



## Customer relationship terms

general terms for providing goods or services to customers

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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 goods or services to you. The commercial terms of any transaction will be contained in an order that incorporates these terms. Nothing in the terms obliges any party to enter into any orders.

## 2 Definitions and interpretation

### 2.1 *Definitions.* In the agreement:

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

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

**business day** means any day within business hours, 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 based, and any other reference to a **day** means a calendar day;

**business hours** means our normal business hours on business days (9am to 5pm);

**deliverable** means any bespoke task we undertake for you including web, graphic design, copywriting, or printing related work and any related documentation;

**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;

**EULA** means an end user license agreement;

**existing material** means any code, forms, algorithms, user interfaces, digital strategies 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 price you will pay to us in respect of goods or services we provide under orders;

**goods** means any goods we provide to you, under orders (including software that we provide to you);

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

**non-critical bug** means any bug, problem, error, or difficulty experienced with the operation of the thing being supported and maintained that does not threaten your ability to generate revenue;

**our technology** means any technology that we have created, acquired or otherwise have rights in and may, in connection with performing our obligations under the agreement, employ, provide, modify, create or otherwise acquire rights in and includes any: concepts or ideas; methods or methodologies; procedures or processes; know-how or techniques; function, process, system, data, or object models; templates; the generalised features of the structure, sequence and organisation of software, user interfaces and screen designs; general purpose consulting and software tools, utilities, routines or frameworks; logic, coherence and methods of operation of systems; and patches or enhancements to open source libraries;

**parties** means the parties to this agreement being you and us, and **party** refers to either of us as the context requires;

**personnel** means any representative, including any director, employee, agent, affiliate, consultant, or contractor;

**privacy notice** means our notice regulating data use and protection, accessible from our website;

**proposal** means the proposal describing the goods or services, related fees, basis for providing the goods or services and outlining the statement of work as incorporated in a particular order, incorporated in annexure 1 of the order;

**related and related persons** means natural and juristic persons who are connected to one another in the manner contemplated in applicable law;

**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, signed or signing** means the handwritten signature, an advanced electronic signature, or an electronic signature that the parties agree to use, of a party's duly authorised representatives;

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

**site** means any physical premises or digital premises (such as accounts requiring logins) referred to in an order, where we will provide goods or services under the order;

**specific developments** means any developments provided to you in the course of performance of this agreement that have specific applicability to your business (such as specific forms, algorithms or calculation methods) and that are identified by you during this agreement, the categorisation of which is agreed upon in writing by the parties;

**specification** means the specification (which may be in the form of a proposal, wire frame, project initiation document, functional specification, or technical specification) of the deliverable, which may be (i) in or attached to an order, or (ii) in writing, dated and signed by the parties;

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

**terms** means these terms, consisting of:

- these general customer relationship 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 goods or services);

**third party contractor** means any contractor, supplier, vendor, service provider or licensor any of the goods or 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 goods or services;

**we, us, or our** means the Tecbot (Pty) Ltd vendor or service provider that enters into an order and, if specified in the order, those related to it;

**writing or written** 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 files), but excludes information or data in the form of email, text message or instant message;

**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 data (including information about an identifiable person) that:

- you (or any third party on your behalf) provide to us; or

- we generate, process, or supply to you in providing the goods or services; but excludes any derived data that we create for our own internal purposes or which is proprietary or confidential to us or our third party contractors; and

**your technology** means any technology that you have created, acquired or otherwise have rights in and may, in connection with performing your obligations under the agreement, employ, provide, modify, create or otherwise acquire rights in and includes any: concepts or ideas; methods or methodologies; procedures or processes; know-how or techniques; function, process, system, data, or object models; templates; the generalised features of the structure, sequence and organisation of software, user interfaces and screen designs; general purpose consulting and software tools, utilities, routines or frameworks; logic, coherence and methods of operation of systems; and patches or enhancements to open source libraries.

