



## STANDARD TERMS AND CONDITIONS FOR THE SOFTWARE LICENSE, MAINTENANCE AND SUPPORT AGREEMENT

### 1 PARTIES

1.1 The parties to this agreement are: -

1.1.1 **CLEVVA (Proprietary) Limited**, a private company duly incorporated in terms of the laws of the Republic of South Africa under registration number 2003/010949/07 (**"Licensor"**); and

1.1.2 **The Licensee**, means the entity that is Licensed to use the Software in the conduct of its respective business.

### 2 DEFINITIONS

2.1 Unless the contrary is clearly indicated, the following words and/or phrases used in this Agreement shall have the following meaning:

2.1.1 **"Agreement"** shall mean the Schedule and these standard terms and conditions together with all its written appendices, annexures, exhibits and schedules, as amended in writing from time to time;

2.1.2 **"CLEVVA Client Device"** means a device which has access to the CLEVVA Platform, and will typically but not necessarily be a mobile tablet, laptop or desktop;

2.1.3 **"CLEVVA Platform"** means the Licensor's software platform, which incorporates all modules and associated software, being the proprietary hosted or installed software under the control of CLEVVA (Pty) Ltd;

2.1.4 **"Commencement Date"** shall mean the date on which this Agreement will be effective, as set out in the License Schedule;

2.1.5 **"Copyright"** shall mean all rights of copyright whether existing now or in the future in and to the Software including initial drawings, sketches, flow charts and designs relating thereto;

2.1.6 **"Confidential Information"** shall mean:



- 2.1.6.1 any information of whatever nature, which has been or may be obtained by either of the Parties from the other, whether in writing or in electronic form or pursuant to discussions between the Parties, or which can be obtained by examination, testing, visual inspection or analysis, including, without limitation, scientific, business or financial data, know-how, formulae, processes, designs, sketches, photographs, plans, drawings, specifications, sample reports, models, customer lists, price lists, studies, findings, computer software, inventions or ideas; and
- 2.1.6.2 analyses, concepts, compilations, studies and other material prepared by or in possession or control of the recipient which contain or otherwise reflect or are generated from any such information as is specified in this definition;
- 2.1.7 **“Content”** shall mean the content that the Licensee delivers or creates using the CLEVVA platform;
- 2.1.8 **“Content Server”** shall mean the server where the content that is delivered via the CLEVVA Platform is housed.
- 2.1.9 **“Currency”** shall mean South African Rand;
- 2.1.10 **“Enhancements”** shall mean significant changes to the Software resulting in the addition of a feature or capability not present in the Software prior to the introduction of the changes as well as any changes to the Software designed to permit the use of the Software on hardware and/or in conjunction with operating system software or platforms other than that for which the Software was initially designed;
- 2.1.11 **“Intellectual Property Rights”** shall mean all present and future rights in the Software and other rights which may in the future be based thereon, including but not limited to Copyright;
- 2.1.12 **“License”** shall mean a non-transferable and non-exclusive right granted to the Licensee to Use the Software for the term of this Agreement;
- 2.1.13 **“License Fee”** shall mean the license fee payable in respect of the use of the Software, as set out in the License Schedule;



