



## HOSPITALITY SOLUTIONS

### 360 HOSPITALITY SOLUTIONS

#### (STANDARD TERMS AND CONDITIONS OF BUSINESS SUBSCRIPTION)

#### 1. SCOPE OF APPLICATION

- 1.1. Unless otherwise agreed in writing, all transactions (including online transactions), purchase orders, quotations, offers to contract and contracts (whether written or oral) for the provision of Services by the Company, shall be subject to the standard terms and conditions contained in these Terms together with the Company's terms of Engagement and Privacy. All Services provided to the Customer, both before and after signature and acceptance of these Terms by the Customer, shall be governed by these Terms.
- 1.2. These Terms apply between the Company and its Customers, regardless of the Service(s) provided.
- 1.3. These Terms and any other official documents of the Company, which constitute an offer to contract, shall once accepted, constitute the entire agreement between the Parties in respect of the subject matter hereof and supersedes any other discussions, agreements and/or understandings regarding the subject matter hereof. In the event of any inconsistency between these Terms and any other official documents, these Terms shall take precedence.
- 1.4. To the extent that the provision of the Services by the Company are governed by any South African legislation or regulated by the Consumer Protection Act and/or the National Credit Act, these Terms do not purport to override the aforementioned insofar as they are not allowed to be amended.

## 2. DEFINITIONS AND INTERPRETATION

### 2.1. Definitions

For purposes of these Terms, unless the context requires otherwise:

<b>Business Day</b>	means a day other than a Saturday, a Sunday or an official public holiday;
<b>Companies Act</b>	means the Companies Act, 71 of 2008, as amended;
<b>Company</b>	means 360 Hospitality Solutions (Pty) Ltd t/a 360 Hospitality Solutions, Company Registration Number: 2022/807834/07, its holding company and each of its subsidiaries and/or affiliates (as applicable);
<b>Commencement Date:</b>	means the date on which the Customer is able to access their Subscription service; HAPPY WITH THIS
<b>Consumer Protection Act</b>	means the Consumer Protection Act, 68 of 2008, as amended;
<b>Customer</b>	means the party with whom the Company engages in respect of all transactions (including online transactions), quotations, offers to contract and contracts (whether written or oral) for the provision of Services;
<b>Day</b>	means calendar days inclusive of Saturday, a Sunday or an official public holiday;
<b>ETC Act</b>	means the Electronic Communications and Transactions Act, 25 of 2002, as amended;
<b>Insolvency Act</b>	means the Insolvency Act, 24 of 1936, as amended;
<b>Insolvency Event</b>	means any of the following: <ul style="list-style-type: none"><li>i) Any act of insolvency by the Customer as defined in section 8 of the Insolvency Act, as amended;</li><li>ii) Any decision by the Customer to file or the filing of any application or action, whether by the Customer or any other person for the liquidation, sequestration, administration, voluntary surrender, placing under business rescue, debt review or any other form of judicial management;</li><li>iii) The convening of a meeting of directors or shareholders to consider the passing of a decision entailing any of the steps envisaged in Clause (ii) above.</li></ul>
<b>National Credit Act</b>	means the National Credit Act, 34 of 2005, as amended;
<b>Parties</b>	means the Company and the Customer;

<b>Personal Information</b>	means “personal information” as defined in section 1 of POPIA but excluding “special personal information” as defined in section 26 of POPIA;
<b>POPIA</b>	means the Protection of Personal Information Act, 4 of 2013, as amended;
<b>Process and Processing</b>	shall bear the same meaning as “processing” as defined in section 1 of POPIA;
<b>Services</b>	means any of the services provided by the Company, including, but not limited to any quality verification Services; HAPPY WITH THIS
<b>Subscription</b>	means the Silver, Gold and Diamond service packages offered by the Company to the Customer for the agreed Subscription Period; HAPPY WITH THIS - BUT WE CAN CHANGE THIS FOR NATIONAL BASIC & PROVINCIAL BASIC PACKAGE
<b>Subscription Fee</b>	means the annual or monthly fee payable under the Customers elected Subscription package; HAPPY WITH THIS
<b>Subscription Period</b>	means the minimum period for which the Customer engages the Services of the Company, HAPPY WITH THIS
<b>Terms</b>	means these standard terms and conditions together with any annexures’;
<b>Website</b>	means the website located at <a href="http://www.360hospitalityolutions.co.za">www.360hospitalityolutions.co.za</a> or any other uniform resource locator (URL) used by us from time to time.

