

**1. INTRODUCTION**  
**These terms and conditions apply to all transactions between Interon Solutions (Pty) Ltd (The Supplier) and its Client, per 2.4 below.**

- 1.1 The supplier may, or may have not, designed and/or developed the website and/or database for the client.
- 1.2 The client wishes the supplier to maintain the product and if a website, database, online catalogue or the like, operate and maintain the website on the internet and the world wide web (together hereinafter referred to as the "www").

**2. INTERPRETATION**

In the agreement, unless inconsistent with or otherwise indicated by the context -

- 2.1 "acceptance testing" means the carrying out by the client of tests agreed between the supplier and the client (under the supervision of the supplier if requested) to which the website (or, as the case may be the website prepared pursuant to clause 8.7 that is proposed to be developed in partial substitution for or as an addition to the website) is to be subjected;
- 2.2 "the agreement" means the agreement between the client and the supplier as set out in the client form, these terms and conditions, together with all appendices and schedules hereto;
- 2.3 "billing rates" means the supplier's personnel charges from time to time as notified, plus the cost of any materials provided;
- 2.4 "the client" means the entity whose name is reflected in schedule 1;
- 2.5 "commencement date" means the data of commencement of the rendering of the services as specified in the form;
- 2.6 "confidential information" shall include, but not be limited to-
- 2.6.1 the supplier's strategic, design, motion graphic, hardware and software solutions, interface layout, content layout, text specifications, database models, structuring and presentation of data pertaining to the clients business;
- 2.6.2 the supplier's interpretation and application of industry specific trends relative to the clients business;
- 2.6.3 any information of whatever nature which has been or may be obtained by either of the parties from the other, whether in writing or in electronic form or pursuant to discussions between the parties, or which can be obtained by examination, testing, visual inspection or analyses, including, without limitation, business or financial data, processes, designs, sketches, photographs, plans, drawings, specifications, sample reports, models, client lists, price lists, studies, findings, computer software or ideas;
- 2.6.4 all trade secrets and know-how of any nature whatsoever disclosed in writing, orally or by other means by the supplier to the client, all of which are either confidential, proprietary or otherwise not generally available to the client and the public.
- 2.7 "database" means the collection of related data including, but not limited to, text, images sound and video, all of which have been created and integrated by the supplier using a method of connecting and displaying the data into a collection of interrelated independent files or data which are stored together and can be accessed by third parties;
- 2.8 "enhancements" means changes and/or addition and/or improvements to the website which create functionality or additional content not covered in the specification;
- 2.9 "enhancement specification" means a written document setting out the parameters of an enhancement;
- 2.10 "hosting fee" means the monthly fee payable by the client to the supplier in respect of the hosting of the website;
- 2.11 "intellectual property rights" means all copyrights, patents, service marks, trademarks (whether registered or unregistered) as well as any applications for any of the foregoing and any other rights which may in the future be based thereon, together with all trade secrets, know-how and other intellectual property rights in all parts of the world;
- 2.12 "maintenance fees" means the monthly / annual fee payable by the client to the supplier in respect of the services ;

