



CUSTOMER RELATIONSHIP TERMS

(general terms relating to the use of this web site and the provision of technology goods or services)
Version number: RSA1.1

INTRODUCTION

These Terms are the general terms of the relationship between Vendor and Customer. These Terms cover the use of this web site, including any other marketing material of Vendor. By visiting and using this web site, each Customer accepts and agrees to these Terms. These Terms also cover any transactions (including any transaction carried out electronically using a computer or network, or in person) where Vendor provides to Customer who receives Goods or Services. The commercial terms of any transaction between Vendor and Customer will be contained in an Order that will incorporate these Terms. The Order will prevail if there is a conflict of meaning. Nothing in these Terms obligates either party to enter into any Orders.

DEFINITIONS AND INTERPRETATION

Definitions. For purposes of the Agreement:

"Affiliate" means any parent company, subsidiaries, joint ventures, or other companies under a common control;

"Agreement" means the agreement between Vendor and Customer, consisting of these Terms and any Orders the parties enter into;

"Customer" or **"you"** means any person who visits this web site or concludes an Order;

"ECT Act" means the Electronic Communications and Transactions Act 25 of 2002;

"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 Vendor;

"EULA" means an end user license agreement;

"Fees" means the fees, charges, or purchase consideration that Customer will pay to Vendor in respect of Goods and Services provided by Vendor under Orders;

"Goods" means any goods Vendor provides to Customer, under Orders;

"Order" means a goods or services order agreed to and signed by both the parties describing the specific Goods or Services to be provided by Vendor to Customer;

"Services" means any services Vendor provides to Customer, under Orders;

"Service Levels" means the levels according to which Vendor will provide each Service as agreed by the parties;

"Sign" means the handwritten signature or advanced electronic signature of the duly authorised representative of a party;

"Signature Date" means the date of signature by the party signing last;

"Terms" means these terms, consisting of:

1. these customer relationship terms; and
2. any other relevant specific terms, policies, disclaimers, rules and notices agreed between the parties, (including any that may be applicable to a specific section or module of this web site or any specific Goods or Services);

"Vendor" means the vendor identified on this web site; and

"Writing" means any mode of reproducing information or data in physical form and includes hard copy printouts, handwritten documents, fax transmissions, but excludes information or data in electronic form.

Definitions in the Order. Words defined (or assigned a meaning) in the Order will have that meaning in these Terms, unless the context clearly indicates otherwise.

Interpretation. A word defined or assigned a meaning in the Agreement will start with a capital letter. 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 from time to time. A reference to a person includes a natural and juristic person and a reference to either 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.

Conflict. If there is a conflict of meaning between these customer relationship terms and any other relevant specific terms, policies, disclaimers, rules and notices agreed between the parties, the specific terms will prevail in respect of your use of the relevant section or module of the web site or Goods or Services. .

TERM

These Terms commence on acceptance and continue until terminated.

USE OF THIS WEB SITE

License to use this web site. Vendor grants each Customer a limited, revocable license to use this web site subject to the Agreement. Any person wishing to use this web site contrary to the Agreement must obtain Vendor’s prior written consent.

Framing. No person, business, or web site may frame this web site or any of the pages on this web site.

Linking. Customer may link to the web site only by linking to the home page [insert hyperlink] of this web site. Vendor prohibits Customer from “deep linking” to any other pages in a manner that would incorrectly suggest endorsement or support of Customer by Vendor or suggests Customer is the owner of any intellectual property belonging to Vendor.

Spiders and Crawlers. No person, business, or web site may use any technology (including spiders or crawlers) to search and gain any information from this web site.

MODIFY

Vendor may modify, suspend, or discontinue providing this web site or any Goods or Services (with or without notice) and will not be liable.

USER ACCOUNTS

Passwords and Security. Only a registered Customer can make offers. Each Customer is responsible for keeping their password secure. Each Customer is solely responsible and liable for activities that occur under their account. Customer authorises Vendor to act on any instruction given under Customer’s account, even if it transpires that someone else has defrauded both Vendor and Customer, unless Customer has notified Vendor prior to Vendor acting on a fraudulent instruction.

Customer Accounts. Customer accounts registered by bots or other automated methods are not permitted. Each Customer must provide their full legal name, a valid email address, and any other information requested in order to complete the registration process. One person may only use each Customer’s login - Vendor does not permit multiple people to share a login.

Deactivation or deletion by Customer. A Customer may deactivate or delete Customer’s account, for any reason.

