

A PROPOSAL OR QUOTE SUBMITTED BY CYANRE TO THE CUSTOMER IS AN INVITATION TO DO BUSINESS. THE CUSTOMER'S ACCEPTANCE OF SAME SHALL BE AN OFFER FOR THE SERVICES, WHICH OFFER CYANRE MAY ACCEPT IN ITS SOLE DISCRETION. ON ACCEPTANCE OF THE CUSTOMER'S OFFER, THIS AGREEMENT AND RELEVANT SERVICE SCHEDULE SHALL APPLY.

1. Definition

- 1.1. **"Agreement"** means this document (Standard Terms and Conditions) and all attachments hereto;
- 1.2. **"Confidential Information"** means (but not limited to) any and all strategic, sensitive and/or confidential business, private, personal and/or privileged information, in whatsoever format and, without limitation, includes information concerning the disclosing party's operations, business affairs, relationships, contracts, clients, suppliers, plans, ideas, employees, expressed thoughts, processes, techniques, trade secrets, know-how, experience, goodwill, reputation and financial status and any part and/or element of the foregoing
- 1.3. **"Contract Documents"** means the LOE or Proposal and/or Quote, the tasking instruction, this Agreement and the Service Schedules, as amended from time to time;
- 1.4. **"Customer"** is the person or juristic person reflected in the Letter of Engagement or Proposal or Quote.
- 1.5. **"Customer Data"** means the Customer's data - provided to Cyanre either by the Customer or by any third party on the Customer's behalf; or data specific to the Services which Cyanre upload, generates, processes, or supplies to the Customer in the performance of the Services;
- 1.6. **"Customer Equipment"** means equipment, such as (but not limited to) hardware, software, infrastructure owned by the Customer, in possession of the customer or under any other third party agreement in possession of the customer;
- 1.7. **"Cyanre"** means Computer Forensic Lab (Pty) Limited, with registration number 2006/010865/07, with business address: 244 Jean Avenue, Norma Jean Square, Building 5, Centurion;
- 1.8. **"Documentation"** means all Service related documentation made available by Cyanre to the Customer from time to time including whatever report required under any of the Services;
- 1.9. **"Effective Date"** means the date on which a representative of the Customer signs the Proposal or Letter of Engagement, Issues a purchase order or submit instructions to Cyanre to commence with the Services;
- 1.10. **"Fees"** means the charges payable by the Customer, taking into consideration the rates as per the signed proposal or quote or Service Schedule or Cyanre's current rates (in the absence of any signed proposal or quote) for provision of the Services;
- 1.11. **"Implementation Phase"** means the period (as set out under the relevant Service Schedule) required to execute the initial implementation of hardware and/or software or issuing of required Service access details to enable a Customer to utilise the requested Service;
- 1.12. **"Intellectual Property Rights"** means, but shall not be limited to, concepts, know-how, data processing techniques, Confidential
- 1.13. **"Juristic Person"** means (but not limited to) a company, close cooperation, body corporate, partnership or association or a trust defined in the Trust Property Act;
- 1.14. **"Letter of Engagement (LOE)" or "Proposal"** means the terms of reference agreed between the Customer and Cyanre detailing the Services that are to be rendered by Cyanre to the Customer;
- 1.15. **"Personnel"** means Cyanre employees, agents or authorised sub-contractors;
- 1.16. **"Services"** means the services that are to be rendered by Cyanre to the Customer in accordance with this Agreement and the relevant Service Schedule;

- 1.17 **"Service Schedule"** means a document that contains the specific terms and conditions, description of a Service and service levels (where applicable);
- 1.18 **"Scope briefing"** refers to the LOE where relevant.
- 1.19 **"VAT"** means value added tax in terms of the Value Added Tax Act, 1991 or any similar tax on the supply or sale of goods and/or services;
- 1.20 **"Writing"** or **"Written"** includes any hand-written, typewritten, facsimile or electronic communications unless electronic communications have been expressly excluded;
- 1.21 Clause and paragraph headings are for purposes of reference only and shall not be used in interpretation.
- 1.22 Unless the context clearly indicates a contrary intention, any word connoting:
 - 1.22.1 any gender includes the other two genders;
 - 1.22.2 the singular includes the plural and vice versa;
 - 1.22.3 natural persons includes artificial persons and vice versa;
 - 1.22.4 insolvency includes provisional or final sequestration, liquidation or judicial management.
- 1.23 A reference to a Business Day is a reference to any day excluding Saturday, Sunday and a public holiday in the Republic of South Africa.
- 1.24 When any number of days is prescribed such number shall exclude the first and include the last day unless the last day falls on a Saturday, Sunday, or a public holiday in the Republic of South Africa, in which case the last day shall be the next succeeding Business Day.
- 1.25 A reference to an enactment is a reference to that enactment as at the date of signature hereof and as amended or re-enacted from time to time.
- 1.26 The rule of interpretation that a written agreement shall be interpreted against the party responsible for the drafting or preparation of that agreement shall not apply.
- 1.27 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 the Agreement.
- 1.28 Where any term is defined within the context of any particular clause in this Agreement, then, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, the term so defined shall bear the meaning ascribed to it for all purposes in terms of this Agreement, notwithstanding that the term has not been defined in the definition clause.

2. STATUS AND PRECEDENCE

- 2.1 This Agreement forms the basis for all Services requested by the Customer from Cyanre from time to time. Any Service specific terms and conditions shall be set out under a Service Schedule or a proposal.
- 2.2 Except where specifically provided to the contrary in a Service Schedule and then only to the extent so specified, each Service Schedule shall be subject to this Agreement. Insofar as any term and condition in a Service Schedule conflicts with this Agreement in respect of-
 - 2.2.1 the description of Services, the terms and conditions in the Service Schedule shall prevail;
 - 2.2.2 any other matter, this Agreement shall prevail.
- 2.3 Conflicts with body of Service Schedules: Unless otherwise stated in a Service Schedule, insofar as the meaning of any term or condition in a schedule or annexure to a Service

Schedule or any other document referred to in a Service Schedule, excluding this Agreement, conflicts with the meaning of the body of the relevant Service Schedule, the meaning of the terms and conditions in the body of the relevant Service Schedule shall prevail.

- 2.4 Service Schedules amendment: The terms of one Service Schedule will only apply to another Service Schedule to the extent specifically and expressly stated therein but to the extent that any Service Schedule expressly overrides the provisions of this Agreement, such amendment will be effective only in respect of that Service Schedule and not any other Service Schedule.