- 2.2 **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.
- 2.3 **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' follow a term together with specific examples or items, they will not limit its ambit. Terms other than those defined within the agreement will be given their plain English meaning. References to any law or enactment will include 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.
- 2.4 **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 goods or services. This clause is subject to the limitations of liability clause below.

### 3 Duration

The terms commence on acceptance of an order and continue until terminated according to the terms.

### 4 Orders

- 4.1 **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; and
  - will submit true, accurate and correct information to us.
- 4.2 **Valid and binding order.** The parties only conclude a valid and binding order when we accept the offer made by you. We will accept and sign the agreed upon order and give you a signed copy.
- 4.3 **Fees.** The fees for any goods or services are as provided in the relevant order.
- 4.4 **Time and place.** The parties conclude any agreement between each other at the date of the last signature of the parties and at the place where you have your head office.
- 4.5 **Orders.** Each order will create a separate agreement. Despite that, we may consider your breach of any one order to constitute a breach of any or all agreements.

### 5 Goods

- 5.1 **Sale.** We sell goods to you who purchase the goods on the terms of the agreement.
- 5.2 **Warranty.** The goods will be subject to any warranty indicated in the description of the goods appearing on the accompanying documentation, packaging, order, or EULA. Please review those documents carefully. To the extent legally possible, we assign to you the benefit of any supplier warranties that a supplier may give to us regards the goods. You may not waive any of our rights as against the supplier.
- 5.3 **Risk and ownership.** All risk of loss or damage to the goods will pass to you upon delivery but ownership of the goods will only pass to you upon full payment of the fees.
- 5.4 **Software.** Unless otherwise stated, the license for any software is contained in the EULA or the relevant order. You will be required to agree to the EULA or relevant order prior to use of the software. The applicable EULA or order, which takes precedence, governs the use of the software. If you do not agree to the EULA, you must stop using the goods and return the software. If you use the software (or take any other action that is described in the packaging or software as constituting your consent to the EULA or relevant order), then you agree to the EULA or order, unless otherwise allowed in the documentation accompanying the software or applicable law.
- 5.5 **Resale and exports.** If you wish to resell or export any goods, you must obtain all required consents or licenses under all applicable laws and regulations that may affect or regulate such resale or export.

### 6 Services

We will provide the services according to the agreed service levels.

- 6.1 **Our roles and responsibilities.** We will develop the deliverable in accordance with the specifications and with the development timetable.
- 6.2 **Retained services.** We agree to provide the retained services to you on the basis that unless otherwise specified, the retained services will be provided during business hours.
- 6.3 **Exclusivity.** During the currency of this agreement, you will only use us for the provision of the services for the deliverable.

### 7 Acceptance procedure

- 7.1 **Commencement and initial period.** You will commence acceptance testing of any deliverable immediately following delivery by us. You must use acceptance tests and data developed by you and approved by us in our reasonable discretion. The acceptance tests will be completed within five business days of delivery, unless otherwise agreed in writing.
- 7.2 **Assistance.** We will assist you to complete the acceptance tests on request and reasonable notice.
- 7.3 **Variations.** You will report any variations in any deliverable from its specification that you discover during the period of the acceptance testing to us in writing.
- 7.4 **Correction.** We will correct any variance as soon as possible and at our cost insofar as the correction falls within the scope of the particular

order.

- 7.5 **Additional period for testing.** You will have an additional period (equal to the initial period above) to conduct acceptance tests on any corrected deliverable. If you discover any further material variance in a corrected deliverable from its specification, you will report it to us. We will correct any further variance in the corrected deliverable as soon as possible. During the additional period, you may not report any variance that does not relate to: (i) a variance that you initially reported; or (ii) the corrected deliverable, unless agreed by the parties in writing. The parties will deal with these separately as additional services. The parties may agree, to neither party's detriment to an extension of the additional period if further material variances occur.
- 7.6 **Acceptance confirmation.** The parties may, at any time, confirm in writing that you have accepted the deliverables.
- 7.7 **Deemed acceptance.** You will be deemed to have accepted the deliverables if you:
- fail to sign a confirmation of acceptance within five business days, unless otherwise agreed to in writing from when we have signed and sent it to you;
  - fail to report any variance to us in writing at the end of the initial or additional period;
  - fail to report any variance to us in any corrected deliverable within three business days, from when we call on you to do so in writing;
  - or put any deliverable to productive use.

