

CONTINUAL'S GENERAL TERMS AND CONDITIONS

THE COMPANY AND THE APPLICANT (HEREINAFTER REFERRED TO AS THE VENDOR) AGREE THAT THE VENDOR WILL PROVIDE THE DELIVERABLES TO THE COMPANY, ON THE TERMS AND CONDITIONS AS SET OUT BELOW.

1. DEFINITIONS AND INTERPRETATION

In this Agreement:

- 1.1 "Agreement" shall mean these terms and conditions and all annexures, if applicable, including the documents referred to in clause 2.1.1, 2.1.2, 2.1.3 and 2.1.4 below;
- 1.2 "Charges" is defined in clause 8.1.
- 1.3 "Company" shall mean **CONTINUAL LOGISTICS (PTY) LTD**, Registration number 2019/122748/07 a private company duly registered in accordance with the laws of the Republic of South Africa with its registered address at 12 Byls Bridge Boulevard, Highveld Ext 73, Centurion, 0157;
- 1.4 "Deducted Amount" is defined in clause 11.1.1;
- 1.5 "Deliverables" shall mean the Goods and/or Services identified in the Order and/or the Service Level Agreement whichever is applicable;
- 1.6 "Delivery Location" shall mean the place identified in the Order in relation to the provision of the Deliverables;
- 1.7 "Goods" shall mean all the goods, materials, equipment and parts provided by the Vendor to the Company as detailed in the Order;
- 1.8 "Intellectual Property Rights" includes any copyright, design rights, patents, inventions, logos, business names, service marks and trademarks, internet domain names, rights in databases, data, source codes, reports, drawings, specifications, know how, business methods and trade secrets, applications for registration and the right to apply for registration, for any of these rights and all other intellectual property rights and equivalent or similar forms of protection existing anywhere in the world;
- 1.9 "Laws" shall mean all applicable laws, ordinances, writs, orders, regulations, by-laws, permits, judgments and orders of any competent court, governmental agency or municipal authority in the Republic of South Africa or such other jurisdiction the Deliverables are being delivered in;
- 1.10 "Material" shall mean any material brought into existence as part of, or for the purpose of producing the Order, and includes but is not limited to documents, equipment, information or data stored by any means;
- 1.11 "Order" shall mean a request for the supply of Deliverables;
- 1.12 "Party" shall mean a party to this Agreement;
- 1.13 "Personnel" shall mean:
 - 1.13.1 in relation to the Vendor, any of its employees, Sub-contractors (including Sub-contractors' Personnel), agents and representatives involved either directly or indirectly in the performance of the Order;
 - 1.13.2 in relation to the Company, any of its past or present officers, employees, agents or representatives; and
 - 1.13.3 in relation to a Sub-contractor, any of its employees, agents or representatives involved either directly or indirectly in the performance of the Order;
- 1.14 "Services" shall mean the work identified in the Order to be performed by the Vendor in accordance with this Agreement;
- 1.15 "Service Level Agreement" means the agreement entered into between the Parties in terms of which services are rendered to the Company;
- 1.16 "Site" means the Company's premises identified in the Order;
- 1.17 "Sub-contractor" shall mean any person engaged by the Vendor in accordance with clause 24 to perform all or any part of the Order on behalf of the Vendor;

