

staffroom

Staffroom Software (Pty) Ltd
Customer Relationship Terms
 general terms for the provision of services

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Terms Version Number

1.0

1. Introduction

These terms are the general terms of the relationship between us and you. The terms cover any transactions where we provide services to you. The commercial terms of any transaction will be contained in an order that will incorporate these terms. The order will prevail if there is a conflict of meaning. Nothing in the terms obligates any party to enter into any orders.

2. Definitions and interpretation

Definitions. In the agreement:

additional fee means a charge you must pay us for the supply of any services outside of an order, which charge must be made at our then current standard prices and rates, unless otherwise agreed in writing between the parties;

administrator means an authorised user that you employ who is authorised to provide, manage and administer certain services;

AFSA means the Arbitration Foundation of Southern Africa (or its successor or body nominated in writing by it in its stead);

agreement means the agreement between us and you, consisting of the terms and any orders the parties enter into;

authorised user means you or a user in your employ where you are a juristic person, who has been assigned credentials;

business day means any day other than a Saturday, a Sunday, or a holiday (including a public or bank holiday) in the jurisdiction where our entity that entered into the relevant order is organised;

business hours means our normal business hours on business days;

calendar day means a day counted from midnight to midnight. It includes all days of the month, including weekends (Saturday and Sunday), and public holidays;

contract year means, in respect of an order, each successive 12 calendar month period during the term of the order, calculated from the effective date;

dashboard means the section on the website accessible by you through a web browser that allows you to control certain aspects of the services;

credentials means a unique username and password that has been assigned to an authorised user;

effective date means in respect of each order, the effective date stipulated in each order, in the absence of which it will be the date the order is accepted by us;

existing material means any code, forms, algorithms or materials developed by or for either party independently and outside of the agreement and provided during the course of the agreement;

fees means the fees, charges, or purchase consideration that you will pay to us in respect of services we provide under orders;

order means a services order agreed to and signed by both the parties describing the specific services that we will provide to you;

personnel means any director, employee, or other person who works permanently or temporarily under our direction or supervision, or a person who renders services to us for purposes of our obligations under this agreement as its, agent, consultant, contractor, or other representative;

related and **related persons** means natural and juristic persons who are connected to one another in the manner contemplated in sections 2 and 3 of the Companies Act 71 of 2008;

services means any services we or related persons provide to you, under orders;

service levels means the levels according to which we will provide each service as agreed by the parties in writing and signed;

sign means the handwritten signature, an advanced electronic signature, or an electronic signature that the parties agree to use, of each of our duly authorised representatives;

signature date means the date of signature by the party signing last;

tax means any:

- tax (including value added tax, income taxes, pay-as-you-earn tax or other taxes levied in any jurisdiction);
- duty (including stamp duty);
- tariff, rate, levy; or
- any other governmental charge or expense payable;

terms means the terms, consisting of:

- these terms; and
- any other relevant specific terms, policies, disclaimers, rules and notices that the parties agree on, (including any that may be applicable to any specific services);

third party contractor means any contractor, supplier, service provider or licensor of a part of the services, which is not a party to the agreement;

third party software means all third party software owned by a third party but legally licensed to us for use in providing the services;

we, us, or our means Staffroom Software (Pty) Ltd (Registration number: 2017/408306/07), the service provider that enters into an order and, if specified in the order, those related to it;

writing means the reproduction of information or data in physical form (includes handwritten documents, hard copy printouts and fax transmissions) or any mode of reproducing information or data in electronic form that the parties agree to use (like pdf), but excludes information or data in the form of email;

you or your means the customer that enters into an order and, if specified in the order, those related to it;

your data means your (and your customer's) data (including information about an identifiable person) that:

- you provide, your customer provides, or any third party on your behalf provides to us; or
- we generate, process, or supply to you (or your customer) in providing the services;

2.1 **Definitions in the order.** Words defined (or assigned a meaning) in an order will have that meaning in the terms, unless the context clearly indicates otherwise.

