

VPS Networks – Terms of Service

(Version number: 1.0)

1. Introduction

These terms are the general terms of the relationship between us and you. The terms cover any transactions where we provide services to you. The commercial terms of any transaction will be contained in an order that will incorporate these terms. The order will prevail if there is a conflict of meaning. Nothing in the terms obligates any party to enter into any orders.

2. Definitions and interpretation

Definitions. In the agreement:

additional fee means a charge you must pay us for the supply of any services outside of an order, which charge must be made at our then current standard prices and rates, unless otherwise agreed in writing between us;

administrator means an authorised user in your employ who is authorised to provision, manage and administer certain services;

AFSA means the Arbitration Foundation of Southern Africa (or its successor or body nominated in writing by it in its stead);

agreement means the agreement between us and you, consisting of the terms and any orders the parties enter into;

authorised user means you or a user in your employ where you are a juristic person, who has been assigned credentials;

business day means any day other than a Saturday, a Sunday or a holiday (including a public or bank holiday) in the jurisdiction where our entity that entered into the relevant order is organised;

business hours means our normal business hours on business days;

contract year means, in respect of an order, each successive 12 calendar month period during the term of the order, calculated from the effective date;

control panel means the section on the website accessible by you through a web browser;

credentials means a unique user ID and password that has been assigned to an authorised user;

effective date means in respect of each order, the effective date stipulated in each order, in the absence of which it will be the date the order is accepted by us;

existing material means any code, forms, algorithms or materials developed by or for either party independently and outside of the agreement and provided during the course of the agreement;

fees means the fees, charges, or purchase consideration that you will pay to us in respect of services we provide under orders;

ICT means information, communication or technology;

order means a services order agreed to and signed by both the parties describing the specific services that we will provide to you;

our technology means any technology that we have created, acquired or otherwise have rights in and may, in connection with the performance of our obligations under the agreement, employ, provide, modify, create or otherwise acquire rights in and includes any: concepts or ideas; methods or methodologies; procedures or processes; know-how or techniques; function, process, system, data, or object models; templates; the generalised features of the structure, sequence and organisation of software, user interfaces and screen designs; general purpose consulting and software tools, utilities, routines or frameworks; logic, coherence and methods of operation of systems; and patches or enhancements to open source libraries;

personnel means any director, employee, agent, affiliate, consultant, contractor or other representative;

related and **related persons** means natural and juristic persons who are connected to one another in the manner contemplated in sections 2 and 3 of the Companies Act 71 of 2008;

services means any services we or related persons provide to you, under orders;

service levels means the levels according to which we will provide each service as agreed by parties in writing and signed;

sign means the handwritten signature, an advanced electronic signature, or an electronic signature that the parties agree to use, of each of our duly authorised representatives;

signature date means the date of signature by the party signing last;

tax means any:

- tax (including value added tax, income taxes, pay-as-you-earn tax or other taxes levied in any jurisdiction);
- duty (including stamp duty);
- tariff, rate, levy; or
- any other governmental charge or expense payable;

terms means the terms, consisting of:

- these terms of service; and
- any other relevant specific terms, policies, disclaimers, rules and notices that the parties agree on, (including any that may be applicable to any specific services);

third party contractor means any contractor, supplier, service provider or licensor of a part of the services, which is not a party to the agreement;

we, us, or our means VPS Networks CC, the service provider that enters into an order and, if specified in the order, those related to it;

third party software means all third party software owned by a third party but legally licensed to us for use in providing the services.

writing means the reproduction of information or data in physical form (includes handwritten documents, hard copy printouts and fax transmissions) or any mode of reproducing information or data in electronic form that the parties agree to use (like pdf), but excludes information or data in the form of email;

you or your means the customer that enters into an order and, if specified in the order, those related to it;

your data means your data (including information about an identifiable person) that:

- you (or any third party on your behalf) provide to us; or
- we generate, process, or supply to you in providing the services; but excludes any derived data that we create for our own internal purposes or which is proprietary or confidential to us or our third party contractors;

2.1 **Definitions in the order.** Words defined (or assigned a meaning) in an order will have that meaning in the terms, unless the context clearly indicates otherwise.

- 2.2 **Interpretation.** All headings are inserted for reference purposes only and must not affect the interpretation of the agreement. Whenever "including" or "include", or "excluding" or "exclude", together with specific examples or items follow a term, they will not limit its ambit. Terms other than those defined within the agreement will be given their plain English meaning. References to any enactment will be deemed to include references to the enactment as re-enacted, amended, or extended. A reference to a person includes a natural and juristic person and a reference to a party includes the party's successors or permitted assigns. Unless otherwise stated in the agreement, when any number of days is prescribed in the agreement the first day will be excluded and the last day included. The rule of construction that an agreement must be interpreted against the party responsible for its drafting or preparation does not apply. GMT +2 will be used to calculate any times.

- 2.3 **Conflict.** If there is a conflict of meaning between these terms and any order, the order will prevail in respect of your use of the relevant services.