- 2.1.14 “**License Schedule**” means the schedule attached to this document entitled “License Schedule”, which forms an integral part of this Agreement;
- 2.1.15 “**Parties**” shall mean the Licensor and the Licensee and “**Party**” shall be a reference to either of them as the context may indicate;
- 2.1.16 “**Prime Rate**” means the Prime overdraft-lending rate charged by First National Bank to its best grade corporate customers on unsecured facilities from time to time. In the event of a dispute arising between the parties as to the aforesaid rate of interest, a certificate issued by any branch manager of the said Bank confirming the rate, shall be *prima facie* evidence of such rate;
- 2.1.17 “**Renewal Period**” shall have the meaning ascribed thereto in Clause 7.3;
- 2.1.18 “**the Schedule**” means the schedule to which these standard terms and conditions are annexed;
- 2.1.19 “**Services Fee**” shall mean the service fee payable in respect of the Support Services, as set out in the Services Schedule;
- 2.1.20 “**Services Schedule**” means the schedule attached to this Agreement entitled “Services Schedule”, which forms an integral part of this Agreement;
- 2.1.21 “**Standard Hours**” shall have the meaning ascribed to it in the Services Schedule;
- 2.1.22 “**Support Services**” shall mean the services to be provided by the Licensor, or its nominee, in support of the Software as set out in the Service Schedule and subject to the terms of this Agreement:
- 2.1.23 “**Software**” shall mean the software as set out in the License Schedule;
- 2.1.24 “**Software Documentation**” shall mean the written document(s) containing detailed instructions pertaining to the Use of the Software and setting out the operation of the Software;
- 2.1.25 “**Territory**” shall mean the territory as set out in the License Schedule;

- 2.1.26 “**Upgrades**” shall mean changes or improvements to the Software which relate to or effect the operating performance of the Software or an aspect of the Software, but which do not change the basic operation or functioning of the Software.
- 2.1.27 “**Use**” shall mean that the Licensee is entitled to use the Software to the extent authorised in this Agreement.
- 2.2 Any reference to an enactment is to that enactment as at the date of signature hereof and as amended or re-enacted from time to time.
- 2.3 If any provision in a definition is a substantive provision conferring rights or imposing obligations 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 the body of this Agreement.
- 2.4 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 Saturday, Sunday or public holiday, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday.
- 2.5 Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.
- 2.6 Expressions defined in this Agreement shall bear the same meanings in schedules or annexures to this Agreement which do not themselves contain their own definitions.
- 2.7 Words importing the singular shall include the plural, and *vice versa*, and words importing the masculine gender shall include the feminine and neutral genders, and words importing persons shall include juristic persons, partnerships and bodies corporate, and *vice versa*.
- 2.8 The head notes to the paragraphs to this Agreement are inserted for reference purposes only and shall not affect the interpretation of any of the provisions to which they relate.
- 2.9 This Agreement shall be binding on and enforceable by the estates, heirs, executors, administrators, trustees, assigns, liquidators, curators or other legal representatives of the Parties as fully and effectually as if they had signed this Agreement in the first instance and reference to any Party shall be deemed to include such Party's estate, heirs, executors,

administrators, trustees, assigns, liquidators, curators or other legal representatives, as the case may be.

2.10 To the extent that value-added tax may be applicable, the amounts stated in this Agreement shall be regarded as exclusive of value-added tax.

### **3 PREAMBLE**

3.1 The Licensor is the owner of the Software and/or an authorised licensor thereof and is able to provide the Support Services to the Licensee.

3.2 The Licensee wishes to obtain-

3.2.1 a License to Use the Software; and

3.2.2 the services of the Licensor or its nominee to provide the Support Services, anywhere within the Territory.

3.3 The Parties agree as set out in this Agreement.

### **4 LICENSE**

4.1 The Licensor herewith grants a License to the Licensee on the terms and conditions set out in this Agreement.

4.2 The License granted to the Licensee authorises the Licensee to:

Use the Software anywhere within the Territory for the duration of this Agreement as more fully detailed in clause 7.

4.3 The Licensee shall not have the right to sub-license or transfer the Software in any way, either in whole or in part, to any third party.

4.4 The Licensee shall not copy nor permit any party to copy the Software.

4.5 The Licensee shall not modify, de-compile, disassemble or otherwise reverse-engineer the Software, or attempt to do any of these.

- 4.6 At reasonable times and on request the Licensee shall provide the Licensor and/or its employees, contractors, sub-contractors, agents or authorised representatives with access to the Licensee's premises, to audit the Licensee's compliance with this Agreement.
- 4.7 All rights not expressly granted in terms hereof, shall remain reserved to the Licensor.

