

## GENERAL TERMS

### 1. INTERPRETATION

- 1.1. The headings to the clauses of the Agreement are for reference only and shall not affect the interpretation of the Agreement.
- 1.2. In the Agreement, unless the context clearly indicates the contrary, any reference to:
  - 1.2.1. The singular shall also include a reference to the plural and vice versa;
  - 1.2.2. Any one gender shall include a reference to the other gender;
  - 1.2.3. A person shall include a reference to a natural or juristic person.
- 1.3. Any schedules to the Instrument of Agreement or the Particulars shall form part of the Agreement and any reference to the Agreement shall include such schedules.
- 1.4. Notwithstanding the fact that they appear in a definition clause, any and all substantive provisions contained in the definition clause 2, shall be deemed to be incorporated in and form part of the Agreement.

### 2. DEFINITIONS

In the Agreement, the following terms shall, unless otherwise stated, or inconsistent with the context in which they appear, bear the following meanings:

- 2.1. "Access" means access the Software and/or Content via an online portal provided by the Company;
- 2.2. "Access Software" means the software identified as such in the Particulars and could include, for example, Java Script Application Programmers Interface (API) or Search API;
- 2.3. "Affiliate" means with respect to a Party to the Agreement, any other person that Controls, is Controlled by or is under common Control with that Party;
- 2.4. "Affiliated Sub-Licensees" means Affiliates of the Customer, which are identified in the Particulars;
- 2.5. "Agreement" means the agreement between the Parties, constituted by the following parts:
  - 2.5.1. the Instrument of Agreement;
  - 2.5.2. the General Terms (contained herein);
  - 2.5.3. the Particulars;
  - 2.5.4. any other terms and conditions referred to in the Instrument of Agreement and incorporated therein by reference;
- 2.6. "Authorised Site(s)" means the site(s) of the Customer which are specified in the Particulars, if applicable;
- 2.7. "Business Day" means any day other than a Saturday, Sunday or a day on which banking

institutions in the Republic of South Africa are customarily closed;

- 2.8. "Cancellation Fee" means the fee specified as such in the Particulars, which is a percentage of any Licence Fees that would have been payable by the Customer in respect of the remaining period of the Initial Licence Period, if the Agreement had not been terminated by the Customer for convenience;
- 2.9. "Commencement Date" means the date on which the Customer is first able to Use the Software and/or Content;
- 2.10. "Company" means AFRIGIS PROPRIETARY LIMITED, a company duly registered and incorporated with limited liability in accordance with company laws of the Republic of South Africa with registration no. 1997/0067/16/07;
- 2.11. "Content" means each of the sets of data, in read-only form, identified in the Particulars and/or which is accessed by the Company's webservices through the use of the Software, which may include the contents of the national address database; the street centre line; and cadastre information;
- 2.12. "Content New Release Period" means the period specified as such in the Particulars;
- 2.13. "Control" means, with respect to the relationship between or among two or more persons, the possession, directly or indirectly, of the power to direct or cause the direction of the affairs or management of a person, whether through the ownership of voting securities, by contract or otherwise, including without limitation the ownership, directly or indirectly, of securities having the power to elect a majority of the board of directors or similar body governing the affairs of such person, and "Controls" and "Controlled" will be interpreted accordingly;
- 2.14. "Credit Limit" means the limit on the Customer's Use of the Software, as specified in the Particulars, if applicable;
- 2.15. "Current Release" means the most recent version of the Software and/or Content, as indicated by the context, released by the Company, from time to time;
- 2.16. "Customer" means the person identified as such in the Instrument of Agreement;
- 2.17. "Customer Data" means a set of data, databases and methods of analysis and computation (and derivations thereof and enhancements thereto) created by the Customer, (including those that may be derived from the Content or inseparably integrated with the Content but excluding a simple addition to, re-ordering or restructuring of, the Content;
- 2.18. "Destructive Elements" means any computer code which:

- 2.18.1. is designed to disrupt, disable, harm or otherwise impede in any manner, including but not limited to aesthetical disruptions or distortions, the operation of the Software or the Content or any other associated software, hardware, computer software or network (generally referred to as "viruses" or "worms"); and/or
- 2.18.2. would disable the Software or the Content or impair in any way its operation based on the elapsing of a period of time, exceeding an authorised number of copies, advancement to a particular date or other numeral (generally referred to as "time bombs", "time locks", or "drop dead" devices); and/or
- 2.18.3. would permit a third party to access the Software or the Content to cause disablement or impairment (generally referred to as "traps", "access codes" or "trap door" devices); and/or
- 2.18.4. any other similar harmful, malicious or hidden procedures, routines or mechanisms which would cause such programs to cease functioning or to damage or corrupt data, storage media, programmes, equipment or communications, or otherwise interfere with operations;
- 2.19. "Event of Force Majeure" means an event beyond the reasonable control of a Party, including an act of God, war, insurrection, earthquake, act of terrorism, storm, flood and any other event which the Party invoking this clause could not reasonably be expected to prevent or control, but shall exclude:
- 2.19.1. any event caused by the negligence of such Party or its Representatives or any failure to observe the standard of care and skill reasonably expected of that Party; and
- 2.19.2. strikes or illegal action by the workforce of a Party;
- 2.20. "Exceptions" means the exceptions to the Specifications of the Software and/or the Content, specified as such in the Particulars;
- 2.21. "General Terms" means the general terms and conditions on which the Company will engage with the Customer, which are set out herein;
- 2.22. "Hardware" means any electronic device, machine or piece of equipment, including portable or mobile devices, such as laptops and mobile telephones, hard drives, monitors, electronic storage mediums, servers and processors;
- 2.23. "Initial Licence Period" means, if applicable, the period specified as such in the Particulars;
- 2.24. "Insolvency Event" means, in relation to a Party:
- 2.24.1. that Party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or is deemed unable to pay its debts;

- 2.24.2. that Party or any other person (save for the purposes of a solvent reorganisation or restructuring) takes any step, gives notice, commences proceedings or an appointment is made for or in connection with the winding up or administration of that Party, which is not terminated or discharged within 21 days;
- 2.24.3. a distress, execution, sequestration, attachment, security enforcement or similar process in respect of all or substantially all of that Party's assets occurs and such process is not terminated or discharged within 21 days;
- 2.24.4. that Party enters or seeks to enter into any arrangement with any one or more of its creditors; or
- 2.24.5. if anything analogous to any of the events/circumstances described in clauses 2.24.1 to 2.24.4 above occurs in any jurisdiction in relation to that Party;
- 2.25. "Install" means to load or download the Installation Software onto the Customer's Hardware for Use by a User;
- 2.26. "Installation Software" means the software identified as such in the Particulars;
- 2.27. "Instrument of Agreement" means an instrument in which both Parties indicate their agreement to the terms and conditions upon which they will engage with each other in relation to the Software and/or Content;
- 2.28. "Intellectual Property" means any creation of the mind which is capable of being protected by law from use by any other person, whether in terms of South African law or foreign intellectual property law, and any rights in such creation, including but not limited to patents, inventions, copyright, registered and unregistered designs, registered and unregistered trade marks, know-how, domain names, trade secrets and all other rights and interests of a similar nature in any part of the world, whether registerable or not, and all rights to apply therefor;
- 2.29. "Licence" means a licence granted by the Company to the Customer to Use the Software and/or Content, on the terms and conditions set out in the Agreement;
- 2.30. "Licence Fee" means the fee specified as such in the Particulars;
- 2.31. "Losses" means losses, damages, costs, charges, expenses, penalties, interest and fines, including those arising as a result of claims, demands, actions, proceedings or suits by any person;
- 2.32. "Modification" means changes, improvements or customisation of or to the Software and/or the Content, or any component of the Software and/or Content; and "Modify" shall have a corresponding meaning;