3. TERM

- 3.1. The Agreement shall commence on the Effective Date of any Service and subject to clause 20 below, remain in force for the duration of any Services utilised by the Customer
- 3.2. Service Schedules:
- 3.2.1. Subject to clause 20 below, the duration period of each of the Services shall be as specified in each Service Schedule or Proposal. The Parties may agree to an initial period under a Service Schedule or Proposal or Quote ("Initial Period"). Where an Initial Period has been agreed to, the Services shall endure for the agreed Initial Period, calculated from the Effective Date and thereafter shall be renewed automatically for successive periods ("subsequent" period) as agreed under the relevant Service Schedule ("Service Schedule Term"). Where no Initial Period has been agreed to the Services will expire on delivery of the Services as agreed to in the Proposal and/or Quote;
- 3.2.2. The Customer may during the Initial period of any Service, terminate the particular Service at the end of the Initial period of that Service by way of at least 30 (thirty) days prior written notice ("Termination Notice");
- 3.2.3. Should Termination Notice at the end of a particular Service Initial period not be given in terms of clause 3.2.2 the particular Service shall automatically be renewed for the Subsequent period. Similar to the cancellation of the Initial period in 3.2.2, the Customer may during the subsequent periods terminate a particular Service at the end of each Subsequent period giving the other party 90 (ninety) days prior written notice.
- 3.3. Any termination of the General Terms and Conditions and / or any Service Schedule, however caused, shall not affect the coming into force or the continuance in force of any provision herein and / or Service Schedule or other agreed to Service Schedule which is expressly or by implication intended to come into or continue in force on or after such termination.

4. SERVICES

- 4.1. The Services to be performed or delivered by Cyanre will be as described in the Proposal and/or the applicable Service Schedule.
- 4.2. Services will only be provided to the Customer on receipt of the signed Proposal or Quote or receipt of a purchase order or written instruction to commence with the Services.
- 4.3. Cyanre shall supply Services to the Customer as listed on the Schedule of Services and on an "as required" basis in accordance with Service Request/ tasking instruction or proposal as the case may be;
- 4.4. During any Implementation Phase (where applicable) no Service levels will apply and will Cyanre perform to the best of its ability;
- 4.5. Unless otherwise agreed to under a Service Schedule, work will be performed during Cyanre's business hours (8h00 to 17h00 GMT). If after hours work is required, this will be discussed and agreed upon against Cyanre's standard overtime rate (currently 1.5 of normal rates) between the parties involved;

- 4.6 The Customer shall ensure that Cyanre has access to sites and systems in accordance with the agreed Project Plan or Service Schedule to execute the Services (where required)

4.7 Request for additional or new Services:

- 4.7.1 Should the Customer at any time require additional services related to the Services or require new Services, the Customer may submit a request ("Service Request") to Cyanre detailing –
- 4.7.1.1 the nature of and scope of the services; or
- 4.7.1.2 the specification and quantity of the services / deliverables;
- 4.7.1.3 required together with any other requirements or information which is relevant to the provision of additional services or deliverables.
- 4.7.2 Cyanre shall evaluate such Service Request and respond to the Customer with a proposal and/or quote, or where no formal proposal is required an approval or disapproval of the Service Request within a reasonable time (such approval not to be unreasonably withheld)
- 4.7.3 Additional or new Services, shall be subject to the General Terms and Conditions and applicable Service Schedule/ tasking instructions applicable at the Effective Date of the additional - or new- or scope changed Services.
- 4.7.4 Where additional or new Services are acquired by the Customer part way through the Initial Period of a Service or any Renewal Period (as applicable), such fees shall be pro-rated for the remainder of the applicable period.
- 4.8 The Customer may accept or reject any proposal in its sole discretion, without providing reasons therefor and will not be liable for any costs associated with the preparation or submission of the Service Request, unless it has agreed otherwise in writing prior to submission of the proposal by Cyanre that the costs for drafting of the proposal will be for the account of the Customer. By signing the proposal the Customer will accept the General terms and Conditions and applicable Service Schedule (new or as amended to deal with the amended Services).
- 4.9 Cyanre will deploy the additional or new Services, after acceptance of Cyanre's proposal or quote. Instructions from the Customer to proceed with additional or new Services will be dealt with as an acceptance of Cyanre's proposal or quote.
- 4.10 The parties agree to provide one another such information, materials and resources as they may agree in a Service Schedule or as may be reasonably required for the performance of the Service Schedule.
- 4.11 Each Party, while on the other Party's premises (where required), shall comply with the reasonable requests, standard rules and regulations of such Party regarding safety and health and personal and professional conduct generally applicable to such premises or equipment, which policies, standards and procedures to be provided by relevant party subsequent to signing of a Service Schedule.
- 4.12 **Excused performance:** Cyanre's non-performance of any particular obligation under the Contract Documents shall be excused where such failure to perform is directly caused by:-
- 4.12.1 the Customer's failure (or the failure of a third party to provide services under an agreement between it and the Customer) to perform an express material obligation assigned to the Customer in this Agreement or any Service Schedule; or
- 4.12.2 by Cyanre being obliged to follow the Customer's instructions or procedures in circumstances where Cyanre advised the Customer that such instructions or procedures should not be followed;
- 4.12.3 modification or alteration of the Services by any party other than Cyanre or Cyanre's duly authorised contractors or agents.
- 4.12.4 the non-availability or incorrect functioning of any Customer Equipment;
- 4.12.5 An event as per clause 23 above (Force Majeure) and notwithstanding the foregoing, Cyanre continues to use reasonable efforts to perform and to minimize the impact of such failure.

- 4.13 **Non-conformance:** If Services do not conform to the undertakings under this clause 4, Cyanre will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of an undertaking set out in clause 4. Notwithstanding the foregoing, Cyanre:
- 4.13.1 does not warrant that the Customer's use of the Services will be uninterrupted or error-free; nor that the Services and/or the information obtained by the Customer through the Services will meet the Customer's requirements; and
- 4.13.2 is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services may be subject to limitations, delays and other problems inherent in the use of such communication facilities.
- 4.14 This Agreement shall not prevent Cyanre from entering into similar agreements with third parties (including other customers whether on the same case/matter of the Customer or not), or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this Agreement, except where a possible conflict of interest has been identified (see clause 19 below).

