
Master Licence and Services Terms

1. DEFINITIONS

In this Agreement the following terms shall have the meanings set out below:

- 1.1 **"AFSA"** means the Arbitration Foundation of Southern Africa, or its successors in title;
- 1.2 **"Agreement"** means this Agreement comprising these Master Terms, the Order and any Service Level Agreement (including all amendments thereto) agreed by the parties in writing from time to time;
- 1.3 **"Business Application Software"** means the computer system software program to which the Nomad Software is attached in the operating environment;
- 1.4 **"Business Day"** means any day other than a Saturday, Sunday or public holiday within the meaning of the Public Holidays Act, 1994, in the Republic of South Africa;
- 1.5 **"Business Hours"** means from 08h00 to 17h00 on a Business Day;
- 1.6 **"Change Procedure"** means the agreement Change Procedure set out in clause 11;
- 1.7 **"Client"** means the party who wishes to acquire the Nomad Software and certain ancillary services from Licensor in terms of this Agreement, the full description of whom is set out in the Order;
- 1.8 **"Client Data"** means collectively:-
 - 1.8.1 data provided by the Client, any third party or private individual, to Licensor, or otherwise received and/or accessed by Licensor pursuant to this Agreement relating to the Client, a third party or private individual; and
 - 1.8.2 data specific to the Services which Licensor generates, processes, or supplies to the Client in the performance of the Services;
- 1.9 **"Client Input"** means the inputs required of the Client in order to enable Licensor to provide the Services to the Client, as set out in clause 6;
- 1.10 **"CPI"** means the latest available year on year increase in the headline Consumer Price Index (metropolitan areas, all items) as published in the Statistical Release P0141.1 compiled by Statistics South Africa as at the effective date of increase, or, in the absence thereof, a similar index nominated by Licensor's auditors;
- 1.11 **"Effective Date"** means the date of signature of an Order by Licensor, unless a specific effective date is specified in an Order in which case the date so specified shall be the effective date;
- 1.12 **"Fees"** means the fees and charges to be paid by the Client to Licensor or its nominated reseller or subcontractor, as the case may be, from time to time in terms of this Agreement;
- 1.13 **"Master Terms"** means the terms set out in this document;
- 1.14 **"Licensor"** means Nomad Information Systems (Pty) Ltd (Registration Number 1999/17630/07) t/a Nomad, its successors in title and/or assigns;
- 1.15 **"Nomad Software"** means the computer software program trademarked "*Nomad*", supplied by Licensor to the Client which software provides for electronic fund transfers, as well as all Updates and Upgrades (subject to due payment therefor);
- 1.16 **"Operating Environment"** means the location, situation, operating system and configuration specified by the Client for the operation of the Nomad Software;
- 1.17 **"Order"** means the Order completed by the Client in respect of certain Services to be provided by Licensor to the Client in terms of this Agreement;
- 1.18 **"Premises"** means the premises of the Client at which the Nomad Software will be installed, as set out in the Order;
- 1.19 **"Prime Rate"** means the publicly quoted prime rate of interest (percent, per annum) from time to time charged by Nedbank Limited, as certified by any manager of such bank, whose appointment and authority it shall not be necessary to prove, calculated daily and compounded monthly in arrears;
- 1.20 **"Services"** means the Services to be rendered by Licensor to the Client, as detailed in the Order;
- 1.21 **"Staff"** means any director, employee, agent, consultant, contractor or other representative of a party or its sub-contractors involved in the provision of Services under this Agreement;
- 1.22 **"Time and Material Basis"** means the method of billing based on actual time spent and materials used, based on Licensor's standard rates from time to time.
- 1.23 **"Updates"** means incremental enhancements and error-fixes to the Nomad Software that are signified by version number changes to the right of the decimal point, for example, version 2.10, 2.20.
- 1.24 **"Upgrades"** means new versions of the Nomad Software that include new major features, add-ons, technology paradigm shifts and significantly improved or differing functionality, and which are signified by version number changes to the left of the decimal point, for example, version 5.0, 6.0;

2. DURATION

This Agreement shall commence on the Effective Date and shall, unless terminated in terms of clause 15, continue indefinitely, subject to the right of either party to terminate this Agreement on no less than 3 (three) calendar months' prior written notice to the other party, provided that where an Order provides for an initial fixed period then neither party may give the aforesaid 3 (three) calendar months notice until the expiry of the initial period.