- 2.33. "New Release" means a release of the Software and/or Content, incorporating Upgrades made by the Company, to the Software and/or Content;
- 2.34. "Particulars" means the particulars referred to in the Instrument of Agreement or specified for use in conjunction with these General Terms, as well as any schedules, annexures and appendices attached thereto;
- 2.35. "Parties" means the Company and the Customer; and "Party" means the Company or the Customer, as the context indicates;
- 2.36. "Prime" is the rate of interest per annum at which the Company's South African bankers will lend from time to time to the Company on overdraft, which rate of interest shall be ascertained, for the purpose of the Agreement, without any further necessity for proof by a certificate issued by any branch manager of the banker (whose appointment it shall also not be necessary to prove);
- 2.37. "Product Information" means information, instructions and manuals issued or made available by the Company, pertaining to the Software and/or the Content or its Access, Installation, operating instructions and/or other associated technical literature, to facilitate the Use of the Software and/or Content by the Users;
- 2.38. "Purpose" means the purpose specified as such in the Particulars;
- 2.39. "Representative" means, in relation to a person:
- 2.39.1. a director, officer, agent or employee of that person; or
  - 2.39.2. a sub-contractor or consultant of that person or any other person acting for and on behalf of, or on instruction of that person;
- 2.40. "Service Level Agreement" means a written agreement concluded or to be concluded between the Parties in relation to the Company's support and maintenance of the Software and/or Content;
- 2.41. "Software" means a run-time version of the Installation Software and/or the Access Software, as indicated by the context;
- 2.42. "Software New Release Period" means the period specified as such in the Particulars, if applicable;
- 2.43. "Source Code" means program statements and instructions for the Software in human readable form and in such form that it can be compiled or interpreted into equivalent object code; together with all technical and other information and documentation reasonably necessary for the reproduction, understanding, maintenance, Modification, correction and enhancement of such software by a person reasonably skilled in software development who has not had prior access to such materials;
- 2.44. "Specifications" means the specifications for the Software and/or Content, which is displayed on the Company's website and in its marketing and

promotional material and other documentation provided to the Customer prior to the Commencement Date, but excluding the Exceptions;

- 2.45. "Support" means the maintenance and support services provided by the Company to the Customer in relation to the Software and/or Content, or its Use, in terms of clause 6;
- 2.46. "Termination Notice" means the period specified as such in the Particulars;
- 2.47. "Upgrade" means any supplementation, change or improvement to the Software and/or Content or any component thereof, that relates to or affects the constitution or operating performance of such Software/Content or an aspect thereof, but does not change the basic content, operation or functioning of the Software/ Content; and/or any significant changes to the Software/Content or any component thereof, which change results in a supplement to, or addition of a feature or capability, not present in such Software/Content prior to the introduction of the changes;
- 2.48. "Use" means use or operation of any portion of the Software and/or Content, by the Users, strictly for the benefit of the Customer and solely for its internal business purposes and in accordance with clause 4 of these General Terms;
- 2.49. "User" means a Representative of the Customer who is designated by the Customer has a person entitled to Use the Software and/or Content; and
- 2.50. "User Limit" means the limit on the number of Users able to Use the Software, as specified in the Particulars, if applicable.

### 3. TERM OF AGREEMENT

- 3.1. The Agreement shall commence on the Commencement Date and shall endure for the Initial Licence Period, if any. Thereafter, subject to the provisions of clause 10, the Agreement shall remain in force until:
- 3.1.1. termination by the Customer on provision of written notice to the Company for the Termination Notice Period;
  - 3.1.2. termination by a Party in accordance with clause 11.1;
  - 3.1.3. termination of a royalty-free Licence by the Company in accordance with clause 4; or
  - 3.1.4. termination by a Party in accordance with clause 12 (Force Majeure).
- 3.2. Notwithstanding clause 3.1, the Customer may terminate the Agreement before the expiry of the Initial Licence Period for convenience on provision of written notice to the Company for the Termination Notice Period, in which case the Customer will be liable for the Cancellation Fee, and such Cancellation Fee shall become immediately due and payable to the Company.
- 3.3. In the event that the Agreement expires, or is terminated/cancelled by either Party, or otherwise ceases to be of force or effect, the Customer's

right to Use the Software and Content, shall immediately cease and the Company shall have no obligation to provide the Support to the Customer.