ORDERS

Invitation to do business. The marketing of the Goods or Services by Vendor is merely an invitation to do business or for Customer to make an offer to procure Goods or Services. The parties only conclude a valid and binding Order when Vendor accepts the offer made by Customer. Unless proven to the contrary, Vendor only accepts an offer relating to Goods, when Vendor ships the Goods. If only part of the Goods relating to an offer are shipped, Vendor only accepts that portion of the offer. Unless proven to the contrary, Vendor only accepts an offer relating to Services, when Vendor begins providing the Services. Vendor may accept or reject any offer. If Vendor does not accept any offer, then Vendor will refund any monies already paid by Customer.

Cancel. Vendor may cancel any Order at any time in its absolute discretion. Vendor will refund any monies already paid by Customer.

Fees. Despite Vendor’s best efforts, the stated Fees may be incorrect. Vendor will confirm the Fees for any Goods or Services when Vendor accepts the Customer’s offer.

Third party terms. If a third party supplies or delivers any Goods or Services directly to you, third party terms or conditions may apply. Customer is solely responsible to ensure they understand and agree to those terms.

Time and place. The parties conclude any agreement between them at the time when a duly authorised representative of Vendor accepts the relevant offer and at the place where Vendor has its head office. Vendor does not need to communicate the acceptance of the offer to Customer.

Orders. The Terms in effect at the time Customer makes an offer will govern the Order. Each Order will create a separate agreement. Despite that, Vendor may consider the breach of any one Order to constitute a breach of any or all Orders.

Stock availability. Vendor may not always have the Goods on which Customer makes an offer in stock. Customer may cancel the offer or make another offer on the part of the Goods that are in stock.

CAPACITY OF CUSTOMER

Each Customer represents and warrants that Customer (and any person who places an Order on Vendor):

1. is old enough under applicable law to enter into the Agreement;
2. is legally capable of concluding any transaction;
3. possesses the legal right, full power, and authority to enter into the Agreement;
4. is authorised to use the password required for any account; and
5. will submit true, accurate and correct information to Vendor and this web site.

If Customer is younger than 18 years of age, Customer warrants that Customer has the consent of its legal guardian to enter into the Agreement or that Customer has obtained legal status in another manner.

GOODS

Sale. Vendor sells to Customer who purchases the Goods on the terms of the Agreement.

Countries. Customer may only make offers for Goods for delivery to the countries listed on the web site. If Customer's shipping or billing address is not listed as a choice under the country category on the web site, Customer must not make an offer. Vendor is only able to sell into the countries listed, and Vendor is only able to ship to those countries.

Shipping and packing. Vendor will display all available shipping options and charges before Customer completes Customer's purchase. Unless otherwise agreed in writing, Vendor will select the specific mode of shipment of the Goods and the cost of shipment will be for Customer's account. Vendor will pack the Goods in accordance with Vendor's packaging specifications for the Goods and the cost of packaging will be included in the Fees.

Time until dispatch. Once Vendor receives an offer, Vendor will endeavour to dispatch the Goods as soon as reasonably practicable (which may be longer than 30 calendar days) to the address specified in the offer. Vendor will try to adhere to the estimated delivery dates but accepts no liability for failing to do so. Customer may not withdraw any offer due to a delay in delivery.

Risk and ownership. All risk of loss or damage to the Goods will pass to Customer upon physical delivery of the Goods to Customer's delivery address. Ownership in the Goods will only pass to Customer upon the payment in full of the Fees.

SERVICES

Vendor will provide the Services to Customer at the Service Levels.

FEES AND PAYMENT

Due Dates. Payments must be made promptly on the Due Date, without any deduction, set off or demand and free of exchange in the currency specified in the Order.

Manner of payment. Customer must make payment in the manner specified in the Order.

Late payments. The additional surcharges and penalties specified in the Order will apply to any payment received after the Due Date to cover collection fees and additional administration costs. Customer must pay the surcharges and penalties to Vendor on-demand. Vendor may withhold or remove any Goods or halt the provision of any Services until Customer has paid all amounts that are due.

Interest on overdue amounts. Any amount not paid by Customer on the Due Date will bear interest for the benefit of Vendor, from the Due Date until the date Customer pays it. The rate of interest will be either 2% above the published prime overdraft rate from time to time of Vendor's 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.

Appropriation. Vendor may appropriate any payment received from Customer towards the satisfaction of any indebtedness of Customer to Vendor under the Agreement.