2.2 **Interpretation.** All headings are inserted for reference purposes only and must not affect the interpretation of the agreement. Whenever "including" or "include", or "excluding" or "exclude", together with specific examples or items follow a term, they will not limit its ambit. Terms other than those defined within the agreement will be given their plain English meaning. References to any enactment will be

deemed to include references to the enactment as re-enacted, amended, or extended. A reference to a person includes a natural and juristic person and a reference to a party includes the party's successors or permitted assigns. Unless otherwise stated in the agreement, when any number of days is prescribed in the agreement the first day will be excluded and the last day included. The rule of construction that an agreement must be interpreted against the party responsible for its drafting or preparation does not apply. GMT +2 will be used to calculate any times.

- 2.3 **Conflict.** If there is a conflict of meaning between these terms and any order, the order will prevail in respect of the relevant goods or your use of the relevant services. **Conflict.** If there is a conflict of meaning between these terms and any order, the order will prevail in respect of the relevant goods. **Conflict.** If there is a conflict of meaning between these terms and any order, the order will prevail in respect of your use of the relevant services.

3. Duration

The terms commence on acceptance and continue until terminated. Where the duration of this agreement is specified in an order, if you are a "consumer" for purposes of the Consumer Protection Act, you may terminate the relevant service prior to the expiry of the term on 20 business day's written notice to us. However, we may charge you an early termination fee. The terms commence on acceptance and continue until terminated.

4. Orders

- 4.1 **Request for goods or services.** If you at any time require additional goods or services related to the services, you may submit a request for proposal (RFP) to us detailing:

- the nature of and scope of the services; and
- the specification and quantity of goods;

required together with any other requirements or information that is relevant to the provision of additional goods or services and stipulating a reasonable timeframe within which we may submit a proposal to you.

- 4.2 **Submission of proposal.** We may submit a proposal to you. It may be in the form of an order.
- 4.3 **Acceptance of proposal.** If the proposal is acceptable to you, the parties will execute an order.
- 4.4 **Capacity.** You represent and warrant that you (and any person who places an order):

- are old enough under applicable law to enter into the agreement;
- are legally capable of concluding any transaction;
- possess the legal right, full power, and authority to enter into the agreement;
- are authorised to use the credentials required for any account;
- will submit true, accurate and correct information to us.

If you are younger than 18 years of age, you warrant that you have the consent of your legal guardian to enter into the agreement or that you have obtained legal status in another manner.

- 4.5 **Invitation to do business.** The marketing of the services by us is merely an invitation to do business or for you to place an order to procure services. The parties only conclude a valid and binding order when you place the order. We only accept an offer relating to services, when we begin providing the services.
- 4.6 **Deemed order.** You will be deemed to have placed an order in regard to services when you start consuming any services you have requisitioned automatically from the dashboard, it being agreed that each click of a button to requisition a service constitutes a billable event.
- 4.7 **Time and place.** The parties conclude any agreement between themselves at the time when your duly authorised representative places the relevant order and at the place where you have your head office.
- 4.8 **Orders.** The terms in effect at the time you place an order will govern the order. Each order will create a separate agreement.

5. Services

- 5.1 **Grant of right.** We grant you a limited, non-exclusive, non-transferrable, revocable right to use our services in accordance with the terms and the terms of any third party agreement. Any person wishing to use the services contrary to the terms or third party agreement must obtain our prior written consent.
- 5.2 **Consent to monitoring.** You consent to us monitoring your use of the service for security purposes and in order to ensure that the service is always running and functioning as it should.
- 5.3 **Service levels.** We will provide the services to you at the service levels.
- 5.4 **Third party software.** Some software used in our services may be third party software that we will make available to you in accordance with third party software license terms. You agree that the use of the services is subject to these third party software license terms and that they may change from time to time. Please note that there may be provisions in the third party software license agreement that expressly override some of these terms.

6. Change control

- 6.1 **Changes to services.** During the currency of an order, events may occur which require a change to the nature and scope of services. The parties will not implement a change unless they comply with this clause.
- 6.2 **Change request.** A party may propose a change to the nature and scope of services by sending a scope change document to the other party detailing the desired changes.
- 6.3 **Scope change document.** If a scope change document is made by:
- you, you will specify the reasons for that change and describe the change in sufficient detail to enable us to formulate a response. We will investigate the likely impact of any proposed changes on the provision of services and will provide you with a scope change proposal, including amended pricing and timeframes; or
 - us, we will detail in a scope change proposal the reasons for and impact of the change, the services required to implement the change and the effect that the changes, if implemented, will have on the relevant order.
- 6.4 **Sign-off.** The parties will discuss and agree the proposed changes and make the necessary amendments to our scope change proposal. You will then consider the scope change proposal and may approve or reject it in writing within three business days. If you:
- accept a scope change proposal, a duly authorised representatives of the parties will sign off the scope change proposal and it will be incorporated into the relevant order; or

- reject a scope change proposal, we will continue to provide the services on the existing terms.

