partners, shareholders, directors, agents, consultants, contractors, subcontractors, Professional Advisers, or other representatives of the PARTY.
- 16.3.1. "PERSONAL DATA" means any information defined as such or information treated as personal information or data under the DATA PROTECTION LEGISLATION.
- 16.3.2. "RECEIVING PARTY(IES)" means a party who receives or to whom CONFIDENTIAL INFORMATION is disclosed. This definition includes employees, partners, shareholders, directors, agents, consultants, contractors, subcontractors, Professional Advisers, or other representatives of the PARTY.
- 16.3.3. "WATCHER'S DATA" means collectively –
- 16.3.3.1. CONFIDENTIAL INFORMATION provided by WATCHER and/or any third party or private individual in respect of or on behalf of WATCHER to the CLIENT relating to WATCHER'S business or WATCHER'S CLIENT(S).
- 16.3.3.2. CONFIDENTIAL INFORMATION which the CLIENT processes or in respect of which the CLIENT comes into possession pursuant to performing under this AGREEMENT and any other agreement(s) entered into as a direct foreseeable consequence of this AGREEMENT.
- 16.4. Ownership in all WATCHER'S DATA, whether under its control or not, shall continue to vest in WATCHER and the CLIENT shall not obtain any proprietary rights in any such WATCHER'S DATA. For the avoidance of doubt, the PARTIES agree that the WATCHER'S DATA will at all times be the property of WATCHER.
- 16.5. The CLIENT agrees not to utilise any of WATCHER'S DATA other than for purposes of this AGREEMENT. The CLIENT agree that they will be liable to WATCHER for any direct and/or indirect financial benefit and/or any potential direct and/or indirect financial benefit which they directly or indirectly receive or may receive from the unauthorised use of WATCHER'S DATA.
- 16.6. The WATCHER'S DATA in possession of the CLIENT or to which the CLIENT may have access during the currency of this AGREEMENT, may not be used, accessed and/or tampered with by the CLIENT or the CLIENT'S personal for any purposes other than as may be specifically required to enable the CLIENT to comply with its obligations under this AGREEMENT.
- 16.7. The PARTIES acknowledge that all material and information which has or will come into the possession or knowledge of the other in connection with this AGREEMENT or the performance of the obligations hereunder, consists of confidential and proprietary information, which, if disclosed to third parties, will be damaging.
- 16.8. The RECEIVING PARTY must treat and hold as confidential all CONFIDENTIAL INFORMATION of the DISCLOSING PARTY to which they have access, or which otherwise becomes known to them during the currency of this AGREEMENT.

- 16.9. 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):
- 16.9.1. 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
- 16.9.2. comes into the public domain and could be obtained after such disclosure, otherwise than by reason of a breach of any of the undertakings contained in this AGREEMENT; or
- 16.9.3. 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
- 16.9.4. 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
- 16.9.5. is disclosed with the written approval of the DISCLOSING PARTY; or
- 16.9.6. is or becomes available to a third PARTY from the DISCLOSING PARTY on an unrestricted basis; or
- 16.9.7. 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.
- 16.10. The RECEIVING PARTY therefore agrees to hold such CONFIDENTIAL INFORMATION in the strictest confidence, not to make use thereof other than for the performance of the obligations under this AGREEMENT, to release it only to personnel and professional advisors requiring such information on a need-to-know basis and not to release or disclose it to any other person.
- 16.11. The PARTIES agree that the provisions of this clause 16 will survive the termination of this AGREEMENT.
- 16.12. 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, undertakes to respect the secret, confidential and proprietary nature thereof.
- 16.13. The PARTIES shall comply with the DATA PROTECTION LEGISLATION when processing PERSONAL DATA.
- 16.14. Each PARTY warrants and undertakes in respect of all CUSTOMER DATA that it may process on behalf of the other, that it shall:
- 16.14.1. only process CUSTOMER DATA for the purposes provided for in this AGREEMENT 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.
- 16.14.2. keep CUSTOMER DATA separate to data processed on behalf of any third party.
- 16.14.3. not process, apply or use CUSTOMER DATA for any purpose other than as required for purposes of this AGREEMENT.
- 16.15. 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 AGREEMENT, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing; and
- 16.16. 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 AGREEMENT.
17. RESTRAINT
- The CLIENT undertakes in favour of WATCHER that:
- 17.1. The CLIENT and/or any entity in which the CLIENT has a financial interest will not, during the currency of this AGREEMENT and thereafter for a period of 3 (three) years, employ any of the employees of WATCHER.
- 17.1.1. The restraint and undertakings as set out above are reasonable for the protection of the interests of WATCHER; and
- 17.1.2. This clause will remain binding between the PARTIES disregarding the cancellation of this AGREEMENT.