5. THE CUSTOMER SUBCONTRACTORS

- 5.1. Where Cyanre is required in terms of any Service Schedules to interact with any Customer-appointed subcontractors, suppliers or vendors pursuant to third party contracts, the following provisions will apply:-
- 5.1.1. Cyanre shall co-operate in good faith with the Customer and such third parties.
- 5.1.2. Where third parties require access to any Confidential Information that Cyanre may, through the Services acquire at the Customer, it will be the responsibility of the Customer to ensure that the appropriate non-disclosure agreements are in place between the Customer and the third party. Cyanre shall not be obliged to provide any Confidential Information to a Customer-appointed subcontractors, unless instructed in writing by the Customer.
- 5.1.3. Cyanre shall not be required to ensure or be responsible for ensuring the Customer's compliance with the terms and conditions of such third party contracts (or vice versa), but Cyanre agrees to use reasonable endeavours (but not obliged) to advise the Customer if Cyanre becomes aware of any third party subcontractor defaults;
- 5.1.4. the Customer shall be responsible for obtaining and maintaining all necessary licences, consents or authorities under the third party contracts and shall be liable for all fees and other charges payable to any third party pursuant to the third party contracts.
- 5.2. Cyanre shall not be liable for any act or omission of a third party contractor.

6. CYANRE EQUIPMENT

- 6.1. No lien: No lien over any equipment that Cyanre may utilise for performance of the Services at the premises of the Customer shall be established in favour of the Customer that may be in possession of such equipment ("Equipment").
- 6.2. During the period that any Equipment may be utilised at the Customer's premises, the Customer shall: (i) take proper and diligent care of such Equipment (ii) mark all Equipment uniquely; (iii) take all reasonable steps to exclude any landlord's hypothec over such Equipment,

including by giving any landlord written notice that it is not the owner of such Equipment; and (iv) accept all risk in the Equipment (where Equipment is left at the Customer Premises) in which regard it shall take reasonable steps to protect the Equipment from loss and/or damage and shall insure the same against all risks. Cyanre shall be entitled to make reasonable inspections of the other's premises at which such Equipment is located in order to establish whether or not the other is complying with its obligations in terms of this clause and to be provided with proof of all risks insurance cover of the Equipment.

- 6.3 The Customer shall return such Equipment to Cyanre on termination of this Agreement or the specific Service Schedule in the same condition in which it was received, fair wear and tear excepted and shall remedy, to the reasonable satisfaction of the other, any damage to the Equipment sustained whilst under its care; alternatively, in

7. PERSONNEL AT THE CUSTOMER'S PREMISES

- 7.1 The Customer shall afford to the Cyanre Personnel such access to the Customer's premises as is reasonably required for the provision of the Services, subject to the Customer's security requirements. The Customer shall make such security requirements and any amendments made thereto from time to time, applicable to Cyanre's Personnel, available to Cyanre for inspection.
- 7.2 Cyanre shall upon request issue the Customer with a list of the Personnel who will be attending at the Customer's premises and the Customer will issue them with access cards if required. Such access cards shall be carried and displayed by the Personnel at all times and if such access cards are lost, Cyanre shall pay for the replacement cost thereof.
- 7.3 The Customer shall afford to the Personnel such facilities as may be specified under applicable Service Schedule, as is reasonably required for the provision of the Services.
- 7.4 While the Personnel attend the Customer's premises, Cyanre shall ensure that they conform to the Customer's codes, policies, standards and regulations, including but not limited to the Customer's IT policies, procedures and standards in place from time to time and that they adopt proper standards of behaviour and co-operate with the Customer's employees, brokers or agents with designated security and system responsibilities. The Customer shall make such policies, procedures and standards (if any and including any amendments made thereto from time to time) available to Cyanre for inspection prior to provision of the Services.

8. CUSTOMER'S OBLIGATIONS

The Customer shall:

- 8.1 provide Cyanre with:
- 8.1.1. all necessary co-operation in relation to the Contract Documents; and
- 8.1.2. all necessary access to such information as may be required by Cyanre; in order to render the Services, including but not limited to Customer Data, security access information and configuration services;
- 8.2 comply with all applicable laws and regulations with respect to its activities under the Contract Documents;
- 8.3 carry out all other Customer responsibilities set out in any Contract Documents in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, Cyanre may adjust any agreed timetable or delivery schedule as reasonably necessary;
- 8.4 obtain and shall maintain all necessary licences, consents, and permissions necessary for Cyanre, its contractors and representatives to perform their obligations under the Contract Documents, including without limitation access to Customer Equipment and Customer Data and processing of Customer Data or any other data on the Customer Equipment for purposes of the Services;

- 8.5 not unreasonably interfere with the activities of the Cyanre representatives in execution of the Services;
- 8.6 provide adequate working space and all necessary facilities and use of all information and facilities and personnel deemed necessary by Cyanre to provide the Services