2.13	"nominated account" means the supplier's banking account;
2.14	"the parties" means the supplier and the client;
2.15	"prime rate" means a rate of interest per annum which is equal to the published minimum lending rate of interest per annum, compounded monthly in arrears, charged by the supplier's bankers on the unsecured overdrawn current accounts of its most favourite corporate clients in the private sector from time to time. In the case of a dispute as to the rates payable, the rate shall be certified by any manager or assistant manager of any branch of the said bank, whose decision shall be final and binding on the parties;
2.16	"problems" mean difficulties experienced with the operation of the website which may be categorised by the supplier in its discretion as any of the following:-
2.16.1	Level 1 problem - an operational problem which renders the website completely inaccessible to users of the www or severely corrupts the integrity of the data or services available at the website.
2.16.2	Level 2 problem - an operational problem which renders the website partially inaccessible to users of the www or which renders it materially inconsistent with the specification.
2.16.3	Level 3 problem - any other problem with the operation, format or appearance of the website;
2.17	"product" means the website and/or customer relationship management program and/or digital catalogue and/or data base and/or any form of interactive multimedia program which includes, but is not limited to, the use of text, audio, graphics, animated graphics, photographic or other images and full-motion video electronically manipulated, integrated and reconstructed in synchrony and which is hosted on the server (if a website) or delivered to the client via electronic mail or on CD Rom, magnetic tape, disk or other physical material which is capable of being processed by a multimedia enabled system;
2.18	"retained copyright" means all computer code or script, whether compiled or not, written by the supplier in HTML, CGI-bin, Perl, Java (including any Java Beans developed by the supplier), Javascript, PHP, ASP or any other computer language or program and incorporated into the website;
2.19	"server performance" means the proportion of time during the period of the agreement for which the server hosting the website will be accessible via the www;
2.20	"services" means the services set out schedule 1;
2.21	"specification" means the framework or specification of the website, which is to be provided by the client to the supplier, as modified by any enhancement specification attached to the agreement;
2.22	"specification addendum" means an amendment to the specification agreed to between the parties in writing pursuant to clause 8.3 below;
2.23	"supplier's server" means any and all of the supplier's computer processors, whether located at their offices, or those of contracted third parties who may at any time be responsible for them.
2.24	"third party copyright" means intellectual property rights owned by third parties in any software as well as other material used by the supplier in the creation of the website;
2.25	"update" means substitution to the extent specified in schedule 1 of text or graphics on the website, without the need to amend or add any code or hyperlinks;
2.26	"website" means a compilation of one or more web pages being a combination of text, data information of whatever nature (be it numeric, graphic or textual, sound, images, other material accessible through the world wide web or other internet services (including, but not limited to electronic mail ("email") and file transfer protocol ("ftp")) and shall include the database;
2.27	"working hours" are between eight o'clock (08h00) and half past five o'clock (17h30) on days from Monday through Friday, excluding public holidays in the Republic of South Africa;
2.28	words importing the singular include the plural and vice versa;
2.29	words importing any one gender include the other gender;
2.30	reference to a natural person includes artificial persons and vice versa;
2.31	if any word or phrase is defined in any clause, that word or phrase shall bear the same

meaning wherever used in the agreement.

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| 2.32 | If any provision in clause 1 or 2 of these terms and conditions is a substantive provision conferring rights or imposing obligations on any party, effect shall be given to it as if it were a substantive provision in the body of the agreement.  |
| 2.33 | The clause headings to the agreement are intended for convenience only and shall not affect the construction or interpretation of the agreement.  |
| 2.34 | Expressions defined in the agreement shall bear the same meanings in schedules or annexures to the agreement which do not themselves contain their own definitions.   |
| 2.35 | The use of any expression in the agreement covering a process available under South African Law such as a winding-up (without limitation eiusdem generis) shall, if any of the parties to the agreement is subject to the law of any other jurisdiction, be construed as including any equivalent proceedings under the law of such defined jurisdiction. |
| 2.36 | The rule of construction that the agreement shall be interpreted against the party responsible for the drafting or preparation of the agreement, shall not apply.   |
| 2.37 | The agreement shall be governed by, interpreted and implemented in accordance with the laws of the Republic of South Africa.  |
| 2.38 | In the event of any conflict arising between these terms and conditions and the client form or any appendices or schedules, then, unless a contrary intention appears these terms and conditions shall prevail.   |

### **3. THE AGREEMENT**

In consideration of the payment of the hosting fee and/or maintenance fee and any other fees payable pursuant hereto by the client to the supplier, the supplier agrees to maintain the product and, if a website, subject to the effects of the failure or interruption of services provided by third parties, to use its best endeavours to provide the services and to maintain the server performance.