- 1.18 “Vendor” means the Party (as identified in the Order) responsible for executing the Order;
- 1.19 “Value Added Tax” means any value added tax calculated in accordance with the VAT Act; and
- 1.20 “Value Added Tax Act or VAT Act” means the Value Added Tax Act, No 89 of 1991 (as amended).
- 1.21 In this Agreement, unless the context otherwise requires:
 - 1.21.1 if any provision in a definition is a substantive provision conferring rights or imposing obligations on a Party, notwithstanding that it is only in the interpretation clause, effect shall be given to it as if it were a substantive provision in the body of this Agreement;
 - 1.21.2 in this Agreement a Party includes a reference to that Party’s successors in title and assigns allowed at law;
 - 1.21.3 any reference in this Agreement to:
 - 1.21.3.1 “business hours” shall be construed as being the hours between 07h30 and 16h00 on any business day. Any reference to time shall be based upon South African Standard Time;
 - 1.21.3.2 “days” shall be construed as calendar days unless qualified by the word “business”, in which instance a “business day” will be any day other than a Saturday, Sunday or public holiday as gazetted by the government of the Republic of South Africa from time to time;
 - 1.21.3.3 “person” means any person, company, close corporation, trust, partnership or other entity whether or not having separate legal personality; and
 - 1.21.3.4 “writing” means legible writing and in English and includes any form of electronic communication contemplated in the Electronic Communications and Transactions Act, No 25 of 2002.
 - 1.21.4 the words “include” and “including” means “include without limitation” and “including without limitation”. The use of the words “include” and “including” followed by a specific example or examples shall not be construed as limiting the meaning of the general wording preceding it;
 - 1.21.5 the words “shall” and “will” and “must” used in the context of any obligation or restriction imposed on a Party have the same meaning;
 - 1.21.6 words and expressions defined in any clause shall, unless the application of any such word or expression is specifically limited to that clause, bear the meaning assigned to such word or expression throughout this Agreement;
 - 1.21.7 unless otherwise provided, defined terms appearing in this Agreement in title case shall be given their meaning as defined, while the same terms appearing in lower case shall be interpreted in accordance with their plain English meaning;
 - 1.21.8 a reference to any statutory enactment shall be construed as a reference to that enactment as at the commencement date of this Agreement and as amended or substituted from time to time;
 - 1.21.9 unless specifically otherwise provided, any number of days prescribed shall be determined by excluding the first and including the last day or, where the last day falls on a day that is not a business day, the next succeeding business day;
 - 1.21.10 if the due date for performance of any obligation in terms of this Agreement is a day which is not a business day, then (unless otherwise stipulated) the due date for performance of the relevant obligation shall be the immediately preceding business day;
 - 1.21.11 where figures are referred to in numerals and in words, and there is any conflict between the two, the words shall prevail, unless the context indicates a contrary intention;
 - 1.21.12 the rule of construction that this Agreement shall be interpreted against the Party responsible for the drafting of this Agreement, shall not apply;
 - 1.21.13 the expiration or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this;

- 1.21.14 no provision of this Agreement shall (unless otherwise stipulated) constitute a stipulation for the benefit of any person (*stipulatio alteri*) who is not a party to this Agreement;
- 1.21.15 any reference in this Agreement to “this Agreement” or any other agreement or document shall be construed as a reference to this Agreement or, as the case may be, such other agreement or document, as amended, varied, novated or supplemented from time to time.

2. **AGREEMENT AND PRECEDENCE OF DOCUMENTS**

- 2.1 This Agreement consists of the following documents:
 - 2.1.1 The Service Level Agreement concluded between the parties where applicable;
 - 2.1.2 The terms and conditions contained in this Agreement;
 - 2.1.3 The Sundry Vendor Registration Application Form;
 - 2.1.4 The Order/s if applicable.
- 2.2 This Agreement contains the entire agreement between the Company and the Vendor with respect to its subject matter and supersedes all prior communications and negotiations between the Company and the Vendor in this regard, unless those communications expressly form part of this Agreement.

3. **ACCEPTANCE**

- 3.1 The Company requests the Deliverables on the terms and conditions as set out in the Agreement.
- 3.2 The Order number stated in the Order shall be indicated clearly on all documentation (where applicable).
- 3.3 This Agreement can only be changed, or other terms agreed, in written correspondence signed by a director or other senior manager of the company. No subsequent behaviour of the Company, in accepting this Agreement from the client with proposed amendments, can be taken to imply any acceptance by the company of those proposed amendments.

4. **PERFORMANCE BY VENDOR**

The Vendor must deliver the Deliverables or execute the Order in accordance with this Agreement and in consideration of the payment of the Charges by the Company.

5. **SPECIFICATIONS**

- 5.1 If the Company orders Goods, then, unless otherwise stated, this Agreement is deemed to include the supply of all relevant documentation of those Goods necessary to enable the Company to use them for their intended purposes.
- 5.2 If the Company orders Services then, unless otherwise stated, this Agreement includes the complete performance of those Services.
- 5.3 If the Company orders Goods and/or Services then, unless otherwise stated, this Agreement includes any legal rights necessary to use those Goods and/or Services for their intended purposes.
- 5.4 The quantity, quality and description of Deliverables will be as specified in the Company’s Order or as agreed to by the Company in writing.
- 5.5 The Vendor has sole responsibility for complying with all applicable regulations and other legal and regulatory requirements concerning the performance of the Order, and for ensuring that the Company can, in compliance, likewise, fully utilise the Deliverables for their intended purposes.