6.5 **No change effective until sign-off.** No party may proceed with any change to an order until the change and all matters relating to the change have been agreed in writing between the parties. Pending sign-off, the parties will continue to perform their obligations without taking account of the proposed changes. No party must agree to any change, but a party will not unreasonably delay or withhold their agreement to a proposed change.

6.6 **Exception.** Amendments to the content of the agreement that do not directly impact the nature and scope of the services will not be subject to this change control procedure, but the parties will execute them in writing.

7. Personnel

7.1 **Requests and directions.** We (and our personnel) will comply with all your reasonable requests and directions.

7.2 **Time sheets.** On request, our personnel will complete daily time sheets, which accurately record work durations and activities.

7.3 **Access.** With effect from the signature date, you will allow us and our personnel access to your premises at all reasonable times strictly for the purposes of fulfilling our obligations under orders.

7.4 **Compliance with your policies.** We will comply, and ensure that our personnel comply, with your policies. Your policies are incorporated into the agreement by this reference. We can either already access them from you or we must request them from you.

7.5 **Allocation of resources.** We may allocate and re-allocate all our personnel who carry out our obligations under the agreement. We will notify you in advance if we do. We will ensure that the provision or continuity of our obligations to you is not prejudiced in any way.

7.6 **Unprotected action.** We and our personnel will not take part in (or in any conduct in contemplation or furtherance of) any unprotected “protest action” or a “strike”, as defined in section 213 of the Labour Relations Act 66 of 1995. We and our personnel will also not participate in nor assist, directly or indirectly, in any other form of unprotected coercive collective action or inaction intended to induce us to alter any of our terms or conditions of employment or working conditions.

8. Your data

8.1 **Your data.** We are not in the business of routinely storing your data, but if we do are not responsible for any of your data stored on our system.

8.2 **Privacy and protection of personal information.**

- **Legal obligations.** We are responsible for complying with our obligations and you are responsible for complying with your obligations under applicable laws governing your data. The parties both acknowledge that they are not investigating the steps the other is taking to comply with any applicable privacy and protection of personal information laws.
- **Responsible party.** You remain the responsible party for determining the purpose and means of our processing of your data.
- **Trans-border flows of your data.** We may not transfer any of your data across a country border without your prior written consent.

8.3 **Access.** On a party’s reasonable written request, the other party will provide the requesting party with the information that it has regarding your data and its processing that is necessary to enable the requesting party to comply with its obligations under this clause and the applicable laws. The requesting party will reimburse the other party for its reasonable charges for its assistance.

8.4 **Preservation of integrity of your data.** Both of the parties will preserve the integrity of your data and prevent any unauthorised access, corruption or loss of your material.

8.5 **Records.** You agree that our records are prima facie evidence of the services provided to you.

8.6 **Return of data.** On termination of any order, each party will return to the other party in the form in which it was received all of the other party’s data or information provided to the party for the purpose of the performance of the relevant order.

8.7 **Safeguarding.** We will safeguard your material and report promptly to you any third party claim after it comes to our attention, directly or indirectly. We will co-operate with you in any enforcement or other protective action taken by you with regard to your material.

8.8 **Trade marks.** Your logo and sub-logos, marks, and trade names are your trade marks and no person may use them without permission.

8.9 **Restrictions.** Except as expressly permitted under the agreement, the your material may not be:

- modified or used to make derivative works;
- rented, leased, loaned, sold or assigned;
- decompiled, reverse engineered or copied; or
- reproduced or distributed.

8.10 We may only use your material to comply with the agreement.

9. Intellectual property

9.1 **Your data.** You own all your data. We do not own your data. All title, ownership rights and intellectual property rights in your data belong to you or the applicable content owner and may be protected by applicable copyright or other law.

9.2 **Your data license.** When you provide us with data you give us a worldwide license to use, host and store your data, solely for purposes of providing the services.

