

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 **"Affiliate"** means in relation to any person, a holding or subsidiary company of such person
- 1.2 **"AFSA"** means the Arbitration Foundation of Southern Africa
- 1.3 **"Agreement"** means this document (Standard Terms and Conditions), the Quotation or LOE (Letter of Engagement) as the case may be, the terms and conditions below and all attachments hereto;
- 1.4 **"Authorised Users"** means those employees, agents and independent contractors of the Customer who are authorised by the Customer to use Subscription Services, as further described in clause 7.2.6, in accordance with their access rights set up as per Customer's instructions;
- 1.5 **"Commencement Date"** means the date of signature hereof or commencement of any service whichever occurs first;
- 1.6 **"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
- 1.7 **"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;
- 1.8 **"Customer"** is the person or juristic person reflected in the Letter of Engagement or Proposal or Quote.
- 1.9 **"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;
- 1.10 **"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;
- 1.11 **"Cyanre's Equipment"** means any computer network, software (installed at the Customer or Subscription Services software), system and information technology used by Cyanre to perform the Services;
- 1.12 **"Cyanre Locations"** means those locations as stated under the applicable Service Schedule;
- 1.13 **"Date of Signature Hereof"** means the date of the last signature to this Agreement;
- 1.14 **"Deficiency"** means with respect to a Deliverable any: (i) failure to meet the Relevant Specifications, (ii) error, problem, non-conformity or defect resulting in a deviation from relevant documentation or specifications of such Deliverable, or (iii) incorrect or incomplete documentation
- 1.15 **"Deliverables"** means any deliverable (software or hardware) to be delivered by Cyanre to the Customer in terms of the Service Schedule;
- 1.16 **"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;
- 1.17 **"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;

- 1.18 **"Enhancement"** means significant changes to the supported Software or any component thereof which results in the addition of a new feature or capability which is not present in the Relevant Specifications for such Software;
- 1.19 **"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;
- 1.20 **"Hardware"** means any hardware supplied to, procured, supported or maintained by Cyanre for, the Customer, including the operating system, all other environmental software components necessary for the proper functioning and operation of the hardware (including any firmware) installed upon or contained in such hardware and all the relevant documentation pertaining to such hardware and software (to be confirmed under the relevant Service Schedule);
- 1.21 **"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;
- 1.22 **"Intellectual Property Rights"** means, but shall not be limited to, concepts, know-how, data processing techniques, Confidential Information, copyrights, patents, designs, inventions, trademarks, which are created, invented and/or developed;
- 1.23 **"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;
- 1.24 **"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;
- 1.25 **"Live Environment"** the whole or any part of the Customer's information technology systems and equipment used in the actual conduct of the Customer's business and operations in the event of the whole or any part of Software being run on the Customer's live database;
- 1.26 **"Loan equipment"** means any hardware, network facilities and/or telecommunications facilities and/or any other equipment or utilities of whatever nature which Cyanre has lent or made available to the Customer regardless of whether or not such loan or availability is regulated in terms of a Service Schedule
- 1.27 **"New Release"** means a new release of the supported Software incorporating Upgrades, Bug-fixes or Enhancements to the supported Software and which is generally a replacement for the supported Software; for the sake of clarity, New Releases are usually identified by a change in the version number, for instance a change from version 1 to version 2;
- 1.28 **"Parties"** means Cyanre and the Customer and "Party" means either of them as the context may indicate;
- 1.27 **"Pattern Data"** means non-personally identifiable information, data and reports derived from or compiled through the Services, including but not limited to demographics data, mobility patterns, location data and trend data such as aggregated data and statistics indicating frequency of use and popularity of the Services. For greater certainty, Pattern Data is data that does not identify a specific customer or Authorised User or Data Subject and is data which does not relate to a specific customer's business (including data relating to a specific customer's locations that receive the Services).
- 1.28 **"Payment schedule"** means the payment schedule contained in a Service Schedule, governing the price and payment terms (where different from the payment terms as per this Agreement) of the Services;
- 1.29 **"Personnel"** means Cyanre employees, agents or authorised sub-contractors designated by Cyanre to perform Services;
- 1.30 **"Product"** means any product that is supplied by Cyanre to the Customer
- 1.31 **"Project Plan"** means the document to be jointly produced and agreed between the Parties prior to the start of the implementation Phase, which details tasks, responsibilities and timeframes to allow the acquired services to be active. The Project Plan shall form part of the Service Schedules
- 1.32 **"Proposal"** means the proposal as set out as set out under the particular Service Schedule (where applicable);
- 1.33 **"Quotation Validity"** A quotation is valid for 14 days unless stated differently
- 1.34 **"Relevant Specifications"** means in relation to any Software or Hardware, any criteria or standard which applies thereto, whether contained in any Service Schedule, any Documentation or

- Deliverables or any business requirements, functional requirements, architecture requirements, design specifications or technical specifications pertaining thereto which have either been agreed between the Parties or which are published by the proprietor, manufacturer or distributor of such Software or Hardware;
- 1.35 **"Resellers agreement"** agreement Cyanre has with the license holder/ product owner as reseller of any hardware/ software and includes the guarantees and warranties from the original supplier of the product
- 1.36 **"Scope briefing"** refers to the LOE where relevant.
- 1.37 **"Services"** means the services that are to be rendered by Cyanre to the Customer in accordance with this Agreement and the relevant Service Schedule;
- 1.38 **"Service Schedule"** means a document that contains the specific terms and conditions, description of a Service and service levels (where applicable);
- 1.39 **"Software"** means the Cyanre hosted software applications provided by Cyanre as part of the Services;
- 1.40 **"Subscription Services"** means those services that are subject to the issuing of subscriptions to Authorised Users and use of the Software as hosted at the Cyanre Locations for purposes of the Services;
- 1.41 **"Subsidiary company"** has the meaning determined in accordance with section 3 of the Companies Act of 2008
- 1.42 **"User Subscriptions"** means the user subscriptions purchased by the Customer pursuant to clause 7 which entitle Authorised Users to access and use certain Services (Subscription Services) in accordance with this Agreement and the specific Service Schedule;
- 1.43 **"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;
- 1.44 **"Virus/Malware"** means anything or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any device, programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including malware, worms, trojan horses, viruses and other similar programs or compromises the security of such device, data or storage location.
- 1.46 **"Warranty party"**-supplier of product / license / hardware / software
- 1.47 **"Writing"** or **"Written"** includes any hand-written, typewritten, facsimile or electronic communications unless electronic communications have been expressly excluded;
- 1.48 Clause and paragraph headings are for purposes of reference only and shall not be used in interpretation.
- 1.49 Unless the context clearly indicates a contrary intention, any word connoting:
- 1.49.1 any gender includes the other two genders;
- 1.49.2 the singular includes the plural and vice versa;
- 1.49.3 natural persons includes artificial persons and vice versa;
- 1.49.4 insolvency includes provisional or final sequestration, liquidation or judicial management.
- 1.50 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.
- 1.51 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.