## **5 SOFTWARE MAINTENANCE**

During the term of this Agreement the Licensee shall be entitled to use, upon the same terms set out in this Agreement, all upgrades and enhancements to the Software which are publicly released by the Licensor.

## **6 SUPPORT SERVICES**

- 6.1 The Licensor or its nominee shall, with effect from the Commencement Date, render the Support Services in accordance with the Services Schedule.
- 6.2 Unless otherwise agreed by the Parties in writing, the Licensor shall not provide any services not being Support Services, including, without limitation, any of the following services:
- 6.2.1 installation and/or configuration of any Upgrades and/or Enhancements which the Licensee may become entitled to Use in terms hereof;
  - 6.2.2 support of any software other than the Software;
  - 6.2.3 support of any accessories, attachments, machines, peripheral equipment, systems or other devices not supplied by the Licensor;
  - 6.2.4 rectification or the recovery of lost or corrupted data arising from any reason other than the Licensor's own negligence;
  - 6.2.5 support in relation to any changes, alterations, additions, modifications or variations to the Software, not made by the Licensor, or any other software;
  - 6.2.6 attendance to faults caused by using the Software outside design or other specifications or outside the provisions laid down in any documentation or manual supplied with the Software;

- 6.2.7 diagnosis and/or rectification of problems not associated with the Software;
- 6.2.8 repairs or replacements necessitated by accidental damage, operator errors, abnormal operating conditions, the connection of unauthorised peripheral equipment, improper use, misuse, neglect or abuse of the Software, assistance on hardware usage or service calls necessitated by causes external to the Software such as failures in the hardware on which the Software is operational.
- 6.3 The Licensee will inform the Licensor of any faults or problems in or in respect of the Software as soon as possible after any such fault or problem is discovered in accordance with the provisions of this Agreement.

## **7 COMMENCEMENT AND DURATION**

- 7.1 This Agreement shall commence on the Commencement Date.
- 7.2 Subject to the provisions of clause 7.3 and clause 13 of this Agreement and clause 7.3 of the License Schedule, this Agreement will continue in force until the Termination Date specified in clause 4 of the License Schedule.
- 7.3 The License Fee and the Services Fee applicable for each Renewal Period shall be negotiated and agreed in writing between the Parties, acting in good faith, 1 month prior to the Termination Date, or the end of each Renewal Period, as the case may be, taking cognisance of market related pricing. In the event that the Parties do not reach agreement in relation to the License Fee and the Services Fee applicable for such Renewal Period, this Agreement shall terminate on the Termination Date, or at the end of the relevant Renewal Period, as the case may be.

## **8 PAYMENT**

- 8.1 The Licensee shall pay the Licensor:-
  - 8.1.1 In consideration of the License being granted, the License Fee in the Currency, without demand and free of setoff and bank charges, on the due date as set out in the License Schedule;

- 8.1.2 In consideration of the Support Services, the Service Fee in the Currency, without demand and free of setoff and bank charges, on the due date as set out in the Services Schedule.
- 8.2 In the event where the Currency is another currency than that in which the Licensee normally does its business, then the exchange rate applicable to any amount due by either of the Parties to the other shall be the exchange rate between those two currencies on the date on which the amount becomes due.
- 8.3 The License Fee, as well as any other funds due by either of the Parties to the other, shall exclude any taxes and/or levies due as a result of a requirement by any governmental organisation (which shall include but not be limited to any value added tax, importation tax, withholding tax and general sales tax) and all these taxes and/or levies, shall be paid by the Licensee.
- 8.4 All amounts not paid on the due date shall attract interest at the Prime rate, plus two percent.
- 8.5 The Licensee will not be entitled to withhold payment of any amount payable to the Licensor to satisfy any claim of the Licensee arising from this or any other contract between the Parties, nor will the Licensee be entitled to set-off such an amount against the amount payable to the Licensor in terms of this Agreement or any other contract.
- 8.6 The Licensor reserves the right to suspend the rendering of any rights and/or services hereunder on notice in writing to the Licensee if the latter is in breach of any of the provisions of this clause 8.