9 Fees and payments

- 9.1 The Customer shall be liable for the Fees agreed to between Cyanre and the Customer from time to time;
- 9.2 **Default provisions.** Unless otherwise agreed in terms of a Service Schedule or Proposal -
 - 9.2.1 Cyanre requires a PO (Purchase Order), signed quote, signed Proposal or signed Service Schedule before commencing, scheduling and/or planning any work request;
 - 9.2.2 Where Cyanre was required to do work which was not planned, the Customer is required to provide a PO on Cyanre's request for example:
 - 9.2.2.1 Unplanned after hours services where an immediate resolution is required a PO upfront would delay an immediate resolution of the problem;
 - 9.2.2.2 Any on-site services provided whereby it is difficult to ascertain the time upfront.
 - 9.2.3 the Customer shall pay the Fees upon presentation of the invoice or, where agreed to in writing, within 30 (thirty) days from date of statement (unless otherwise agreed to in writing by both Parties) in South African Rands, free of conditions, set-off, bank - or exchange costs, commission or any other deduction by means of electronic transfer into a bank account designated in writing by Cyanre. For clarity purposes it is specifically agreed that where Cyanre executes Services as instructed by the Customer for the Customer's client that payment by the Customer to Cyanre is not dependent on the Customer receipt of payment from its client, unless otherwise agreed to in writing between Cyanre and the Customer.
 - 9.2.4 Any Fee stated in a currency other than South African Rand shall be paid in South African Rands by using the exchange rate applicable on the date of the invoice, as obtained from: <http://www.xe.com>. (see clause 9.3 below).
 - 9.2.5 the Customer may not, for any reason whatsoever, defer, adjust, set-off or withhold any payment due to Cyanre in terms of or arising out of the Contract Documents unless scope of work in the relevant Service Schedule has not been signed-off for a valid reason by the Customer;
 - 9.2.6 Unless otherwise agreed to under a Service Schedule, Fees will escalate annually (during January each year) by the CPI rate as published by Statistics South Africa plus 5% (two per centum) or a general 10% (ten per centum) increase, whichever is the highest, unless otherwise agreed to under a Service Schedule;
 - 9.2.7 Cyanre may, in its sole discretion and notwithstanding any from or on behalf of Customer, to any indebtedness of Customer to Cyanre arising from any cause whatsoever.
 - 9.2.8 All prices and/or costs quoted by Cyanre shall be inclusive of all applicable taxes but excluding VAT, which shall be shown clearly and separately to the agreed fees charged in terms of each Service Schedule. Taxes or other charges, such as (but not limited to) transfer fees, bank charges, local taxes and value added taxes in other jurisdictions shall not be deducted from the payments due to Cyanre but shall be paid in addition to the fees due to Cyanre;
 - 9.2.9 Travel costs and accommodation costs are not inclusive of the Service charges. Traveling and Accommodation:
 - 9.2.9.1 Cyanre's standard hourly rate will apply for travel time;
 - 9.2.9.2 Cyanre's standard travel and accommodation rates;
 - 9.2.9.3 The above costs shall be subject to prior approval from the Customer where reasonably possible.
- 9.3 It is agreed that should there be a subsequent price increase on components of the Services that are currency/indexed linked, beyond the control of Cyanre, including but not

limited to foreign exchange fluctuations, increased third party products or services (i.e. third party software), surcharges, taxes, rates or levies, Cyanre shall be entitled to increase the affected Services Fees accordingly, by the rand value of the increase but in proportion to the Services provided after written notification to Customer.

- 9.4 If the Customer fails to make any payment or portion of a payment due in terms of this Agreement, Cyanre may, without prejudice to Cyanre's rights in terms of this Agreement or Service Schedule or at law, charge:-
 - 9.4.1 interest on any unpaid amount from the date the account became due until the date of payment, at the prevailing prime overdraft rate of Cyanre commercial bank overdraft lending rate, plus 2% (two per centum); and
 - 9.4.2 a collection charges of R80.00 per follow up communication. The Customer agrees that no notice in terms of section 129 of the National Credit Act is required if Customer default on any payment due to Cyanre
- 9.5 In the event of a dispute over an amount of fees, the amount not in dispute shall be paid on presentation of an invoice without any set off or counter claim, which may be alleged.
- 9.6 Cyanre reserves the right to suspend any service until all amounts are paid in full

10. NON SOLICITATION

- 11.8 The Customer shall not, during the continuance of the Agreement and for a period of twelve (12) months immediately following the date of termination of the Agreement, directly or indirectly solicit or offer employment or any other form of contract for services to any Personnel of Cyanre or was Personnel within 12 (twelve) months prior to termination of this Agreement, without Cyanre's written consent;
- 11.9 The above restraint shall endure also in favour of the successors-in-title. The terms Successors-in-title shall mean any person who:-
 - 11.9.5 acquires the business; or
 - 11.9.6 acquires the goodwill of the business; or
 - 11.9.7 becomes beneficial owner of such goodwill through his/her shareholding in any company;
 - 11.9.8 has acquired by cessions the right to enforce the restraints embodied herein

12 CONFIDENTIAL INFORMATION

- 12.2 For the purpose of this Agreement, Confidential Information shall not include:
 - 12.2.5 information which is required by law or a court of competent jurisdiction to be publicly released, to the extent only that it is necessary to comply with such law or with the order of such court; or
 - 12.2.6 any information which the receiving Party can prove by substantial written evidence was already in its possession, without breach of any Contract Document, or which is already or becomes public knowledge through no wrongful act of the receiving Party or was acquired independently of the disclosing party by the receiving party in circumstance that do not amount to a breach of the provisions of the Contract Documents.
- 12.3 Each Party hereby undertakes to the other that it shall:
 - 12.3.5 keep confidential the existence and terms and conditions of the Contract Documents;
 - 12.3.6 keep confidential the Confidential Information and not disclose any of or any part thereof to any third party (other than its professional advisors, auditors, bankers and Personnel executing the Services and / or Deliverables) without the prior written permission of the disclosing party;
 - 12.3.7 not use the Confidential Information or any part thereof except for the performance of its obligations under the Contract Documents;
 - 12.3.8 without prejudice to the obligations contained herein, ensure that its employees, agents or sub-contractors are

- under the same obligations of confidence as set out herein prior to the receipt of such Confidential Information; and
- 11.2.5 upon the termination of this Agreement or any Service Schedule, for whatever reason, return to the disclosing party (and procure the return from any employees, agents or sub-contractors of) all Confidential Information in whatever format (including all copies) belonging to the disclosing Party, which is capable of being so returned.
 - 11.2.6 not to derive any benefit, whether directly or indirectly, from the Confidential Information, nor, without limiting the generality of the foregoing, be engaged, involved, concerned or interested, whether directly or indirectly, in the economic exploitation, whether by marketing, promoting, advertising, changing, adapting, reverse-engineering, publishing or selling in any manner whatsoever, the Confidential Information;
 - 11.3 Any documents or records (including written instructions, drawings, notes or memoranda) relating to the Confidential Information of the Customer which come into Cyanre's possession during the currency of this Agreement, shall be deemed to be the property of the Customer and shall be, subject to clause 9 above, surrendered to the Customer on demand, and in any event on the termination of Cyanre's appointment by the Customer and Cyanre will not retain any copies thereof or extracts thereof.
 - 11.4 The disclosing party may, at a time by way of written notice to the receiving party, require the receiving party to return any material containing, pertaining to or relating to Confidential Information from any word processor, computer or any other similar device into which it was entered or programmed, and may, in addition, require the receiving party to furnish a written statement (certified as correct by a director of receiving party) to the effect that upon such a return, receiving party has not retained in its possession, or under its control, either directly or indirectly, any such material;
 - 11.5 As an alternative to the return of the material contemplated above, the receiving party and / or its representatives shall at any instance of disclosing party, destroy such material and furnish disclosing party with a written statement (certified as correct by a director of receiving party) to the effect that such material has been destroyed;
 - 11.6 the Parties indemnify and agree to keep each other indemnified against all costs, claims, demands, liabilities, losses and expenses arising out of any breach on the part of the receiving party (including its agents, employees and sub-contractors) of the provisions of this clause 12.
 - 11.7 The obligations in this clause shall survive in perpetuity.