- 1.52 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.
- 1.53 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.
- 1.54 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.
- 1.55 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. APPOINTMENT

- 2.1 The Customer hereby appoints Cyanre, and Cyanre hereby accepts such appointment, to perform the Services for and provide the Deliverables to the Customer, upon the terms and conditions contained in the Contract Document.

3. RELATIONSHIP

- 3.1 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;
- 3.2 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.

4. STATUS AND PRECEDENCE

- 4.1 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.
- 4.2 Cyanre agrees that at any time during the term of this Agreement the Customer may order Services from Cyanre or the Service Provider Affiliates (the **"Service Provider Contracting Party"**) by executing a Service Schedule, which shall be governed by, and incorporate, the terms and conditions of this Agreement, which together shall be dealt with as a contract (**"Contract"**) between the Parties.
- 4.3 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-
- 4.3.1 the description of Services, the terms and conditions in the Service Schedule shall prevail;
- 4.3.2 any other matter, this Agreement shall prevail.
- 4.4 **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.
- 4.5 **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.

5. TERM

- 5.1 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
- 5.2 Service Schedules:
- 5.2.1 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;
- 5.2.2 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");
- 5.2.3 Should Termination Notice at the end of a particular Service Initial period not be given in terms of clause 5.2.2 the particular Service shall automatically be renewed for the Subsequent period. Similar to the cancellation of the Initial period in 5.2.2, the Customer may during the subsequent periods terminate a particular Service at the end of each Subsequent period giving the other party 30 (thirty) days prior written notice.
- 5.2.4 Completion of any Service Schedule, the termination of a Service Schedule or the absence of order for additional Services or Deliverables shall not terminate this Agreement, it being the intent of the Parties to keep this Agreement in effect in the event of future orders for Services of Deliverables
- 5.2.5 Should Termination notice be given prior to the agreed service period, for whatever reason other than a breach by Cyanre, the Customer may be held liable for the full period costs
- 5.3 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.
- 5.4 Notwithstanding anything to the contrary contained under this Agreement, the Customer shall be entitled to cancel a Service order prior to the finalisation of the Enabling and implementation Services or Acceptance Date. Any such cancellation shall by way of notice sent in writing by the Customer to Cyanre and shall be effective on receipt or deemed receipt of such notice. Upon cancellation Cyanre shall be entitled to charge the Customer all costs and expenses as have been actually incurred by Cyanre or obligations has become necessarily bound arising from the relevant Service order, from the Signature Date of the Service schedule concerned up to the date of receipt or deemed receipt of such notice of cancellation.
- 5.5 Upgrades (as per Customer request) or additional User Subscriptions issued during the term of any Service Schedule will amend the Effective date of that particular Service to the date of activation of the upgraded Services.
- 5.6 **Activation of the Subscription Services ("Subscription Services"):**
The Subscription Services shall be deemed to have been evaluated by the Customer, accepted and activated on:-
- 5.6.1 the issuing of the initial login and passwords for the authorised users by Cyanre as per instructions of the Customer; or
- 5.6.2 in the event that the customer uses the whole or any part of the Subscription Services in a live environment; or
- 5.6.3 by any other date as agreed to in writing.
- 6. SERVICES / DELIVERABLES**
- 6.1 The Services and Deliverables to be performed or delivered by Cyanre will be as described in the Proposal and/or the applicable Service Schedule.
- 6.2 **Services will only be provided to the Customer on receipt of the signed Proposal or Services Schedule or Quote or receipt of a purchase order or written instruction to commence with the Services.**
- 6.3 The Services will be performed at agreed Service Location(s) or other locations as may be advised by the Customer from time to time. All Subscription Services shall be performed from Cyanre Locations;
- 6.4 Nothing contained in clause **Error! Reference source not found.** shall affect Cyanre's right to exercise its own judgement and to utilise its skills as it considers most appropriate in order to achieve compliance with the said resolutions and directions or otherwise to comply with its obligations under any Contract.
- 6.5 Cyanre shall use commercially reasonable endeavours to make Subscription Services available 24 hours a day, seven days a week, except for:
- 6.5.1 planned maintenance carried out during the maintenance window of 10.00 pm to 4.00 am; and
- 6.5.2 unscheduled maintenance performed outside normal business hours, provided that Cyanre has given the Customer at least 6 (six) Normal Business Hours' notice in advance where reasonably possible. In certain emergency maintenances Cyanre may not be able to provide 6 (six) Normal Business Hours' notice.
- 6.6 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. During an Enabling and Implementation Phase (where applicable) no Service levels will apply;
- 6.7 Unless otherwise agreed to under a Service Schedule, work will be performed during Cyanre's business hours (7h30 to 16h00 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;
- 6.8 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)
- 6.9 Request for additional or new Services or Deliverables:**
- 6.9.1 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 –
- 6.9.1.1 the nature of and scope of the services; or
- 6.9.1.2 the specification and quantity of the services / deliverables required together with any other requirements or information which is relevant to the provision of additional services or deliverables.
- 6.9.2 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)
- 6.9.3 If an instruction is received for work falling outside the original scope and outside of what is included in our proposal without a request from the Customer to first supply a cost proposal, the instruction to perform such work will serve as financial authorisation for such additional work.
- 6.9.4 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.
- 6.9.5 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 proportioned for the remainder of the applicable period.
- 6.10 **Acceptance of proposal (new Services or amended Services):** The Customer may accept or reject any proposal in its sole discretion, without providing reasons therefore 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. **Should the proposal be acceptable to the Customer, the Parties will execute a Service Schedule or where it relates to amendment to existing Services and / or Deliverables under an existing Service Schedule, amend the Service Schedule and Project Plan (where applicable), alternatively attached to the existing Service Schedule an addendum, to reflect**

the above information, together with any additional or new terms and conditions upon which such services or deliverables will be provided.