## 2.2. Interpretation

- 2.2.1. Unless expressly provided to the contrary or inconsistent with the context, a reference in these Terms to:
- 2.2.1.1. a person includes any natural person, firm, company, corporation, body corporate, juristic person, unincorporated association, government, state or agency of a state or any association, trust, partnership, syndicate, consortium, joint venture, charity or other entity (whether or not having separate legal personality);
  - 2.2.1.2. any one gender, whether masculine, feminine or neuter, includes the other two;
  - 2.2.1.3. the singular includes the plural and *vice versa*;
  - 2.2.1.4. a word or expression given a particular meaning includes cognate words or expressions;
  - 2.2.1.5. a statutory provision includes any subordinate legislation made from time to time under such provision and a reference to a statutory

provision includes that provision as from time to time amended, substituted or re-enacted as far as such amendment, substitution or re-enactment applies, or is capable of applying, to this agreement or any transaction entered into between the Parties;

2.2.1.6. The *eiusdem generis* rule does not apply so that whenever specific words of a particular class are used in conjunction with general words then the specific words must not limit the scope of the general words. If any provision is followed by the word including and specific examples, such examples must not be construed so as to limit the general ambit of the provision concerned; and

2.2.2. All the headings and sub-headings in these Terms are for convenience and reference only and shall be ignored for the purposes of interpreting it.

2.2.3. If a definition confers substantive rights or imposes substantive obligations on a Party, such rights and obligations shall be given effect to and are enforceable as substantive provisions of this agreement, notwithstanding that they are contained in that definition.

2.2.4. No provision in the agreement shall be interpreted for or against either Party because that party or its legal counsel drafted such provision and the *contra proferentem* rule of construction shall have no application to the construction, interpretation or adjudication of these Terms.

### 3. QUOTATIONS

3.1. All quotations submitted by the Company to the Customer shall remain open for acceptance only for a period of 30 (Thirty) calendar days unless otherwise stipulated in the quotation.  
HAPPY WITH THIS

3.2. Notwithstanding acceptance by the Customer of a quotation, performance of the Company's obligations thereunder shall be subject to the provisions of this agreement.

3.3. Notwithstanding the provisions of clause 3.1, the Company reserves its right to revoke a quotation at any time, prior to the expiry of the 30 (Thirty) days and the acceptance of the quotation.

3.4. The Parties agree that the Company reserves the right to charge a 10% (Ten Percent) administration fee on all Subscriptions which are cancelled by the Customer within 07 (Seven) calendar days of the Customer's access to the Subscription service(s) commencing, in accordance with section 44 of the ECT Act.

3.6. Each quotation and acceptance shall constitute a separate agreement between the Parties subject to this agreement and any other specific written terms of the Company, if applicable. Any terms and conditions of the Customer shall not be binding on the Company, even if not expressly rejected.

#### 4. SUBSCRIPTION PERIOD AND RENEWAL

- 4.1. The Customer may apply to join the Company's Subscription service by completing and submitting the prescribed application form and required supporting documents. HAPPY WITH THIS
- 4.2. The Company reserves its right to reject any application which does not meet its approval criteria and as such, the Company may refuse to provide any Service(s) to the Customer, and the Customer shall have no claim whatsoever against the Company for such refusal. HAPPY WITH THIS
- 4.3. The Customer, by entering into this Agreement, expressly agrees to subscribe to their chosen service package, being either the Silver, Gold or Diamond service packages offered by the Company, for the agreed Subscription Period. HAPPY WITH THIS - BUT WE CAN CHANGE THIS FOR NATIONAL BASIC & PROVINCIAL BASIC PACKAGE
- 4.4. The Subscription Period shall be for an initial period of not less than 12 (Twelve) consecutive calendar months (the "Initial Subscription Period"), effective from the Commencement Date. HAPPY WITH THIS
- 4.5. At the end of the Initial Subscription Period, the Customer's Subscription shall automatically renew for successive "Renewal Periods" unless; notice is given by the Customer in accordance with clause 4.7 below, or this agreement is terminated in accordance with the provisions set out herein. HAPPY WITH THIS
- 4.6. In the case of Customers:
- 4.6.1. who are juristic persons, the Customer's Renewal Period(s) shall be a period of 12 (Twelve) consecutive months at a time unless otherwise agreed between the parties; HAPPY WITH THIS
- 4.6.2. who are natural persons; the Customer's Renewal Period(s) shall be a period of 01 (One) month at a time unless otherwise agreed between the parties. HAPPY WITH THIS
- 4.7. Should the Customer wish not to renew their Subscription at the end of the initial or any subsequent Renewal Period(s), the Customer shall be required to provide the Company with written notice of their intention not to renew their Subscription, which written notice must be given to the Company no less than 30 (Thirty) days prior to the end of the Initial Subscription Period or any applicable Renewal Period(s). HAPPY WITH THIS