#### **4. USE OF SOFTWARE AND CONTENT**

- 4.1. Notwithstanding anything else contained in the Agreement, the Licence granted in the Agreement will not entitle the Customer to do any of the following (or enable or assist anyone else to do so):
  - 4.1.1. redistribute, license or sell any part of the Software or Content;
  - 4.1.2. copy the Software or Content except as is expressly provided in the Agreement;
  - 4.1.3. mass download or create bulk feeds of the Content;
  - 4.1.4. use the Content or the Software to create or augment any other mapping-related data (including a mapping, tracking or navigation data set, business listing, look-up list, mailing list, or telemarketing list) for use in providing a service that is a substitute for, or which is substantially similar to, that provided by the Company;
  - 4.1.5. reverse engineer or attempt to extract the Source Code of the Software;
  - 4.1.6. remove, obscure, or alter any of the Company's terms pertaining to the use of the Software or the Content, or any links to or notices of those terms, or any notifications of the Company's Intellectual Property or that of its licensors; or
  - 4.1.7. use the Software or Content manner to harass, abuse, stalk, threaten, defame or otherwise infringe or violate the rights of any other party or in any manner that is inappropriate, illegal, or in violation of any person's rights (including their privacy, publicity, and Intellectual Property).
- 4.2. When Using the Content, the Customer will attribute credit to the Company and its information/content providers. Such attribution must be clear and visible whenever Content is displayed.
- 4.3. The Customer may not use any trade marks, logos, slogans or other branding of the Company or which are used by the Company in conjunction with the Content or the Software.

#### **5. TERMINATION OF FREE LICENCES**

Where the Company provides the Customer with access to Use Software free of any charge to the Customer (i.e. where the Licence Fee is nil), the Company shall be entitled at any time, in its discretion, to terminate the licence so granted, or to terminate the provision of any Support that may have been provided by the Company in relation to that licence, without providing any notice of termination to the Customer.

#### **6. SUPPORT AND MAINTENANCE**

- 6.1. The Company's obligation to provide support in relation to the Software and/or Content may be set out in a Service Level Agreement. If the Parties execute a Service Level Agreement then the terms and conditions contained therein will apply in relation to the support and maintenance of the Software and/or Content and will supersede and substitute the provisions of this clause 6.
- 6.2. If the Parties do not execute a Service Level Agreement, the Company's obligation in relation to the support and maintenance of the Software and/or Content will be as set out in this clause 6.
- 6.3. The Company will not be obliged to provide any maintenance or support of, or technical assistance, in relation to, any Hardware, despite the fact that Software/Content may be Installed or Used or Accessed using such Hardware.
- 6.4. The Company will provide the following technical support ("Support") in relation to the Software and/or Content and its Use, free of any charge to the Customer:
  - 6.4.1. providing advice on the Use of the Software and/or Content to fully-trained Users, remotely by telephone, e-mail or other appropriate means but excluding attendance at the Customer's premises;
  - 6.4.2. diagnosing faults in the Software and rectification of such faults remotely and the making of all necessary consequential amendments (if any) to the Software and the Product Information;
  - 6.4.3. investigating reported errors or inaccuracies in the Content and, to the extent that it is reasonably able to do so, making necessary amendments to the Content, to correct such errors or inaccuracies;
  - 6.4.4. if a Software New Release Period is specified in the Particulars, providing a New Release of the Software, on the expiry of each Software New Release Period, from time to time;
  - 6.4.5. providing a New Release of the Content, on the expiry of each Content New Release Period, from time to time.
- 6.5. The Customer will provide the Company with all information pertaining to a query/fault/issue in relation to the Software/Content as is necessary to enable the Company to provide the Support.
- 6.6. The Company will provide a helpdesk/call centre facility to which the Customer can log queries relating to the Software/Content. This facility will be available on Business Days between the hours of 08:00 to 16:30 (South Africa time) ("Normal Business Hours") and will be used as follows:
  - 6.6.1. On experiencing an issue, the Customer can request assistance from the Company by telephone and will confirm such telephone request by email. The email

correspondence will contain the following information:

- (i) Customer's name;
- (ii) Name of Representative enquiring on behalf of the Customer;
- (iii) A brief description of the problem experienced;
- (iv) The name of the Software and the Current Release; and
- (v) A contact telephone number at which the Company can communicate with the Customer Representative.