9.3 **Retention of rights.** We have created, acquired or otherwise obtained rights in our technology and despite anything contained in the agreement, we will own all right, title, and interest in our technology.

9.4 **Use of our technology.** If we utilise any of our technology in connection with our performance under an order, our technology will remain our property and you will not acquire any right or interest in it.

9.5 **Trade marks.** Our logo and sub-logos, marks, and trade names are our trade marks and no person may use them without permission. Any other trademark or trade name that may appear on our marketing material is the property of its respective owner.

9.6 **Restrictions.** Except as expressly permitted under the agreement, the services may not be:

- modified or used to make derivative works;
- rented, leased, loaned, sold or assigned;
- decompiled, reverse engineered or copied; or
- reproduced or distributed.

9.7 **Prosecution.** All violations of proprietary rights or the agreement will be prosecuted to the fullest extent permissible under applicable

law.

10. Confidential information

- 10.1 **Responsibility to keep information confidential.** Each party must keep confidential any information it receives from the other party or under this agreement.
- 10.2 **The receiving party's responsibilities.** The party that receives confidential information agrees to protect the interests of the party it is from, and will:
- only use it to comply with its responsibilities under this agreement;
 - only give the information to any of its employees or agents that need it, and only give as much of it as they need;
 - use reasonable security procedures to make sure employees or agents keep the information confidential;
 - get promises of confidentiality from those employees or agents who need access to the information;
 - not reveal the information to anyone else; and
 - not use it for any purpose other than this agreement.
- 10.3 **End of this agreement.** At the end of an agreement, the parties will give back to the other all originals and copies of confidential information of the other that they have. If the other agrees, they may destroy the confidential information they have.
- 10.4 **Exceptions.** These responsibilities will not apply to any information that:
- is lawfully in the public domain (available to the general public) when a party received it;
 - lawfully becomes part of the public domain afterwards;
 - is given to the receiving party afterwards by a different person who is allowed to reveal the confidential information; or
 - is given to comply with a court order or other legal duty.
- 10.5 **Indemnity.** Each party indemnifies the other against any loss or damage that the other may suffer because of a breach of this clause by a party or its employees or agents.
- 10.6 **Survival.** This clause about confidential information is separate from the rest of this agreement and remains valid for five years after the end of this agreement.

11. Non-solicitation

No party will, during the currency of any order or for a period of 12 calendar months following termination, directly or indirectly solicit, offer employment to, employ, or contract in any manner with any personnel of the other party who were involved in the implementation or execution of the order.

12. Transfer of services

- 12.1 **You to transfer the services to us.** If anyone other than us has been providing the services to you prior to the effective date, then the parties will as soon as possible after the effective date do all things as may be necessary to transfer the relevant services to us to enable us to provide the services. The parties will endeavour to complete the transfer of the services to us prior to the effective date or as soon as possible thereafter.
- 12.2 **Parties to cooperate.** The transition of the services will be co-ordinated by the account managers of the parties, or alternates appointed by the account managers and during the transfer period the parties will cooperate with each other (and will ensure that their respective third party suppliers cooperate with each other), to effect a smooth transfer of all the services to us.

13. Service warranties

- 13.1 **Services not error-free.** We do not warrant that any services will be error free after acceptance by you.
- 13.2 **Survival.** This clause will survive termination of this order.
- 13.3 **Quality of service.** We warrant that we will perform the services in a professional and workmanlike manner consistent with industry standards reasonably applicable to those services.
- 13.4 **Exclusions.** We are not responsible for any infringements to third party copyrights, patents, or trade secrets where you have made amendments to original documents and similar works that we have prepared without our express approval, or where you fail to use the most recent versions of those works that we have delivered.

14. Our warranties

- 14.1 **Service warranties.** We warrant that in relation to the services:
- we and our personnel will possess and have the right to use knowledge and expertise sufficient to enable us to provide the services;
 - we will employ a sufficient number of suitably trained personnel to provide the services and to achieve the service levels; and
 - we will provide the services in accordance with all applicable laws, enactments, and regulations.
- 14.2 **General warranties.** We warrant that:
- we have the legal right and full power and authority to execute and deliver, and to exercise our rights and perform our obligations under the agreement; and
 - we and our personnel will not knowingly introduce any malicious software into your material or your system.
 - we will at all times comply with our obligations in terms of the agreement with the care and diligence required in accordance with the current best practices and standards prevailing in our industry.
- 14.3 **Additional warranties.** The warranties in this clause are in addition to any warranties given in any order.