3. Duration

The terms commence on acceptance and continue until terminated. Where the duration of this agreement is specified in an order, if you are a "consumer" for purposes of the Consumer Protection Act, you will be entitled to terminate the relevant service prior to the expiry of the term on 20 business day's written notice to us. However, we will be entitled to charge you an early termination fee.

4. Orders

- 4.1 **Capacity.** You represent and warrant that you (and any person who places an order):

- are old enough under applicable law to enter into the agreement;
- are legally capable of concluding any transaction;
- possess the legal right, full power, and authority to enter into the agreement;
- are authorised to use the credentials required for any account; and
- will submit true, accurate and correct information to us.

If you are younger than 18 years of age, you warrant that you have the consent of your legal guardian to enter into the agreement or that you have obtained legal status in another manner.

- 4.2 **Invitation to do business.** The marketing of the services by us is merely an invitation to do business or for you to make an offer to procure services. The parties only conclude a valid and binding order when we accept the offer made by you. Unless proven to the contrary, we only accept an offer relating to services, when we begin providing the services. We may accept or reject any offer. If we do not accept any offer, then we will refund any monies already paid by you.
- 4.3 **Deemed order.** You will be deemed to have placed an order in regard to services when you start consuming any services you have requisitioned automatically from the control panel, it being agreed that each click of a button to requisition a service constitutes a billable event.
- 4.4 **Cancel.** Unless otherwise agreed, we may cancel any order at any time in our absolute discretion. We will refund any monies already paid by you.
- 4.5 **Fees.** Despite our best efforts, the stated fees may be incorrect. We will confirm the fees for any services when we accept your offer.
- 4.6 **Time and place.** The parties conclude any agreement between each other at the time when our duly authorised representative accepts the relevant offer and at the place where you have your head office. We do not need to communicate the acceptance of the offer to you.
- 4.7 **Orders.** The terms in effect at the time you make an offer will govern the order. Each order will create a separate agreement. Despite that, we may consider the breach of any one order to constitute a breach of any or all orders.

5. Online Services

- 5.1 **Registration.** Each authorised user must provide their full legal name, a valid email address, and any other information requested by us to complete the registration process.
- 5.2 **Access.** Only authorised users may access the service by using the credentials issued to them.
- 5.3 **Authorised user obligations.** Each authorised user agrees:
- to keep their credentials secure;
 - not to provide access to any person other than an authorised user;
 - not to interfere with the functionality or proper working of the service;
 - not to introduce any viruses, worm, logic bomb, trojan, wares, potentially unwanted program (PUP) or other malicious software into the service; and
 - not use the service for direct marketing, spamming, unsolicited communications, or other advertising or marketing activities prohibited by applicable law.
- 5.4 **Administrator obligations.** The administrator agrees:
- not to use bots or other automated methods to register authorised user accounts;
 - to only create one account per email address per authorised user;
 - to make a list of all authorised users available to us on request;
 - to immediately notify us in writing of any lost credentials by an authorised user;
 - to ensure that authorised users who are no longer authorised to use the service do not use the service;
 - to notify us of any known breach of our privacy policy;
 - to take reasonable measures to ensure that authorised users do not introduce any viruses, worm, logic bomb, trojan, wares, potentially unwanted program (PUP) or other malicious software into the service.
- 5.5 **Security.** Each authorised user is responsible and liable for activities that occur under their account. You authorise us to act on any instruction given by an authorised user, even if it transpires that someone else has defrauded both us and you, unless you have notified us in writing prior to you acting on a fraudulent instruction. We are not liable for any loss or damage suffered by you attributable to an authorised user's failure to maintain the confidentiality of their credentials.

6. Services

- 6.1 **Grant of license.** We grant you a limited, non-exclusive, non-transferrable, revocable license to use our services in accordance with the terms and the terms of any third party software license agreement. Any person wishing to use the services contrary to the terms or third party software license agreement must obtain our prior written consent.