- 6.11 **Scope change:** Cyanre will only proceed with the execution of scope change ("Scope Change Request") as approved in writing by Cyanre. Cyanre will deploy the scope changes, after acceptance of the Scope Change Request. The Customer is required to verify and sign off that the scope change has been deployed correctly at site sign off.
- 6.12 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.
- 6.13 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.
- 6.14 The Customer acknowledges that it is the Customer's obligation to operate, manage, run and control its business and business processes. The Customer shall check and verify that the Service (or any relevant part thereof) is performing according to its specifications in order to prevent or at least minimise configuration errors and / or omissions and shall alert Cyanre of any problems experience the Customer may experience.
- 6.15 In the performance of the Services Cyanre shall rely on information and materials as received from the Customer or Third Party Service providers (as directed by the Customer). Unless agreed to otherwise under a Service Schedule, Cyanre has no editorial rights to the information and will rely on the information as-is received from the Customer or any third party service provider as directed by the Customer in the execution of the Services; there is no obligation on Cyanre to verify or investigate the accuracy of such information or materials.
- 6.16 **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:-
- 6.16.1 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
- 6.16.2 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;
- 6.16.3 modification or alteration of the Services by any party other than Cyanre or Cyanre's duly authorised contractors or agents.
- 6.16.4 the non-availability or incorrect functioning of any Customer Equipment;
- 6.16.5 An event as per clause 24 below (Force Majeure) and notwithstanding the foregoing, Cyanre continues to use reasonable efforts to perform and to minimize the impact of such failure.
- 6.17 **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:
- 6.17.1 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

- 6.17.2 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.
- 6.18 Cyanre shall ensure that all licenses and support arrangements that it has with third parties for the provision of the Services or Deliverables in a Service Schedule are maintained in force. Cyanre shall, upon request by the Customer from time to time, provide the Customer with evidence that these are being maintained in force.
- 6.19 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).

7. GRANT OF RIGHTS AND USER SUBSCRIPTIONS

Certain Services are subject to the purchase of User Subscriptions as per the specific Service Schedule. For purposes of User Subscriptions the following shall apply:-

- 7.1 subject to the Customer purchasing the User Subscriptions in accordance with **Error! Reference source not found.** and clause **Error! Reference source not found.**, the restrictions set out in this clause 7 and the other terms and conditions of the Contract Documents, Cyanre hereby grants to the Customer a non-exclusive, non-transferable right to permit the Authorised Users to use the Subscription Services during the Service Schedule Term solely for the Customer's internal business operations.
- 7.2 In relation to the Authorised Users, the Customer undertakes that:
- 7.2.1 the maximum number of Authorised Users that it authorises to access and use the Services shall not exceed the number of User Subscriptions it has purchased from time to time;
- 7.2.2 it will not allow or suffer any User Subscription to be used by more than one individual Authorised User unless it has been prior approved by Cyanre and reassigned in its entirety to another individual Authorised User, in which case the prior Authorised User shall no longer have any right to access or use the Services;
- 7.2.3 each Authorised User shall keep a secure password for his use of the Services, that such password shall be changed no less frequently than each month and that each Authorised User shall keep his password confidential;
- 7.2.4 it shall maintain a written, up to date list of current Authorised Users and provide such list to Cyanre within 5 (five) Business Days of Cyanre's written request at any time or times;
- 7.2.5 it shall permit Cyanre to audit the Subscription Services in order to establish the name and password of each Authorised User. Such audit may be conducted no more than once per quarter, at Cyanre's expense, and this right shall be exercised with reasonable prior notice, in such a manner as not to substantially interfere with the Customer's normal conduct of business;
- 7.2.6 if any of the audits referred to in clause 0 reveals that any password has been provided to any individual who is not an Authorised User, then without prejudice to Cyanre's other rights, the Customer shall promptly disable such passwords and Cyanre shall not issue any new passwords to any such individual unless otherwise agreed to in writing between the parties; and
- 7.2.7 if any of the audits referred to in clause 7.2.5 reveal that the Customer has underpaid Subscription Fees to Cyanre, Customer shall pay to Cyanre an amount equal to such underpayment as calculated in accordance with the prices set out in the applicable Service Schedule, within 15 (fifteen) Business Days of the date of the relevant audit.
- 7.3 The Customer (and its employees or contractors) shall not, except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties:
- 7.3.1 and except to the extent expressly permitted under this Agreement or Service Schedule, attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the software and/or Documentation (as applicable)

- 7.3.2 in any form or media or by any means; or attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or
- 7.4.3 access all or any part of the Services and Documentation in order to build a product or service which competes with the Services and / or the Documentation; or
- 7.3.4 use the Services and / or Documentation to provide services to third parties; or
- 7.3.5 license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Documentation available to any third party except the Authorised Users, or
- 7.3.6 attempt to obtain, or assist third parties in obtaining, access to the Services and / or Documentation, other than as provided under this clause 0 above.
- 7.4 the Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and / or the Documentation and, in the event of any such unauthorised access or use, promptly notify Cyanre.
- 7.5 An Authorised User may have access to various projects or cases via the Services, as instructed by the Customer. Cyanre shall issue each Authorised User with one username and password with access rights and limits as instructed by the Customer.
- 7.6 The rights provided under this clause 7 are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer, unless agreed to in writing between the Parties.