### **4. TERM AND TERMINATION**

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| 4.1   | Unless otherwise specified the agreement shall commence on the commencement date and shall endure for an initial period of 2 (two) years calculated from the commencement date ("the initial period").   |
| 4.2   | Subject to clause 4.3, the initial period shall automatically be renewed for a further period of 1 (one) year and subsequent periods of 1 (one) year each (the "renewal period/s").  |
| 4.3   | Either party may terminate the agreement with immediate effect by written notice to the other in the event that the other party:-  |
| 4.3.1 | fails to pay any amount due hereunder;   |
| 4.3.2 | being a company or close corporation, takes steps to reregister itself or is deregistered or a Resolution is passed for its winding up; or   |
| 4.3.3 | being an individual, dies or takes steps to surrender his/her estate or his/her estate is sequestered, whether provisionally or finally;   |
| 4.3.4 | being a company or close corporation, takes steps to place itself, or is placed, in liquidation, whether voluntarily or compulsory or in judicial management, in either case whether provisionally or finally; or  |
| 4.3.5 | being a partnership, the partnership is terminated;  |
| 4.3.6 | commits an act of insolvency as defined in the Insolvency Act, as at the date of the agreement, or, being a corporate body, commits an act which would be such an act of insolvency if committed by a natural person;                                    |
| 4.3.7 | compromises or attempts to compromise generally with any of its creditors;   |
| 4.3.8 | is unable to pay its debts (within the meaning of Section 345 of the Companies Act No. 61 of 1973, if a company, or Section 69 of the Close Corporation's Act No. 69 of 1984, if a close corporation, or Section 8 of the Insolvency Act No. 24 of 1936; |
| 4.3.9 | commits a material breach of any term of the agreement and fails to remedy that breach within 30 (thirty) days written notice to do so;  |
| 4.4   | Either party may give at least 30 (thirty) days written notice to the other party to expire on   |

an anniversary hereof of its decision not to renew the agreement for a further year, save that no such notice shall be given during the initial period.

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4.5 Termination of the agreement shall be without prejudice to any other rights or remedies of either party.

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## **5. EFFECTS OF TERMINATION**

In the event of termination of the agreement other than as a result of a breach by one of the parties or in terms of clause 4.3 -

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5.1 goods, services and licences already contracted for by the supplier in relation hereto must be paid for by the client;

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5.2 the supplier undertakes to facilitate the transfer of the website in accordance with clause 8.3 and to license any retained copyright if applicable, to the client in return for a licence fee to be determined by the supplier; and

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5.3 the client will be responsible for entering into appropriate licences with third party copyright owners and meeting the costs thereof.

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## **6. EXCLUSIONS**

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6.1 The services do not include services in respect of problems, defects or errors resulting from-

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6.1.1 the client failing to follow the suppliers written instructions;

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6.1.2 any modifications or enhancements to the website not made by the supplier, or made without the suppliers prior written consent;

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6.1.3 negligence of the client; and

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6.1.4 recovering lost or corrupted data.

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6.2 The supplier shall not be obliged to support the website if problems are due to reasons external to the supplier including, but not limited to, failure on the part of third parties who render services to the supplier to provide connectivity, failure or fluctuation of electrical suppliers, hardware failures, accidents or natural disasters.

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6.3 The supplier may temporarily suspend its obligations in terms of the agreement in order to maintain, repair or improve any of the services. Where circumstances permit, the supplier shall provide prior notice of any such suspension to the client and restore its services as soon as is reasonably practicable.

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6.4 On the happening of an event contemplated in clause 6.3, the client shall not be entitled to any set-off, discount, refund or other credit in respect of any suspension of services beyond the suppliers control in terms of this clause 6, or which is reasonable in duration in the circumstances, nor shall the client be entitled to claim any damages (whether direct or consequential) which may be suffered by it as a result of the suspension of the services.

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## **7. CHARGES**

### **Maintenance fee**

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7.1 The maintenance fee shall cover the provision of the services only in relation to the website and/or product.

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7.2 Maintenance fee invoices shall be raised by the supplier monthly in advance. Any invoices issued under the agreement shall be payable by the client within 14 (fourteen) days of the date of the invoice.

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7.3 The supplier shall be entitled to increase the maintenance fee during the initial period and any subsequent renewal period in accordance with any increases which have been imposed upon it by its suppliers and/or with benchmarks in the IT industry which shall include, but not be limited to, increases in labour costs (having regard to, inter alia, premium salaries being paid to specialist personnel, the accelerated demand by computer users for new computer systems, bonuses, "high average" salaries and "skills scarcity" premiums), as well as any change in the supplier's effective maintenance obligations resulting from enhancements effected during the previous 12 (twelve) months.