- 6.2 **Consent to monitoring.** You consent to us monitoring your use of the service for security purposes and in order to ensure that the service is always running and functioning as it should.
- 6.3 **Service levels.** We will provide the services to you at the service levels.
- 6.4 **Third party software.** Some software used in our services may be third party software that we will make available to you in accordance with third party software license terms. You agree that the use of the services is subject to these third party software license terms and that they may change from time to time. Please note that there may be provisions in the third party software license agreement that expressly override some of these terms.
7. **Your data**
- 7.1 **Your data.** We are not responsible for any of your data stored on our system.
- 7.2 **Location of your data.** We are able to provide the website in multiple locations that are located in different countries. Your data will remain in whatever location you place it.
- 7.3 **Privacy and protection of personal information.**
- **Legal obligations.** We are responsible for complying with our obligations and you are responsible for complying with your obligations under applicable laws governing your data. We both acknowledge that we are not investigating the steps the other is taking to comply with any applicable privacy and protection of personal information laws.
 - **Responsible party.** You remain the responsible party for determining the purpose and means of our processing of your data, including that processing will not place us in breach of any laws.
 - **Trans-border flows of your data.** You consent to us transferring your data across a country border to enable us to comply with our obligations under the agreement. You are solely responsible for determining that any transfer of your data across a country border complies with the applicable laws.
 - **Indemnity.** You agree to indemnify, defend, and hold us harmless (and those related to us and our personnel, co-branders or other partners) from and against any claim, demand, loss, damage, cost, or liability (including legal costs) arising out of or relating to you failing to comply with your obligations under this clause. If permissible under applicable law, legal costs will be on an attorney and own client basis.
- 7.4 **Access.** On a party's reasonable written request, the other party will provide the requesting party with the information that it has regarding your data and its processing that is necessary to enable the requesting party to comply with its obligations under this clause and the applicable laws. The requesting party will reimburse the other party for its reasonable charges for its assistance.
- 7.5 **Preservation of integrity of your data.** Both of us will take reasonable precautions (having regard to the nature of each of our obligations under the agreement), to preserve the integrity of your data and prevent any unauthorised access, corruption or loss of your data.
- 7.6 **Records.** You agree that our records are prima facie evidence of the services supplied to you.
- 7.7 **Return of data.** On termination of any order, each party will return to the other party in the form in which it was received all of the other party's data or information provided to the party for the purpose of the performance of the relevant order.
8. **Intellectual property**
- 8.1 **Your data.** You own all your data. We do not own your data or other third party content used as part of the website. All title, ownership rights and intellectual property rights in and to the content accessed through the website belong to you or the applicable content owner and may be protected by applicable copyright or other law.
- 8.2 **Your data license.** When you upload your data to the system, you give us a worldwide license to use, host and store your data, solely for purposes of providing the services
- 8.3 **Retention of rights.** We have created, acquired or otherwise obtained rights in our technology and despite anything contained in the agreement, we will own all right, title, and interest in our technology.
- 8.4 **Use of our technology.** If we utilise any of our technology in connection with our performance under an order, our technology will remain our property and you will not acquire any right or interest in it.
- 8.5 **Trademarks.** Our logo and sub-logos, marks, and trade names are our trademarks and no person may use them without permission. Any other trademark or trade name that may appear on our marketing material is the property of its respective owner.
- 8.6 **Restrictions.** Except as expressly permitted under the agreement, the website may not be:
- modified, distributed, or used to make derivative works;
 - rented, leased, loaned, sold or assigned;
 - decompiled, reverse engineered, or copied; or
 - reproduced, transferred, or distributed.
- 8.7 **Prosecution.** All violations of proprietary rights or the agreement will be prosecuted to the fullest extent permissible under applicable law.
9. **Our warranties**
- 9.1 **Service warranties.** We warrant that in relation to the services:
- We and our personnel will possess and have the right to use knowledge and expertise sufficient to enable us to provide the services.
 - We will employ a sufficient number of suitably trained personnel to provide the services and to achieve the service levels;
 - We will provide the services in accordance with all applicable laws, enactments, and regulations.
- 9.2 **General warranties.** We warrant further that:
- We have the legal right and full power and authority to execute and deliver, and to exercise our rights and perform our obligations under the agreement;
 - We and our personnel will not knowingly introduce any malicious software into your material or your system.
10. **Disclaimer of warranties [Service Provider bias]**
- 10.1 **Disclaimer.** You use our services at your sole responsibility and risk. We provide the services on an "as is" and "as available" basis. Except for the warranties given in this agreement and to the extent allowed by law, we expressly disclaim all

representations, warranties, or conditions of any kind, whether express or implied, including:

- any implied warranties or conditions of satisfactory quality, no latent defects, merchantability, fitness for a particular purpose, accuracy, system integration, quiet enjoyment, title, and non-infringement;
- any warranties regards third party software; or
- that the services will meet your requirements or be uninterrupted, legally effective or complete, timely, secure, error-free or free from infection by malicious software. You should keep up-to-date security software on any systems used to access the services.

10.2 **Exclusion of liability.** Despite any warranty we give, we will not be liable regards any defect arising from negligence, failure to follow our instructions (whether oral or in writing) or misuse.

11. Your warranties

You warrant that:

- 11.1 you have not been induced to enter into the agreement by any prior representations, warranties or guarantees (whether oral or in writing), except as expressly contained in the agreement;
- 11.2 by entering into an order you are not acting in breach of any agreement to which you are a party;
- and you agree to indemnify, defend, and hold harmless us (and those related to us and our personnel, co-branders or other partners) from and against any claim for damages by any third party as a result of the breach of these warranties, including all legal costs. If permissible under applicable law, legal costs will be on an attorney and own client basis.