6.6.2. The Company will, in the first instance, attempt to resolve the issue by telephone communication and in the event that the foregoing fails to address the issue, the Company will address the issue within 24 (twenty four) hours.

6.7. The Company will not be obliged to provide the Support in relation to faults arising for any one or more of the following reasons: -

- 6.7.1. the Customer's misuse of the Software/Content or its failure to use the Software/Content in accordance with the Product Information;
- 6.7.2. any repair, adjustment, alteration or Modification of, or supplementation of, the Software/Content by any person other than the Company without the Company's prior written consent;
- 6.7.3. the Customer's failure to maintain a suitable environment for the Hardware through which the Software/Content is Used, including the provision of a constant power supply and sufficient communications bandwidth;
- 6.7.4. any accident or disaster affecting the Hardware through which Software/Content is Used or failure to provide a suitable environment for such Hardware including: fire, flood, water, wind, lightening, transportation, vandalism or burglary.
- 6.7.5. the incompatibility of the Software/Content with any other software/content not supplied by the Company to the Customer;
- 6.7.6. limitations on national and/or international bandwidth capacity; or
- 6.7.7. failures in telecommunication links and line failures and quality of telecommunication services.

6.8. The Support does not include the provision of any of the following:

- 6.8.1. set-up of operating systems, databases, data or data inputting mechanisms or procedures;
- 6.8.2. transfer of software and information from one piece of Hardware to another; or

6.8.3. training of Users in the Installation, Access or Use of the Software/Content.

6.9. The Company may upon request by the Customer provide any of the services described in clauses 6.8.1 to 6.8.3 and, but will in this case, be entitled to charge the Customer for the services so provided at its prevailing hourly consultancy fee rates or as otherwise agreed to between the Parties in writing.

## 7. PRODUCT MODIFICATION

7.1. The Customer shall not decompile, reverse compile or disassemble the Software nor derive nor attempt to derive the Source Code of the Software.

7.2. The Customer shall not attempt to Modify the Software and/or Content or any part thereof, or permit others to do so, without the Company's express prior written permission and, unless otherwise agreed between the Parties in writing, all Intellectual Property pertaining to, associated with, or embodied in, such Modifications, shall become, and shall be assigned to be, the sole property of the Company.

## 8. AUDIT

The Customer shall, upon reasonable request of the Company, provide information and documentation reasonably necessary for the Company to verify that the Customer is complying with its obligations under the Agreement (in particular, the Customer's use of the Software and/or Content). If, on the basis of the information provided, the Company considers that a breach of the Agreement has occurred then it shall be entitled to appoint (at its own cost and expense) independent auditors to verify and confirm the same.

## 9. INTELLECTUAL PROPERTY RIGHTS

9.1. The Company warrants, to its knowledge, but without having conducted any due diligence, that the Use of the Software/Content does not infringe any Intellectual Property of a third party.

9.2. The Company warrants that it is lawfully entitled to grant the Licence on the terms and conditions set out in the Agreement.

9.3. In the event that any third party succeeds in its claim for the infringement of its Intellectual Property, the Customer's sole remedy against the Company shall be to demand that the Company, at the Company's discretion and within 30 (thirty) days of the Customer's Use of the Software/Content having been found to infringe such Intellectual Property:

9.3.1. obtain for the Customer the right to continue using the Software/Content or parts thereof, which constitute the infringement;

9.3.2. replace the Software/Content or the parts thereof which result in the infringement, with other content or software which does not infringe and which in all respects operates substantially in accordance with the Specifications;

9.3.3. alter the Software/Content in such a way so as to render the Customer's Use thereof non-infringing while still in all respects being substantially in accordance with the Specifications; or

9.3.4. withdraw the Software/Content and refund to the Customer all Licence Fees paid by it.

## **10. THIRD PARTY LINKS AND SERVICES IN SOFTWARE**

10.1. Use of the Software may result in the Customer accessing third party's web sites or using third party's services (collectively "Third Party Services").

10.2. Certain Third Party Services may display, include or make available content, data, information, applications or materials from third parties (collectively "Third Party Materials").