15. Fees and payment

- 15.1 **Due dates.** In consideration for the services, you will be liable for and pay the fees and any additional fees promptly on the due date free of exchange in the currency specified in the order.
- 15.2 **Manner of payment.** You must make payment in the manner specified.
- 15.3 **Withhold payment.** You may not withhold payment of any amount due to us for any reason.
- 15.4 **Certificate.** A certificate, signed by an accountant appointed by us, of the amount due by you and the date on which it is payable will be proof of the correctness of the certificate's contents.
- 15.5 **Tax.** All fees include (and we will pay) all tax and any unemployment insurance within one week of signature of any order.

16. Intellectual property infringement

- 16.1 **Defence.** We will defend you against any claims made by any third party that any services infringe its patent, design, copyright, or trade mark and will pay the amount of any resulting adverse final judgement (or settlement to which we consent). We will reimburse you with all costs you incurred in connection with assisting us with the defence of the action immediately on demand (including attorneys fees on an attorney and own client basis). You will notify us of the claim in writing and we will have sole control over its defence or settlement.
- 16.2 **Consequences of successful claim by third parties.** If any third party succeeds in its claim for the infringement of any intellectual property rights, we may within 30 calendar days of the infringing item having been found to so infringe:
- obtain for you the right to continue using the infringing item or the parts that constitute the infringement;
 - replace the infringing item or the parts that constitute the infringement with another product that does not infringe and that in all respects operates substantially in accordance with its specifications;
 - alter the infringing item in a way as to render it non infringing while still in all respects operating substantially in accordance with its specifications; or
- 16.3 **Survival.** This clause will survive termination of the agreement.

17. Project managers

- 17.1 **Appointment.** On the effective date, each party will appoint a suitably qualified and responsible person to act as their project manager. If a party does not appoint a project manager and that party is a natural person, then that party will be its own project manager. Otherwise, the natural person that is ordinarily responsible for the day-to-day administration of that party will be its project manager.
- 17.2 **Function.** The project managers' responsibilities include to manage and coordinate the services and to discuss and manage any changes.
- 17.3 **Replacement.** A party may, on seven calendar days' written notice to the other, appoint an alternative project manager who is suitably qualified and responsible.

18. Suretyship

- 18.1 **Signatory guarantee.** If we are a company or corporation, or if the signatory signs in any representative capacity, the signatory binds herself or himself as surety for and co-principal debtor jointly and severally *in solidum* (for the whole) with us for the due and punctual performance by us of all our obligations to you.
- 18.2 **Cancellation.** This suretyship will be a continuing guarantee that may only be cancelled by the signatory giving written notice to surety, and then only provided that all sums then owing by us (whether due or not) to you have been paid in full and we have complied with all our obligations in terms of orders.
- 18.3 **Renouncement.** Each surety renounces the benefits of:
- prescription;
 - excussion (you need not first take action against us before taking action against each surety);
 - division (where there is more than one surety, you may sue each surety for the full amount owing);
 - *cedendarum actionem* (cession of action – you need not first cede your right of action against us to surety before you take action against surety);
 - *non numeratae pecuniae* (no value received – surety may not allege that no money was paid over by us to you);
 - *non causa debiti* (surety may not allege that there is no reason or cause for our obligations to you);
 - *erroroe calculi* (surety may not allege that errors have been made in the calculation of the amount claimed); and
 - any other exception.
- 18.4 **Confirmation of renunciation.** Each surety declares that they are fully acquainted with the force, meaning, and effect of this renunciation.