#### 5. SUBSCRIPTION FEE AND PAYMENT

- 5.1. The Services are provided to the Customer on a pre-paid basis. The Subscription Fee payable by the Customer for the Services to be provided, shall be as follows:
- 5.1.1. In the event of a quotation offering by the Company and acceptance by the Customer of such quoted or listed price:

- i) Such quoted price subject to and notwithstanding any instance of a statutory increase or adverse fluctuations in the rate of exchange prior to the rendering of Services, which may have a material direct or indirect impact on the cost of the Services, the Company reserves its rights to furnish the Customer with an adjusted quotation proportionate to any such increase incurred; and
  - 5.1.2. In the event of no quotation by the Company:
    - ii) The Company's prevailing list price, in the absence of which, the fair and reasonable price Services as determined by the Company in its absolute discretion.
- 5.2. The Customer acknowledges and accepts that this agreement does not in any way manner or form amount to a credit agreement and as such, it is not subject to or regulated by the National Credit Act.
- 5.3. The Customer shall upon reasonable request, provide the Company with information which may including but shall not be limited to FICA documents, financial and/or management statements.
- 5.4. Payment of the Subscription Fee shall be affected in South African Rand unless the Customer is quoted in another currency, in which case the Payment of the Subscription Fee is to be affect in the applicable quoted currency and with all fees associated with the payment to be borne by the Customer unless otherwise agreed between the Parties in writing.
- 5.5. All initial upfront payments to the Company shall be affected by means of card-based payment through the Company's Website, whereafter each subsequent payment, in respect of monthly paid subscriptions, shall be paid by way of debit order, alternatively by way of electronic funds transfer into the bank account specified on the Company's invoice issued to the Customer in this regard. WE CAN DO THIS ON NETCASH
  - 5.5.1. The Customer acknowledges and accepts that the Company may use payment systems owned and operated by third parties ("Payment System Providers") to facilitate the collection of fees and other amounts payable by the Customer in respect of the Services, which Payment System Providers are not associated or otherwise controlled by the Company. HAPPY WITH THIS
- 5.6. Payment of the Subscription Fee(s) in respect of Customer's who have been granted an annual Subscription by the Company:
  - 5.6.1. shall be payable immediately upon the provision of the Services OR within 07 (Seven) days of the Company transmitting the Customer's invoice or on such other day of such other period as the Company may have advised the Customer of in writing. HAPPY WITH THIS
- 5.7. Payment of the Subscription Fee(s) in respect of Customers who have been granted a monthly paid Subscription by the Company: HAPPY WITH THIS

5.7.1. shall be payable in advance, being on or before the 01<sup>st</sup> (First) day of each calendar month (“Monthly Due Date”) falling within the Subscription Period, irrespective of whether the Company has issued the Customer with an invoice in respect of such payment or not OR within 07 (Seven) days of the Company transmitting the Customer’s invoice or on such other day of such other period as the Company may have advised the Customer of in writing); HAPPY WITH THIS

5.7.2. should the Company not receive payment as contemplated in clause 5.7.1 above, and without limiting the Company’s other rights or remedies, the Company may elect to suspend the Customer’s access to the Services, until such time as payment has been received, together with any applicable penalty or interest charges where applicable. HAPPY WITH THIS