12. THE CUSTOMER DATA

- 12.1 Ownership in all Customer Data, whether under its control or not, shall continue to vest in the Customer and Cyanre shall use the same for the purposes of providing the Services or as directed by the Customer and shall not obtain any proprietary rights in the Customer Data. The Customer hereby grants to Cyanre and its Personnel a non-exclusive, royalty free licence to process the Customer Data as an Operator for the purpose of providing the Services or as directed by the Customer for the duration of the Agreement.
- 12.2 Processing of Customer Data:
 - 12.2.1 The Customer shall determine what Customer Equipment needs to form part of the Services;
 - 12.2.2 The Customer shall determine what Customer Data needs to be made available for purposes of the Services;
 - 12.2.3 Customer Data shall be made available to Cyanre in a format as per the Cyanre specifications;
 - 12.2.4 The Customer shall not upload, access, store, distribute or transmit any Viruses, or any material during the course of its use of the Services that is unlawful, harmful, threatening, facilitates illegal activity or causes damage or injury to any person or property. It is the responsibility of the Customer to ensure that the Customer Data to be

- uploaded is Virus free. The Customer hereby indemnifies Cyanre against any claim and liability whatsoever that may result from an upload of a Virus
- 12.2.5 Cyanre shall process Customer Data on instructions from the Customer and process the Customer Data as Confidential Information;
- 12.2.6 Cyanre shall make Customer Data available to third parties as per instructions from the Customer and shall not be responsible to verify whether said third party is authorised to receive the Customer Data or control the third party's management of the Customer Data subsequent to receipt of said Customer Data.
- 12.3 Privacy and Data Protection.
 - 12.3.1 Cyanre and the Customer are each responsible for complying with their respective obligations under applicable privacy and data protection laws, if any, governing the Customer Data.
 - 12.3.2 The Customer remains solely responsible for determining the purposes and means of Cyanre's processing of Customer Data under any Contract Document.
 - 12.3.3 The Customer is and shall have sole responsible for the legality, reliability, integrity, accuracy and quality of the Customer Data;
 - 12.3.4 Processing of Personal Information: If Cyanre processes any Personal Information on the Customer's behalf when performing its obligations under the Contract Documents, the parties record their intention that the Customer shall be the Responsible Party and Cyanre shall be an Operator and in any such case:
 - 12.3.4.1 the Customer shall ensure that the Customer is entitled (as per applicable data protection legislation) to transfer the relevant Personal Information to Cyanre so that Cyanre may lawfully use, process and transfer the Personal Information in accordance with Contract Documents on the Customer's behalf;
 - 12.3.4.2 Cyanre shall process the Personal Information only in accordance with the terms of the Contract Documents and any lawful instructions reasonably given by the Customer from time to time;
 - 12.3.4.3 Cyanre shall notify the Customer immediately in writing if there are reasonable grounds to believe that the Personal Information has been accessed or acquired by any unauthorised person or that there has been any loss or corruption of Personal Information. Cyanre agrees to use its best endeavours to assist the Customer, where such information has been used, lost, corrupted or disclosed in remedying such unauthorised use, loss, corruption or disclosure.
 - 12.3.4.4 In the event that Cyanre uses a third party for any or all of the processing activities required of Cyanre in connection with a Contract Document, it will ensure that it has signed terms and conditions sufficient to meet its obligations under this Agreement.
 - 12.3.4.5 Disclosure of any Personal Information to any of Cyanre's Personnel, which will be done on a need to know basis only, and without prejudice to the Customer's rights in terms of the Contract Documents, Cyanre shall procure that each employee or representative is aware of the confidential nature of the information being disclosed and shall be bound by an applicable confidentiality provision.
 - 12.3.4.6 (where required) the Customer acknowledges and agrees that the Personal Information may be transferred or stored outside the country where Cyanre may make use of third party service providers in order to carry out the Services and Cyanre's other obligations under the Contract Documents;
 - 12.3.5 Provisions of Information
 - 12.3.5.1 If the Customer is required to provide information to a third party, regarding the Customer Data and outside the scope of the Services, Cyanre will reasonably cooperate with the Customer in providing such information. The Customer will reimburse Cyanre for

12.3.5.2 Upon Cyanre's or the Customer's reasonable written request, the Customer or Cyanre will provide the other with such information that it has regarding Customer Data and its processing that is necessary to enable the requester to comply with its obligations under this clause and the applicable privacy and data protection laws.

12.3.6 Both Parties shall take reasonable technical and organisational measures to preserve the integrity of the Customer Data or any other information that may contain Personal Information, and to prevent any unauthorised or unlawful access and processing Personal Information or its accidental loss, destruction or damage.

12.3.7 Cyanre shall follow its archiving procedures for Customer Data. In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy shall be for Cyanre to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by Cyanre in accordance with Cyanre's archiving procedure. Cyanre shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party, except those third parties sub-contracted by Cyanre to perform services related to Customer Data maintenance and back-up.

13. PROPERTY RIGHTS

Cyanre Intellectual Property

13.1 The Customer acknowledges and agrees that Cyanre and/or its licensors own and retain all rights, title and interest in the Services and the Documentation including without limitation, all reproductions, enhancements, upgrades, new releases, modifications and/or derivative works thereto that is used in connection with the Services to the extent listed in each Service Schedule. Except as expressly stated herein, the Contract Documents do not grant the Customer any rights to, or in, patents, copyrights, database rights, trade secrets, trade names, trademarks (whether registered or unregistered), or any other rights or licences in respect of the Services or the Documentation.

13.2 Cyanre confirms that it has all the rights in relation to the Services and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this agreement.

13.3 The Customer shall only utilise and ensure its employees and contractors utilise Cyanre's Intellectual Property as per the terms and conditions of the Contract Documents or such license terms and conditions made available to the Customer for purposes of the Services.