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- 7.4 In the event of the supplier increasing the maintenance fee, it shall first give the client 30 (thirty) days written notice.
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- 7.5 Hosting fee. The hosting fee shall be determined by the supplier and shall be based on the level of traffic to the website as well as the amount of bandwidth consumed by visitors to the website, the details of which are set out in schedule 1. The provisions of clauses 7.2 and 7.3 shall apply mutatis mutandis.
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- 7.6 Interest. Without prejudice to all or any of the suppliers rights in terms of the agreement, should the client fail to pay any invoice in accordance with clauses 7.2 and 7.5, the supplier shall be entitled to charge interest on a daily basis on any sums outstanding from the invoice date until the date of payment, at the rate of 2% (two percentum) above the prime rate.
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- 7.7 Taxes. All maintenance fees due by the client to the supplier in terms of the agreement shall exclude any taxes and/or levies due as a result of a requirement by any governmental organisation (which shall include, but not be limited to, any value added tax, importation tax, withholding tax and general sales tax) and all these taxes and/or levies shall be paid by the client.

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### **Suspension**

- 7.8 Without prejudice to the client's obligation to pay fees due hereunder, the supplier may without prejudice to any other rights and remedies suspend the services hereunder if the client refuses to pay any amount due to the supplier, if the client's account with the supplier is overdue, or any material, data or information appears on the website which is illegal or unlawful, obscene, defamatory, could reasonably be construed to demonstrate a clear intention to be hurtful, harmful or incite harm, promote or propagate hatred, encourages hate speech or otherwise infringes any third party rights whatsoever.
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- 7.9 On the happening of any event contemplated in clause 9.9, the supplier shall not be liable for any damages (whether direct or consequential) suffered by the client.

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### **Additional Services**

- 7.10 In consideration for the provision by the supplier at the client's request of additional service which do not form part of the services as specified in schedule 1 the client shall pay the supplier according to the billing rates, unless otherwise agreed by the parties. The provision of a mirror server if requested by the client shall be regarded as an additional service.
- 7.11 For purposes of the agreement, time of payment shall be of the essence.

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## **8. CHANGE CONTROL**

- 8.1 If at any time, the client wishes the supplier to effect any enhancements, the client shall supply to the supplier full written particulars of any desired enhancement.
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- 8.2 The supplier will then quote for such enhancement.
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- 8.3 If the client accepts the quote, full particulars of the enhancement including pricing and time of payment are to be recorded in an enhancement specification to be signed by both parties and appended to the agreement.
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- 8.4 Until such time as the enhancement is formally agreed, the parties shall, unless otherwise agreed, continue to perform their respective obligations under the agreement, as if such enhancements had not been requested.
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- 8.5 If the enhancement is to be carried out, the supplier shall develop the enhancements in accordance with the enhancement specification. The client further undertakes to secure copyright and other appropriate licences or consents where necessary for the inclusion of all material, data and information provided to the supplier pursuant hereto to enable the supplier to incorporate such material, data and information into the website.
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- 8.6 The client undertakes to obtain all necessary consents for the supplier to incorporate into the website material and information provided by or on behalf of the client to the supplier.
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- 8.7 Once an enhancement has in the opinion of the supplier been completed, the supplier will notify the client in writing (whether by email, fax or letter) and provide the client with an opportunity to test the enhancement in the manner set out in schedule 1. The client shall
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be deemed to have accepted the enhancement unless within 14 (fourteen) days of the date of such notification, it notifies the supplier to the contrary in writing and specifies in such notice the grounds for not accepting the enhancement. The client shall not refuse to accept the enhancement unless it substantially fails to conform to the enhancement specification referred to in clause 8.3 above.

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| 8.8   | If the enhancement does not comply with the enhancement specification, the supplier agrees to carry out any necessary modifications without extra charge. On completion of such modifications the procedure set out in clause 8.7 will be repeated.  |
| 8.9   | Unless otherwise agreed to in writing by the parties, after acceptance of the enhancement and payment of all sums due by the client, the supplier agrees to assign in writing copyright in the enhancement to the client with the exclusion of:  |
| 8.9.1 | retained copyright which will be licensed to the client in return for a licence fee determined by the supplier; and  |
| 8.9.2 | third party copyright.   |
| 8.10  | Subject to contrary agreement by the parties in the relevant enhancement specification, enhancements will be invoiced and payable in accordance with the terms of the agreement.   |
| 8.11  | In the event that the client cancels a requested modification at any time between signing of the enhancement specification pursuant to clause 8.3 and notification of readiness of the modification for acceptance testing pursuant to clause 8.7, payment shall become immediately due to the supplier equal to fifty percent of the fixed price, if a fixed price has been agreed or otherwise on a time and materials basis in accordance with the billing rates. |
| 8.12  | The provisions of clauses 8.2, 8.6 and 8.7 shall apply mutatis mutandis.   |
| 8.13  | In the event of cancellation by the client, goods, services and licences already contracted for by the supplier in relation hereto must be paid for by the client.   |