- 5.8. The Customer is not permitted, under any circumstances whatsoever, to:
- 5.8.1. apply set-off in respect of any amount payable by the Customer to the Company against any claim that the Customer may have against the Company;
  - 5.8.2. to make any deductions whatsoever from any amount due by the Customer to the Company; or
  - 5.8.3. withhold, for any reason whatsoever, any payment due and owing to the Company.
- 5.9. All and any business between the Company and the Customer to which these Terms apply, shall at all times be regarded as an agreement between the specific entity or entities actually doing business with the Customer and not an agreement collectively with all the entities contemplated in the definition of the Company.
- 5.10. The Customer shall, in addition to any other claims by the Company in terms of this Agreement, be liable towards the Company for any penalties and/or any early cancellation fees (clause 13.4.1.4), in accordance with the provisions of this agreement.
- 5.11. Should any amount not be paid by the Customer on the due date as provided herein, then all amounts owed to the Company shall immediately due and payable and the Customer shall be liable to pay interest in respect of amounts unpaid as at the due date, compounded monthly at the rate of 02% (Two Percent) until date of payment in full.
- 5.12. In the event of any notification of change in banking details of the Company, due to the risk of fraud, the Customer shall verify that the account into which payment will be made is indeed the Company’s legitimate bank account.

## 6. COMMENCEMENT OF SUBSCRIPTION

- 6.1. The Company is not obliged to provide any Services to the Customer until the Subscription Fee, together with interest and penalties, if applicable, is paid in full or secured to the satisfaction of the Company.

- 6.2. The Subscription Period shall commence as soon as the Customer's is afforded access to the Subscription service(s), being the Commencement Date.
- 6.3. The Customer shall carry the onus to ensure they have access to the Subscription service(s) on the Commencement Date. The Company has no obligation to verify such access and has the right to assume that Customer has access to the Subscription service(s) on the Commencement Date.
- 6.4. The Company shall have the right to make any changes to the provision of any Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services and the Company shall notify the Customer in any such event.
- 6.5. The Customer may make a written request to commence their Subscription serve at a later date, which request the Company, in its absolute discretion, may elect to accept or deny. HAPPY WITH THIS
- 6.6. Despite any other provision of these Terms, the Company's obligation to deliver the Services are subject to the following conditions:
  - 6.6.1. the timeous receipt by the Company of all necessary documentation and instructions from the Customer.

## **7. OWNERSHIP**

- 7.1. Ownership in respect of any and all algorithms, codes, data, information, reviews, results or software relating to or incident to the Services, including but not limited to all quality verification and review data, information or results in any form whatsoever, shall at all times remain vested in the Company and shall not pass to the Customer under any circumstances whatsoever.

## **8. EXCLUSION OF LIABILITY AND INDEMNITY**

- 8.1. The Company does not make any representations, recommendations in relation to any Services, nor does the Company or any of its affiliates provide or afford any guarantee or warranty other than as envisaged herein.
- 8.2. Claims arising out of, or which are related to any third-party Services supplied by the Company shall exclusively be dealt with between the Customer and such third-party. To the extent permissible under law, the Company shall not be liable in respect of any defect in any such Services and further shall not be liable for any loss or damage as a result of any defect.
- 8.3. The Customer hereby indemnifies the Company against any and all intellectual property rights infringement claims resulting from the supply of the Services, or any part thereof in accordance with instructions and/or specifications dictated by the Customer.



- 8.4. Unless specifically otherwise stated in writing under the signature of a director of the Company, any date mentioned in any quotation, invoice or other document for the commencement or provision of any Services, shall be an approximate date. The Customer shall have no claim whatsoever against the Company in respect of or as a result of the failure of the Company to provide the Services on or prior to the Commencement Date or such other specified date(s).
- 8.5. The Company shall not under any circumstances whatsoever be liable towards the Customer for any indirect or consequential damages of any nature, or for any loss of profits or special damages whether or not the Parties so intended, which the Customer may suffer or sustain as a result of the failure of the Company to comply with its contractual obligations pertaining to the provision of any Services.