## 8 Change control

- 8.1 **Changes to goods or services.** During the currency of an order, events may occur which require a change to the nature and scope of goods or services. The parties will not implement a change unless they comply with this clause.
- 8.2 **Change request.** A party may propose a change to the nature and scope of goods or services by sending a scope change document to the other party detailing the desired changes.
- 8.3 **Scope change document.** If a scope change document is made by:
- you, it must specify the reasons for that change and describe the change in sufficient detail to enable us to respond. We will investigate the likely impact of any proposed changes on the provision of goods or services and will provide you with a scope change proposal, including amended pricing and timeframes; or
  - us, the scope change proposal will detail the reasons for and impact of the change, the goods or services required to implement the change and the effect that the changes, if implemented, will have on the relevant order.
- 8.4 **Sign-off.** The parties will discuss and agree the proposed changes and revise the scope change proposal accordingly. 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 goods or services on the existing terms.
- 8.5 **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. A party may not unreasonably delay or withhold their agreement to a proposed change.
- 8.6 **Exception.** Amendments to the content of the agreement that do not directly impact the nature and scope of the goods or services will not be subject to this change control procedure, unless otherwise agreed by the parties in writing.
- 8.7 **Future enhancements.** If you require us to make any future enhancements the same change control procedure will be followed. However, this does not prevent you after the expiry of this agreement, to enter into a contract with another service provider to conduct any future changes or enhancements. If future enhancements are made by another service provider, the warranty we give below is void.

## 9 Personnel

- 9.1 **Access.** With effect from the signature date, you will allow us and our personnel access (at all reasonable times) to the sites for the purposes of fulfilling our obligations under orders.
- 9.2 **After-hours access.** At times we may need after-hours access to the sites. We will request this access in writing prior to the access. You will not unreasonably withhold your consent.
- 9.3 **Compliance with your policies.** We will take all reasonable steps to comply, and ensure that our personnel comply, with your policies. You must notify us of all your policies prior to the effective date and give us and the relevant personnel reasonable written notice of any change in your existing policies or the implementation of your new policies.
- 9.4 **Allocation of resources.** We endeavour to keep the same personnel on the relevant order, for the duration of such order. However, we may allocate and re-allocate all our personnel who provide goods or services under the agreement. If we need to re-allocate personnel, they will have substantially similar qualifications to the original appointments.

## 10 Non-solicitation

- 10.1 **Restriction.** Unless otherwise agreed, 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.
- 10.2 **Recruitment fee.** If a party whose personnel is recruited (affected party):
- consents to any such employment, the recruiting party (recruiting party) will pay the affected party a recruitment fee equal to 50% of the gross annual package (including any quantifiable bonuses or incentives and annualised if necessary) paid by the affected party to the member of personnel concerned (gross package); or
  - does not consent to any such employment, the recruiting party will, on written demand from the affected party, pay the affected party a recruitment fee equal to 60% of the gross package of the personnel concerned.

## 11 Assignment and subcontracting

- 11.1 **No assignment.** No party may delegate its duties under this agreement or assign its rights under this agreement, in whole or in part without the other party's prior written consent, which may not be unreasonably withheld. We may assign this agreement to any successor or purchaser

of our business or some of our assets, provided we inform you of the change.

- 11.2 **Consent.** We may cede and assign all rights and obligations under this agreement to a related person with your prior written consent, which may not be unreasonably withheld.
- 11.3 **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.

## 12 Relationship

- 12.1 **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.
- 12.2 **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.