12. Fees and payment

- 12.1 **Due dates.** You will be liable for and pay the fees specified in the order and any additional fees promptly on the due date, without any deduction, set off or demand and free of exchange in the currency specified in the order.
- 12.2 **Manner of payment.** You must make payment in the manner specified.
- 12.3 **Late payments.** Any additional surcharges and penalties specified will apply to any payment received after the due date to cover collection fees and additional administration costs. You must pay the surcharges and penalties to us on-demand. We may halt the provision of any services until you have paid all amounts that are due.
- 12.4 **Interest on overdue amounts.** To the extent permitted by applicable law, any amount not paid by you on the date of the statement of outstanding invoices will bear interest for our benefit, from the due date until the date you pay it. The rate of interest will be either 2% above the published prime overdraft rate from time to time of our bankers or 15%, whichever is higher. A letter signed by a general, branch or other bank manager setting out their rate will be proof of the rate. Interest will be payable on a claim for damages from when the damages were suffered.
- 12.5 **Appropriation.** We may appropriate any payment received from you towards the satisfaction of any indebtedness of you to us under the agreement.
- 12.6 **Withhold payment.** You may not withhold payment of any amount due to us for any reason.
- 12.7 **Certificate.** A certificate, signed by an accountant appointed by us, of the amount due by you and the date on which it is payable will be proof of the correctness of the certificate's contents.
- 12.8 **Tax.** All fees exclude any tax, which will be payable where applicable by you in addition to the fees.
- 12.9 **Payment profile.** You and any signatory consent and agree that we may provide any registered credit bureau with information about the payment of amounts.
- 12.10 **Reimburse costs.** If we suspend the service, you will pay to us the costs incurred by us (including redeployment, travel and associated expenses) in remobilising our employees affected by the agreement and recommencing the services.

13. Intellectual property infringement

- 13.1 **Defence.** We will defend you against any claims made by an unaffiliated third party that any services infringe its patent, design, copyright, or trade mark and will pay the amount of any resulting adverse final judgment (or settlement to which we consent). We will reimburse you with all costs you reasonably incurred in connection with assisting us with the defence of the action. You will promptly notify us of the claim in writing and we will have sole control over its defence or settlement.
- 13.2 **Consequences of successful claim by third parties.** If any third party succeeds in its claim for the infringement of any intellectual property rights, we may within 30 calendar days of the infringing item having been found to so infringe:
- obtain for you the right to continue using the infringing item or the parts that constitute the infringement;
 - replace the infringing item or the parts that constitute the infringement with another product that does not infringe and that in all respects operates substantially in accordance with its specifications;
 - alter the infringing item in a way as to render it non infringing while still in all respects operating substantially in accordance with its specifications; or
 - withdraw the infringing item and refund to you all fees paid by you to us under the relevant order specifically with regard to the infringing item in the preceding six calendar month period.
- 13.3 **Exclusion.** We will not be liable for any claim that arises out of goods or services you select and acquire from third parties.
- 13.4 **Survival.** This clause will survive termination of the agreement.

14. Project managers

- 14.1 **Appointment.** On the effective date, each party will appoint a suitably qualified and responsible person to act as their project manager. If a party does not appoint a project manager and that party is a natural person, then that party will be its own project manager. Otherwise, the natural person that is ordinarily responsible for the day-to-day administration of that party will be its project manager.
- 14.2 **Function.** The project managers' responsibilities include to manage and coordinate the services and to discuss and manage any changes.
- 14.3 **Replacement.** A party may, on seven calendar days' written notice to the other, appoint an alternative project manager who is suitably qualified and responsible.

15. Limitation of liability

- 15.1 **Direct damages limited.** To the extent permitted by applicable law, regardless of the form (whether in contract, delict or any other legal theory) in which any legal action may be brought, our maximum liability to you for direct damages for anything giving rise to any legal action will be an amount equal to the total fees already paid by you to us for the goods or services related to the claim. The aggregate amounts for all claims will not be greater than the maximum amount.
- 15.2 **Indirect damages excluded.** To the extent permitted by applicable law, in no event will we (or our personnel) be liable for any indirect, incidental, special or consequential damages or losses (whether foreseeable or unforeseeable) of any kind (including loss of profits, loss of goodwill, damages relating to lost or damaged data or software, loss of use, damages relating to downtime or costs of substitute products) arising from the agreement.
- 15.3 **Exclusions.** The limitation contained in this clause will not apply to any breach by a party of the other party's proprietary or confidential information or intellectual property or damages arising from a party's gross negligence.
- 15.4 **We are not liable for your default.** We will not be liable for any loss or damage suffered by you arising out of or in connection with any breach of the agreement by you or any act, misrepresentation, error or omission made by or on behalf of you or your personnel.
- 15.5 **Other goods or services.** We are not liable for any other deliverable, including website, goods, or service provided by any third party.
- 15.6 **Indemnity.** We agree to indemnify, defend and hold you (and your personnel) harmless against any and all:
- loss of or damage to any property or injury to or death of any person; and
 - loss, damage (including attorneys' fees on an attorney and own client basis), costs and expenses that you may suffer or incur arising directly or indirectly from: (i) any wilful misconduct or fraud of us or our personnel; or (ii) a breach by us of your proprietary or confidential information, or intellectual property.
- 15.7 **Liability.** Without limiting liability, neither party will be liable to the other for any loss that it may suffer as a result of theft, fraud, or other criminal act by a party or its personnel.

16. Breach and termination

If a party:

- does not fix any breach of this agreement (failure to comply with it) within seven days of receiving written notice from the other party to do so;
- breaches this agreement materially twice or more in any six month period;
- is insolvent (bankrupt), or has some legal disability, for example, if they are placed under administration;
- takes steps to deregister itself (close down) or is deregistered;
- makes any settlement or arrangement with its creditors; or
- fails to pay a court order against it (does not satisfy a writ of execution) for more than one million rand, within 21 days;

then the other party may, without prejudice to any of its rights:

- claim specific performance of this agreement (make the party comply with this agreement); or
- immediately cancel this agreement in writing; and
- claim damages from the other party, including any claim for any fees already due.