8. THIRD PARTY SERVICE PROVIDER INTERACTION

- 8.1 Where Cyanre is required in terms of any Service Schedules to interact with any Customer-appointed subcontractors, suppliers and vendors pursuant to the third party contracts, the following terms and conditions will apply:-
 - 8.1.1 Cyanre shall co-operate in good faith with the Customer and such third parties;
 - 8.1.2 Where third parties require access to Cyanre's Confidential Information (excluding financial information) to provide the services, Cyanre shall be entitled to require that such third parties retained by the Customer undertake to protect Cyanre's confidential information by entering into a confidentiality undertaking directly with Cyanre.
 - 8.2.2 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, but Cyanre agrees to use reasonable endeavours to advise the Customer of any approvals or licences required pursuant to the third party contracts to the extent that Cyanre becomes aware thereof;
 - 8.2.4 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.
 - 8.1.2.1 Prior to any integration, the Third Party Service Providers shall sign the Cyanre standard Integration Agreement and Data Processing Agreement (where Personal Information will be processed) and such other terms and conditions, policies and or standards as prescribed by Cyanre from time to time; and
 - 8.1.2.2 All APIs or integration information or development for purposes of the

integration and any enhancements thereto shall remain the property of Cyanre and shall only be utilised for purposes of integration to the Services.

- 8.1.2.3 Cyanre, shall not be liable for any damages, losses or claims toward the Customer where Cyanre terminates the Integration Agreement with the Third Party Service Provider as a result of the Third Party Service Provider's breach of any term or condition under said agreement;

8.2 Cyanre shall not be liable for any act or omission of a third party contractor.

9. IMPLEMENTATION AND ACCEPTANCE TESTING

- 9.1 Implementation
 - 9.1.1 Certain Services require the necessary implementation / installation / set-up / activation of Software. Prior to the commencement of any project, the dates and milestones to be achieved during the implementation of a Service shall be agreed to between the parties. All project related information shall be captured in the Project Plan;
 - 9.1.2 Cyanre's standard Project Management Services and methodology will apply during each project;
 - 9.1.3 The Customer shall ensure that key personnel are available:-
 - 9.1.3.1 to attend the necessary workshops and be able to make decisions with regard to the Customer's business to ensure a successful Implementation; and
 - 9.1.3.2 to attend training where required;
 - 9.1.4 All project constraints, issues and risks shall be addresses and captured in the Project Plan prior to the implementation of any Deliverable;
 - 9.1.5 The Customer shall ensure that the necessary hardware and software infrastructure at the Customer (as per specifications from Cyanre) are available before any Configuration, setup and training can commence. Any delay in the availability of the required infrastructure will delay the delivery date of the Project Plan;
- 9.2 Cyanre's obligation to present Deliverable for Acceptance Testing: Cyanre acknowledges that each Deliverable requires formal acceptance by the Customer, which can only be accomplished in accordance with this clause **Error! Reference source not found..** Cyanre shall present the Deliverable to the Customer at the location designated by the Customer for Acceptance Testing.
- 9.3 Purpose of Acceptance Testing: Acceptance Testing shall be conducted in accordance with the Acceptance Testing procedures (applicable to the specific Service Schedule) to determine whether the Deliverable complies with any applicable documentation and the Relevant Specifications.
- 9.4 Duties of Cyanre in Acceptance Testing: Cyanre shall assist the Customer, to the extent reasonably requested by the Customer, in conducting the Acceptance Testing and shall respond to any queries relating to the Deliverable within a reasonable time. In the event that the relevant Customer resources are not available for a period of more than 2 (two) Business Days after the date scheduled for the acceptance test Cyanre shall be entitled to conduct the acceptance test without the assistance of the Customer.
- 9.5 Acceptance:
 - 9.5.1 The Deliverable(s) shall be accepted on receipt of Customer's written confirmation of successful acceptance test.
 - 9.5.2 The Customer shall test the Deliverable (or any relevant part thereof) on its Test Environment prior to using the Deliverable (or any part thereof) on its Live Environment.
 - 9.5.3 In the event that the Customer uses the whole or any part of the Deliverable in a Live Environment prior to conclusion of the acceptance test procedure(s) such part of the Deliverable will be deemed to have been accepted by the Customer.
- 9.6 Acceptance Testing applies to Upgrades, New Releases and Enhancements: The provisions of this clause **Error! Reference source not found.** apply to all Deliverables including all Upgrades, New Releases and Enhancements.
- 9.7 Cyanre's obligation to remedy Deficiencies: If the Customer discovers a Deficiency, the Customer shall promptly inform Cyanre thereof. Cyanre shall correct each such Deficiency within 72 (seventy two) hours of receiving the Customer's notice of such Deficiency, or where it is not reasonably possible to do so, within such longer period as the Parties, both acting reasonably, may determine.
- 9.8 Customer's right of rejection: After the Deliverable has been subjected to further Acceptance Testing, if the Customer does not accept the Deliverable it shall give Cyanre written notice of its rejection (including a written description of Deficiencies in order to enable Cyanre to remedy the same) and a final period of 14 (fourteen) days within which to correct the Deficiencies. If Cyanre is

- unable to correct the Deficiencies within this period, then the Customer may in its sole discretion elect to:
- 9.8.1 direct Cyanre to continue its efforts to make the Deliverable comply with the Relevant Specifications, in which case the Cyanre shall continue such efforts; or
 - 9.8.2 accept the Deliverable with its Deficiencies, in which event the charges with respect to such Deliverable shall be equitably reduced to reflect the presence of such Deficiencies and in which regard the Customer shall be entitled to determine the extent of such equitable reduction and Cyanre shall, if it disputes such determination, bear the onus of proving the contrary; or
 - 9.8.3 reject the Services and/or Deliverables under acceptance testing, by written notice to Cyanre, in which case Cyanre shall within 14 (fourteen) days of demand refund to the Customer those amounts paid in advance for the Services and / or Deliverables, pro rata for the term that the Customer will not be utilising same. Upon such payment Cyanre shall be entitled to remove the Deliverables in respect of which any such rejection has been effected.
- 9.9 The Customer acknowledges that it is the Customer's obligation to operate, manage, run and control its business and business processes. The Customer shall check and verify that the Deliverable (or any relevant part thereof) is performing according to its specifications in order to prevent or at least minimise configuration errors and/or omissions and shall alert Cyanre of any problems experience.
- 9.10 Timeous Acceptance Testing: Subject to the full co-operation of Cyanre and the number, severity and impact of the Deficiencies identified by the Customer during the Acceptance Testing process, the Customer shall use reasonable endeavours to complete the Acceptance Testing and accept or reject the Deliverable within the time periods set forth in a Service Schedule. In the event that the Customer does not confirm acceptance or decline such services within the timeframe as per the relevant Service Schedule, then Services and / or Deliverables delivered shall be deemed to be accepted by the Customer.