## **9. CLIENT'S OBLIGATIONS**

The client shall-

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| 9.1  | appoint a representative acceptable to the supplier, which acceptance shall not be unreasonably withheld, and undertakes to channel all contact with the supplier hereunder through the said representative;  |
| 9.2  | at its own expense provide to the supplier all such information as the supplier requires to substantiate the existence or diagnose the cause of problems;   |
| 9.3  | secure copyright and other appropriate licences or consents where necessary for use of any material, data or information provided to the supplier pursuant hereto;  |
| 9.4  | keep secure from third parties any passwords issued to the client by the supplier in connection herewith;   |
| 9.5  | undertake to fully virus-check all data supplied to the supplier pursuant to the agreement;   |
| 9.6  | not use its own CGI, PHP or ASP scripts or ActiveX, unless it has obtained the supplier's prior written consent to do so;   |
| 9.7  | ensure that the parameters of an enhancement are set out clearly in the enhancement specification. The consequences of any failure so to do, financial or otherwise will be for the sole account of the client.   |
| 9.8  | maintain procedures to facilitate the reconstruction of any lost, corrupted or altered files, data or programs to the extent deemed necessary by the client, and the client agrees that the supplier will not be liable under any circumstances for any consequences arising from lost, altered or corrupted data, files or programs. The client is solely responsible for carrying out all necessary backup procedures for its own benefit, to ensure that data integrity can be maintained in the event of loss of data for any reason; |
| 9.9  | not make any modification or addition to the website, except with the written consent of the supplier, which may not be unreasonably withheld; and  |
| 9.10 | embark on any course of action, whether by use of the website or any other means, which may cause a disproportionate level of website activity without providing at least seven days prior notice in writing to the supplier. For the avoidance of doubt, the client  |

undertakes to advise the supplier on an ongoing basis of its marketing activities.

## **10. INTELLECTUAL PROPERTY RIGHTS AND INDEMNITIES**

- 10.1 Without prejudice to any intellectual property rights owned by the client prior to the agreement, and subject to clause 9.9 above, the client agrees to waive and acknowledges that it obtains no ownership rights or claims to any intellectual property rights whatsoever by virtue of the agreement.
- 10.2 The client shall immediately bring to the attention of the supplier any infringement or suspected infringement by any third party of any of the suppliers intellectual property rights or third party copyright of which it is or becomes aware and shall at the request and expense of the supplier take such action or assist the supplier in taking such action as the supplier may deem appropriate to protect the intellectual property rights.
- 10.3 The client agrees to indemnify the supplier against all damages, liabilities, costs and expenses which the supplier may incur or sustain including the costs of defending any suit arising from the use of any material or data provided by or on behalf of the client in the website, or any act or omission by the client, its employees or agents on the attorney and own client scale.
- 10.4 Subject to clause 11.1, the supplier agrees to indemnify the client against all damages, liabilities, costs and expenses which the client may incur or sustain, including the costs of defending any suit arising from the use of any material or data provided by or on behalf of the supplier in the website or any act or omission by the supplier, its employees or agents.
- 10.5 The client hereby grants a licence to the supplier without charge to use its intellectual property rights to the extent necessary for the purpose of the agreement.

## **11. LIMITATION OF LIABILITY**

- 11.1 No matter how many claims are made and whatever the basis of such claims, the suppliers maximum aggregate liability to the client under or in connection with the agreement in respect of any direct or consequential loss whether such claim arises in contract or in delict, shall not exceed a sum equal to the amount of the most recently paid maintenance fee at the time such claim arises, or in the case of an enhancement, the sum paid for such enhancement.
- 11.2 In no event shall the supplier be liable for any direct or consequential damages (including but not limited to, in respect of both direct and consequential damages, loss of profits, revenue, data or goodwill) howsoever arising suffered by the client and arising in any way in connection with the agreement, or for any liability of the client to any third party.
- 11.3 In no event will the supplier be liable for the costs of the procurement of substitute services.
- 11.4 The client agrees that it is in a better position than the supplier to foresee and estimate any loss it may suffer in connection with the agreement and that the maintenance fee and other fees have been set after taking full account of the limitations and exclusions in this clause 11.