## **9 INDEMNITY AND LIMITATION OF LIABILITY**

- 9.1 Subject to the terms of the Agreement, the Licensor shall indemnify and hold harmless the Licensee and its employees, agents, successors and assigns from and against any and all loss, damage, liability, and expense arising from any claim brought against any such indemnified party by a third party resulting from the failure of the Licensor to comply with its obligations under this Agreement.



- 9.2 Subject to the terms of the Agreement, the Licensee shall indemnify and hold harmless the Licensor and its employees, agents, successors and assigns from and against any and all loss, damage, liability, and expense arising from any claim brought against any such indemnified party by a third party resulting from the failure of the Licensee to comply with its obligations under this Agreement.
- 9.3 Notwithstanding anything to the contrary contained in this Agreement, the Licensor shall not be liable for the faulty execution of the Software nor for any damages suffered by the Licensee, whether direct or indirect, as a result of the malfunctioning of such Software, provided that the Licensee notifies the Licensor of such malfunction in accordance with clause 4 of the Services Schedule and the Licensor rectifies the malfunction, within a reasonable period, at no cost to the Licensee. In the event that Licensor cannot rectify the faulty execution or malfunction within such reasonable period, the Licensee may terminate this Agreement in accordance with the provisions of clause 12 and the Licensor shall be obligated to refund Licensee any portion of the License Fee paid by Licensor that corresponds to any period of time after the date of such termination.
- 9.4 The Licensor shall not be liable in any manner whatsoever should the Licensee attempt to correct or allow third parties to correct or attempt to correct the Software without the prior written approval of the Licensor.
- 9.5 Any other liability on the part of the Licensor arising from any cause whatsoever is specifically excluded. Without limiting the generality of the foregoing, the Licensor shall not be liable for any delay, failure, breakdown, damage or injury caused by:
- 9.5.1 software, programs and support services supplied by or obtained by the Licensee from third parties without the prior written consent of the Licensor; or
  - 9.5.2 software or programs modified by the Licensee or any third party not authorised to do so in terms of the Agreement;
  - 9.5.3 the actions or requirements of any telecommunications authority or a supplier of telecommunications services or software;
  - 9.5.4 unauthorised modification(s) to the Software by the Licensee or any third party;
  - 9.5.5 damage to the Software caused by the Licensee;

- 9.5.6 neglect of the system on which the Software operates or of the operating procedure prescribed by Licensor, unless Licensor has agreed to maintain the system on which the Software operates;
  - 9.5.7 failure of electrical power;
  - 9.5.8 use of the Software which is other than the Use of the Software as set out in the Software Documentation;
  - 9.5.9 a combination of computer hardware and/or software applications functioning in conjunction with the Software, where such computer hardware or software applications have not been approved, by way of a written notice to the Licensee by the Licensor as being compatible with the Software.
- 9.6 In no event shall either Party be liable to the other Party for loss of profits or for incidental, special or consequential damages arising out of or in connection with the Software or the delivery, installation, servicing, performance or use of it in combination with other computer software of mobile devices.

## **10 INTELLECTUAL PROPERTY RIGHTS**

- 10.1 The Licensee acknowledges and agrees that ownership and any and all of the Intellectual Property rights of whatever nature vesting in, relating to or used or embodied in or in connection with the Software shall in no way be granted or assigned under this Agreement to the Licensee.
- 10.2 The Licensee shall not question or dispute the ownership of such rights at any time during the continuation in force of the Agreement or thereafter.
- 10.3 The Licensor warrants that it has all necessary rights and authority to grant the Licensee the licence contemplated in the Agreement.