8.6. The Customer shall not, under any circumstances whatsoever have any claim against the Company in respect of any alleged errors or inaccuracies relating to or resulting from their Services unless the notice, as envisaged in clauses 3.4, was delivered to the Company.

HAPPY WITH THIS

## 9. PERMITS, CONSENTS AND APPROVALS

If any permit, consent or approval, including regulatory approval, is required in relation to the provision of any Services under any applicable law, then the Customer shall obtain such permit, consent or approval, unless otherwise agreed between the Parties. Any failure by the Customer to obtain such permit, consent or approval shall not affect the existence, or operation of this agreement.

## 10. WARRANTIES AND GUARANTEES BY THE COMPANY NOT SURE - GREG MUST LEAD ON THIS

10.1. The Company guarantees expressly, subject to the undermentioned limitations and exclusions, that:

10.1.1. the Services rendered by the Company itself, shall be free from poor workmanship during the operation of this agreement;

10.1.2. subject to section 8 above, the Company shall at its discretion and when it is reasonable to do so, assist the Customer in the facilitation of any relevant third-party warranty claim on any service supplied through the Company, provided such service(s) are found to be defective, in accordance with the agreement entered into between the Customer and such associated third-party.

10.2. The aforementioned guarantees are subject thereto that the Services to which it applies:

10.2.1. if defective, are reported to the Company in writing without delay.

10.3. The Company shall not incur any liability under the aforementioned guarantees:

10.3.1. in case of the Customer owing any amount to the Company that is due and payable but unpaid.

10.3.2. with regards to damages from:

10.3.2.1. inaccurate or incorrect data received from the Customer or any affiliates or third parties connected with the Customer; or

10.3.2.2. inaccurate or incorrect data collected from any open / public sources or third-party sources whatsoever;

10.4. Any liability of the Company which may arise in respect of the aforementioned guarantees, and at the absolute discretion of the Company, shall be limited to an extension to the Customer's Subscription Period, which extension shall be equal in time to that which the Customer lost as a result of and in accordance with clause 10.1.1.

10.5. The Company shall not under any circumstances whatsoever be liable towards the Customer for any indirect or consequential damages or for any loss of profits or special damages whatsoever which the Customer may suffer or sustain as a result of any defect in any Services provided by the Company or due to a breach of any of the aforementioned guarantees or otherwise.

10.6. Except as stated in these Terms, no guarantee or representation of whatever nature that is made on behalf of the Company shall be binding on or valid against the Company and all common law guarantees to which the Customer otherwise would have been entitled are expressly excluded.

## 11. REPRESENTATION AND WARRANTIES BY THE CUSTOMER

The Customer makes the following representations and warrants as set out below:

### 11.1. Status:

If it is a juristic person, it is duly incorporated and validly existing under the law of its jurisdiction of incorporation.

### 11.2. Binding Obligations:

The obligations as envisaged in these Terms are legal, valid, binding and enforceable obligations imposed on the Customer.

### 11.3. Power and Authority

11.3.1. It has the power to enter into and has taken all necessary action to authorise its entry into and performance in terms hereof; and

11.3.2. The person acting on its behalf in its dealings with the Company is duly authorised to do so.

### 11.4. Insolvency and Financial Distress

No corporate action, legal proceeding or other procedure or step contemplated in the definition of Insolvency Event; or creditors' process contemplated in the definition of Insolvency Event, has been taken, or to its knowledge, threatened in relation to the Customer, and no Insolvency Event has occurred in respect of the Customer.