10. LOAN EQUIPMENT

- 10.1 **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").
- 10.2 **Conditions of loan:** 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.

- 10.3 **Return:** The Customer shall return such Loan Equipment to Cyanre on termination of the loan period in the same condition in which it was received, fair wear and tear excepted and shall remedy, to the reasonable satisfaction of Cyanre, any damage to the Loan Equipment sustained whilst under its care; alternatively, in the event of the Loan Equipment being damaged beyond repair the Customer shall upon written demand by Cyanre, forthwith replace such Loan Equipment with new equipment of equal or better standard, quality and specification.

11. CYANRE OBLIGATIONS

Cyanre shall:

- 11.1 render the Services, as stipulated under each Service Schedule, substantially in accordance with the Documentation and with reasonable skill and care;
- 11.2 perform such Services at agreed Service Location(s) or other locations as may be advised by the Customer from time to time. All Subscription Services shall be performed from Cyanre Locations;
- 11.3 maintain professional standards of conduct in relation to the Customer's representatives and employees with whom Cyanre has contact;
- 11.4 refrain from any action, which may prejudice or be adverse to the business interests of the Customer or its customers;
- 11.5 have a communication facility available to be reached by the Customer at agreed times prior to the completion of a Services;
- 11.6 Cyanre shall ensure that all licenses and support arrangements that it has with third parties for the provision of the Services or Deliverables in a Service Schedule are maintained in force. Cyanre shall, upon request by the Customer from time to time, provide the Customer with evidence that these are being maintained in force.

12. CUSTOMER'S OBLIGATIONS

The Customer shall:

- 12.1 provide Cyanre with:
 - 12.1.1 all necessary co-operation in relation to the Contract Documents; and
 - 12.1.2 all necessary access to such information as may be required by Cyanre; in order to render Services, including but not limited to Customer Data, security access information and configuration services;
- 12.2 comply with all applicable laws and regulations with respect to its activities under any Contract;
- 12.3 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;
- 12.4 ensure that the Authorised Users use the Subscription Services and the Documentation in accordance with the terms and conditions of the Contract and such other terms and conditions available when accessing the Software. The Customer shall be responsible for any Authorised User's breach of same;
- 12.5 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;
- 12.6 ensure that its network and systems comply with the relevant specifications provided by Cyanre from time to time
- 12.7 be solely responsible for procuring and maintaining its network connections and telecommunication links from its systems to Cyanre's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunication links or caused by the internet
- 12.8 not unreasonably interfere with the activities of the Cyanre representatives in execution of the Services;
- 12.9 provide adequate working space and all necessary facilities and use of all information and facilities to Cyanre representatives **including**, without limiting the generality of the foregoing, consumables, hardware and software, telephone, fax and e-mail facilities and personnel deemed necessary by Cyanre to provide the Services

13. PERSONNEL AT THE CUSTOMER'S PREMISES

- 13.1 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.
- 13.2 Cyanre shall 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.
- 13.3 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.
- 13.4 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.

14 FEES AND PAYMENT TERMS

- 14.1 The fees payable by the Customer to Cyanre shall be as set out in each Service Schedule ;
- 14.2 **Default provisions.** Unless otherwise agreed in terms of a Service Schedule or Proposal -
- 14.2.1 Cyanre requires a PO (Purchase Order), signed quote or signed Service Schedule before commencing, scheduling and/or planning any work request;
- 14.2.2 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:
- 14.2.2.1 Unplanned after hours support work where an immediate resolution is required a PO upfront would delay an immediate resolution of the problem;
- 14.2.2.2 Any on-site support provided whereby it is difficult to ascertain the time upfront.
- 14.2.3 the Customer shall pay the Fees within 30 (thirty) days from date of an undisputed statement 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;
- 14.2.4 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>
- 14.2.5 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 Agreement unless scope of work in the relevant Service Schedule has not been signed-off for a valid reason by the Customer;
- 14.2.6 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% (five per cent) or 10% (ten per cent), whichever is the highest, unless otherwise agreed to under a Service Schedule;

- 14.2.7 Cyanre may, in its sole discretion and notwithstanding any instructions by Customer, appropriate any payment received from or on behalf of Customer, to any indebtedness of Customer to Cyanre arising from any cause whatsoever.
- 14.2.8 All prices and/or costs quoted by Cyanre shall be inclusive of all applicable taxes but excluding South African Value Added Tax, 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.
- 14.2.9 Travel costs and accommodation costs, (50km outside of Cyanre's location are not inclusive of the Service and/or Deliverable charges.
- 14.2.9.1 Cyanre's standard hourly rate will apply for travel time, and
- 14.2.9.2 Cyanre's standard travel and accommodation rates shall apply
- 14.2.9.3 All the above costs shall be subject to prior approval from the Customer where reasonably possible
- 14.2.10 Currency/Index-linked products / solutions (as indicated under the Service Schedule) may have their price adjusted between proposal / quotation date and invoice date, with reference to the exchange rate as available on <http://www.xe.com/>, on the day of issuing the invoice to the Customer;
- 14.3 It is agreed that should there be a subsequent price increase on components of the Services or Deliverables 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.
- 14.4 If, at any time whilst using the Services, the Customer exceeds the amount of disk storage space / data usage bracket specified in Documentation or Service Schedule, Cyanre shall be entitled to charge the Customer, and the Customer shall pay, the data usage fee as per the next data bracket stipulated under the relevant Service Schedule.
- 14.5 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: -
- 14.5.1 following a 14 (fourteen) days written notice period of its intention to suspend the Services, disable the Customer's password, account and access to all or part of the Services and Cyanre shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid. Usage of the Services will only be restored once Cyanre, at its sole discretion, is satisfied with the circumstances of any such restoration. All costs and risks associated with service suspension and re-connection will be borne by the Customer; and
- 14.5.2 charge 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 cent)