6. DELIVERABLES, WARRANTIES AND LIABILITY

- 6.1 The Vendor warrants, represents and undertakes on an ongoing basis that:
 - 6.1.1 the quantity and quality for the Goods and/or the quality of the Services will be those set out in the Order and/or the Service Level Agreement (whichever is applicable) and in accordance with the Company's specifications;
 - 6.1.2 any Goods will be new and free from defects in materials and workmanship;
 - 6.1.3 any Deliverables will comply with all statutory requirements and regulations, and with all normally applicable quality standards, relating to their sale or supply;
 - 6.1.4 all claims made by the Vendor about any Deliverables, and all apparently serious claims in the Vendor's advertising and promotional material, are correct and can be relied upon;
 - 6.1.5 any Services will be performed by appropriately qualified and trained Personnel; and
 - 6.1.6 neither the sale and supply of any Deliverable, nor its proper use by the Company for an intended purpose, will breach any property rights in or about that Deliverable, including intellectual property rights, of any other person.
- 6.2 All warranties, conditions and other terms implied by statute or common law in the Company's favour will apply to any Deliverables purchased from the Vendor.
- 6.3 The Vendor will indemnify and keep indemnified the Company immediately upon the Company's written demand against any cost, claim, expense or liability arising from any risk for which the Vendor is responsible under this Agreement.
- 6.4 If the Vendor fails to comply with any obligation under this Agreement, the Company will be entitled, at its discretion, to reject any Deliverable and the Vendor will not be entitled to receive payment for that Deliverable.
- 6.5 If any Deliverables were bought or obtained by the Vendor from a third party then any benefits or indemnities that the Vendor holds from that other party, in respect of those items, will be held on trust for the Company.
- 6.6 The Vendor will insure itself, and keep insured until the Order is delivered, against all normal insurance risks relevant to the Order, on terms and for amounts consistent with normal business prudence.
- 6.7 The Vendor will maintain relevant industry qualifications, permits and licences.
- 6.8 The Vendor will provide copies of such qualifications, permits and licences to the Company upon request.
- 6.9 Notwithstanding anything to the contrary contained in this Agreement, the total aggregate liability of the Company, in respect of a claim or claims arising in terms of this Agreement (whether arising from negligence, breach of contract or otherwise howsoever) will be limited to the total charges already paid to the Vendor in terms of the Order/s in question that gave rise to the claim/s.

7. DELIVERY, TITLE AND RISK

- 7.1 The Vendor agrees to provide the Deliverables nominated on the Order within the time(s) quoted, any failure of which will entitle the Company, in addition to other rights and remedies, to cancel the Order and be relieved of all liabilities for any undelivered portion. A waiver of the Company's right to cancel the acceptance of any items after the nominated delivery date shall not constitute a waiver of such rights as to future deliveries.
- 7.2 A packing note quoting the number and details of the Order must accompany each delivery of Goods (if applicable).
- 7.3 Where Goods are supplied in instalments, the Order is to be treated as a single order. If the Vendor fails to deliver or perform any instalment, the Company may treat the whole Order as repudiated.
- 7.4 The Company may accept or reject any Deliverables which are not fully delivered in accordance with this Agreement within 14 (fourteen) days after the delivery date agreed upon and in the case of latent defect, within a reasonable time after the defect becomes apparent.

- 7.5 If any of the Goods do not comply with all Order requirements the Company can demand that the Vendor repair them or supply replacement Goods within 7 (seven) days or, at the Company's sole discretion, the Company can reject the Goods and demand the repayment of any sum already paid for them.
- 7.6 The Company will not be bound to return to the Vendor any packaging or packing material, but if any relevant requirement for packaging recycling applies, the Vendor will take materials back free of charge on request.
- 7.7 Full unencumbered title to the Goods will pass to the Company upon the earlier of:
 - 7.7.1 the Company making payment in full to the Vendor for the Goods; or
 - 7.7.2 the Goods being delivered to the Delivery Location and accepted by the Company.
- 7.8 Risk in the Goods will remain with the Vendor until its delivery and acceptance by the Company.