## **12. DATA PROTECTION**

- 12.1. The Customer acknowledges that the Company has been furnished with and may in future come into possession of Personal Information of the Customer and where applicable of its directors, members, partners, trustees, sureties etc., whether previously or as part of this agreement.
- 12.2. The Customer hereby consents to the Processing by the Company of its Personal Information as well as the Personal Information of its directors, members, partners, trustees, sureties etc., where applicable.
- 12.3. The Customer further authorises the Company to obtain, provide and verify any Personal Information with any designated third-party for the purposes stated in clause 12.5.
- 12.4. The Customer consents to the retention of any Personal Information addressed in this clause for an indefinite period. The Customer may however revoke the aforementioned consent in writing at any time.
- 12.5. The Parties agree that the purposes of Processing under this clause are as follows:
  - 12.5.1. Internal Statistics;
  - 12.5.2. Risk management, credit checks, credit reporting; and/or
  - 12.5.3. Future marketing of Services by the Company.
- 12.6. None of the aforementioned derogates from the Company's right to process and retain Personal Information as otherwise provided for in POPIA.
- 12.7. The Parties agree that the Customer shall have the duty of informing the Company of any changes in the Personal Information received from the Customer and to ensure the continued accuracy of any Personal Information provided to the Company.
- 12.8. Where Personal Information relates to any person other than the Customer, including any of the Customer's directors, officers, employees or principals, the Customer warrants that it has obtained the consent of the relevant person to whom such Personal Information relates, authorising the Customer to disclose such Personal Information to the Company and any relevant third party as well as authorising the Company and any relevant third party to Process such Personal Information.
- 12.9. The Customer confirms that it is aware of its rights in terms of POPIA which include, but are not limited to, its right to request the details of all Personal Information being Processed by the Company and its right to approach the Information Regulator with regard to any alleged non-compliance with POPIA.

## **13. BREACH AND TERMINATION & PENALTY FEES**

### **13.1. Termination by notice**

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13.1.1. Notwithstanding any contrary provision envisaged herein and in instances where the Customer is a natural person and this agreement is governed by and subject to the Consumer Protection Act, the Customer may terminate this agreement by giving the Company not less than 20 (Twenty) Business Days' prior written notice.

13.1.2. Notwithstanding any contrary provision envisaged herein, the Company may terminate this agreement for convenience, by giving the Customer not less than 30 (Thirty) days' prior written notice. HAPPY WITH THIS

### **13.2. Automatic termination**

Unless otherwise provided by the Company, this agreement shall automatically terminate if:

- 13.2.1. the Customer is a natural person, upon his death;
- 13.2.2. the Customer is a partnership, upon dissolution thereof; or
- 13.2.3. an Insolvency Event occurs in respect of the Customer.

### **13.3. Breach**

Without limiting its other rights or remedies, the Company shall be entitled forthwith to cancel this agreement and/or to claim immediate payment and/or performance by the Customer of all of the Customer's obligations, whether or not such payment and/or performance is due, by giving written notice to the Customer, if the Customer:

- 13.3.1. breaches any warranty envisaged herein;
- 13.3.2. breaches these Terms and such breach cannot be remedied or if such breach can be remedied fails to remedy such breach within 05 (Five) days after receipt of written notice from the Company to do so;
- 13.3.3. suspends or ceases, or threatens to suspend or cease, the carrying on all or a substantial part of its business; and/or
- 13.3.4. repeatedly breaches any of these Terms in such a manner as to reasonably justify the Company's opinion that the Customer's conduct is inconsistent with it having the intention or ability to give effect to these Terms.

13.4. Without limiting the rights or remedies of the Company, it may upon the termination or cancellation of these Terms, for any reason other than that set forth in clause 13.1.2, require:

- 13.4.1. the Customer to immediately pay to the Company:
  - 13.4.1.1. any and all of the Company's unpaid invoices, interest, cost and penalties, as well as the balance due for and in respect of Services provided, but which have not yet been invoiced, the Company shall submit an invoice which shall be payable by the Customer immediately;

13.4.1.2. the cost of any Services ordered which cannot be reasonably avoided or cancelled;

13.4.1.3. the costs or losses incurred by the Company as a result of the cancellation of third-party agreements, including any cancellation fees which are due in under such third-party agreement;

13.4.1.4. in respect of a Customer who has entered into an annual subscription and paid their full Subscription Fee, a cancellation fee equal to the entire pre-paid Subscription Fee paid by the Customer shall be retained by the Company, unless otherwise recorded in this agreement or agreed to in writing between the Parties; and/or HAPPY WITH THIS

13.4.1.4. in respect of a Customer who has entered into a monthly paid subscription, a cancellation fee equal to the amount which would become due to the Company under the remaining term of the Subscription Period, unless otherwise recorded in this agreement or agreed to in writing between the Parties. HAPPY WITH THIS

i) For the purpose of clarity and example only, should the Customer elect to cancel their Subscription early, in month 10 (Ten) of their 12 (Twelve) month Subscription Period, the cancellation fee that will be immediately due and payable by the Customer to the Company shall be the balance of their Subscription Period.