15. NON-SOLICITATION

- 15.1 Neither Party shall, 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 person who is an employee of the other party or was an employee within 12 (twelve) months prior to termination of this Agreement, without the other Party's written consent;
- 15.2 The restraint referred to in 15.1 shall not be applicable in the event where the prior written approval to make such an offer has been obtained from the Cyanre who is or has been the employer of such staff member.
- 15.3 For the purpose of this clause "staff member" shall include, but not be limited to permanent employees, part-time employees and any other contractor utilised for particular Services and / or Deliverables.
- 15.4 The above restraints shall endure also in favour of the successors-in-title. The term Successors-in-title shall mean any person who:-

- 15.4.1 acquires the business; or
- 15.4.2 acquires the goodwill of the business; or
- 15.4.3 becomes beneficial owner of such goodwill through his/her shareholding in any company;
- 15.4.4 has acquired by cessions the right to enforce the restraints embodied herein

16. CONFIDENTIAL INFORMATION

- 16.1 For the purpose of this Agreement, Confidential Information shall not include:
 - 16.1.1 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
 - 16.1.2 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.
- 16.2 Each Party hereby undertakes to the other that it shall:
 - 16.2.1 keep confidential the existence and terms and conditions of the Contract Documents;
 - 16.2.2 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;
 - 16.2.3 not use the Confidential Information or any part thereof except for the performance of its obligations under the Contract Documents;
 - 16.2.4 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
 - 16.2.5 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.
 - 16.2.6 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;
- 16.3 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 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.
- 16.4 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;

- 16.5 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;
- 16.6 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.
- 16.7 Cyanre reserves the right to use the name of the customer as a reference in proposals, presentations or similar submissions to other prospective customers, unless the customer expressly forbids such disclosure on reasonable grounds and only if no information regarding the matter is placed in the public domain.
- 16.8 The obligations in this clause shall survive in perpetuity.

17. THE CUSTOMER DATA

- 17.1 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 and/or Deliverables or as directed by the Customer and shall not obtain any proprietary rights in the Customer Data. The Customer hereby grants to Cyanre (and Cyanre's contractors as necessary) a non-exclusive, royalty free licence to process the Customer Data as an Operator for the purpose of providing the Services and/or Deliverables or as directed by the Customer for the duration of the Agreement.

17.2 Processing of Customer Data:

- 17.2.1 The Customer shall determine what Customer Data needs to be uploaded and made available for purposes of the Services.
- 17.2.2 Customer Data shall be made available to Cyanre in a format as per the Cyanre specifications.
- 17.2.3 The Customer shall not upload, access, store, distribute or transmit any Malware, 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 Malware free. The Customer hereby indemnifies Cyanre against any claim and liability whatsoever that may result from an upload of a Malware. To protect Cyanre systems and to limit any risks associated with Malware and without any prejudice to any other right Cyanre may have (but not obliged to);
 - 17.2.3.1 disable the Customer's access to any material that breaches the provisions of the clause and/or automatically, through its software, remove Malware from the information/data \ loaded. This may result in certain information to be removed;
 - 17.2.3.2 Cyanre shall process Customer Data on instructions from the Customer and process the Customer Data as Confidential Information;
- 17.2.4 Cyanre shall make Customer Data available to Authorised Users or such 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 except as per the access rights granted to the third party as per the Customer's instructions.
- 17.3.6 As a result of Cyanre:-
 - 17.3.6.1 not initiating the transmission of Customer Data without the instructions of the Customer;
 - 17.3.6.2 not selecting the addressee / third party to whom the Customer Data (or part thereof) must be submitted to;
 - 17.3.6.3 not modifying the Customer Data
 - 17.3.6.4 complies with the conditions of access to Customer Data; or
 - 17.3.6.5 not having actual knowledge that the Customer Data or an activity relating to the Customer Data is infringing the rights of a third party; or

17.3.6.6 not being aware of facts or circumstances from which the intriguing activity or the infringing nature of the Customer Data is apparent

17.3.8.7 not modifying the Customer Data contained in the transmission

Cyanre shall not be liable for damages arising from Customer Data stored at the request of the Customer of the Service or for providing access to or for operating facilities for information systems or transmitting, routing or storage of the Customer Data via an information system under Cyanre's control, unless in breach of its obligations under this Agreement.

17.3.9 Cyanre is further entitled to licence the Services to any other customer (including customers on the same matter/case as the Customer)

17.4 Privacy and Data Protection

17.4.1 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.

17.4.2 The Customer remains solely responsible for determining the purposes and means of Cyanre's processing of Customer Data under any Contract Document.

17.4.3 The Customer is and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data;

17.4.4 Cyanre shall, in providing the Services, comply with its (privacy and Security Policy) relating to the privacy and security of the Customer Data available on request, as such document may be amended from time to time by Cyanre in its sole discretion.

17.4.5 Where the Customer and another customer are working on the same case/matter, Cyanre will:

17.4.5.1 allocate separate project managers for the respective parties, and

17.4.5.2 ensure that the Customer Data is kept separate and secure the other party's data

17.5 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:

17.5.1 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;

17.5.2 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;

17.5.3 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.

17.5.4 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.

17.5.5 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.

17.5.6 (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;

17.5.7 Provisions of Information

17.5.7.1 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 such services.

17.5.8.2 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.

17.5.8.3 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.

17.5.8.4 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.