## 11 CONFIDENTIALITY

Notwithstanding the cancellation or termination of this Agreement, neither Party ("**Receiving Party**") shall, at any time after the conclusion of this Agreement, disclose to any person or use in any manner whatever the other Party's Confidential Information or the existence and contents of this Agreement; provided that -

- 11.1 either Party may disclose the existence and contents of this Agreement to the extent required by any rules of any stock exchange by which that Party is bound; provided further that no such disclosure shall be made unless the other Party has first given its written approval for the form thereof, which approval may not be withheld unreasonably;
- 11.2 the Receiving Party may disclose the other Party's Confidential Information and the existence and contents of this Agreement -
  - 11.2.1 to the extent required by law (other than in terms of a contractual obligation of the Receiving Party);
  - 11.2.2 to, and permit the use thereof by, its employees, representatives and professional advisers to the extent strictly necessary for the purpose of implementing or enforcing this Agreement or obtaining professional advice or conducting its business, it being specifically agreed that any disclosure or use by any such employee, representative or adviser of such Confidential Information or other information for any other purpose shall constitute a breach of this clause 0 by the Receiving Party; and
- 11.3 the provisions of this clause 0 shall cease to apply to any Confidential Information of a Party which -
  - 11.3.1 is or becomes generally available to the public other than as a result of a breach by the Receiving Party of its obligations in terms of this clause 0;
  - 11.3.2 is also received by the Receiving Party from a third party who did not acquire such Confidential Information subject to any duty of confidentiality in favour of the other Party; or
  - 11.3.3 was known to the Receiving Party prior to receiving it from the other Party.



## 12 LICENSEE'S OWNERSHIP AND ABILITY TO DISTRIBUTE THE CONTENT.

- 12.1 **Ownership of Content.** The Licensee shall retain all rights, title and interest in and to its Content. The Licensor obtains no right, title or interest from the Licensee under this Agreement in or to the Content that the Licensee or Licensee's authorised developers may develop. Notwithstanding the foregoing, the Licensee acknowledges and agrees that the Licensor may develop, license or otherwise acquire the rights to distribute content and products that compete with the Licensee's Content; provided, however, that none of Licensee's Confidential Information shall be used by Licensor in so doing.
- 12.2 **Distribution of Content.** The Licensee acknowledges that it is solely responsible for (and the Licensor has no liability for) any data, content, or resources that are created, transmitted or displayed through or by means of the CLEVVA Platform.

## 13 BREACH AND TERMINATION

- 13.1 Should either Party ("**Defaulting Party**") commit a material breach of any provision of this Agreement and fail to remedy such breach within fourteen days after receiving written notice from the other Party ("**Aggrieved Party**") requiring the Defaulting Party to do so, then the Aggrieved Party shall, without prejudice to its other rights in law, be entitled to terminate this Agreement with immediate effect by way of written notice.
- 13.2 Any costs incurred by the Aggrieved Party in enforcing any of its rights against the Defaulting Party in terms of this Agreement shall be for the account of the Defaulting Party on an attorney and own client scale.
- 13.3 Notwithstanding any other provision of this Agreement, on termination of this Agreement for any reason whatsoever -
- 13.3.1 any and all amounts due and owing to the Licensor by the Licensee shall become immediately due and payable; and
- 13.3.2 the Licensee shall at its own cost, and at the election of the Licensor, either return to the Licensor or destroy any aspect of the Software in their possession, including all Software Documentation, and shall not retain any extracts, copies or summaries thereof, and furnish the Licensor with a certificate, signed by a duly authorised

representative of the Licensee confirming the return or destruction, as the case may be, of the Software and the Software Documentation.

#### **14 RELATIONSHIP**

This Agreement does not constitute either of the Parties an agent or legal representative of the other for any purposes whatsoever and neither of the Parties shall be entitled to act on behalf of, or to represent the other unless duly authorised thereto in writing.