17. Suspension of the service

- 17.1 **Immediate suspension.** We may immediately suspend your right to use any of the services in any of the following circumstances:
- You attempt a denial of service attack on any of the services;
 - You seek to hack or break any security mechanism on any of the services;
 - We determine in our sole discretion that your use of the services poses a security threat to us, or to any other user of the services;
 - You otherwise use the services in a way that disrupts or threatens the services;
 - We determine, in our sole discretion, that there is evidence of fraud with respect to your account;
 - We receive notice, or we otherwise determine, in our sole discretion, that you may be using the services for any illegal purpose or in any way that breaches the law or infringes the rights of any third party;
 - We determine, in our sole discretion, that our provision of any of the services to you is prohibited by applicable law, or has become impractical or unfeasible for any legal or regulatory reason.
- 17.2 **Preservation of data (suspension).** In the event that we suspend your access to any services, we will not take any action to intentionally erase any of your data in our possession during the period of suspension and the fees will continue to accrue.

18. Termination

- 18.1 **Termination for good cause.** We may immediately terminate this agreement at any time by giving you notice in writing if:
- We discontinue the services;
 - We believe providing the services could create an economic or technical burden or material security risk for us;
 - Termination is necessitated by us having to comply with the any applicable law or requests of governmental entities; or
 - We determine that your use of the service or the provision of any of the services to you has become impractical or unfeasible for any legal or regulatory reason.
- 18.2 **Duties on termination.** On termination, cancellation, or expiry of this agreement:
- We will stop providing the services;
 - Your access rights will cease to exist; and
 - Your data will be erased, unless we have agreed to provide you with post termination assistance in writing.
- 18.3 **Survival.** The termination, cancellation, or expiry of this agreement will not affect the enforceability of the terms that are intended to operate after expiry or termination.

19. Effect of termination

- 19.1 **Amounts due to us become due and payable.** On termination, cancellation, or expiry this agreement, all amounts due to us for services rendered before termination will become due and payable even if we have not yet invoiced them. You may not withhold the

amounts for any reason, unless the arbitrator directs otherwise.

- 19.2 **Post termination assistance.** Following termination, you will be entitled to take advantage of any post-termination assistance that we may generally make available (such as data retrieval arrangements). We may provide you with post-termination assistance, but we will not be under an obligation to do so. Your right to take advantage of any post termination assistance will depend on your acceptance of and compliance with any additional fees and terms that we may impose for such assistance.

- 19.3 **No expectation.** We acknowledge and confirm that no expectation has been created by anyone, by the agreement or any other agreement, entitling us or you to expect:

- the renewal or extension of the term of any agreement; or
- the conclusion of any further agreement between you and us or our personnel.

- 19.4 **Survival.** The termination, cancellation, or expiry of this agreement will not affect the enforceability of the terms that are intended to operate after expiry or termination.

20. Cloud hosting introduction

We provide cloud hosting services in various packages. If you wish to use one or more of our packages, then we will maintain the cloud hosting services in accordance with the packages that you pay fees for under orders and you are responsible for your content including your cloud hosted applications that you install and host on our cloud hosting services.

21. Cloud hosting definitions

cloud hosting services means the virtual machine hosting services we provide to you and related cloud hosting documentation;

cloud hosting documentation means any guides and other documentation for the cloud hosting services that we provide to you or make available through the website, as updated by us from time to time;

external interfaces means the ports or other application specific communication endpoints in the operating systems or other software you install and host on our cloud hosting services;

cloud hosting maintenance means upgrades, patches, bug fixes or other maintenance necessary for the continued operation of the cloud hosting services;

cloud hosting third party software means software applications provided directly to you for use with the cloud hosting services under a separate agreement by third parties;

time and materials means our time and materials fees applicable from time to time;

your cloud hosted applications means any software applications that you install and host on the cloud hosting services for use by your authorised users and any third parties authorised by you, including your customers and other end-users; and

your cloud hosted content means your cloud hosted applications and any other content, materials, or data that you use, install, upload, or host on the cloud hosting services.

22. Cloud hosting services

- 22.1 **Orders.** You may request cloud hosting services by submitting orders to us using our standard order form.

- 22.2 **Grant of license.** We grant you a limited, non-exclusive, non-transferrable, revocable license to use our cloud hosting services to:

- store;
- retrieve;
- query;
- serve; and
- execute;

your cloud hosted content that you:

- own;
- have licensed; or
- have otherwise lawfully obtained.

- 22.3 **Access.** Your authorised users may access the cloud hosting services through a web-based user interface.

- 22.4 **Consent to monitoring.** You consent to us monitoring your use of the cloud hosting services to check whether you are complying with this agreement by monitoring your external interfaces. You may not stop us from monitoring your external interfaces. But, you may use encryption technology or firewalls to help keep your content confidential.

- 22.5 **Co-operation with monitoring.** You must co-operate with us to identify any problem with the cloud hosting services that we believe may be caused by your content or any other content you control.