## 13 Appointments and governance

- 13.1 **Appointment.** On the effective date, each party will appoint a suitably qualified and responsible person to act as their representative. If a party does not appoint a representative and that party is a natural person, then that party will be its own representative. Otherwise, the natural person that is ordinarily responsible for the day-to-day administration of that party will be its representative.
- 13.2 **Function.** The representative's responsibilities include to manage and coordinate the goods or services and to discuss and manage any changes.
- 13.3 **Meetings.** The representatives will meet as agreed between the parties in an order.
- 13.4 **Replacement.** A party may, on five business days' written notice to the other, appoint an alternative representative who is suitably qualified and responsible.
- 13.5 **Other personnel.** Both parties will, in a separate appointment schedule, appoint other relevant personnel where necessary in connection with the provision of the goods or services.

## 14 Payment

- 14.1 **Due dates.** You will be liable for and pay the fees specified in the order, and any additional fees, promptly on the due date specified in the relevant order, without any deduction, set off or demand and free of exchange and bank charges in the currency specified in the order. If no due date is specified or agreed, the due date is within 30 days of the date of invoice. The parties may agree otherwise in the relevant order.
- 14.2 **Invoice date for general services.** You will pay us the fees and charges for general services on receipt of a tax invoice from us. We will send you a tax invoice once each milestone or agreed upon billing date has been reached.
- 14.3 **Process for approval of invoice services.** Upon receiving an invoice for retained services, you will have two business days to:
- review them;
  - report any problems, discrepancies, or disagreements; and
  - make queries.
- 14.4 **Deemed acceptance.** If not done within three business days, reports and invoices for services will be deemed to have been accepted by you. We must resolve any queries within three business days. The parties may extend the period in writing. Time spent on queries is for each party's own account.
- 14.5 **Disputed invoices.** You may not withhold payment on any invoice that is not disputed, whether they relate to disputed invoices or not. You will pay any invoice (which is disputed on the calendar monthly payment date) immediately upon resolution of the dispute and may not wait for the next calendar monthly payment date to pay the invoice. You will bear any costs of the payment at a later date.

## 15 Performance and good faith

The parties will cooperate with each other and at all times act in good faith towards each other in performing this agreement and any orders.

## 16 Intellectual property

- 16.1 **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.
- 16.2 **Use of your technology.** If we use any of your technology in connection with our performance under an order, your technology will remain your property and we will not acquire any right or interest in it.
- 16.3 **Use of our technology.** If we use 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. If required we may grant you a non-transferable, non-exclusive licence in writing to use our technology in connection with the deliverable as agreed in the relevant order.
- 16.4 **Licence.** We grant you a non-transferable and non-exclusive licence in respect of any intellectual property that may be needed in supplying the goods or services.
- 16.5 **Deliverables created during the agreement.** We own all rights to all deliverables we develop for you in the course of providing the goods or services under this agreement and any orders.
- 16.6 **Other rights.** Neither party will obtain any rights in the existing material or intellectual property of the other party that was not created in performing the agreement or existed before the commencement of the agreement, unless a licence is granted.
- 16.7 **Trademarks.** Our logo and sub-logos, marks, and trade names are our trademarks 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.
- 16.8 **Restrictions.** Except as expressly permitted under the agreement, the goods or services may not be:
- modified, distributed, or used to make derivative works;
  - rented, leased, loaned, sold or assigned;
  - decompiled, reverse engineered, or copied; or

- reproduced, transferred, or distributed.
- 16.9 **Residual knowledge.** Nothing contained in the agreement will restrict us from the use of any generic ideas, concepts, know-how, or techniques developed by us or learned in the course of providing the goods or services.
- 16.10 **Prosecution.** All violations of proprietary rights or the agreement will be prosecuted to the fullest extent permissible under applicable law.

## 17 Intellectual property infringements

- 17.1 **Defence.** We will do our best to defend you against any claims made by an unaffiliated third party that any goods or services infringe its patent, design, copyright, or trade mark. You will promptly notify us of the claim in writing and we will have sole control over its defence or settlement. This does not apply where such infringement is caused wholly or partly due to your intentional or negligent conduct.
- 17.2 **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 days of a finding of infringement:
- 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 according to its specifications;
  - alter the infringing item in a way as to render it non-infringing while still in all respects operating substantially according to its specifications;
- 17.3 **Exclusion.** We will not be liable for any claim that arises out of goods or services you select and acquire from third parties.
- 17.4 **Survival.** This clause will survive termination of the agreement.