## **12. DISCLAIMER FOR LIABILITY**

- 12.1 The parties agree that the client is the sole author, editor or publisher of all material on the website.
- 12.2 The supplier is not liable for any viruses uploaded to the website by third parties or the client's employees or agents.
- 12.3 The client alone is responsible for virus-checking any programs, macros, data files or other material accessed through the internet (or the www).
- 12.4 It is the client's sole responsibility to ensure and satisfy itself as to the integrity, validity and completeness of any data or other material which it downloads from or uploads to the website.
- 12.5 The supplier shall not be liable for ensuring that there is not any material, data or information on the website which is illegal or unlawful, obscene, defamatory, could

reasonably be construed to demonstrate a clear intention to be hurtful, harmful or incite harm, promote or propagate hatred, encourages hate speech or otherwise infringes any third party rights whatsoever.

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- 12.6 The supplier is not liable for any failure in respect of its obligations hereunder which result directly or indirectly from failure or interruption in software or services provided by third parties.
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- 12.7 The supplier shall use its reasonable endeavours to perform the services promptly, but any response times furnished by it are merely estimates and no warranty is given in respect of any times for response, or performance by the supplier.
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- 12.8 The supplier shall not be liable for delay arising from any industrial dispute or any cause outside its reasonable control and any agreed time scale will be subject to reasonable extension in the event of such delay.
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- 12.9 Provision of the service does not imply any representation or warranty by the supplier that it will be able to assist the client in achieving any results which are not technically feasible. Subject to this, any services which are outside the scope of the agreement will, at the client's request and at the supplier's option be provided at the billing rate.
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- 12.10 Provision of the services does not imply the warranty that the supplier will be successful in correcting problems and the supplier does not accept any liability in this regard.
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- 12.11 The supplier reserves the right to refuse to provide the services at any time without refunding any sums paid by the client –
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- 12.11.1 if any attempt is made, other than by the supplier, to deal with any problems;
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- 12.11.2 if any enhancements is carried out by any person or entity other than the supplier; and
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- 12.11.3 if the client has failed to pay the supplier's invoice in accordance with the provisions of the agreement.
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- 12.12 Notwithstanding anything to the contrary herein contained, the supplier shall not be liable to the client or any other person or entity whatsoever (and the client and such other person or entity shall accordingly have no claim against the supplier, and the client hereby indemnifies the supplier) in respect of any loss or damage of whatsoever nature caused by or arising from:
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- 12.12.1 any fact or circumstances beyond the reasonable control of the supplier;
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- 12.12.2 if such loss or damage is consequential or incidental loss or damage; or
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- 12.12.3 as a result of or attributable to the following causes (or any downtime, outage, interruption in or unavailability of the supplier's server as a result of or attributable to any of the following causes):
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- 12.12.3.1 necessary hardware or software maintenance or hardware or software upgrades;
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- 12.12.3.2 agreed system downtime for any reason (including, for example, a move in premises);
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- 12.12.3.3 any breakdown in any of the services provided by any of the supplier's suppliers;
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- 12.12.3.4 the performance or unavailability of external communications networks to which the server or the website is connected;
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- 12.12.3.5 any technical failure in the connectivity services provided by the supplier to the client or a suspension or interruption in performance of any of the supplier's obligations in terms of the agreement, as a direct or indirect result of any technical problems, including but not limited to denial of access to other sites or information;
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- 12.12.3.6 any infringement of the client rights of privacy, security, confidentiality and/or any other like rights, by any person whatsoever arising from any access obtained by any person or entity to the information, data or content of the client on the site or the client's website in terms of the agreement;
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- 12.12.3.7 the loss, destruction, theft, damage, contamination or corruption of the server or any of the client data, material, information and/or content;
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- 12.12.3.8 the client failure to obtain any license, consent or authority necessary or required for services offered by the client, or the breach by the client of any law or regulation;
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- 12.12.3.9 the Upgrade, modification or replacement of hardware forming part of the supplier's server or any faults or defects in the hardware;
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- 12.12.3.10 any services, modifications, alterations, repairs or replacements of work done on the
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supplier's server by any third party.