19. Limitation of liability

- 19.1 **Direct damages limited.** To the extent permitted by applicable law, regardless of the form (whether in contract, delict or any other legal theory) in which any legal action may be brought, each party's maximum liability for direct damages for anything giving rise to any legal action will be an amount equal to the total fees already paid (or due and payable) by you to us in respect of this agreement for the period 12 months preceding the claim. The aggregate amounts for all claims will not be greater than the maximum amount.
- 19.2 **Indirect damages excluded.** To the extent permitted by applicable law, in no event will a party be liable for any indirect, incidental, special or consequential damages or losses (whether foreseeable or unforeseeable) of any kind (including loss of profits, loss of goodwill, damages relating to lost or damaged data or software, loss of use, damages relating to downtime or costs of substitute products) arising from this agreement.
- 19.3 **Exclusions.** The limitation contained in this clause will not apply to (i) any breach by a party of the other party's proprietary or confidential information or intellectual property; (ii) a party's indemnification obligations in terms of the agreement; (iii) or damages arising from a party's gross negligence.
- 19.4 **Indemnity.** We agree to indemnify, defend, and hold you (and your personnel) harmless against any and all:
- loss of or damage to any property or injury to or death of any person; and
 - loss, damage (including attorneys' fees on an attorney and own client basis), costs and expenses that you may suffer or incur arising directly or indirectly from: (i) any wilful misconduct or fraud by us or our personnel; or (ii) a breach by us of your proprietary or confidential information, or intellectual property.
- 19.5 **Liability.** Without limiting our liability, we will be liable to you for any loss that you may suffer as a result of theft, fraud, or other criminal act by us or our personnel.

20. Your failure

If you fail to comply with your obligations for a period in excess of five calendar days after receiving a written request from us for you to do so, the failure will constitute a material breach of this order. In addition to any remedies we may have arising out of the breach, if you fail to comply with your obligations within the notice period of five calendar days, we will be excused from meeting the service levels for as long as you fail to comply with your obligations.

21. Your duties and responsibilities

- 21.1 **Processing and authorisation of invoices.** You will process and settle invoices by the due dates.

- 21.2 **Your personnel, facilities, and resources.** You will ensure we have timely access to your appropriate personnel and will arrange for our personnel to have suitable and safe access to your facilities and systems. You will also provide suitable office space and associated resources for training your personnel on-site including all necessary computing and office support resources.
- 21.3 **Training on specialised equipment or tasks.** You will ensure that all your personnel who work on our systems are adequately qualified and receive suitable training both to ensure the safety of your personnel and to safeguard the our systems.
- 21.4 **Approvals and information.** You will respond promptly, and in any case, within five working days, to any of our requests to provide direction, information, approvals, authorisations, or decisions that are reasonably necessary for us to perform the services.

22. Security

- 22.1 **Physical access.** You must ensure that our employees and sub-contractors are given reasonable authorised access to premises and equipment to deliver and maintain the services in accordance with the terms of this order.
- 22.2 **Logical access.** You must ensure that our employees and sub-contractors are given necessary access to the software and systems to deliver and maintain the services in accordance with the terms of this order.
- 22.3 **Compliance with your security policies.** In the event that you operate formal security policies, we will ensure that our employees are made aware of those policies and will also ensure on-going compliance with those policy statements. You will provide us with up to date information on your security policies and will keep us informed about any changes to those policies.

23. Breach

If a party:

- does not fix any breach of this agreement (failure to comply with it) within seven days of receiving written notice from the other party to do so;
- breaches this agreement materially twice or more in any six month period;
- is insolvent (bankrupt), or has some legal disability, for example, if they are placed under administration;
- takes steps to deregister itself (close down) or is deregistered;
- makes any settlement or arrangement with its creditors; or
- fails to pay a court order against it (does not satisfy a writ of execution) for more than one million rand, within 21 days;

then the other party may, without prejudice to any of its rights:

- claim specific performance of this agreement (make the party comply with this agreement); or
- immediately cancel this agreement in writing; and
- claim damages from the other party, including any claim for any fees already due.

24. Remedies for breaches.

In the event of our defective performance or failure to furnish the agreed level of service, we will make reasonable efforts to restore the service to a good operating condition on an urgent basis.

25. Suspension of services

25.1 **Immediate suspension.** We may immediately suspend your right to use any of the services in any of the following circumstances:

- you attempt a denial of service attack on any of the services;
- you seek to hack or break any security mechanism on any of the services;
- we determine in our sole discretion that your use of the services poses a security threat to us, or to any other user of the services;
- you otherwise use the services in a way that disrupts or threatens the services;
- we determine, in our sole discretion, that there is evidence of fraud with respect to your account;
- we receive notice, or we otherwise determine, in our sole discretion, that you may be using the services for any illegal purpose or in any way that breaches the law or infringes the rights of any third party; or

25.2 **Preservation of data (suspension).** In the event that we suspend your access to any services, we will not take any action to intentionally erase any of your data in our possession during the period of suspension and the fees will continue to accrue.