3. LICENCE

- 3.1 **Grant.** Licensor hereby grants the Client a non-exclusive and non-transferable right to use the Nomad Software in conjunction with the Business Application Software at the Premises on the terms and conditions set forth in this Agreement.
- 3.2 **Acceptance.** The Client –
 - 3.2.1 accepts the licence granted in terms of this clause 3;
 - 3.2.2 acknowledges that it obtains no rights of ownership in the Nomad Software.
- 3.3 **Change in fees.** Subject to the provisions of clause 10, Licensor may determine from time to time the appropriate fees which are payable by the Client. Licensor may charge additional fees in respect of any Upgrade released by Licensor which the Client wishes to acquire.
- 3.4 **Restrictions.** The Client shall not :
 - 3.4.1 assign, cede or transfer any rights or obligations relating to this Agreement or the Nomad Software without the prior written consent of Licensor;
 - 3.4.2 make copies of the Nomad Software except for purposes of back-up;
 - 3.4.3 loan, rent, sublicense or otherwise transfer the Nomad Software (in any data storage medium) except as provided above;

- 3.4.4 alter, modify, translate or adapt the Nomad Software, nor de-compile, disassemble, reverse engineer or create adaptations of the Nomad Software;
- 3.4.5 grant any third party direct or indirect access to the Nomad Software, including without limitation, by way of lease, bureau services, download, as an application service provider or any other method;
- 3.4.6 part with possession of, lend or transfer any part of the Nomad Software or any part thereof to any third party;
- 3.4.7 sub-licence or otherwise transfer the use of the Nomad Software, whether in whole or in part, to any third party; or
- 3.4.8 remove any proprietary notices or labels on the Nomad Software packaging.

3.5 **Rights on termination.** Licensor shall have the right -

- 3.5.1 upon termination of this licence for any reason, to disable the functioning of the Nomad Software and/or to de-install and remove same and the Client shall have the duties as contemplated by clause 17 hereof;
- 3.5.2 to inspect and audit the Operating Environment at all reasonable times to ensure the compliance by the Client with its obligations.

4. **SOFTWARE MAINTENANCE AND SUPPORT**

- 4.1 **Acknowledgement.** The Client is aware that the Nomad Software will operate in conjunction with Business Application Software in the Operating Environment specified by the Client and that the developer of the Business Application Software will be responsible for on-site maintenance of the Nomad Software, and the Business Application Software.
- 4.2 **No Liability.** Licensor assumes no liability or obligations in terms of this Agreement in respect of maintenance, alteration or customisation of the Nomad Software to meet the special requirements of the Client.
- 4.3 **No extension.** In no circumstances will the obligations and/or services of Licensor extend to direct maintenance of the Nomad Software for the Client in the Operating Environment.
- 4.4 **Updates.** Licensor may make Updates to the Nomad Software available to the Client as and when same become available within the normal development cycle of Licensor. These shall be provided at no additional cost to the Client, and shall at all times remain the property of Licensor and the Client shall at no time obtain any proprietary rights in such updates.
- 4.5 **Upgrades.** Licensor shall notify the Client of any Upgrades which may become available from time to time, including the cost to the Client of acquiring and implementing such Upgrades, which shall at all times remain the property of Licensor and the Client shall at no time obtain any proprietary rights therein.

5. **STAFF**

- 5.1 **Access.** With effect from the Effective Date and subject to 5.2, the Client shall allow Licensor and its Staff free and full access to the Premises for the purposes of fulfilling its obligations in terms of this Agreement.
- 5.2 **Compliance with procedures.** Licensor shall comply, and ensure that its Staff comply, with any practices and procedures including (but not limited to) any IT policies, security and access policies, safety, health and environmental policies which are of general application to the Client's Staff. The Client shall notify Licensor of all such policies and procedures in writing prior to the Effective Date and give Licensor and the relevant Staff no less than 5 (five) days written notice of any change in existing policies or the implementation of new policies.

6. **CLIENT INPUT**

In order to enable Licensor to provide the Services, equipment and/or Licensor Software in terms of this Agreement, the Client shall, to the extent required by Licensor and at the Client's cost:-

- 6.1 provide electricity services, telephone services and other connectivity (including access to networks) at the Premises;
- 6.2 make available sufficiently qualified and authorised resources, with appropriate access rights and permissions, to assist Licensor;
- 6.3 take commercially reasonable measures to ensure that no Virus is introduced into the Client's or Licensor's systems by the Client's Staff or any third party under the control of the Client;
- 6.4 provide the input contemplated in any Order.