8. **CHARGES**

- 8.1 The fees and charges ("**Charges**") means the aggregate amount payable by the Company to the Vendor in relation to the Order.
- 8.2 The Charges will be as specified in the Company's Order and, unless otherwise stated, will be:
 - 8.2.1 fixed and invariable and not subject to adjustment unless otherwise stated in the Order;
 - 8.2.2 exclusive of any applicable Value Added Tax in accordance with the VAT Act (which will be payable by the Company subject to the receipt of a valid tax invoice);
 - 8.2.3 inclusive of all expenses incurred by the Vendor in relation to the provision of the Order, including, without limitation, travel expenses or any other expenses, and of any duties or levies other than Value Added Tax; and
 - 8.2.4 payable in South African Rand.

9. **VALUE ADDED TAX**

- 9.1 The Parties agree that:
 - 9.1.1 Value Added Tax may be payable on certain supplies of Goods and/or Services;
 - 9.1.2 all charges and amounts payable by one Party to another under this Agreement are stated exclusive of Value Added Tax; and
 - 9.1.3 for each taxable supply under or in connection with this Agreement:
 - 9.1.3.1 the Vendor will be entitled to charge the Company for any Value Added Tax payable by the Vendor in respect of the taxable Order;
 - 9.1.3.2 the Company must pay to the Vendor the amount of the Value Added Tax at the same time as the relevant charge applicable to the Order becomes payable under this Agreement; and
 - 9.1.3.3 the Vendor must provide a valid tax invoice to the Company in respect of the taxable Order.

10. **PAYMENT**

- 10.1 The Company shall pay to the Vendor the Charges in accordance with the invoicing and payment provisions set out below.
- 10.2 Notwithstanding any other provisions contained herein, the Vendor shall not supply any Deliverables to the Company and the Company shall not incur any liability to the Vendor, including the obligation to make any payment, until a Service Level Agreement has been signed and/or the Vendor has been provided with a valid Order (if applicable) by the Company in respect of the Deliverables to be provided.
- 10.3 The Vendor shall issue a tax invoice to the Company in accordance with the Company's Payment Terms and Invoice Process, for Deliverables executed as soon as reasonably possible.
- 10.4 The Vendor must include the Company and the Vendor registered name, Registration number, Value Added Tax (VAT) number and Address on each tax invoice. No payment will be made should these details be omitted.

- 10.5 In addition to the provisions set out above, the Vendor shall submit a statement to the Company together with its invoice, in respect of the tax invoices issued for Goods ordered or Services rendered during the preceding month (a "statement").
- 10.6 The Company will make payment of tax invoices as set out in the Company's Payment Terms and Invoice Process.
- 10.7 The Charges shall be paid to a bank account nominated by the Vendor in writing to the Company.
- 10.8 The Vendor hereby waives any lien or other right of retention it may have or acquire in respect of any of the Goods conveyed by it in rendering the Services if applicable.

11. **DEDUCTIONS**

- 11.1 The Company may:
 - 11.1.1 deduct from any moneys due or becoming due to the Vendor pursuant to clause 10 the following amounts ("**Deducted Amount**"):
 - 11.1.1.1 all debts and moneys due from the Vendor to the Company;
 - 11.1.1.2 all liabilities which the Company may have paid, suffered or incurred and which the Vendor is liable to bear, pay or reimburse to the Company; and
 - 11.1.1.3 the cost of remedying any defective or damaged Goods; or
 - 11.1.2 without prejudice to the Company's rights pursuant to any other provision of this Agreement, if the Vendor fails to perform any of its obligations under this Agreement, without notice withhold payment of all or part of any amounts payable to the Vendor under this Agreement, until the matter has been remedied.
- 11.2 The Company must notify the Vendor of the details of any amounts withheld or deducted pursuant to clause 11.1.