10.3. The Customer acknowledges that there may be additional terms and conditions associated with the use of Third Party Services and Third Party Materials and will read and accept these terms and conditions beforehand.

10.4. To the extent that the Customer accesses and uses the Third Party Services and Third Party Materials, such access and use will be at its sole risk and the Company shall not have any liability to the Customer for Third Party Services or Third Party Materials that may be found to be defective, faulty, inaccurate or incorrect.

10.5. The Customer acknowledges and agrees that the Company provides Third Party Services and Third Party Materials as a convenience to the Customer and is not responsible for examining or evaluating the content, accuracy, completeness, timeliness, validity, copyright compliance, legality, decency, quality or any other aspect of such Third Party Services or Third Party Materials.

10.6. The Company does not warrant or endorse and does not assume and will not have any liability or responsibility to the Customer or any other person, for any Third Party Services or Third Party Materials.

## **11. BREACH AND TERMINATION**

11.1. If a Party:

11.1.1. materially breaches the Agreement and fails to remedy the breach within 30 (thirty) days of written notice to do so (such notice specifying the breach); or

11.1.2. becomes the subject of an Insolvency Event;

11.1.3. the Customer fails to pay the Licence Fee on or before the date on which it becomes due and payable and fails to remedy such breach within 30 (thirty) days of written notice to do so;

11.1.4. the Customer sells or attempts to sell its business to a third party which agreement affects its ability to fulfil its obligations as set out in the Agreement;

11.1.5. the Customer commits any act or omission which can be construed by a third party that it purports to be the owner of the Software or the Intellectual Property pertaining to, associated with or embodied in, the Software; or

11.1.6. the Customer furnishes the Company with misleading or false information which in any way effected the conclusion of the Agreement or relationship of the Parties during the term of the Agreement,

then that Party shall be in default which shall entitle the other Party to terminate the Agreement on written notice to that Party.

11.2. In the event that the Agreement expires, is terminated/cancelled by either Party, or otherwise ceases to be of force and effect for whatever reason:

11.2.1. shall be without prejudice to any existing rights and/or claims that a Party may have against the other Party;

11.2.2. all amounts payable by the Customer to the Company, shall become immediately due and payable; and

11.2.3. all rights and obligations of the Parties contained in the Agreement shall forthwith be terminated (save for those obligations of the Customer which specifically or by their nature survive the termination of the Agreement) and in particular, the Customer shall have no right to access or use the Software/Content, in any manner whatsoever, and the Company shall have no further obligations to provide the Customer with access to the Software/Content or provide the Support.

11.3. All provisions of the Agreement which, to give effect to the meaning, needs to survive its termination, shall remain in full force and effect after termination.

## **12. FORCE MAJEURE**

12.1. Failure on the part of a Party to comply with any of the terms and conditions of the Agreement shall not give rise to any claim for damages or for termination or cancellation in so far as (i) such failure has arisen from an Event of Force Majeure and (ii) the Party invoking the provisions of this clause has: (i) taken all reasonable alternative measures with the object of carrying out its obligations and avoiding failure, and (b) taken all reasonable steps to remove the cause of such failure and to comply with its obligations under the Agreement with the minimum delay.

12.2. Such Party shall notify the other Party in writing as soon as reasonably possible of the circumstances constituting an Event of Force Majeure and giving rise to its failure to perform and shall thereafter further notify the other Party, as soon as reasonably possible, of the removal or cessation of such circumstances.

12.3. If an Event of Force Majeure continues for a period exceeding 30 (thirty) days, either Party shall be entitled to give one month's written notice of termination of the Agreement.

### **13. CHOSEN ADDRESSES**

13.1. The Company chooses as its chosen addresses for all purposes under the Agreement, whether in respect of court process, notices or other documents or communications of whatsoever nature, the addresses set out in the Instrument of Agreement.

13.2. The Customer chooses as its chosen address for all purposes under the Agreement, whether in respect of court process, notices or other documents or communications of whatsoever nature, the physical address set out in the Instrument of Agreement.

13.3. Any notice or communication required or permitted to be given in terms of the Agreement shall be valid and effective only if in writing but it shall be competent to give notice by email (provided that there is no non-delivery message received).