7. **DATA**

- 7.1 **Ownership.** Ownership in all Client Data, whether under its control or not, shall continue to vest in the Client and Licensor shall not obtain any proprietary rights in such data.
- 7.2 **Restricted use.** The Client's Data in the possession of Licensor, or to which Licensor may have access during the currency of this Agreement, may not be used, accessed and/or tampered with by Licensor (and Licensor will procure that Staff do not do so) for any purposes whatsoever other than as may be specifically required to enable Licensor to comply with its obligations in terms of this Agreement.
- 7.3 **Preservation of integrity of Client Data.** Save to the extent that any Client Data resides on equipment at Licensor's premises, Client shall be responsible for taking all steps to preserve the integrity and security of the Client Data (including, without limitation, implementing its own disaster recovery and back-up procedures).
- 7.4 **Return of data.** Upon termination of this Agreement, each party, on written demand from the other party, shall return all of the other party's data to such party in the format such data is in at the time of such demand.

8. **LICENSOR WARRANTIES**

- 8.1 **Service warranties.** Licensor warrants that in relation to each Service, if any, provided in terms of this Agreement that:
 - 8.1.1 Licensor and, where applicable its Staff, will possess and have the right to use knowledge and expertise sufficient to enable it to provide the Services;
 - 8.1.2 Licensor will employ a sufficient number of suitably trained staff to provide the Services.
- 8.2 **Disclaimer of warranties.** Licensor hereby excludes and disclaims all warranties, whether expressed or implied, statutory or otherwise, except those warranties expressly made in this clause 8 or a specific Part. Without limiting the foregoing Licensor hereby disclaims:
 - 8.2.1 any implied warranties of satisfactory quality or fitness for a particular purpose;
 - 8.2.2 all warranties in respect of third party software applications provided pursuant to this Agreement.
- 8.3 **No representations.** The Client warrants that it has not been induced to enter into this Agreement by any prior representations, warranties or guarantees, whether oral or in writing, except as expressly contained in this clause 8.

9. FEES AND PAYMENT

- 9.1 **Licence Fees.** The current licence fees payable by the Client to Licensor (excluding VAT) are set out in the Order, which fees may be amended by Licensor from time to time. Such licence fees include any Updates but exclude any Upgrades.
- 9.2 **Payment.** Licence fees shall be payable monthly in advance by way of debit order on the Client's bank account, authorisation for which is included in the Order.
- 9.3 **Annual Pricing Escalation.** All recurring monthly and annual fees will be subject to an annual escalation on 1 January of each year, such increase to be advised to the Client on not less than 30 days prior notice. Should the Client not wish to accept the escalation, the Client may, at any time before expiry of the 30 day notice period, give the Licensor 3 calendar months notice to terminate this agreement and the fees which applied prior to the proposed increase will apply during such 3 month notice period. .
- 9.4 **Interest on outstanding amounts.** Where payment of any amount due is not made on due date, Licensor shall be entitled to charge interest on the outstanding amount at a rate of 1% above the Prime Rate. Such interest shall be calculated from the due date of payment to the date of actual payment, both days inclusive and the Client agrees and undertakes to pay such penalty interest, which it hereby accepts as fair and reasonable, on demand.
- 9.5 **Mode and method of payment.** All amounts due and payable by the Client shall be paid to Licensor in South African Rand without deduction or set-off for whatever reason at an address and in a manner nominated by Licensor in writing from time to time. The Client will not be entitled to withhold payment of any amounts payable to Licensor in terms of this Agreement to satisfy any claim of the Client arising from this or any other agreement.
- 9.6 **Fees for additional Services, equipment and software.** The Client shall be liable for and shall pay the fees in respect of additional Services, equipment or software supplied pursuant to this Agreement on the following basis, unless expressly provided otherwise:-
- 9.6.1 as consideration for the Services, software and equipment provided by Licensor to the Client in terms of this Agreement, Client shall pay Licensor the amounts set out in the Order;
- 9.6.2 all amounts will be, unless expressly provided otherwise, stipulated exclusive of Value Added Tax, which shall be payable by the Client at the applicable rate.
- 9.6.3 all fees will be subject to the remaining provisions of this clause 9.
- 9.7 **Expenses.** The Client shall reimburse all reasonable travel and subsistence expenses as are properly incurred by Licensor, its employees or sub-contractors in providing additional services to the Client. All expenses shall only be incurred with the prior approval of the Client.