12. **BREACH**

- 12.1 In the event of either of the Parties ("**the defaulting party**") committing a breach of any of the provisions of this Agreement and failing to remedy such breach within a period of 10 (ten) days after receipt of a written notice from the other Party ("**the aggrieved party**") calling upon the defaulting party so to remedy, then the aggrieved party shall be entitled, at its sole discretion and without prejudice to any of its other rights in Law, either:
 - 12.1.1 to claim immediate payment and/or performance by the defaulting party of all of the defaulting party's obligations under this Agreement, whether or not the due date for such payment and/or performance shall have arrived; or
 - 12.1.2 to cancel this Agreement as against the defaulting party, in either event without prejudice to the aggrieved party's rights to claim damages.
- 12.2 Notwithstanding anything to the contrary contained in this Agreement and clause 12.1 in particular, the aggrieved party shall not be entitled to cancel this Agreement as a result of a breach by the defaulting party unless such breach is a material breach going to the root of this Agreement and is incapable of being remedied by the payment of monetary compensation, or if it is so capable of being remedied, the defaulting party fails to pay the amount concerned within 10 (ten) days after such amount has been finally determined. If any dispute shall arise as to whether a particular breach is:
 - 12.2.1 a material breach which goes to the root of this Agreement; or
 - 12.2.2 incapable of being remedied by the payment of monetary compensation, such dispute shall be determined, mutatis mutandis, in accordance with the provisions of clause 16 below.
- 12.3 All costs, charges and expenses of whatsoever nature which may be incurred by either Party in enforcing its rights in terms hereof including legal costs on the scale as between attorney and own client and collection commission, irrespective of whether any action has been actually instituted, shall be recoverable by the successful Party from the Party in breach.

13. WARRANTIES, REPRESENTATIONS AND UNDERTAKINGS BY THE VENDOR

- 13.1 The Vendor makes the representations and warranties set out in this clause as at the acceptance date of this Agreement and for the duration of this Agreement and acknowledges that the Company has entered into this Agreement in reliance on these representations and warranties, each of which is material and a material representation inducing the Company to enter into this Agreement.
- 13.2 The Vendor has the power to execute and deliver this Agreement and to perform all its obligations thereunder (including, without limitation, the payment of all amounts) and all corporate and other action required to authorise its execution and its performance of such obligations, have been duly taken.
- 13.3 The Vendor is not prohibited in terms of its constitutional documents, or otherwise, from entering into this Agreement or transactions contemplated by it to which it is a party.
- 13.4 All information (as supplemented from time to time) that has been or will hereafter be made available to the Company by the Vendor or any of its representatives in connection with the transactions contemplated herein is and will at all times be complete and correct in all material respects and does not and will not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements contained therein not misleading in light of the circumstances under which such statements were or are made.
- 13.5 The Vendor agrees to supplement such information from time to time so that the same remains correct and acknowledges that the Company is acting in reliance on the accuracy of information supplied to it without independent verification.
- 13.6 No legal suit, action, proceeding or process or any other steps have been taken or, to the best of the Vendor's knowledge and belief, after having made all reasonable enquiries in this regard, threatened for the winding-up or liquidation (whether voluntary or involuntary, provisional or final), placing the Vendor in Business Rescue or de-registration of the Vendor or for the appointment of a liquidator or similar officer over the Vendor or over any assets of the Vendor.
- 13.7 The Vendor hereby warrants, represents and undertakes that:
- 13.7.1 the Vendor is not carrying on business recklessly, with gross negligence, with intent to defraud or fraudulent purposes;
- 13.7.2 the Vendor it is not carrying on business or trading under insolvent circumstances;
- 13.7.3 that no application to court for an administration order has been made in respect of the Vendor;
- 13.7.4 the Vendor will advise the Company immediately of any facts or circumstances which cause or which are reasonably likely to cause any representation or warranty to be false or misleading in any material respect; and
- 13.7.5 the Vendor is in full compliance with all applicable laws, regulations and standard industry practices, which includes but is not limited to the protection of the environment and is not aware of any circumstances which may prevent full compliance in future.
- 13.8 The Vendor shall at all times whether during or after termination or expiry of this Agreement indemnify and keep the Company indemnified against all losses, claims, damages, liabilities and expenses (including all reasonable legal fees) which may arise (because of this Agreement or any other facility and/or the Company having an interest in the Vendor's assets) in respect of a breach of, or a failure to meet any of the aforesaid representations, warranties and/or undertakings.
- 13.9 The Vendor undertakes to notify the Company immediately of:
- 13.9.1 any change of address;
- 13.9.2 cessation of business; and / or
- 13.9.3 change in ownership or shareholding of the Vendor.
- 13.10 The Vendor shall at all times whether during or after termination or expiry of this Agreement indemnify and keep the Company indemnified against all losses, claims, damages, liabilities and expenses (including all reasonable legal fees) resulting from any advice given,

recommendations made, goods delivered, services rendered or arising from any cause whatsoever as envisaged in the preceding paragraphs.