26. Termination

26.1 **Termination for good cause.** We may immediately terminate this agreement at any time by giving you notice in writing if:

- we discontinue the services;
- we believe providing the services could create an economic or technical burden or material security risk for us;
- termination is necessitated by us having to comply with any applicable law or requests of governmental entities; or
- we determine that your use of a service or the provision of any services to you has become impractical or unfeasible for any legal or regulatory reason.

26.2 **Termination for convenience.** Either party may terminate the agreement or a specific order, upon at least 180 days prior written notice to the other party.

26.3 **Duties on termination.** On termination, cancellation, or expiry of this agreement:

- we will stop providing the services;
- your access rights will cease to exist; and
- we will erase your data, unless we have agreed to provide you with post termination assistance in writing.

26.4 **Survival.** The termination, cancellation, or expiry of this agreement will not affect the enforceability of the terms that are intended to operate after expiry or termination.

26.5 **Payment on termination.** In the event of termination of this order for any cause, we will continue to be paid up to the effective date of termination for any fees or expenses due for services delivered up to that date.

27. Effect of termination

27.1 **Post termination assistance.** Following termination, you may take advantage of any post-termination assistance that we may generally make available (such as data retrieval arrangements). We may provide you with post-termination assistance, but we will not be under an obligation to do so. Your right to take advantage of any post termination assistance will depend on your acceptance of and compliance with any additional fees and terms that we may impose for such assistance.

27.2 **No expectation.** We acknowledge and confirm that no expectation has been created by anyone, by the agreement or any other

agreement, entitling us or you to expect:

- continued service for any period whether definite or indefinite;
- the renewal or extension of the term of any agreement; or
- the conclusion of any further agreement between you and us or our personnel.

27.3 **Non dismissal.** Any expiry or termination of the Agreement or any Order, for any reason, will not be capable of being regarded as a “dismissal” as defined in the Labour Relations Act 66 of 1995 nor will we or any of our Personnel be entitled to the payment of any remuneration or compensation of any nature, including redundancy or other compensatory payments.

27.4 **Survival.** The termination, cancellation, or expiry of this agreement will not affect the enforceability of the terms that are intended to operate after expiry or termination.

28. Resolving disputes

28.1 **Notifying each other.** There will be a dispute about or from this agreement if a party writes to the other about it and asks for it to be resolved under this clause. The parties must refer any dispute to be resolved by:

- negotiation (direct talks to try and agree how to end the dispute); failing which
- mediation (talks in which a neutral third party tries to help the parties agree how to end the dispute); failing which
- arbitration (a hearing after which a neutral third party makes a binding decision about the dispute).

28.2 **Negotiation.** Each party must make sure that their chosen representatives meet within 10 business days of notification, to negotiate and try to end the dispute by written agreement within 15 more business days.

28.3 **Mediation.** If negotiation fails, the parties must refer the dispute to mediation under AFSA’s rules.

28.4 **Arbitration.** If mediation fails, the parties must refer the dispute within 15 business days to arbitration (including any appeal against the arbitrator’s decision) under AFSA’s latest rules for expedited arbitrations. The arbitration will be held in English in \${arbitration_city}. The parties will agree and appoint one arbitrator. If the parties cannot agree on the arbitrator within 10 business days after the referral, the Secretariat of AFSA will appoint the arbitrator.

28.5 **Agree otherwise in an order.** The parties may agree otherwise in an order.

28.6 **Periods.** The parties may agree in writing to change the periods for negotiation or mediation.

28.7 **Urgent interim relief.** This clause will not stop a party from applying to court for urgent interim relief (temporary help) while the dispute resolution process is being finalised. An example might be an interdict (type of court order).

28.8 **Severability.** This clause is separate and divisible from the rest of this agreement and remains effective even if this agreement ends or is invalid.

29. Notices and domicile

29.1 **Notices.** The parties will send all notices, authorisations, disclosures, acknowledgements, or requests by hand delivery, prepaid registered post, fax, or email to an address or number given in the relevant order.