Applicable Subscription Period = 12 months less Subscription Period already served = 10 months.

Cancellation Fee = 12 (Twelve months) – 10 (Ten months) = 02 Months.

The Cancellation Fee payable by the Customer for early cancellation, would be equal to 02 (Two) months Subscription Fees.

13.4.2. the Company shall have the right to set-off any amount due in terms of any other agreement with the Customer against any deposit or advance payment paid to the Company by the Customer in terms hereof; and

13.4.3. the accrued rights and remedies of the Company as at termination shall not be affected, including the right to claim damages or to institute any applicable action in respect of any breach of the agreement which existed at or prior to the date of termination.

## **14. JURISDICTION AND COSTS**

- 14.1. The Company shall be entitled, at its discretion, to institute proceedings against the Customer in connection with these Terms in any Magistrate's Court having jurisdiction notwithstanding that such claim may exceed the monetary jurisdiction of such Court.
- 14.2. Notwithstanding the above, should the Company elect to institute proceedings in the High Court, the Customer hereby consents and submits to the jurisdiction of the High Court of South Africa.
- 14.3. In the event of cross border transactions or where the Customer trades or is resident outside the borders of South Africa the Company may in its absolute discretion elect to institute legal action any competent High Court of South Africa or such other country in which the Customer trades or is resident in subject to clause 15.7.
- 14.4. The Customer is liable for all legal costs incurred by the Company resulting from a breach of these Terms, on an attorney-and-own-client scale, including all tracing fees and collection commission and on a full indemnity basis.

## **15. GENERAL**

### **15.1. Address for Legal Service**

The Customer hereby chooses its *domicilium citandi et executandi* for purposes of service of any legal process and the dispatch of accounts and notices in terms hereof, as the address indicated as the physical business address by the Customer in the Schedule hereto and in the absence of such address, the address of the Customer that appears on the most recent invoice of the Company to the Customer.

### **15.2. Remedies**

No remedy of the Company conferred by these Terms is intended to be exclusive of any other remedy which is otherwise available at law, by statute or otherwise, and each remedy shall be cumulative and in addition to every other available remedy existing at law, by statute or otherwise. The election of any one or more remedy by the Company shall not constitute a waiver by the Company of the right to pursue any other remedy.

### **15.3. Severance**

If any provision of these Terms which is not material to its efficacy as a whole, is rendered void, illegal or unenforceable in any respect under any law, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

### **15.4. Assignment**

- 15.4.1. The Customer cannot assign any of its rights, benefits, obligations and liabilities under or arising from these Terms without the prior written consent of the Company; and

15.4.2. The Customer hereby agrees that the Company may cede, assign or delegate any of its rights, benefits, obligations and liabilities under or arising from these Terms, or appoint an agent to perform any of the Services, without the Customer's additional consent and without giving notice to the Customer.

**15.5. Suretyship**

Every person signing these Terms on behalf of the Customer binds himself in his personal capacity as surety and co-principal debtor towards the Company for the due and proper performance by the Customer of its obligations towards the Company.

**15.6. Counterparts**

This agreement may be signed in counterparts, all of which taken together shall constitute one and the same agreement.

**15.7 Governing law**

The validity of these Terms, its interpretation, the respective rights and obligations of the Parties and all other matters arising in any way out of it or its expiration or earlier termination for any reason shall be determined in accordance with the laws of South Africa.

**15.8. Waiver and Concession**

15.8.1. No failure by the Company to enforce any provision of these Terms shall constitute a waiver of such provision or in any way affect the Company's right to require performance of any such provision at any time in the future, nor shall the waiver of any subsequent breach nullify the effectiveness of the provision itself; and

15.8.2. No concession, indulgence or relaxation which the Company may grant to the Customer shall in any way limit or diminish the rights of the Company or be interpreted as a waiver by the Company of any of its rights herein.