18. INTELLECTUAL PROPERTY RIGHTS

18.1 Without limitation to the aforesaid, the Customer acknowledges and agrees that Cyanre and/or its licensors own and retain all existing and future intellectual Property Rights in the Services (including but not limited to the Software utilised for purposes of the Services), the Documentation and Pattern Data that may be as a result of utilisation of the Services. Except as expressly stated herein, this Agreement does not grant the Customer or Authorised User any Intellectual Property Rights or any other rights or licences in respect of the Services, 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.

18.2 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.

18.3 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.

18.4 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

- 18.5 Prior to the commencement date of the Service Schedule, the Customer shall at its own expense procure the grant of such licences or permissions to Cyanre as are necessary under the terms of any third-party licences, leases, rental or other agreement in respect of Cyanre's use of third-party software for the purposes of providing the Services.
- 18.6 Ownership of the third-party software, including all Intellectual Property Rights in it, shall remain in the relevant third party.

19. LIMITATION OF LIABILITY

- 19.1 Unless otherwise agreed to under this Agreement or any Service Schedule, this clause 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:
 - 19.1.1 any breach of this agreement;
 - 19.1.2 any use made by the Customer of the Services and Documentation or any part of them; and
 - 19.1.3 any representation, statement or tortious act or omission (including negligence) arising under or in connection with this agreement.
- 19.2 Except as expressly and specifically provided in any Contract Document:
 - 19.2.1 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;
 - 19.2.2 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
 - 19.2.3 the Services and the Documentation are provided to the Customer on an "as is" basis.
- 19.3 Nothing in this agreement excludes the liability of either Party:
 - 19.3.1 for death or personal injury caused by either party's negligence; or
 - 19.3.2 for fraud or fraudulent misrepresentation.
- 19.4 Subject to clause 19.2 and clause 19.3:
 - 19.4.1 Neither party shall 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
 - 19.4.2 Each Party'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 on a specific project /instruction during the preceding three (3) months duration of the relevant Service Schedule immediately preceding the date on which the claim arose.

20. INDEMNITY

- 20.1 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:
 - 20.1.1 the Customer is given prompt notice of any such claim
 - 20.1.2 Cyanre provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and
 - 20.1.3 the Customer is given sole authority to defend or settle the claim.
- 20.2 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.
- 20.3 In no event shall Cyanre or its employees, agents and subcontractors be liable to the Customer to the extent that the alleged infringement is based on:
 - 20.3.1 a modification of the Services or Documentation by anyone other than Cyanre; or
 - 20.3.2 the Customer's use of the Services or Documentation in a manner contrary to the instructions given to the Customer by Cyanre; or
 - 20.3.3 the Customer's use of the Services or Documentation after notice of the alleged or actual infringement from Cyanre or any appropriate authority.
- 20.4 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, trademark, database right or right of confidentiality.
- 20.5 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 willful misconduct or fraud of such Party or its Personnel.

21. WARRANTIES

- 21.1 In addition to those specific warranties under any Service Schedule, Cyanre warrants that in relation to Service provided in terms of a Service Schedule -Each Party warrants to the other Party that:
 - 21.1.1 it, and where applicable Cyanre personnel, will possess and have the right to use the knowledge and expertise sufficient to enable Cyanre to provide the Services and/or Deliverables;
 - 21.1.2 the Services and/or Deliverables shall be provided in:
 - 21.1.2.1 a proper and professional manner by suitably qualified personnel
 - 21.1.2.2 accordance with all applicable laws and regulations.
 - 21.1.3 Cyanre and Cyanre's Personnel will comply with their obligations in terms of this Agreement with the care and diligence required in accordance with the best practice and standards prevailing in Cyanre's industry
- 21.2 The Customer warrants that it has not been induced to enter this Agreement by any prior representations, warranties or guarantees, whether oral or in writing, except as expressly contained in this clause or a Service Schedule.
- 21.3 Except as expressly stated in this Agreement or any subsequent Service Schedule, all conditions and warranties whether express or implied, statutory or otherwise (including but not limited to any conditions or warranty for, fitness for purpose satisfactory quality, usefulness or timeliness) are excluded to the extent permitted by law.
- 21.4 The Customer warrants that: -
 - 21.4.1 in the event that Cyanre Personnel are required to use software owned or operated by the Customer, the Customer warrants all necessary user licences have been obtained in advance;
 - 21.4.2 the use of Customer Data provided by the Customer to Cyanre does not and will not infringe the Intellectual Property Rights of any other persons; and
 - 21.4.3 the Customer hereby indemnifies and holds harmless from any claim for damages by any third party as a result of the breach of this warranty, including all costs incurred

- 21.4.4 on an attorney and own client basis.
has full capacity and authority and all necessary licences, permits and consents to enter into and to perform this Agreement;

22. BREACH AND TERMINATION

- 22.1 Should either party;
- 22.1.1 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.
- 22.1.2 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;
- 22.1.3 be placed in liquidation or under judicial management or curatorship (in either case, whether provisionally or finally); or
- 22.1.4 effect a compromise with its creditors; or
- 22.1.5 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
- 22.1.6 fails to satisfy any final judgement against it within 21 days of the date when it should have become aware of such judgement; or
- 22.1.7 there is a change of control, 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 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.
- 22.3 No party may cancel this Agreement on the grounds of a breach of a term of this Agreement unless the breach is material.
- 22.4 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;
- 22.5 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.

- 22.6 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.