- 22.6 **Service levels.** We will do our best to provide you with the cloud hosting services at 98% uptime, but we accept no responsibility for the cloud hosting services being down for more than 2% of the time.

- 22.7 **Cloud hosting third party software.** You may be allowed to use certain software we or third party licensors provide as part of the cloud hosting services. We or the third party licensors do not sell or distribute the software to you and you may only use it as part of the cloud hosting services. You may not transfer it outside the cloud hosting services without our written permission.

- 22.8 **Cloud hosting third party software terms apply.** Your use of third party software is governed by third party software terms.

- 22.9 **Cloud hosting third party software used at own risk.** Your use of third party software is at your own risk because we may not have tested it with the cloud hosting services.

23. Cloud hosting packages

- 23.1 **Packages.** We have a range of packages for cloud hosting services. A package is made up of certain virtualised hardware specifications in exchange for a monthly cloud hosting services fee as agreed between us in an order.

- 23.2 **Change to packages.** We may change our available packages from time to time. You may not migrate to any new package that becomes available without our permission.

- 23.3 **Package migration.** You may request to migrate from your existing package to a new package. We may migrate you at our discretion based on availability of equipment. We will charge additional fees for migration.

24. Cloud hosting IP addresses

- 24.1 **IP addresses.** We allocate you one or more IP addresses as part of the cloud hosting services. You have no right, title, or interest to those IP addresses.
- 24.2 **IP address reallocation.** We may need to reallocate the IP addresses allocated to you from time to time. We will do our best not to interrupt your access to the cloud hosting services when reallocating IP addresses.

25. Cloud hosting maintenance

- 25.1 **Interruption.** Cloud hosting maintenance may interrupt the cloud hosting services.
- 25.2 **Scheduled cloud hosting maintenance.** We perform scheduled cloud hosting maintenance from time to time. We will do our best to notify you of scheduled cloud hosting maintenance and how long we think it will take before it happens.
- 25.3 **Emergency cloud hosting maintenance.** We may need to perform emergency cloud hosting maintenance in certain circumstances. We may not be able to notify you of emergency cloud hosting maintenance or how long we think it will take before it happens. But, we will do our best to inform you of emergency maintenance when it happens or as soon after it has happened as possible.
- 25.4 **Co-operation with cloud hosting maintenance.** You must co-operate with any cloud hosting maintenance requirements that we tell you about.

26. Your cloud hosted content

- 26.1 **Comply with cloud hosting documentation.** Your content must comply with any technical cloud hosting documentation applicable that we post and update on our website from time to time.
- 26.2 **Access to verify compliance.** You must provide us with any information or other materials related to your content that we reasonably request to verify your compliance with the agreement.
- 26.3 **Prohibited content.** We will notify you that we believe your content contains prohibited content and request that you remove it or disable access to it if we believe that it:
- violates the law;
 - infringes or misappropriates any third party's rights; or
 - otherwise violates a material term of the agreement.
- 26.4 **Unilateral action.** If you do not remove or disable access to the prohibited content within two business days of our notice, we may remove or disable access to the prohibited content or suspend the services to the extent we are not able to remove or disable access to the prohibited content. Despite this clause, we may remove or disable access to any prohibited content without prior notice to you if we believe that it:
- is illegal;
 - may disrupt or threaten the services; or
 - must be removed to comply with law or any judicial, regulatory or other governmental order or request.
- 26.5 **Geographic location.** You will access all cloud hosting services from and store all your content in the location specified in the order.
- 26.6 **Physical data security.** Our hosting provider takes reasonable security measures to protect the physical security of the data centres where we store your content.
- 26.7 **Electronic data security your responsibility.** You are responsible for maintaining appropriate electronic security, protection, and backup of your content. This may include using encryption technology to protect your content from unauthorised access, and routine archiving of your content. You can customise the cloud hosting services for increased electronic security by:
- installing third-party software;
 - implementing security controls; or
 - establishing and enforcing user access controls.
- 26.8 **Data safeguards.** The cloud hosting services are designed to only allow your authorised users to access your content. You acknowledge that we do not have access to your content. You must issue us with temporary credentials if you request support from us that requires us to access your content.
- 26.9 **No backup.** We are not required to make or maintain any backups of your content under this agreement.

27. Your cloud hosted applications

- 27.1 **Limited right.** You may install and host your cloud hosted applications on the services provided that you comply with the requirements and restrictions of this agreement.
- 27.2 **Your responsibilities.** You are solely responsible for:
- operating your cloud hosted applications;
 - supporting and maintaining your cloud hosted applications;
 - ensuring that your personnel have the necessary rights to administer your cloud hosted applications on the cloud hosting services;
 - the conduct of your cloud hosted applications' users; and
 - ensuring that your cloud hosted applications' users comply with the agreement.
- 27.3 **Your intellectual property.** You are the sole and exclusive owner of all right, title, and interest in your cloud hosted applications and your cloud hosted content.
- 27.4 **Grant of license.** You grant us an irrevocable non-exclusive limited licence to use your applications and your content in connection with providing the services.