14. **DISPUTE RESOLUTION**

- 14.1 Should any dispute, disagreement or claim arise between the Parties (“the Dispute”) concerning this Agreement (including its terms and/or the rectification hereof, its termination and/or cancellation) and such Dispute cannot be resolved between the Parties within 15 (fifteen) days after the Dispute arose, then the Dispute shall be submitted to arbitration for resolution in accordance with the rules of the Arbitration Foundation of South Africa (“AFSA”) by an arbitrator or arbitrators appointed by AFSA and utilising such expedited proceedings as may be available in terms of such rules.
- 14.2 The Parties hereby irrevocably agrees that the decision of the arbitrator in the arbitration proceedings shall be final and binding on the Parties and will be carried into effect.
- 14.3 Unless otherwise agreed in writing by the Parties, any arbitration in terms of this clause 16 shall be held in Pretoria.
- 14.4 Nothing in this clause 14 shall prevent any Party from seeking relief on an urgent or interlocutory basis with any competent court having jurisdiction.
- 14.5 For the purposes of this clause 14 and for the purposes of having any award made by the arbitrator/s being made an order of court, the Parties hereby submit to the jurisdiction of the North Gauteng High Court.
- 14.6 Notwithstanding anything to the contrary contained in this Agreement and/or in law and/or in the AFSA rules, the powers of the arbitrator(s) referred to in this clause 14 shall include the power to amend the provisions of this Agreement and to impose contractual terms on the Parties in relation to the Dispute in circumstances where Agreement specifically makes provision for such amendment or imposition and such relief is requested by a Party, if any.

15. **NOTICES**

- 15.1 Any notice or other document to be served under this Agreement to a Party may be to be served at its nominated address.
- 15.2 The nominated address of the Vendor shall be the registered address of the Vendor specified in the Sundry Vendor Registration Application.
- 15.3 For the Company, the nominated address shall be as follows:
12 Byls Bridge Boulevard
Highveld
Centurion
E-mail: Phillippus.Oosthuizen@continual.co.za
Attention: Phillippus Oosthuizen.
- 15.4 A Party shall be entitled from time to time, by written notice to the other, to vary its *domicilium* address to any other address within the Republic of South Africa, which is not a post office box.
- 15.5 All notices given in terms of this Agreement shall be in writing and any notice given by one Party to the other (the addressee) which:
- 15.5.1 is delivered by hand during the normal business hours at the addressee’s *domicilium* shall be deemed to have been received by the addressee at the time of delivery; or
- 15.5.2 is sent by email to the addressee’s e-mail address shall be deemed to have been received by the addressee on the 1st (first) business day after the date of transmission thereof.
- 15.6 Notwithstanding anything to the contrary contained or implied in this Agreement, a written notice or communication actually received by one of the Parties from the other including by way of e-mail transmission shall be adequate written notice or communication to such Party.

16. **CONFIDENTIALITY AND INTELLECTUAL PROPERTY RIGHTS**

- 16.1 To the full extent reasonably possible, each Party agrees and undertakes to and in favour of the other:

- 16.1.1 not to disclose any of the terms and conditions contained in this Agreement to any third party; and
- 16.1.2 not to utilise or disclose to any third party any trade secrets or confidential information of the other of them, which trade secrets or confidential information is not in the public domain, disclosed or made available to it under and by virtue of this Agreement and/or during the course of the implementation thereof, other than as may be necessary for the fulfilment of its duties, functions and obligations under this Agreement.
- 16.2 The Parties acknowledge their respective obligations to comply with the substantive provisions of the Protection of Personal Information Act, 4 of 2013 (“POPI”).
- 16.3 Where any Party receives any personal information as defined in POPI it shall ensure that it fully complies with the provisions of the Act and only deal with the personal information to fulfil its obligations under this Agreement. The personal information received shall not be further processed or disclosed without the consent of the disclosing party.
- 16.4 Each Party therefore understands and agrees, notwithstanding any contrary provision in any other agreement between the Parties, that each Party retains its full rights to pursue legal or equitable remedies in the event of any breach or threatened breach of the provisions dealing with POPI, and may prevent the other Party, any of its agents or sub-contractors, or any third party who has received records from that Party from violating this Agreement by any legal means available. Each Party further understands that violation of the provisions dealing with POPI may subject that Party to applicable legal penalties, including those provided under POPI.
- 16.5 All Intellectual Property rights belonging to a Party prior to the commencement date of this Agreement shall remain vested in that Party.
- 16.6 None of the Intellectual Property Rights in the Company’s trademarks and brands shall be used by the Vendor for any purpose without the Company’s prior written consent.
- 16.7 Where there are modifications to pre-existing material which are inseparable from the pre-existing material, then the Party which owns the pre-existing material will own the modifications.