13.4 Without limiting specific use restrictions under any Service Schedule, the Customer shall not allow any third party to use (gain access to) or copy any of Cyanre's Intellectual Property during the utilisation of same by the Customer. Where any integration may be required between the Intellectual Property of Cyanre and any third party Intellectual Property, the Customer shall notify Cyanre in writing prior to any integration. On receipt of such notification Cyanre shall submit to the Customer the necessary specifications and procedures to be followed during integration and the Customer shall allow Cyanre to manage the process.

Use of third party Intellectual Property licensed to the Customer

13.5 Prior to the commencement date of a Service Schedule, the Customer shall at its own expense procure the grant of such licenses or permissions to Cyanre as are necessary under the terms of any third party licenses, lease, rental or other agreement in respect of Cyanre's use of third party software for the purpose of providing the Services during the Service Schedule term.

13.6 Ownership of the third party software, including all Intellectual Property Rights in it, shall remain in the relevant third party.

its reasonable charges for such assistance provided on a time and materials basis.

14. DISPUTE RESOLUTION

Any dispute arising from the Agreement shall be subject to the following dispute resolution procedures -

14.1 **Informal dispute resolution:** Prior to referring any dispute to arbitration, the Parties shall first attempt to resolve the dispute

14.2 **Informal dispute resolution does not reduce Parties' rights:** Proceedings in terms of this clause 14.1 shall not be construed to prevent a Party from instituting formal proceedings earlier to obtain urgent or interim relief, avoid the expiration of any applicable limitations period, or preserve a superior position with respect to other creditors.

14.3 **Institution of Formal Proceedings: Subject** to the provisions of clauses 14.1 and 14.2, the Parties agree that either Party may elect to refer any dispute which may arise to any court with jurisdiction in South Africa or to arbitration proceedings as contemplated in clause 14.4. Upon election by a Party initiating the relevant dispute proceedings, the other Party will be bound by such election for the purposes of the dispute in question.

14.4 **Arbitration:** If the Parties are **unable** to resolve any dispute informally and either Party has elected to commence arbitration proceedings to resolve the dispute in terms of clause 14.3, then such dispute shall on written demand by the electing Party be submitted to arbitration at AFSA against the Expedited Rules of AFSA.

14.5 **Status of arbitration ruling:** The decision of the arbitrator shall be binding on the Parties to the arbitration after the expiry of the period of 20 (twenty) days from the date of the arbitrator's ruling if no appeal has been lodged by any Party or upon the issue of determination by the appeal panel, as the case may be. A decision, which becomes final and binding in terms of this clause 14.5 may be made an order of court at the instance of any Party to the arbitration. The parties agree to keep the arbitration confidential and not to disclose it to anyone except for purposes of obtaining an order as contemplated herein.

14.6 **Rapid resolution of disputes:** The Parties shall use commercially reasonable efforts to resolve disputes arising as rapidly as possible.

14.7 **Confidentiality:** All disputes will be dealt with in confidentiality to protect the reputation of the parties

14.8 **Excluded relief:** This clause 1 shall not preclude either Party from seeking urgent or interim relief from the High Court of South Africa or any other competent organs of state created for the specific purpose of regulating the business or industry activities in which the Parties are engaged.

14.9 **Agreed Jurisdiction:** the Parties hereby consent to the jurisdiction of the North Gauteng High Court (Pretoria) in respect of proceedings referred to in clause 14.3 above.

15. WARRANTIES

15.1 Each Party warrants to the other Party that:

15.1.1. it has full capacity and authority and all necessary licences, permits and consents to enter into and to perform this Agreement;

15.1.2. this Agreement is executed by a duly authorised representative of that Party; and

15.1.3. the execution and delivery of this Agreement, and the performance by the warranting Party of its obligations under it, will not:

15.1.4. result in a breach of any provision of the Memorandum or Articles of Association or Partnership Deed, if applicable, of the warranting Party; or

15.1.5. result in a breach of or constitute a default under any instrument or agreement to which the warranting Party is a Party to or by which the warranting Party is bound; or

15.1.6. result in a breach of any order, judgement or decrees of any court or Governmental agency to which the

warranting Party is a Party or by which the warranting Party is bound.

- 15.2 Cyanre warrants that the Services shall be supplied by appropriately experienced, qualified and trained personnel and in a professional manner with reasonable care, skill and diligence.
- 15.3 The Customer warrants that it has the right to authorise Cyanre to access the Customer Equipment and / or Customer Data for purposes of the Services and indemnify Cyanre against any claim, damages or expenses whatsoever as a result of Cyanre's access to and processing of the Customer Equipment and/or Customer Data.
- 15.4 Except as expressly stated in this Agreement all conditions and warranties whether express or implied, statutory or otherwise (including but not limited to any conditions or warranty for, fitness for particular purpose, satisfactory quality, usefulness or timeliness) are excluded

16. LIMITATION OF LIABILITY

- 16.1 Unless otherwise agreed to under this Agreement or any Service Schedule, this clause 13 sets out the entire financial liability of Cyanre (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:
 - 16.1.1 any breach of this agreement;
 - 16.1.2 any use made by the Customer of the Services and Documentation or any part of them; and
 - 16.1.3 any representation, statement or tortious act or omission (including negligence) arising under or in connection with this agreement.
- 16.2 Except as expressly and specifically provided in any Contract Document:
 - 16.2.1 the Customer assumes sole responsibility for results obtained from the use of the Services and the Documentation by the Customer, and for conclusions drawn from such use. Cyanre shall have no liability for any damage caused by errors or omissions in any information (including Customer Data), instructions or scripts provided to Cyanre by the Customer in connection with the Services, or any actions taken by Cyanre at the Customer's direction;
 - 16.2.2 all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this agreement; and
 - 16.2.3 the Services and the Documentation are provided to the Customer on an "as is" basis.
- 16.3 Nothing in this agreement excludes the liability of Cyanre:
 - 16.3.1 for death or personal injury caused by Cyanre's negligence; or
 - 16.3.2 for fraud or fraudulent misrepresentation.
- 16.4 Subject to clause 16.2 and clause 16.3:
 - 16.4.1 Cyanre shall not be liable whether in delict (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this agreement; and
- 16.5 Cyanre's total aggregate liability in contract, delict (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall be limited to the amount of the total fees paid by the Customer to Cyanre during the 3 months immediately preceding the date on which the claim arose.