## 18 Confidential information

- 18.1 **Responsibility to keep information confidential.** Each party must keep confidential any information it receives from the other party or under this agreement, including existing material and your data. Each party will take all reasonable steps to ensure their employees or contractors abide by this clause.
- 18.2 **The receiving party's responsibilities.** The party that receives confidential information agrees to protect the interests of the party it is receiving 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.
- 18.3 **End of this agreement.** At the end of this agreement, or on written request, 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.
- 18.4 **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.
- 18.5 **Privacy notice.** The terms and conditions of the privacy notice are also applicable to this agreement.
- 18.6 **Survival.** This clause about confidential information is separate from the rest of this agreement and remains valid in perpetuity.

## 19 Your data and data protection compliance

- 19.1 **Your data.** We are not responsible for any of your data stored on our systems.
- 19.2 **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 data protection laws.
- 19.3 **Responsible party.** You remain the responsible party for determining the purpose and means of our processing of your data, including that processing will not place us in breach of any laws.
- 19.4 **Trans-border flows of your data.** You consent to us transferring your data across any country border to enable us to comply with our obligations under the agreement. You are solely responsible for determining that any transfer of your data across a country border complies with the applicable laws.
- 19.5 **Indemnity.** You agree to indemnify, defend, and hold us harmless (and those related to us and our personnel, co-branders or other partners) from and against any claim, demand, loss, damage, cost, or liability (including legal costs) arising out of or relating to you failing to comply with your obligations under this clause. If permissible under applicable law, legal costs will be on an attorney and own client basis.
- 19.6 **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.
- 19.7 **Preservation of integrity of your data.** Both of the parties will take reasonable precautions (having regard to the nature of each of their obligations under the agreement), to preserve the integrity of your data and prevent any unauthorised access, corruption or loss of your data.
- 19.8 **Records.** You agree that our records are provisional (prima facie) evidence of the goods supplied or services provided to you.
- 19.9 **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 performing the relevant order.

## 20 Our warranties

- 20.1 **Service warranties.** We warrant in relation to the services that:

- 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 according to all applicable laws, enactments, and regulations.
- 20.2 **Goods warranties.** Goods are subject to the warranty in any document, packaging or EULA that accompanies them. To the extent legally possible, we assign to you the benefit of any supplier warranties we have. Otherwise you have the same rights against us as we have against the supplier.
- 20.3 **General warranties.** We warrant further 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.
- 20.4 **Specific warranties.** We may provide further specific warranties in the relevant order.

## 21 Disclaimer of warranties

- 21.1 **Disclaimer.** You use our goods or services at your sole responsibility and risk. We provide the goods and services on an 'as is' and 'as available' basis. Except for the warranties given in this agreement and to the extent allowed by law, we expressly disclaim all representations, warranties, or conditions of any kind, whether express or implied, including:
- any implied warranties or conditions of satisfactory quality, no latent defects, merchantability, fitness for a particular purpose, accuracy, system integration, quiet enjoyment, title, and non-infringement;
  - any warranties regarding third party software; and
  - that the goods or services will meet your requirements or be uninterrupted, legally effective or complete, timely, secure, error-free or free from infection by malicious software.
- 21.2 **Exclusion of liability.** Despite any warranty we give, we will not be liable with regard to any defect arising from your negligence, failure to follow instructions (whether oral or in writing) or misuse.
- 21.3 **Security software.** You should keep up-to-date security software on any systems used to access the goods or services.