17. **FORCE MAJEURE**

- 18.1 Performance of each Party's obligations under this Agreement shall be suspended for as long as and to the extent that such Party is prevented or hindered from performance by circumstances of force majeure.
- 18.2 In such circumstances:
 - 18.2.1 the Party so affected shall give prompt written notice to the other Party setting forth the nature and estimated duration of the relevant circumstances of force majeure; and
 - 18.2.2 the Parties shall co-operate and apply all reasonable efforts to minimise the effects of such force majeure;
- 18.3 If the circumstances of force majeure are such as to substantially or permanently prevent the performance by either Party of its obligations in terms of this Agreement for a continuous period of more than 30 (thirty) days, either Party shall be entitled, on 7 (seven) days' written notice, to terminate this Agreement in respect of any obligations still to be performed hereunder.
- 18.4 For the purpose of this Agreement, the expression "**force majeure**" shall include war, earthquake, fire, flood, tempest, Act of God, riots, strikes, pandemics or any other cause beyond the control of the Party affected thereby but excluding financial inability.

19. **CESSION AND ASSIGNMENT**

A Party shall not be entitled to assign, cede or delegate any of its rights and/or obligations in terms of this Agreement to any other person without the prior written consent of the other Party being obtained, provided that such consent shall not be unreasonably withheld or delayed in the event that such assignment, cession and delegation is to an affiliate of a Party.

20. **CONFLICT OF INTEREST**

Neither of the Parties nor any of their respective representatives, employees, agents or sub-contractors shall give to, or receive from the other, any of its affiliates or any representatives, employees, agents or sub-contractors of the other any benefit, commission, fee, rebate, or any gift or entertainment of value in connection with this Agreement.

21. **ANTI-CORRUPTION AND BRIBERY**

Both Parties represent and affirm that (i) they will comply with all applicable Laws relating to anti-bribery and anti-corruption and (ii) they will not promise, offer, give or receive bribes or corrupt actions in relation to the procurement or performance of the Contract. For the purposes of this clause, 'bribes or corrupt actions' mean any payment, gift or gratuity, whether in cash or kind, intended to obtain or retain an advantage, or any other action deemed to be corrupt under the applicable Laws.

22. **WHOLE AGREEMENT**

This Agreement constitutes the whole agreement between the Parties as to its subject matter and no agreement, representations or warranties between the Parties other than those set out herein are binding on the Parties.

23. **SEVERABILITY OF INVALID PROVISIONS**

If any provision of this Agreement is declared to be invalid, the other provisions shall not thereby be affected or impaired and shall continue to be of full force and effect. In such event, the Parties shall seek in good faith to negotiate valid substitute provisions for the provision so declared to be invalid that will as nearly as possible preserve the commercial balance between them. In the event of the failure of such discussions, the provisions of clause 14 shall apply.

24. **SUB-CONTRACTING**

The Parties may, with prior written agreement between the Parties, sub-contract any of its obligations under this Agreement to any third party, provided that in doing so it shall not in any way be relieved of any of its obligations in terms of this Agreement and shall not be entitled to any greater protection in law than it otherwise would have been entitled to have such sub-contracting not been effected.

25. **RELAXATION**

No latitude, lenience, extension of time or other indulgence which may be given or allowed by a Party to the other in respect of the performance of any obligation hereunder or enforcement of any right arising from this Agreement or in law and no single or partial exercise of any right by a party shall under any circumstances be construed to be an implied consent by such Party or operate as a waiver or a novation of, or otherwise affect any of that Party's rights in terms of or arising from this Agreement or in law or estop such Party from enforcing, at any time and without notice, strict and punctual compliance with each and every provision or term hereof.

26. **RIGHTS OF THIRD PARTIES**

The provisions of this Agreement are intended solely for the benefit of the Parties and their respective successors and it is not the intention of the Parties to confer any rights upon third parties.

27. **JURISDICTION**

This Agreement shall be governed by and construed in accordance with the laws of the Republic of South Africa and shall be subject to the exclusive jurisdiction of the Courts of the Republic of South Africa.