10. EXCUSABLE DELAYS

- 10.1 **Definition.** Where the Client:-
- 10.1.1 does not timeously provide Client Input which has been requested by Licensor or agreed;
- 10.1.2 does not reply to a communication from Licensor within the period required, or if no period stipulated, within a reasonable time;
- 10.1.3 withholds an acceptance or consent which it is obliged to give;
- 10.1.4 commits a breach of the Agreement;
- or where Licensor's performance is affected by an event of force majeure, same shall constitute an "Excusable Delay".
- 10.2 **Extension of time for performance.** Licensor's performance shall be extended on a reasonable basis in proportion to the prejudice caused by the Excusable Delay and Licensor shall be entitled to charge for any additional hours and resources required to remedy the Excusable Delay on a Time and Materials Basis.

11. CHANGE PROCEDURE

- 11.1 **Changes to Services.** During the currency of this Agreement, events may occur which require a change to the Services, equipment or software provided. No such change shall be implemented unless the parties comply with the provisions of this clause 11.
- 11.2 **Party desiring change.** Should either party wish to propose any change to the Services, equipment or software or any part thereof, such party shall address a written proposal to the other detailing the desired changes and the envisaged effect that the changes, if implemented, will have on the Services, equipment or software, as the case may be.
- 11.3 **No Changes until sign-off.** Neither party shall be entitled to proceed or require the implementation of any change until such change and all matters relating to such change have been agreed to in writing between the parties and the parties shall continue to perform their respective obligations in terms of this Agreement.

12. INTELLECTUAL PROPERTY

The Client shall acquire no right, title or interest in or to any of the Licensor Software, any Upgrades, Updates or customisations thereof, or any other software and/or the Services provided by Licensor in terms of this Agreement, or any aspect thereof whatsoever, and shall not question or dispute the ownership of any of the intellectual property rights at any time during the currency of this Agreement or thereafter. To the extent that the Client effects any alterations or modifications to or customisations of the Licensor Software for any reason whatsoever, including for the purposes of its operating in conjunction with the Business Application Software, then Licensor shall become the exclusive and unencumbered owner of all new intellectual property rights, including copyright, arising from any such alterations, modifications and/or customisations to the Licensor Software as aforesaid, which the Client (or, if applicable, the relevant member of its Staff) hereby assigns to Licensor.

13. CONFIDENTIAL INFORMATION

- 13.1 **Confidentiality obligation.** Each party must treat and hold as confidential all information which they may receive from the other party or which becomes known to them during the currency of this agreement ("confidential information").
- 13.2 **Parties' obligations.** The parties agree to keep all confidential information confidential and to disclose it only to their officers, directors, employees, consultants and professional advisers who:
- 13.2.1 have a need to know (and then only to the extent that each such person has a need to know);
- 13.2.2 are aware that the confidential information should be kept confidential;
- 13.2.3 are aware of the receiving party's undertaking in relation to such information in terms of this agreement; and
- 13.2.4 Have been directed by the receiving party to keep the confidential information confidential.
- 13.3 **Information which will not constitute confidential information.** The foregoing obligations shall not apply to any information which:-
- 13.3.1 is lawfully in the public domain at the time of disclosure;

- 13.3.2 subsequently and lawfully becomes part of the public domain by publication or otherwise;
- 13.3.3 subsequently becomes available to the receiving party from a source other than the disclosing party, which source is lawfully entitled without any restriction on disclosure to disclose such confidential information; or
- 13.3.4 is disclosed pursuant to a requirement or request by operation of law, regulation or court order.

14. LIMITATION OF LIABILITY

- 14.1 **Direct damages limited.** Notwithstanding the form (whether in contract, delict, or otherwise) in which any legal action may be brought, Licensor's maximum liability for direct damages for any breach, act or omission arising out of this Agreement shall be equal to the aggregate amount of Fees paid by the Client to Licensor during the 6 (six) month period prior to the relevant breach, act or omission.
- 14.1 **Consequential damages excluded.** In no event shall either party be liable for any indirect, incidental, special or consequential damages or losses of any kind arising from this Agreement.
- 14.2 **Exclusions.** The limitation contemplated in this clause 14 shall not apply to any breach by a party of the provisions of clause 3.4 of this Agreement.