## 22 Limitation of liability

- 22.1 **Direct damages limited.** Despite anything else in this agreement including any order, our maximum liability to you for any claim for direct damages is the total amount of fees you have paid us in the preceding 12 months for the goods or services related to the claim. Our total aggregate liability for all claims under this agreement will never be greater than the maximum liability. This limitation applies to the extent allowed by any law that applies, and regardless of the basis of the claim (whether in contract, delict, tort or any other legal basis).
- 22.2 **Indirect damages excluded.** Despite anything else in the agreement including any order, we and our personnel will never be liable for any indirect, incidental, special or consequential damages or losses of any kind arising from the agreement. These include foreseeable or unforeseeable loss of profits, loss of goodwill, pure economic loss, damages relating to lost or damaged data or software, loss of use and damages relating to downtime or costs of substitute products.
- 22.3 **This limitation of liability clause prevails.** To avoid all doubt, and despite the conflict provisions in clause 2.4 of these terms, no order can ever supersede the limitation of our liability and the exclusion of indirect damages in this clause.
- 22.4 **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.
- 22.5 **We are not liable for your default.** We will not be liable for any loss or damage suffered by you arising out of or in connection with any breach of the agreement by you or any act, misrepresentation, error or omission made by or on behalf of you or your personnel.
- 22.6 **Other services.** We are not liable for any other deliverable, including website, goods, or service provided by any third party, nor are we liable for any claims arising due to third party software.
- 22.7 **Severability.** This clause is separate and divisible from the rest of this agreement and remains effective even if this agreement ends or is invalid.

## 23 Your warranties and indemnities

- 23.1 You warrant that:
- you have not been induced to enter into the agreement by any prior representations, warranties or guarantees (whether oral or in writing), except as expressly contained in the agreement;
  - you have obtained all necessary user licences in advance; and
  - by entering into an order you are not acting in breach of any agreement to which you are a party;
- 23.2 You must promptly obtain and provide all consents necessary for us to access, use or modify (including creating derivative works) your or a third party's software, hardware, firmware and other products used by you without infringing the ownership, licence or intellectual property rights of the providers or owners of such products. We will be relieved of performing any obligations affected by your failure to promptly provide any necessary consents to us.
- 23.3 You agree to indemnify, defend, and hold harmless us (and those related to us and our personnel, co-branders or other partners) from and against any claim for damages by any third party as a result of the breach of these warranties, including all legal costs. If permissible under applicable law, legal costs will be on an attorney and own client basis.

## 24 Termination

- 24.1 **Termination on notice.** Both parties have the right to terminate this agreement by giving one calendar months' written notice to the other party. However, no notice of termination is effective for as long as any order remains in effect. Either party may cancel an order by giving three calendar months' written notice to the other party, without giving reasons, and without necessarily terminating this agreement.
- 24.2 **Termination for breach.** If a party does not fix any breach of this agreement (failure to comply with it) or an order within 14 days of receiving written notice from the other party to do so, 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.

24.3 **Immediate termination in other circumstances.** Either party may immediately end this agreement at any time by giving the other notice in writing if:

- the other is insolvent (bankrupt), or has some legal disability, for example, if they are placed under administration;
- the other takes steps to deregister itself (close down) or is deregistered;
- the other makes any settlement or arrangement with its creditors;
- the other fails to pay a court order against it (does not satisfy a writ of execution) for more than one million rand (or equivalent), within 21 days;
- anything analogous to the foregoing occurs in any applicable jurisdiction, which is not dismissed in 21 days;
- termination is necessary to comply with any applicable law or government instruction; or
- the parties agree.

24.4 **Transfer management.** If this order and agreement is terminated by you due to a material breach of the agreement by us or if terminated by us on notice, we may provide assistance to you to enable you to effect a smooth non-disruptive transition to another service provider or to re-establish your in-house IT service, whichever you, in your discretion may decide. To this end, we may for a period of 30 days from date of termination specifically:

- provide advice and guidance to the new service provider or you as the case may be;
- make our personnel available to render assistance to you or to the new service provider; or
- provide, on an ad-hoc basis, the goods or services that we were providing under an order until the new service provider or you are capable of performing the services or providing the goods.

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

## 25 Effect of termination

25.1 **Amounts due to us become due and payable.** On termination, cancellation, or expiry this agreement, all amounts due to us for services rendered or goods received before termination will become due and payable even if we have not yet invoiced them. You may not withhold the amounts for any reason, unless an arbitrator directs otherwise.