17 INDEMNITY

- 17.1 The Customer shall defend, indemnify and hold harmless Cyanre against claims, actions, proceedings, losses,

damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Customer's use of the Services and/or Documentation, provided that:

- 17.1.1 the Customer is given prompt notice of any such claim
- 17.1.2 Cyanre provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and
- 17.1.3 the Customer is given sole authority to defend or settle the claim.
- 17.2 Cyanre shall, subject to clause 17.5, defend the Customer, its officers, directors and employees against any claim that the Services or Documentation infringes any Republic of South African patent effective as of the Effective Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that:
 - 17.2.1 Cyanre is given prompt notice of any such claim;
 - 17.2.2 the Customer provides reasonable co-operation to Cyanre in the defence and settlement of such claim, at Cyanre's expense;
 - 17.2.3 Cyanre is given sole authority to defend or settle the claim.
- 17.3 In the defence or settlement of any claim, Cyanre may procure the right for the Customer to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate the particular Service Schedule on 2 business days' notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer, except a refund on any payment made in advance, minus the pro rata use of said Service.
- 17.4 In no event shall Cyanre or its Personnel be liable to the Customer to the extent that the alleged infringement is based on:
 - 17.4.1 a modification of the Services or Documentation by anyone other than Cyanre; or
 - 17.4.2 the Customer's use of the Services or Documentation in a manner contrary to the instructions given to the Customer by Cyanre; or
 - 17.4.3 the Customer's use of the Services or Documentation after notice of the alleged or actual infringement from Cyanre or any appropriate authority.
- 17.5 The foregoing states the Customer's sole and exclusive rights and remedies, and Cyanre's (including Personnel) entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.
- 17.6 Each Party agrees to indemnify, defend and hold the other Party (and its Personnel) harmless against any and all loss of or damage to any property or injury to or death of any person; and (ii) loss, damage (including attorneys' fees on an attorney and own client basis), costs and expenses which the other Party may suffer or incur arising directly or indirectly from caused by any wilful misconduct or fraud of such Party or its Personnel.

18 NOTICES AND LEGAL PROCESS

- 18.1 Each Party chooses as its address for all purposes under this Agreement ("chosen address"), whether for serving any court process or documents, giving any notice, or making any other communications of whatsoever nature and for any other purpose arising from a Contract Document ("notice"), the following address and contact details:

Cyanre:

- 18.1.1 Physical address: 244 Jean Avenue, Norma Jean Square, Building 5, Centurion
- 18.1.2 Email: ilse@cyanre.co.za (information officer)

Customer: as per the proposal or Service Schedule address which is not a post office box or poste restante.

- 18.2 Any notice required or permitted under this Agreement shall be valid and effective only if in writing.
- 18.3 Either Party shall be entitled from time to time, by written notice to the other, to vary its address to any other
- 18.4 Any notice to either party which is -
- 18.4.1 sent by prepaid registered post in a correctly addressed envelope to the address specified for it under clause shall be deemed to have been received, unless the contrary is proved, within 14 (fourteen) days from the date on which it was posted; or
- 18.4.2 delivered to the party by hand, shall be deemed to have been received on the day of delivery, provided that it has been delivered to a responsible person during ordinary business hours; or
- 18.4.3 sent by email to the addressee, shall be deemed to be received as and when it is reflected in the sender's mail server logs and in the absence of any administrator or mail server error messages.
- 18.5 Notwithstanding anything to the contrary herein, a written notice actually received by a party, including a notice sent by telefax, shall be an adequate notice to it notwithstanding that it was not sent or delivered to its chosen address.

19. CONFLICTS OF INTEREST

Cyanre provides a wide range of services to a large number of customers. Cyanre attempts to identify such situations but cannot guarantee that it has identified all those situations that exist or may exist. The parties agree to notify each other in the event of conflicts arising. No service or products provided by Cyanre can be considered by the client to be exclusive and by accepting an assignment or order Cyanre does not accept any restriction of trade.

20. BREACH AND TERMINATION

- 20.1 Should either party;
- 20.1.1 breach any of its obligations in terms hereof (including any Service Schedule) and fail to remedy such breach within 10 (ten) working days from receipt of a written notice from the other party. If the breach cannot reasonably be remedied within 10 (ten) working days, the Party in default shall be entitled to an extension, not exceeding a further 20 (twenty) days, to remedy the breach, on condition that the Party in default provides evidence to the reasonable satisfaction of the party within the 10 (ten) days that effective steps to remedy the breach have been initiated and continues to provide such evidence on an on-going basis that the steps are being expeditiously pursued.
- 20.1.2 commits a breach of any payment obligation in terms of any Contract Document and fails to make payment within 7 (seven) days after receipt from the other Party of written notice calling upon it to do so;
- 20.1.3 be placed in liquidation or under judicial management or curatorship (in either case, whether provisionally or finally); or
- 20.1.4 effect a compromise with its creditors; or
- 20.1.5 commit any act or omission which would, in the case of an individual, be an act of insolvency in terms of Section 8 of the Insolvency Act; or
- 20.1.6 fail to satisfy any final judgement against it within 21 days of the date when it should have become aware of such judgement; or the non-defaulting party shall, without prejudice to any other remedies which it may otherwise have in terms of the Agreement, applicable Service Schedule or at law terminate this Agreement and/or any Service Schedules or any part of a Services under a Service Schedule on written notice to the defaulting party, in which event such termination shall be without prejudice to, and shall not constitute a release or waiver of, any claims which the non-defaulting party

- 20.2 may have for damages against the defaulting party occasioned by the termination of the this Agreement and/or any Service Schedule (as the case may be) in terms of this clause.
- 20.3 No party may cancel this Agreement on the grounds of a breach of a term of this Agreement unless the breach is material.
- 20.4 Without prejudice to the aforesaid right, where such breach is the result of non-payment from the Customer and Customer does not execute payment after notice as set out above, Cyanre may suspend Services until the amount due and outstanding has been paid in full. Aforesaid suspension shall not be seen as a cancellation or termination unless Cyanre specifically indicate cancellation of the Agreement;
- 20.5 The Customer may cancel the Agreement or any Service Schedule at the end of the Initial Period (if any) or if the Customer is a natural person, on at least 20 (twenty) Business Days advance written notice to Cyanre at any time prior to the expiration of the Initial Period, subject to payment of all amounts due and payable up to the date of cancellation and payment of a reasonable cancellation fee that Cyanre may charge for the early termination in contemplation of the Agreement or Service Schedule enduring for its intended Initial Period.
- 20.6 If the Customer is a Juristic Person, the Customer may not terminate the Agreement or Service Schedule prior to the Initial Term except as otherwise agreed to under this Agreement.