15. BREACH

Should either party ("**the defaulting party**"):-

- 15.1 commit a breach of this Agreement, and fail to remedy such breach within 14 (fourteen) days of having been called upon in writing by the other party ("**the innocent party**") to do so; or
 - 15.2 effect or attempt to compromise or composition with its creditors; or
 - 15.3 be provisionally or finally liquidated or be placed in judicial management, whether provisionally or final; or
 - 15.4 cease or threaten to cease to carry on its normal line of business in the Republic of South Africa or default or threaten to default in the payment of its liabilities generally, or commit any act or omission which would, in the case of an individual, be an act of insolvency in terms of the Insolvency Act, 1936 (as amended);
- then the innocent party may terminate this Agreement on written notice to the defaulting party, in which event such termination shall be without prejudice to any claims which the innocent party may have for damages against the defaulting party occasioned by the termination of this Agreement in terms of this clause.

16. EFFECT OF TERMINATION

- 16.1 **Amounts due to Licensor become due and payable.** Upon termination of this Agreement for whatsoever reason all amounts due to Licensor for Services, equipment or software supplied prior to termination shall become due and payable even if they have not been invoiced. Such amounts may not be withheld for any reason unless the arbitrator appointed pursuant to clause 17.2 otherwise directs.
- 16.2 **Duties upon termination.** Upon termination, cancellation or expiry of this Agreement, the Client's authorisation to use the Licensor Software will automatically cease and the Client undertakes immediately to cease to use the Nomad Software and to return and deliver all copies thereof to Licensor. Further, each party will deliver up to the other party, or at the other party's option destroy, and procure the delivery up of all originals and copies of confidential information and proprietary materials and equipment of the other party in its or their possession or under its control;
- 16.3 **Survival.** Termination of this Agreement shall not affect the enforceability of the provisions which are intended to operate after such expiry or termination.

17. DISPUTE RESOLUTION

- 17.1 **Dispute Resolution.** Any dispute which arises between the parties shall be referred to AFSA for the purposes of mediation and arbitration, to be resolved in accordance with the applicable AFSA rules, available at www.arbitration.co.za, which are hereby incorporated by reference
- 17.2 The provisions of clause 17.1 will not prevent either party from seeking relief from a court of competent jurisdiction.

18. DOMICILIA AND NOTICES

- 18.1 **Addresses.** The Parties hereby choose domicilium citandi et executandi ("**domicilium**") for all purposes under this Agreement at the addresses set out in the Order.
- 18.2 **Change of Address.** Either party may, by giving written notice to the other, change its domicilium to any other physical address in the Republic of South Africa and its telefax number to any other South African number, provided that such change shall take effect fourteen 14 (fourteen) days after delivery of such written notice.
- 18.3 **Deemed Receipt.** Any notice to be given by either party to the other shall be deemed to have been duly received by the other party
 - 18.3.1 if addressed to the addressee at its domicilium and posted by pre-paid registered post on the 10th day after the date of posting thereof, or
 - 18.3.2 if delivered to the addressee's domicilium by hand during Business Hours on a Business Day, on the date of delivery thereof, or
 - 18.3.3 if sent by fax to the addressee on the first Business Day following the date of sending thereof.
- 18.4 **Use of email.** The parties record that whilst they may correspond via email during the currency of this Agreement for operational reasons, no formal notice required in terms of this Agreement, nor any amendment or variation to this Agreement may be given or concluded via email.

19. FORCE MAJEURE

- 19.1 **Parties not liable for force majeure.** Neither party shall be liable for any failure to fulfil its obligations under this Agreement if and to the extent such failure is caused by any circumstances beyond its reasonable control, including but not limited to an act or omission by any third party telecommunications service provider, flood, fire, earthquake, war, tempest, hurricane, industrial action (other than in respect of its own Staff), government restrictions or acts of God.
- 19.2 **Party affected to notify other party.** Should any event of force majeure arise, the affected party shall notify the other party without delay and the parties shall meet within 3 (three) days of such notice to negotiate in good faith alternative methods of fulfilling its obligations in terms of this Agreement, if any. In addition Licensor shall continue to provide, and the Client shall continue to pay for, those Services not affected by the event of force majeure;
- 19.3 **Right to terminate.** Should either party be unable to fulfil a material part of its obligations under this Agreement for a period in excess of 60 (sixty) days due to circumstances beyond its reasonable control or force majeure, the other party may at its sole discretion cancel the Agreement forthwith by written notice.

20. ASSIGNMENT AND SUB-CONTRACTING

- 20.1 **Assignment.** Licensor shall be entitled to cede, assign, delegate or otherwise transfer its rights and obligations under this Agreement, or any part thereof, to a third party without the prior written consent of the Client thereto, in which case, Licensor shall notify the Client accordingly.
- 20.2 **Sub-contractors.** Licensor may sub-contract its obligations under this Agreement to third parties, provided that Licensor shall remain liable for the performance by such subcontractor of Licensor's obligations in terms of the Agreement.