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- 12.12.4 without limiting the foregoing, as a result of any fact, cause or circumstances whatsoever if the supplier shall have substantially performed its obligations under the agreement.
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- 12.13 The client expressly recognises that the supplier does not endorse, guarantee or associate itself with any goods, services or products which might be advertised for sale on the website and the client hereby indemnifies the supplier in respect of any claims which may be made against the supplier by any purchaser of the client goods and/or services and/or products arising from any loss or damage incurred or suffered by such purchasers or any third party from whatsoever cause arising, including but not limited to, the supply or non-supply of such goods, products or services by the client, or any defects in such goods and/or services.
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- 12.14 The supplier disclaims any liability for, and the client hereby indemnifies the supplier against, any damages suffered by any person or entity arising directly or indirectly from any defamatory, illegal, obscene and/or hateful content, information or other data displayed on or associated with the client data, content or information on the website.
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- 12.15 The supplier reserves the right to take whatever action it deems necessary to preserve the security and reliable operation of the website and the client undertakes that it will not do nor permit anything to be done which will compromise the security of the website.
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### **13. WARRANTIES**

- 13.1 The supplier warrants that it shall use its reasonable endeavours to comply with its obligations hereunder at all times. In the event of its failure so to do, the suppliers entire liability and the client's exclusive remedy hereunder shall be the provision by the supplier of its time without charge to endeavour to make good any such failures.
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- 13.2 The supplier does not warrant that the provision of the services will be uninterrupted or error-free.
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- 13.3 The warranties set out in clauses 13.1 and 13.2 are exclusive of and in lieu of all other conditions and warranties, either express or implied, statutory or otherwise, including without limitation those relating to satisfactory quality or fitness for purpose.
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- 13.4 The client hereby warrants that it has not been induced to enter into the agreement by any prior representations, whether oral or in writing, except as expressly contained in the agreement and the client hereby waives any claim for breach of such representations which are not so expressly mentioned.
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### **14. DISPUTE RESOLUTION**

- 14.1 If the parties are unable to resolve any dispute resulting from the agreement by means of joint co-operation or discussion between the individuals directly involved with the execution of the agreement, within 1 (one) week after a dispute arises, or such extended period of time as the parties may allow in writing, then such dispute shall be submitted to the most senior executives of the parties who shall endeavour to resolve this dispute within 5 (five) calendar days after it has been referred to them.
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- 14.2 Should the dispute not be resolved in the aforesaid manner, then the dispute shall be determined in accordance with the rules of the Arbitration Foundation of the Republic of South Africa by an arbitrator or arbitrators nominated by it.
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- 14.3 The provisions of this clause constitute an irrevocable consent by the parties to any proceedings in terms hereof and no party shall be entitled to withdraw therefrom or claim at any such proceedings that it is not bound by such provisions.
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### **15. CONFIDENTIALITY**

- 15.1 The parties shall hold in confidence all confidential information received from each other and not divulge the confidential information to any person, including any of its employees, save for employees directly involved with the execution of the agreement.
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- 15.2 The parties shall prevent disclosure of the confidential information, except as may be required by law.
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- 15.3 Within six (6) months after the termination of the agreement, for whatever reason, the recipient of confidential information shall return same or at the discretion of the original owner thereof, destroy such confidential information, and shall not retain copies, samples or excerpts thereof.
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- 15.4 It is recorded that the following information will, for the purpose of the agreement, not be considered to be confidential information:
- 
- 15.4.1 information known to either of the parties prior to the date that it was received from the other party; or
- 
- 15.4.2 information known to the public or generally available to the public prior to the date that it was disclosed by either of the parties to the other; or
- 
- 15.4.3 information which becomes known to the public or becomes generally available to the public subsequent to the date that it was disclosed by either of the parties to the other, through no act or failure to act on the part of the recipient of such Information; or
- 
- 15.5 information which either of the parties, in writing, authorises the other to disclose.
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## **16. GENERAL CLAUSES**