#### **15 DISPUTE RESOLUTION**

- 15.1 If the Parties are unable to resolve any dispute resulting from this Agreement by means of joint co-operation or discussion between the individuals directly involved with the execution of this Agreement, within one week after a dispute arises or such extended time period as the Parties may in writing allow, then such a dispute shall be submitted to the most senior executives of the Parties who shall endeavour to resolve this dispute, within five (5) calendar days after it having been referred to them.
- 15.2 Should the dispute not be resolved in the aforesaid manner, then it shall be resolved by way of arbitration, in accordance with the provisions of clause 16.
- 15.3 Subject to the provisions of clause 8.6, during such time as any dispute in terms of this Agreement remains unresolved, including disputes that are referred to arbitration in terms of clause 16, none of the rights or obligations of either Party under this Agreement shall be suspended.

#### **16 ARBITRATION**

- 16.1 Subject to clause 15, a dispute between the Parties relating to any matter arising out of this Agreement or the interpretation thereof shall be referred to arbitration, by either of the Parties, by way of a notice to the other Party, in which notice particulars of the dispute are set out.
- 16.2 Such arbitration proceedings shall be held in Cape Town, South Africa and shall be held in a summary manner, which shall mean that it shall not be necessary to observe or carry out:-

- 16.2.1 the usual formalities of procedure (e.g. there shall not be any pleadings or discovery);
- 16.2.2 the strict rules of evidence;
- 16.2.3 immediately and with a view to its being completed within 21 calendar days after it is demanded.
  
- 16.3 The arbitrator for such arbitration proceedings shall:
  - 16.3.1 if the matter in issue is primarily an accounting matter, be an independent auditor with at least 10 years experience, agreed upon by the Parties and, failing agreement, nominated by the chairperson for the time being of the President of the Cape Law Society; or
  - 16.3.2 if the matter in issue is primarily a technical matter, be a suitably qualified person agreed upon by the Parties and, failing agreement, nominated by the chairperson for the time being of the President of the Cape Law Society; or
  - 16.3.3 any other matter, be a practising advocate or attorney, admitted as such in accordance with the legislation of the law governing this Agreement, with at least 10 years experience, agreed upon by the Parties and, failing agreement, nominated by the chairperson for the time being of the President of the Cape Law Society; or
  - 16.3.4 in the event where the Parties are unable to agree whether the nature of a dispute is primarily of an accounting nature, technical nature or any other nature, then the nature of that dispute shall be decided by a practising advocate or attorney, admitted as such in accordance with the legislation of the law governing this Agreement, with at least 10 years experience, agreed upon by the Parties and, failing agreement, nominated by the chairperson for the time being of the President of the Cape Law Society.
  
- 16.4 The decision of the arbitrator shall be final and binding on the Parties, who shall summarily carry out that decision and either of the Parties shall be entitled to have the decision made an order of any court with competent jurisdiction.

- 16.5 The “arbitration” clause in this Agreement shall be severable from the rest of this Agreement and therefore shall remain effective between the Parties after this Agreement has been terminated.
- 16.6 No clause in this Agreement which refers to arbitration shall mean or be deemed to mean or interpreted to mean that either of the Parties shall be precluded from obtaining interim relief on an urgent basis from a court of competent jurisdiction pending the decision of the arbitrator.