29.2 **Service (delivery) address for legal documents.** Each party chooses its street addresses and numbers as its *domicilium citandi et executandi* (its address for the service of any document used in legal action) for this agreement.

29.3 **Change of addresses or numbers.** Each party may change the addresses or numbers in the specific terms to any other addresses or numbers by writing to the other party 14 days before the change.

29.4 **Deemed delivery.** Notice will be considered to be delivered on the date shown on any hand-delivered, prepaid registered post, courier, fax or email confirmation of delivery.

29.5 **Notice actually received.** If a party actually receives any notice or other communication, this will be good enough.

30. Force majeure

30.1 **Parties not liable.** No party will be responsible for any breach of this agreement caused by circumstances beyond its control, including flood, fire, earthquake, war, tempest, hurricane, industrial action, government restrictions, or acts of God.

30.2 **Party affected to notify other party.** If there is an event of force majeure, the party affected will tell the other immediately, and they will meet within seven days to negotiate other ways to carry out any affected responsibilities under this agreement. The parties will continue to comply with the responsibilities that are not affected by the circumstances.

30.3 **Right to cancel.** If a party cannot fulfil a material (significant) part of its responsibilities under this agreement for more than 60 days because of force majeure, the other party may cancel this agreement by written notice.

31. Assignment and subcontracting

31.1 **Assignment by you.** You may delegate your duties under the agreement or assign your rights under the agreement, in whole or in part.

31.2 **Exception.** Despite this clause, we may cede and assign all rights and obligations under this agreement to a related person without your prior written consent, provided that we notify you within a reasonable time of the event occurring.

31.3 **Our third party contractors.** We may sub-contract or delegate our obligations under this agreement to third party contractors. We will remain liable for performance of the third party contractors. No one may require us to disclose the terms (including payment terms) of any sub-contract entered into with respect to our obligations under this agreement.

32. Relationship

32.1 **No temporary employment service or partnership.** Nothing in this agreement will be construed as constituting a temporary employment service or as creating a partnership between the parties and no party will have any authority to incur any liability on behalf of the other or to pledge the credit of the other party.

32.2 **No employment relationship.** Each party enters into the agreement as an independent contractor. The agreement does not create any other relationship, including employment for any purpose, partnership, agency, trust or joint venture relationship.

33. General

33.1 **Entire agreement.** The agreement is the entire agreement between the parties on the subject.

33.2 **Changes to the terms.** We may change the terms at any time and where this affects your rights and obligations, we will notify you of any changes by placing a notice in a prominent place on our website or by email. If you do not agree with the change you must stop

using the services. If you continue to use the services following notification of a change to the terms, the changed terms will apply to you and you will be deemed to have accepted such terms.

- 33.3 **Changes to any third party software license agreement.** We will notify you of any changes to any third party software license terms by placing a notice in a prominent place on our website, or notifying you by email. The updated third party software license terms will be effective immediately and you will be deemed to have accepted them upon notification.
- 33.4 **Acceptance of changes.** If you do not agree with the changes, you must stop using the service. If you continue to use the service following notification of a change, the changed terms will apply to you and you will be deemed to have accepted them.
- 33.5 **Waiver (giving up of rights).** Any favour you may allow us will not affect or substitute any of your rights against us.
- 33.6 **Severability.** If any term is void (invalid), unenforceable, or illegal, the term may be severed (removed) from and will not affect the rest of this agreement if it does not change its purpose.
- 33.7 **Governing law.** South African law governs this agreement.
- 33.8 **Jurisdiction.** You consent to the jurisdiction of the Magistrate's Court in respect of any action or proceedings that we may bring against you in connection with this agreement, even if the action or proceedings would otherwise be beyond its jurisdiction without prejudice to our right to institute any action in any other court having jurisdiction.
- 33.9 **Non-exclusivity.** You may obtain any goods or services from any other person or entity.
- 33.10 **Costs.** Each party is responsible for its own costs of drafting and negotiating this agreement.
- 33.11 **Right to reference.** We must get your consent before using your name and a general description of the services in any marketing or sales material.
- 33.12 **Publicity.** A party will not make any announcement or statement to the press about this agreement, without first getting written permission from the other party.