16. CONSEQUENCES OF TERMINATION

- 21.1 The effect of terminating this Agreement will be termination of all Service Schedules.
- 21.2 Upon termination or expiry of any Service Schedule:-
- 21.2.1 Cyanre shall cease work as per the terminated Service Schedule;
- 21.2.2 Cyanre shall prepare and submit to the Customer an itemization of all completed and partially completed Services;
- 21.2.3 Cyanre shall deliver to the Customer the Services completed up to the date of termination at the agreed upon Fees; and
- 21.2.4 Cyanre shall deliver upon request any work in process;
- 21.2.5 The Customer undertakes to return to Cyanre any Cyanre Equipment, Documentation, information or other materials of Cyanre, which it has, no legal right to retain.
- 21.2.6 Cyanre may destroy or otherwise dispose of any of the Customer Data in its possession unless Cyanre receives, no later than 10 (ten) days after the effective date of the termination of this Agreement or any particular Service Schedule, a written request for the delivery to the Customer of the then most recent back-up of the Customer Data. Cyanre shall use reasonable commercial endeavours to deliver the back-up to the Customer within 30 (thirty) days of its receipt of such a written request, provided that the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Customer shall pay all reasonable expenses (on a time and material basis) incurred by Cyanre in returning or disposing of Customer Data.
- 21.3 Upon termination of this Agreement or any of the Service Schedules for whatever reason Customer shall pay to Cyanre all sums due to the date of termination together with the cost of materials and goods ordered for the performance of the Services for which Cyanre has paid or is legally bound to pay and such reasonable and necessary costs incurred in removing from the Customer's premises any property of Cyanre and in removing and returning to the Customer any property of the Customer.

21. RELATIONSHIP

- 22.1 For the avoidance of doubt, the Parties record and agree that pursuant to the implementation of this agreement Cyanre shall at all times act as an independent contractor;
- 22.2 Nothing in this agreement shall constitute an employer / employee relationship or an agency or a partnership in any shape or form between the Parties nor authorise either of the Parties to incur any liability on behalf of the other of them, save to the extent expressly provided for herein.

23. FORCE MAJEURE

- 23.1. Neither Party will be liable to the other for any default or delay in the performance of its obligations under Contract Documents:
- 23.1.1 if and to the extent that such default or delay is caused by any act of God, war or civil disturbance, court order, rule, regulation or direction or any other circumstance beyond its reasonable control including without limitation, strikes, failure of a utility service or transport or communications network provisioned by a third party, malicious damage ("Circumstances of Force Majeure"); and
- 23.1.2 provided the non-performing Party is without fault in causing such default or delay, and such default or delay could not have been prevented by the non-performing Party through the use of alternative sources, workaround plans or other means
- 23.2. Following any Circumstance of Force Majeure, the non-performing Party shall, subject to clause 23.5 below:
- 23.2.1 As soon as reasonably possible after the event occurring, notify the other Party by whichever way is available and if possible thereafter, confirm in writing ;
- 23.2.2 be excused from further performance or observance of its obligation(s) so affected for so long as such circumstances prevail and such Party continues to use its best efforts to recommence performance or observance whenever and to whatever extent possible without delay; and
- 23.3. co-operate with the other Party in implementing such contingency measures as that other Party may reasonably require.
- 23.4. Should any Circumstances of Force Majeure continue for more than 30 (thirty) days, then either Party may terminate the Agreement and/or the applicable Service Schedule by giving written notice to the other Party.
- 23.5. Notwithstanding the foregoing, if the Customer declares a disaster at its current Location, Cyanre shall continue to provide the Services or Deliverables at the Customer's designated disaster recovery site, upon the same terms and conditions set out in this Agreement and the applicable Service Schedule. The Customer will notify Cyanre in writing of any changes made, from time to time, to its aforesaid disaster recovery plan.
- 23.6. If the agreed Services are to perform and deliver specific Services and / or Deliverables during Circumstances of Force Majeure, then these clauses will not apply.

24. GENERAL AND MISCELLANEOUS

- 24.1. **Sole record of agreement:** The Contract Documents constitutes the sole record of the agreement between the Parties with regard to the subject matter hereof. No Party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein. This Agreement supersedes all previous agreements between the parties.
- 24.2. **No amendment except in writing:** No alteration, cancellation, variation of, or addition hereto, including this

clause, shall be of any force or effect unless reduced to writing and signed by authorised representatives of the parties. The terms and conditions contained on the Customer's purchase order or electronic communications shall not apply to, supplement or supersede any provisions of a Contract Document.

- 24.3 **Waivers:** No relaxation or indulgence, which any Party may grant to any other, shall constitute a waiver of the rights of that Party and shall not preclude that Party from exercising any rights which may have arisen in the past or which might arise in future.
- 24.4 **Survival of obligations:** Any provision of the Contract Documents, which contemplates performance or observance subsequent to any termination, or expiration of this Agreement or any Service Schedule shall survive any termination or expiration of this Agreement and applicable Service Schedule and continue in full force and effect.
- 24.5 **Assignment:** Neither Party may assign the Agreement, or any part thereof without the written consent of the other Party, which consent shall not be unreasonably withheld or unduly delayed, except that either party shall be entitled to assign or transfer any of its rights or obligations hereunder to any one of its Affiliates or in the event of sale or transfer of assets or business of the particular party pursuant to any financing, merger or reorganisation of the particular party, unless such action results in the taking control of the party by a competitor of the other party.
- 24.6 **Approvals and consents:** An approval or consent given by a party to the Agreement shall only be valid if in writing and shall not relieve the other Party from responsibility for complying with the requirements of this Agreement nor shall it be construed as a waiver of any rights under this Agreement except as and to the extent otherwise expressly provided in such approval or consent, or elsewhere in this Agreement.
- 24.7 **Severability:** In the event that any of the terms of the Contract Documents are found to be invalid, unlawful or unenforceable, such terms will be severable from the remaining terms, which will continue to be valid and enforceable.
- 24.8 **Governing law & jurisdiction:** The law of South Africa and the jurisdiction of the South African courts shall govern this Agreement.

WE RECOMMEND THAT YOU PRINT THESE TERMS AND CONDITIONS FOR YOUR OWN RECORDS