25.2 **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, conditions or terms that we may impose for such assistance.

25.3 **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 the renewal or extension of the term of any agreement.

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

## 26 Resolving disputes

26.1 **Definitions.** For the purposes of this clause:

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

26.2 **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).

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

26.4 **Mediation.** If negotiation fails with any entity of ours located:

26.4.1 in South Africa, the parties must refer the dispute to mediation under AFSA's rules;

26.5 **Arbitration.** If mediation fails with any entity of ours located:

26.5.1 in South Africa, the parties must refer the dispute within 15 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 Johannesburg. The parties will agree and appoint one arbitrator. If the parties cannot agree on the arbitrator within 10 days after the referral, the secretariat of AFSA will appoint the arbitrator.

26.6 **Legal costs.** Any legal costs (attorneys and advocates fees and the costs of experts and witnesses) incurred by the parties in the arbitration will be recoverable on the attorney and own-client scale.

26.7 **Costs of arbitration.** The costs of the arbitration proceedings, including the fees of the arbitrator/arbitrators, will be borne equally between the parties, unless the arbitrator's award provides otherwise.

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

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

26.10 **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).

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

## 27 Notices and domicile

27.1 **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 specific order.



- 27.2 **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.
- 27.3 **Change of addresses or numbers.** Each party may change the addresses or numbers in the specific order to any other addresses or numbers in the same country by writing to the other party 14 days before the change.
- 27.4 **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.
- 27.5 **Notice actually received.** If a party actually receives any notice or other communication, this will be good enough.

## 28 Force majeure

- 28.1 **Parties not liable.** No party is 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'.
- 28.2 **Party affected to notify other party.** If there is an event of force majeure, the party affected will tell the other immediately of:
- the cause, nature and extent of the circumstances;
  - the expected duration of the circumstances; and
  - the extent to which its performance will be affected;
- 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.
- 28.3 **Right to cancel.** If a party cannot fulfil a material (significant) part of its responsibilities under this agreement for more than 30 days because of force majeure, the other party may cancel this agreement, without liability to the affected party, on seven days' written notice.

## 29 General

- 29.1 **Entire agreement.** The agreement is the entire agreement between the parties on the subject.
- 29.2 **Signed in part.** The agreement and orders may be signed in two or more counterparts, and the signed counterparts, taken together, will constitute a binding agreement between the parties.
- 29.3 **Changes to the terms.** No change to the terms is effective unless in writing and signed by both parties.
- 29.4 **Changes to any third party software licence agreement.** We will notify you of any changes to any third party software licence terms by placing a notice in a prominent place on our website, or notifying you by email. The updated third party software licence terms will be effective immediately and you will be deemed to have accepted them upon notification.
- 29.5 **Waiver (giving up of rights).** Any waiver we may allow you will not affect or substitute any of our rights against you.
- 29.6 **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.
- 29.7 **Governing law.** The law of South Africa governs this agreement.
- 29.8 **Jurisdiction for our action.** You consent to the jurisdiction of the courts of the country in which your entity which entered into the relevant order has its headquarters in respect of any action or proceedings 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.
- 29.9 **Jurisdiction for your action.** If you bring an action to enforce any order entered into with us you must bring it in South Africa;
- 29.10 **Non-exclusivity.** We may provide any goods or services to any other person or entity. We may exploit our intellectual property subject to our confidentiality obligations.
- 29.11 **Costs.** Each party is responsible for its own costs of drafting and negotiating this agreement.
- 29.12 **No right to reference.** Neither party may reference the other in any communications with third parties without the other party's prior written consent.
- 29.13 **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.
- 29.14 **Acceptance of privacy notice.** By signing this agreement, you confirm that you have read, understood and agree to be bound by the terms of our privacy notice.
- 29.15 **Variation to these terms.** If we agree to vary our standard terms for particular jurisdiction, Annexure A below will apply.
- 29.16 **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.