**15.9. Force Majeure**

15.9.1. The Company shall not be responsible for any failure to perform its obligations in terms hereof if it is prevented or delayed in performing such obligations by an event of *force majeure*;

15.9.2. If the *force majeure*-event continues for more than 30 (Thirty) days, the Company may terminate this agreement between the Parties hereto by giving not less than 10 (Ten) days' written notice to the Customer; and

15.9.3. The events of *force majeure* shall include, but not be limited to: strike, lock-out, shortage of labour, power-failures, accidents of any kind, any default or delay by any sub-contractor or supplier of the Company, insurrection, riot, robbery, sabotage, blockade, embargo, coup, economic crisis, international or national restrictions, any order of an international authority or court, any requirements of any authority or other competent local authority, collapse or interruption in electricity supply, fire or explosion, revolt, civil commotion, state or government

or any other authority, disorder, a state of emergency in any relevant jurisdiction, labour dispute, war, invasion, hostilities, civil war, disease or epidemic, pandemics and acts of terrorism, political or civil disturbances, cyber-attacks, system breaches or electronic communication failures, the elements, inclement weather, natural catastrophes such as earthquakes, hurricanes, floods or droughts, unforeseen physical conditions (whether man-made or natural) or any act of any state or government or any other authority.

**15.10. Anti-Bribery**

- 15.10.1. The Customer acknowledges and confirms that neither the Company nor the Company's directors, officers, employees or agents offered or promised any form of reward to the Customer or any of its employees, officers or agents in order to secure any business in terms hereof; and
- 15.10.2. The Customer shall immediately notify the Company if any of the Company's directors, officers, employees or agents solicits any payment or any other item of value outside of the normal compensation payable under this agreement.

**15.11. Certificate**

A certificate signed by a manager of the Company, whose appointment need not be proven, setting out any amount owing by the Customer to the Company in terms hereof shall be sufficient evidence of the particulars included therein for purposes of judgment, including provisional sentence or summary judgment. If the Customer disputes any amount forming part of such certificate, the Customer shall bear the onus to prove same.

**15.12. Non-Disclosure and Intellectual Property**

- 15.12.1. For purposes hereof, "Intellectual Property" means rights in and to patents, inventions, copyright and related rights, trademarks, business names and domain names, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, know-how and all other intellectual property rights, in each case, whether registered or unregistered and including all applications and rights to apply for and be granted renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or shall subsist now or in the future in any part of the world.
- 15.12.2. All rights, title and interest in and to the Intellectual Property owned by either the Company or its sub-contractor(s) shall vest respectively in either the Company or the sub-contractor(s), as the case may be, and all benefits arising from the use of the Intellectual Property shall inure exclusively for the benefit of the Company and/or the sub-contractor(s) respectively. The Customer acknowledges that it has no rights in or to the Intellectual Property.
- 15.12.3. The Customer shall not make any representation or act in any way which may be taken to indicate that it has any right, title or interest in or ownership or use of the Intellectual Property.



- 15.12.4. The Customer undertakes not to do or permit to be done any act which may impair or prejudice the right, title or interest of the Company and/or the sub-contractor(s) in and to the Intellectual Property.
- 15.12.5. The Customer shall promptly notify the Company of any conduct by any party which constitutes, or which potentially constitutes, an infringement of any of the Intellectual Property rights and which comes to the attention of the Customer.
- 15.12.6. If the Customer becomes aware of any allegation that the Services infringe any rights of another party, or that the Intellectual Property is otherwise threatened or likely to be adversely affected, the Customer shall immediately inform the Company and shall make no comment or admission to any third party in respect thereof.
- 15.12.7. The Company shall in its absolute discretion decide on the applicable remedial action to be instituted, if any, in respect of any infringement or alleged infringement of the Intellectual Property or passing-off or any other claim or counterclaim brought about or threatened in respect of the use or registration of the Intellectual Property. The Customer undertakes to provide such assistance as the Company may require in relation to any such action.
- 15.12.8. All written or verbal information supplied by the Company to the Customer regarding Intellectual Property, products, services, developments, inventions, processes and procedures, product specifications, plans, customers, pricing and all other data whether of a financial, technical, technological, labour related, marketing, administrative or accounting nature ("Confidential Information") shall be treated as confidential and shall not be disclosed to third parties without the Company's prior written consent. Such information shall be exclusively used for the performance by the Parties in terms hereof.