## 17 DOMICILIUM CITANDI ET EXECUTANDI

- 17.1 The Parties choose as their domicilia citandi et executandi their respective addresses set out in 1 and 2 of the Schedule for all purposes arising out of or in connection with this Agreement at which addresses all processes and notices arising out of or in connection with this Agreement, its breach or termination may validly be served upon or delivered to the Parties.
- 17.2 Any notice or communication required or permitted to be given in terms of this Agreement shall be valid and effective only if in writing but it shall be competent to give notice by telefax.
- 17.3 Either Party may by notice to the other Party change the physical address chosen as its domicilium citandi et executandi *vis-à-vis* that Party to another physical address in the Republic of South Africa or its telefax number; provided that the change shall become effective *vis-à-vis* that addressee on the fifth business day from the deemed receipt of the notice by the addressee.
- 17.4 Any notice to a Party: -
- 17.4.1 sent by prepaid registered post (by airmail if appropriate) in a correctly addressed envelope to it at its *domicilium citandi et executandi* shall be deemed to have been received on the 7<sup>th</sup> business day after posting (unless the contrary is proved);
- 17.4.2 delivered by hand to a responsible person during ordinary business hours at its *domicilium citandi et executandi* shall be deemed to have been received on the day of delivery; or

- 17.4.3 sent by telefax or e-mail to its chosen telefax number or e-mail address stipulated in clause 2, shall be deemed to have been received on the date after despatch (unless the contrary is proved).
- 17.5 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 *domicilium citandi et executandi*.

## 18 GENERAL

- 18.1 No Party is entitled to assign any right or obligation in terms of this Agreement to any person or firm without the prior written consent of the other.
- 18.2 This Agreement shall be binding on and enforceable by the estates, heirs, executors, administrators, trustees, assigns, liquidators, curators or other legal representatives of the parties as fully and effectually as if they had signed this Agreement in the first instance and reference to either Party shall be deemed to include such Party's estate, heirs, executors, administrators, trustees, assigns, liquidators, curators or other legal representatives, as the case may be.
- 18.3 Subject to clause 18.4 below, this Agreement shall be governed by and construed and interpreted in accordance with the law of the Republic of South Africa. The Parties agree that the High Court of South Africa, Cape Division, shall have exclusive jurisdiction to hear any disputes that may arise from this Agreement that are not subject to the dispute resolution procedure set forth in clause 15.
- 18.4 For the purpose of all proceedings hereunder that are not subject to the dispute resolution procedure set forth in clause 15, the Parties consent to the jurisdiction of the magistrates' court having territorial jurisdiction, notwithstanding that such proceedings are otherwise beyond its jurisdiction. This clause shall be deemed to constitute the required written consent conferring upon the said court pursuant to section 45 of the Magistrates' Court Act, 1994, provided, nevertheless, that either Party shall have the right at its sole option and discretion to institute proceedings that are not subject to the dispute resolution procedure set forth in clause 15, in any other competent court.



- 18.5 No latitude, extension of time or other indulgence which may be given or allowed by either Party to the other Party in respect of the performance of any obligation hereunder, and no delay or forbearance in the enforcement of any right of either Party arising from this Agreement, and no single or partial exercise of any right by either Party under this Agreement, shall in any circumstances be construed to be an implied consent or election by such Party or operate as a waiver or a novation of or otherwise affect any of that Party's rights in terms of or arising from this Agreement or stop or preclude any such Party from enforcing at any time and without notice, strict and punctual compliance with each and every provision or term hereof.
- 18.6 No addition to or variation, consensual cancellation or novation of this Agreement and no waiver of any right arising from this Agreement or its breach or termination shall be of any force or effect unless reduced to writing and signed by the Parties or their duly authorised representatives.
- 18.7 This Agreement constitutes the whole Agreement between the Parties as to the subject matter hereof and no Agreements, representations or warranties between the Parties regarding the subject matter hereof other than those set out herein are binding on the Parties.
- 18.8 Each provision of this Agreement is severable from the other provisions. Should any provision be found by a Court of competent jurisdiction to be invalid or unenforceable for any reason, the Parties will consult with one another in good faith in order to agree, if possible, an alternative provision in accordance with the intent and tenor of this Agreement. The remaining provisions of this Agreement shall nevertheless remain binding and continue with full force and effect.
- 18.9 Each Party will pay its own costs and expenses incurred by it in connection with the negotiation, entering into and completing of this Agreement.
- 18.10 The person signing this Agreement on behalf of any one of the Parties expressly warrants his authority to do so.