13.4. Any Party may by notice to any other party change its chosen addresses to another addresses, provided that the change shall become effective vis-à-vis that addressee on the 5th (fifth) Business Day from the deemed receipt of the notice by the addressee.

13.5. Any notice to a Party:

13.5.1. delivered by hand to a responsible person during ordinary business hours at its chosen physical address shall be deemed to have been received on the day of delivery; or

13.5.2. sent by email to its chosen email address stipulated above, shall be deemed to have been received on the date of dispatch (unless the contrary is proved).

13.6. Notwithstanding anything to the contrary herein contained a written notice or communication actually received by a party shall be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen addresses.

### **14. ARBITRATION**

14.1. Any other dispute arising out of or in connection with the Agreement or the subject matter of the Agreement, shall be referred to arbitration as set out in this clause 14.

14.2. The Parties shall agree on the arbitrator who shall be an attorney or advocate on the panel of arbitrators of the Arbitration Foundation of Southern Africa ("AFSA"). If agreement is not reached within 10 Business Days after any Party calls in writing for such agreement, the arbitrator shall be an attorney or advocate nominated by the Registrar of AFSA for the time being.

14.3. The request to nominate an arbitrator shall be in writing outlining the claim and any counterclaim of

which the Party concerned is aware and, if desired, suggesting suitable nominees for appointment as arbitrator, and a copy shall be furnished to the other Parties who may, within 7 days, submit written comments on the request to the addressee of the request with a copy to the first Party.

14.4. The arbitration shall be held in Gauteng, South Africa, and the Parties shall endeavour to ensure that it is completed within 90 (ninety) days after notice requiring the claim to be referred to arbitration is given.

14.5. The arbitration shall be governed by the Arbitration Act, 1965, or any replacement Act and shall take place in accordance with the commercial arbitration rules of AFSA.

14.6. The arbitrator need not strictly observe the principles of law and may decide the matters submitted to him according to what he considers equitable in the circumstances.

14.7. Nothing contained in this clause 14 shall prohibit a party from approaching any court of competent jurisdiction for urgent interim relief.

14.8. The decision of the arbitrator shall, in the absence of fraud or manifest or clerical error, be final and binding upon the Parties. Any Party shall be entitled to apply to a court of competent jurisdiction to have such decision made an order of court.

### **15. ASSIGNMENT**

Neither Party shall cede, delegate or assign all or any of its rights and/or obligations in terms of the Agreement without the prior written consent of the other Party.

### **16. ENTIRE CONTRACT**

The Agreement contains all the express provisions agreed to by the Parties with regard to the subject matter of the Agreement and the Parties waive the right to rely on any alleged express provision not contained in the Agreement.

### **17. NO REPRESENTATIONS**

No Party may rely on any representation which allegedly induced that Party to enter into the Agreement, unless the representation is recorded in the Agreement, save that nothing in this clause shall limit a Party's liability for fraud or fraudulent misrepresentation.

### **18. INSURANCE**

The Company shall obtain and at all times maintain (including, without limitation, for the period of 12 months after termination) appropriate professional indemnity and employers' liability insurance.

### **19. VARIATION, CANCELLATION AND WAIVER**

No contract varying, adding to, deleting from or cancelling the Agreement, and no waiver of any right under the Agreement, shall be effective unless reduced to writing and signed by or on behalf of the Parties.

### **20. INDULGENCES**

No relaxation or indulgence which may be granted by any Party to the other shall be construed as a waiver by

any Party of any of that Party's rights arising out of the Agreement, nor shall it in any way prejudice that Party's rights or preclude that Party from exercising any of its rights in the future.

#### **21. SEVERABILITY**

If any undertaking is or becomes unenforceable for any reason, it shall be severable from, and not affect any of, the other undertakings or the rest of the Agreement.

#### **22. APPLICABLE LAW**

The Agreement shall be interpreted and implemented in accordance with the law of the Republic of South Africa.

#### **23. RELATIONSHIP OF THE PARTIES**

The Agreement does not authorise any Party to act as the agent of the other, nor does it create a partnership, joint venture or similar relationship between the Parties.