Withhold payment. Customer may not withhold payment of any amount due to Vendor for any reason.

Certificate. A certificate, signed by an accountant appointed by Vendor, of the amount due by Customer and the date on which it is payable will be conclusive irrefutable proof of the correctness of the certificate's contents.

Tax. All fees exclude any tax (including value added tax and other taxes levied in any jurisdiction), duty (including stamp duty), tariffs, rates, levies and any other governmental charge or expense payable, which will be payable where applicable by Customer in addition to the fees.

Costs to implement. Unless otherwise stated, the parties will bear their own costs to implement (or perform their obligations under) the Agreement.

Payment profile. Customer and any signatory consent and agree that Vendor may provide any registered credit bureau with information about the payment of amounts.

WARRANTY

Warranty. The Goods will be subject to any warranty indicated in the description of the Goods appearing on the web site, the accompanying documentation, packaging, or EULA. Please review those documents carefully. Customer will have the same rights against Vendor as Vendor has against the supplier regards defects in the Goods, the intention being that Vendor's liability to Customer will be co-extensive with the right of recourse Vendor has against the supplier. Vendor will provide a copy of any warranty on request. To the extent legally possible, Vendor assigns to Customer the benefit of any supplier warranties that a supplier may give to Vendor regards the Goods. Customer may not waive any of Vendor's common law rights as against the supplier.

Sales representatives. No sales representatives of Vendor has the authority to bind Vendor and no representation, warranty or any other statements made or given by any sales representative of Vendor will be binding on Vendor, unless given in Writing and Signed by a duly authorised representative of Vendor.

SOFTWARE

Please note that intellectual property laws protect all software. Software is licensed, not sold, to Customer. Unless agreed otherwise, the license for any software is contained in the EULA. Customer will be required to agree to the EULA prior to use of the software. The applicable EULA, which takes precedence, governs the use of the software. If Customer does not agree to the EULA, Customer must return the software in accordance with the Return Policy [insert hyperlink] for a refund of the Fees. If Customer uses the software (or takes any other action that is described in the packaging or software as constituting Customer's consent to the EULA), then Customer agrees to the EULA and may not be eligible for a refund or return of the software, unless otherwise allowed in the documentation accompanying the software or applicable law.

RESALE AND EXPORTS

If a Customer wishes to resell or export any Goods, Customer must obtain all required consents or licences under all applicable laws and regulations, including the Export Administration Regulations of the United States of America that may affect or regulate such resale or export.

INTELLECTUAL PROPERTY

Ownership. Except as provided to the contrary in the Agreement, all right, title, interest, and ownership (including all rights under all copyright, patent, and other intellectual property laws) in, to or of this web site are the sole property of or will vest in Vendor or a third party licensor. All moral rights are reserved.

Trademarks. Vendor's logo and sub-logos, marks, and trade names are the trademarks of Vendor and no person may use them without permission. Any other trademark or trade name that may appear on this web site or other marketing material of Vendor is the property of its respective owner.

Restrictions. Except as expressly permitted under the Agreement, this web site may not be:

1. modified, distributed, or used to make derivative works;
2. rented, leased, loaned, sold or assigned;
3. decompiled, reverse engineered, or copied; or
4. reproduced, transferred, or distributed.

Prosecution. All violations of proprietary rights or the Agreement will be prosecuted to the fullest extent permissible under applicable law.

DISCLAIMER OF WARRANTIES

Disclaimer. Use of this web site, the Goods, and Services are at the sole responsibility and risk of each Customer. This web site, the Goods, and Services are provided on an "as is" and "as available" basis. Except for the warranties given in the Agreement, Vendor expressly disclaims all representations, warranties, or conditions of any kind, whether express or implied, including:

1. 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; or
2. any warranties regards third party software; or
3. any warranty as to the results that may be obtained from the use of the Services or as to the accuracy, reliability, or content of any information service or merchandise contained in or provided through the Services.

Vendor does not warrant that this web site, the Goods, and Services will meet the requirements of any Customer or be uninterrupted, be legally effective or complete, timely, secure, error-free or free from infection by malicious software. Each Customer should keep up-to-date security software on the systems used to access this web site or the Services.

Exclusion of liability. Despite any warranty given by Vendor, Vendor will not be liable regards any defect arising from:

1. fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow its instructions (whether oral or in writing), misuse, or alteration or repair of the Goods without Vendor's express prior approval;
2. attachments, features or devices used on the Goods that are not supplied or approved in writing by Vendor;
3. the use of any version other than the current version of the correct operating system software.