28. Cloud hosting support

- 28.1 **Basic support.** We provide basic support to you for the cloud hosting services in the form of content posted on our website and a help desk.
- 28.2 **Help desk.** We will provide a help desk during business hours for basic support requests.

- Support level one is your responsibility and includes initial recording and diagnosis of support requests. You will resolve them to you're the best of your ability and only escalate them to us in terms of support level two if you have been unable to resolve them yourself.
- Support level two is our responsibility and includes replying to support requests from your personnel as agreed between the parties in writing. Your personnel must make support requests in writing using our support ticketing system on our website.

28.3 **End user support excluded.** We are not obliged to reply to support requests from or relating to end users of your applications.

28.4 **Additional support.** You may request additional support over and above the basic support that we provide for the cloud hosting services. We may charge additional fees for additional support.

29. Cloud hosting fees

29.1 **Monthly in advance.** You will pay us the monthly access fee specified in the order on the first calendar day of each calendar month, starting on the effective date.

29.2 **Fee covers services.** The fee will cover the cloud hosting services and not anything else.

29.3 **Pro rata fees.** You will pay us a pro rata portion of the monthly access fee specified in the order immediately if the effective date of the order is before the 25th day of the month. You will pay us a pro rata portion of the monthly access fee specified in the order at the same time as your next monthly access fee payment if the effective date of the order is between the 25th and the last day of the month.

29.4 **Invoicing.** We will invoice you for monthly access fee and the pro rata monthly access fee (if applicable) in advance for the next calendar month.

29.5 **Fee increase.** We will be entitled to increase the fee once during each successive period of 12 calendar months calculated from the effective date, subject to 14 calendar days' prior written notice to you and not in excess of twice the Consumer Price Index of all urban consumers and other goods and services as published by the SA Department of Economic Affairs during the previous calendar year.

29.6 **Additional fee.** If, after the effective date, the fee payable by you increases as a result of an increase in the cloud hosting services for whatever reason, including you electing to use additional cloud hosting services, you will pay us the additional fee agreed by the parties as being applicable to the cloud hosting services.

30. Other cloud hosting charges

We may charge you additional charges on a time and materials basis for time that in our reasonable opinion we spend in relation to or on account of any of the following:

- data restoration or re-establishment or other assistance required by you that does not result from inherent errors in the cloud hosting services;
- unauthorised use of the cloud hosting services;
- providing support outside business hours;
- providing any other services, including services or work required as a result of any of your modifications to the cloud hosting services in breach of the provisions of this order;
- providing support to you in circumstances where any reasonably skilled and competent system administrator would have judged your request to have been unnecessary.

31. Suspension of the cloud hosting service

31.1 **Your content.** We will not delete your content when we suspend the cloud hosting services.

31.2 **Fees.** Fees will accrue as normal when we suspend the cloud hosting services.

32. Termination of the cloud hosting service

32.1 **Your content.** We will immediately delete your content when we terminate the cloud hosting services. We will give you notice in writing as specified in our terms of service. You are solely responsible for extracting your content from the cloud hosting services prior to termination. We accept no responsibility for any of your content lost during termination.

32.2 **Fees.** Fees stop accruing when we terminate the cloud hosting services.

33. Resolving disputes

33.1 **Notifying each other.** There will be a dispute about or from this agreement if a party writes to the other about it and asks for it to be resolved under this clause. The parties must refer any dispute to be resolved by:

- Negotiation (direct talks to try and agree how to end the dispute); failing which
- Mediation (talks in which a neutral third party tries to help the parties agree how to end the dispute); failing which
- Arbitration (a hearing after which a neutral third party makes a binding decision about the dispute).

33.2 **Negotiation.** Each party must make sure that their chosen representatives meet within 10 business days of notification, to negotiate and try to end the dispute by written agreement within 15 more business days.

33.3 **Mediation.** If negotiation fails, the parties must refer the dispute to mediation under AFSA's rules.

33.4 **Arbitration.** If mediation fails, the parties must refer the dispute within 15 business days to arbitration (including any appeal against the arbitrator's decision) under AFSA's latest rules for expedited arbitrations. The arbitration will be held in English in Johannesburg. The parties will agree and appoint one arbitrator. If the parties cannot agree on the arbitrator within 10 business days after the referral, the Secretariat of AFSA will appoint the arbitrator.

33.5 **Agree otherwise in an order.** The parties may agree otherwise in an order.

33.6 **Periods.** The parties may agree in writing to change the periods for negotiation or mediation.

33.7 **Urgent interim relief.** This clause will not stop a party from applying to court for urgent interim relief (temporary help) while the dispute resolution process is being finalised. An example might be an interdict (type of court order).

33.8 **Severability.** This clause is separate and divisible from the rest of this agreement and remains effective even if this agreement ends or is invalid.

34. Notices and domicile

34.1 **Notices.** The parties will send all notices, authorisations, disclosures, acknowledgements, or requests by hand delivery, prepaid registered post, fax, or email to an address or number given in the specific terms.