23. CONSEQUENCES OF TERMINATION

- 23.1 The effect of terminating this Agreement will be to terminate the ability of either Party to enter into subsequent Service Schedules that incorporate the terms of this Agreement. Termination of this Agreement will not, by itself, result in the termination of any Service Schedules previously entered into (or extensions of the same) that incorporate the terms of this Agreement. The terms of this Agreement will continue in effect for the purposes of such Service Schedules unless and until the Service Schedule itself is terminated or expires.
- 23.2 Upon termination or expiry of any Service Schedule:-
- 23.2.1 Cyanre shall cease work as per the terminated Service Schedule;
- 23.2.2 Cyanre shall prepare and submit to the Customer an itemization of all completed and partially completed Services;
- 23.2.3 Cyanre shall deliver to the Customer the Services completed up to the date of termination at the agreed upon Fees; and
- 23.2.4 Cyanre shall deliver upon request any work in process;
- 23.2.5 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.
- 23.2.6 In terms of licensed Software (as part of the Service): all of Customer's right to use the Software shall immediately cease and Customer shall (i) (where applicable) immediately purge all copies of the Software from all CPUs and from any storage device on which the Customer has placed or permitted others to place copies of the Software in whole or in part; and (ii) at its own cost, and at the election of Cyanre, either return to Cyanre, or destroy the Software and User Documentation and shall not remove any extracts, copies or summaries thereof, and (iii) furnish Cyanre with a certificate, signed by a duly authorised representative of the Customer, confirming the return or destruction, as the case may be, of the Software and Documentation; and
- 23.2.7 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.
- 23.3 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.
- 23.4 Any termination of a Contract Document (howsoever occasioned) shall not affect any accrued rights or liabilities of either party, nor shall it affect the coming into force or the continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination.

24. FORCE MAJEURE

- 24.1 Neither Party will be liable to the other for any default or delay in the performance of its obligations under Contract Documents:
- 24.1.1 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
- 24.1.2 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
- 24.2 Following any Circumstance of Force Majeure, the non-performing Party shall, subject to clause 23.5 below:
- 24.2.1 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;
- 24.2.2 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;
- 24.2.3 co-operate with other Party in implementing such contingency measures as the other Party may require.
- 24.3 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.
- 24.4 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.
- 24.5 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.

25. DISPUTE RESOLUTION

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

- 25.1 **Informal dispute resolution:** Prior to referring any dispute to arbitration, the Parties shall first attempt to resolve their dispute informally by referring to their senior management. Senior management of both Parties shall discuss the issue in dispute and attempt to resolve the dispute, without the necessity of any formal proceeding, within 14 (fourteen) Business Days of the dispute having been referred.
- 25.2 **Informal dispute resolution does not reduce Parties' rights:** Proceedings in terms of this clause 25.1 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.
- 25.3 **Institution of Formal Proceedings:** Subject to the provisions of clauses 25.1 and 25.2, 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 25.4.
- 25.4 **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 25.3, then such dispute shall on written demand by the electing Party be submitted to arbitration at AFSA against the Expedited

Rules of AFSA.

- 25.5 **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.
- 25.6 **Continued performance:** Each Party agrees to continue performing its obligations under the Agreement while any dispute is being resolved.
- 25.7 **Rapid resolution of disputes:** The Parties shall use commercially reasonable efforts to resolve disputes arising as rapidly as possible.
- 25.8 **Confidentiality:** All disputes will be dealt with in confidentiality to protect the reputation of the parties
- 25.9 **Excluded relief:** This clause 25 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.
- 25.10 **Agreed Jurisdiction:** the Parties hereby consent to the jurisdiction of the North Gauteng High Court (Pretoria) in respect of proceedings referred to in clause 25.3 above.

26. NOTICES AND LEGAL PROCESS

- 26.1 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:**
- 26.1.1 Physical address: 244 Jean Avenue, Norma Jean Square, Building 5, Centurion
- 26.1.2 Email: marius@Cyanre.co.za (information officer)
- Customer:**
- as per the proposal or Service Schedule address which is not a post office box or poste restante.
- 26.2 Any notice required or permitted under this Agreement shall be valid and effective only if in writing.
- 26.3 Either Party shall be entitled from time to time, by written notice to the other, to vary its address to any other address which is not a post office box or poste restante.
- 26.4 Any notice to either party which is -
- 26.4.1 sent by prepaid registered post in a correctly addressed envelope to the address specified for it under clause 26.1 above 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
- 26.4.2 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
- 26.4.3 sent by fax to a party at the telefax numbers specified above, shall be deemed to have been received, unless the contrary is proved, within 4 (four) hours of transmission if it is transmitted during normal business hours of the receiving party or within 12 (twelve) hours of the first business day of the receiving party after it is transmitted, if it is transmitted outside those business hours.
- 26.4.3 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.
- 26.5 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.

27. 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.

28. SUCCESSORS AND ASSIGNEES

28.1 This Agreement shall be binding upon, and endure to the benefit of, the parties and their respective successors and permitted assignees, and references to a party in this Agreement shall include its successors and permitted assignees.

28.2 In this Agreement references to a party include references to a person:

28.2.1 Who for the time being is entitled (by assignment, novation or otherwise) to that party's rights under this Agreement (or any interest in those rights); or

28.2.2 Who, as administrator, liquidator or otherwise, is entitled to exercise those rights;

And in particular those references include a person to whom those rights (or any interest in those rights) are transferred or passed as a result of a merger, division, reconstruction or other reorganisation involving that party. For this purpose, references to a party's rights under this Agreement include any similar rights to which another person becomes entitled as a result of a novation of this Agreement.

29. SUBCONTRACTING

Cyanre shall be entitled to subcontract any of its obligations under this Agreement to a third party provided always that Cyanre shall remain primarily responsible for the acts or omissions of such third party under this Agreement.

30. SOFTWARE, SOFTWARE LICENCE DOCUMENTATION, HARDWARE

30.1 Subject to the receipt of payment from the client, Cyanre will supply the relevant Software and software licence documentation and or hardware as the case may be.

30.2 The terms of use will be in line with the terms of the supplier. Cyanre as reseller does not make any additional warranties or guarantees than what is given by the official supplier of the product.

31. GENERAL AND MISCELLANEOUS

30.1 **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.

30.2 **No amendment excepts 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.

30.3 **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.

30.4 **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.

31.5 **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.

31.6 **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.

31.7 **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.

31.8 **Governing law & jurisdiction:** The law of South Africa and the jurisdiction of the South African courts shall govern this Agreement.

31.9 Counterparts

This Agreement and any Service Schedule may be signed in two or more counterparts, one or more of which may be delivered via email and the signed counterparts, taken together, shall constitute a binding agreement between the Parties.

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