- 16.1 Force majeure. Neither party shall be under any liability to the other in respect of anything which, apart from this provision, may constitute a breach of the agreement arising by reason of force majeure, namely circumstances beyond the control of either party which shall include, but not be limited to acts of God, fire, flood, civil commotion, acts of local government or parliamentary authority, breakdown of power supplies and of communications lines.
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- 16.2 Assignment, cession and delegation. Neither of the parties shall be entitled to assign, cede, delegate or transfer any rights or obligations acquired in terms of the agreement, in whole or in part, to any other party or person without the prior written consent of the other, which consent shall not unreasonably be withheld or delayed.
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- 16.3 Notices and domicilia. The parties choose as their domicilia citandi et executandi their respective addresses set out in schedule 1 for all purposes arising out of or in connection with the agreement at which addresses all processes and notices arising out of or in connection with the agreement, its breach or termination may validly be served upon or delivered to the parties. Any notice given in terms of the agreement shall be in writing and shall if delivered by hand be deemed to have been duly received by the addressee on the date of delivery; if posted by prepaid registered post be deemed to have been received by the addressee on the 8th (eighth) day following the date of such posting. Notwithstanding anything to the contrary contained in the agreement, a written notice or communication actually received by one of the parties from another including by way of facsimile transmission shall be adequate written notice or communication to such party.
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- 16.4 Whole agreement. The agreement constitutes the entire contract between the parties with regard to the matters dealt with in the agreement and no representations, terms, conditions or warranties not contained in the agreement shall be binding on the parties.
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- 16.5 Variation. No agreement varying, adding to, deleting from or cancelling the agreement, shall be effective unless reduced to writing and signed by or on behalf of the parties.
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- 16.6 Relaxation. No latitude, extension of time or other indulgence which may be given or allowed by any party to the other parties in respect of the performance of any obligation hereunder, and no delay or forbearance in the enforcement of any right of any party arising from the agreement, and no single or partial exercise of any right by any party under the agreement, shall in any circumstances be construed to be an implied consent or election by such party or operate as a waiver or a novation of or otherwise affect any of the party's rights in terms of or arising from the agreement or estop or preclude any such party from enforcing at any time and without notice, strict and punctual compliance with each and every provision or term hereof.
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- 16.7 Waiver. The waiver by either party of a delay, breach or default in any of the provisions of the agreement, or disagreement by the other party, shall not be construed as a waiver of any succeeding delay, breach, default or provision of the agreement. No failure of a party to exercise any right to it hereunder, or to insist upon compliance by the other party of any obligation hereunder, or comply with any provision of the agreement, shall constitute a waiver of the parties' rights to demand exact compliance with the terms hereof.
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- 16.8 Severability. In the event that any of the terms of the agreement 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.
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- 16.9 Warranty of Authority. Each party warrants to the other party that it has the power, authority and legal right to sign and perform the agreement and that the agreement has been duly authorised by all the necessary actions of its directors and constitutes valid and binding obligations on it in accordance with the terms of the agreement.
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- 16.10 Hosting Content . The following content is not permitted to be hosted on the Network:
- Adult Content
  - Pornographic Content
  - Racist Content
  - Slandorous Content
  - Vulgar Content
  - Illegal Content
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## **17. MAILBOX TERMS AND CONDITIONS OF USE**

- 17.1 To provide you with the most efficient and reliable service, the following rules are applied to email
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- 17.1.1 Your mailbox limit is 30MB per mailbox. Should your mailbox be full, no new mail will be allowed
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- 17.1.2 the size of received mail may not exceed 4MB
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- 17.2 We shall be entitled to employ any means necessary to protect our systems from SPAM (unsolicited/junk). This includes the use of 3rd party spam blocking services which may result in email deemed as spam or emanating from a blacklisted server being blocked or not delivered.
- 
- .17.3 You agree that we shall not be liable in respect of any loss or damage caused by or arising from our implementation of the mailbox rules, as set out above, for any reason whatever. This exclusion of our liability for loss or damage will include (but is not necessarily limited to):
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- 17.3.1 loss or damage caused by negligent acts of by us and any acts of our employees;
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- 17.3.2 any direct, consequential, incidental, indirect or special loss or damage flowing from business interruption, loss of business information, loss of data or any other cause;
- 
- 17.3.3 any loss or damage, regardless of whether a claim for such loss or damage is based on breach of contract, delict, breach of implied warranties or otherwise; and
- 
- 17.3.4 any loss or damage, whether it could have been foreseen or not.
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**We reserve the right to terminate any website without notice.**