- 34.2 **Service (delivery) address for legal documents.** Each party chooses its street addresses and numbers as its *domicilium citandi et executandi* (its address for the service of any document used in legal action) for this agreement.
- 34.3 **Change of addresses or numbers.** Each party may change the addresses or numbers in the specific terms to any other addresses or numbers in South Africa by writing to the other party 14 days before the change.
- 34.4 **Deemed delivery.** Notice will be considered to be delivered on the date shown on any hand-delivered, prepaid registered post, courier, fax or email confirmation of delivery.
- 34.5 **Notice actually received.** If a party actually receives any notice or other communication, this will be good enough.
35. **Force Majeure**
- 35.1 **Parties not liable.** No party will be responsible for any breach of this agreement caused by circumstances beyond its control, including flood, fire, earthquake, war, tempest, hurricane, industrial action, government restrictions, or acts of God.
- 35.2 **Party affected to notify other party.** If there is an event of force majeure, the party affected will tell the other immediately, and they will meet within seven days to negotiate other ways to carry out any affected responsibilities under this agreement. The parties will continue to comply with the responsibilities that are not affected by the circumstances.
- 35.3 **Right to cancel.** If a party cannot fulfil a material (significant) part of its responsibilities under this agreement for more than 60 days because of force majeure, the other party may cancel this agreement by written notice.
36. **Assignment and subcontracting**
- 36.1 **No assignment.** No party may delegate its duties under this agreement or assign its rights under this agreement, in whole or in part. We may assign this agreement to any successor or purchaser of its business or some of its assets.
- 36.2 **Exception.** Despite this clause, we may cede and assign all rights and obligations under this agreement to a related person without your prior written consent, provided that we notify you within a reasonable time of the event occurring.
- 36.3 **Our third party contractors.** We may sub-contract or delegate our obligations under this agreement to third party contractors. We will remain liable for performance of the third party contractors. No one may require us to disclose the terms (including payment terms) of any sub-contract entered into with respect to our obligations under this agreement.
37. **Relationship**
- 37.1 **No temporary employment service or partnership.** Nothing in this agreement will be construed as constituting a temporary employment service or as creating a partnership between the parties and no party will have any authority to incur any liability on behalf of the other or to pledge the credit of the other party.
- 37.2 **No employment relationship.** Each party enters into the agreement as an independent contractor. The agreement does not create any other relationship, including employment for any purpose, partnership, agency, trust or joint venture relationship.
38. **General**
- 38.1 **Entire agreement.** The agreement is the entire agreement between the parties on the subject.
- 38.2 **Changes to the terms.** We may change the terms at any time and where this affects your rights and obligations, we will notify you of any changes by placing a notice in a prominent place on our website or by email. If you do not agree with the change you must stop using the services. If you continue to use the services following notification of a change to the terms, the changed terms will apply to you and you will be deemed to have accepted such terms.
- 38.3 **Changes to any third party software license agreement.** We will notify you of any changes to any third party software license terms by placing a notice in a prominent place on our website, or notifying you by email. The updated third party software license terms will be effective immediately and you will be deemed to have accepted them upon notification.
- 38.4 **Acceptance of changes.** If you do not agree with the changes, you must stop using the service. If you continue to use the service following notification of a change, the changed terms will apply to you and you will be deemed to have accepted them.
- 38.5 **Waiver (giving up of rights).** Any favour we may allow you will not affect or substitute any of our rights against you.
- 38.6 **Severability.** If any term is void (invalid), unenforceable, or illegal, the term may be severed (removed) from and will not affect the rest of this agreement if it does not change its purpose.
- 38.7 **Governing law.** South African law governs this agreement.
- 38.8 **Jurisdiction.** You consent to the jurisdiction of the Magistrate's Court in respect of any action or proceedings that we may bring against you in connection with this agreement, even if the action or proceedings would otherwise be beyond its jurisdiction without prejudice to our right to institute any action in any other court having jurisdiction.
- 38.9 **Non-exclusivity.** We may provide any goods or services to any other person or entity. We may exploit our intellectual property subject to our confidentiality obligations.
- 38.10 **Costs.** Each party is responsible for its own costs of drafting and negotiating this agreement.
- 38.11 **Governing Law relating to licences.** The terms of any licence order entered into with any entity of ours located anywhere will be governed by and construed in accordance with the laws of South Africa.
- 38.12 **Governing Law relating to services.** Unless otherwise agreed in writing, the terms of any services order will be governed by the laws of the jurisdiction where the our entity delivering the services is organised.
- 38.13 **UN Convention.** The 1980 United Nations Convention on Contracts for the International Sale of Goods and its related instruments will not apply to this agreement.
- 38.14 **Jurisdiction for our action.** If we bring an action to enforce this agreement, we will bring it in the jurisdiction where your contracting entity has its headquarters.
- 38.15 **Jurisdiction for your action.** If you bring an action to enforce any licence order entered into with any of our entities located anywhere, you will bring it in South Africa. If you bring an action to enforce any services order, you will bring it in the jurisdiction where our entity delivering the services has its headquarters.
- 38.16 **Right to reference.** You consent to us using your name and a general description of the services in any marketing or sales material.
- 38.17 **Publicity.** A party will not make any announcement or statement to the press about this agreement, without first getting written

permission from the other party.