21. INTERPRETATION

This Agreement shall be subject to the following rules of interpretation.

- 21.1 **Headings.** Headings and sub-headings are inserted for information purposes only and shall not be used in the interpretation of this Agreement.
- 21.2 **References.** Unless otherwise stated, references to clauses, sub-clauses, schedules or paragraphs are to be construed as references to clauses, sub-clauses, schedules or paragraphs of this Agreement. References in Schedules to clauses shall, unless expressly provided otherwise, be deemed to be a reference to clauses in such Schedule.
- 21.3 **References to persons.** References to:-
- 21.3.1 persons shall include companies, corporations and partnerships;
- 21.3.2 any party shall, where relevant, be deemed to be references to, or to include, as appropriate, their respective successors or permitted assigns;
- 21.3.3 the singular shall include the plural and vice versa;
- 21.3.4 any one gender shall include a reference to all other genders.
- 21.4 **Survival of terms.** The expiration or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.
- 21.5 **Substantive provisions.** If any provision in a definition is a substantive provision conferring rights or imposing duties on any party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in this Agreement.
- 21.6 **Calculation of days.** When any number of days is prescribed in this Agreement, same shall be reckoned exclusively of the first and inclusively of the last day, unless the last day falls on a day which is not a business day, in which case the last day shall be the next business day.
- 21.7 **Definitions apply in Schedules.** Expressions defined in clause 1 shall bear the same meanings in the Schedules to this Agreement. Where any term is defined within the context of any particular clause in this Agreement, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this Agreement, notwithstanding that the term has not been defined in clause 1.
- 21.8 **Neutral construction.** The rule of construction that the Agreement shall be interpreted against the party responsible for the drafting or preparation of the Agreement, shall not apply.

22. GENERAL

- 22.1 **Non-exclusivity.** Subject to the provisions of 13, nothing in this Agreement shall be construed as precluding or limiting in any way the right of Licensor from supplying goods or services of whatsoever nature to other clients.
- 22.2 **Disclosure.** It is recorded that Licensor will receive certain rebates, commissions and/or discounts in respect of the value added services provided by it in respect of the service offerings of third party suppliers.
- 22.3 **Entire Agreement.** This Agreement and the documents, records or attachments referred to herein or therein, constitute the entire agreement between the Client and Licensor in respect of the subject matter hereof, and supersedes all previous Agreements in respect thereof.
- 22.4 **Variation.** Licensor may vary these Master Terms after giving the Client not less than 30 (thirty) days' written notice of such variation by publishing the revised Master Terms on its website or by sending an e-mail or in such other medium as the Licensor may choose. Save as aforesaid or as otherwise provided in this Agreement, no amendment or modification to this Agreement shall be effective unless in writing and signed by authorised signatories of both the Client and Licensor.
- 22.5 **Waiver.** No granting of time or forbearance shall be or be deemed to be a waiver of any term or condition of this Agreement and no waiver of any breach shall operate a waiver of any continuing or subsequent breach.
- 22.6 **Magistrate's court.** The Client hereby consents in terms of section 45 of the Magistrates' Court Act, or any amendment thereof, to Licensor taking any legal proceedings for enforcing any of Licensor's rights under this Agreement, or for damages, or for any order of specific performance, if it so elects, in the Magistrate's Court in any district having jurisdiction in respect of the Client. Notwithstanding such consent, Licensor may elect without prejudice elect to pursue its remedies in the High Court of South Africa and in such event the Client hereby consents to the jurisdiction of the High Court of South Africa having its seat in Johannesburg.
- 22.7 **Applicable Law.** This Agreement shall be governed and construed according to the laws of the Republic of South Africa.
- 22.8 **Right to reference.** The Client hereby consents to the use by Licensor of its name and a general description of the Services undertaken by Licensor in terms of this agreement in any Proposals or other similar such documents which Licensor may issue or submit from time to time.
- 22.9 **Good Faith.** The parties shall at all times owe each other a duty of good faith and shall, in all dealings with each other and in respect of the Services act according to such standard.
- 22.10 **No authority.** Nothing in this Agreement shall be construed as creating a legal partnership between the parties and neither party shall have any authority to incur any liability on behalf of the other or to pledge the credit of the other party.