INDEMNITY

Each Customer agrees to indemnify, defend, and hold harmless Vendor (and its subsidiaries, Affiliates, officers, agents, co-branders or other partners, and employees) from and against any claim, demand, loss, damage, cost, or liability (including reasonable attorneys' fees) arising out of or relating to its use of this web site, the Goods, and Services.

LIMITATION OF LIABILITY

Correct faults. Vendor will correct any fault in this web site, the Goods, and Services where possible and as soon as reasonably practical and this is its entire liability regarding any fault in the web site, the Goods, and Services. If this clause is held inapplicable or unenforceable, then the following clause will apply.

Direct damages limited. To the extent permitted by applicable law, regardless of the form (whether in contract, tort, or any other legal theory) in which any legal action may be brought, Vendor's maximum liability to a Customer for direct damages for anything giving rise to any legal action will be an amount equal to the total fees already paid by the Customer to Vendor for the specific Goods or Services related to the claim for the period 12 (twelve) months preceding the claim. The aggregate amounts for all claims will not be greater than the maximum amount.

Indirect damages excluded. To the extent permitted by applicable law, in no event will Vendor (or its 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.

Other web site, goods, or services. Vendor is not liable for any other web site, goods, or service provided by any third party.

TERMINATION

Discontinue this web site, the goods, or services. The Agreement will automatically terminate if Vendor discontinues this web site, Goods or Services.

Breach. If a Customer:

1. commits a breach of the Agreement;
2. repeatedly infringes the copyrights or other rights of others;
3. fails to pay any amount due and fails to remedy the breach within 2 calendar days of having been called on in writing to do so;
4. effects or attempts to effect a compromise or composition with its creditors; or
5. is provisionally or finally liquidated or placed under judicial management;

Customer agrees that Vendor may, to the extent permitted by applicable law and without prejudice to its rights in the Agreement or in law, deactivate or delete the Customer's account, terminate access to or use of the web site, claim specific performance of the Agreement, or cancel the Agreement immediately on written notice and claim damages from Customer (including, any claim for any Fees already due).

Effects of termination. On the deactivation or deletion of a Customer's account, the Agreement will terminate and access rights will immediately cease to exist. On termination, cancellation or expiry of any Order all amounts due to Vendor for Services rendered (including all time spent rendering Services even if the deliverable has not been delivered to Customer) or Goods ordered prior to the effective date of termination will become due and payable even if Vendor has not invoiced them. Customer may not withhold the amounts for any reason, unless the arbitrator directs otherwise. The termination, cancellation, or expiry of an Order will not affect the enforceability of the terms that are intended to operate after expiry or termination.

DISPUTES

Forum. Any claims by Vendor against a Customer for injunctive or equitable relief or regarding intellectual property rights may be brought in any competent court without the posting of a bond. The parties will, in the first instance, refer any other dispute arising between Vendor and a Customer to the Customer Relationship Department of Vendor, which will use its best endeavours to resolve the dispute. If the parties are unable to resolve a

dispute, the dispute will be finally resolved by expedited arbitration in accordance with the dispute resolution procedures and rules [insert hyperlink - http://www.arbitration.co.za/Pages/docs/expedited_rules.pdf] of the Arbitration Foundation of Southern Africa in the city where Vendor has its head office in English.

Statute of limitations. Any claim or cause of action by a Customer arising out of or related to the Agreement must (regardless of any statute or law to the contrary) be filed within 12 calendar months after the claim or cause of action arose or be forever barred.

Collection proceedings. Vendor retains the right to institute collection proceedings in a court of law of competent jurisdiction for matters involving outstanding payment. Customer consents to the jurisdiction of the Magistrates Court and will pay legal costs on an attorney own client scale.

NOTICES AND DOMICILE

Notices. All notices, authorisations, disclosures, acknowledgements, and requests must be sent by hand, prepaid registered post, courier, facsimile, or electronic mail to the addresses and numbers provided on this web site. By providing contact information, each party consents to its use for administering the relationship by the other party and other third parties that help a party administer the relationship.

Domicile. Each party chooses its addresses and numbers provided on this web site as its *domicilium citandi et executandi* (its domicile for being served summons and execution levied) for all purposes.

Change of addresses and numbers. Each party may change the addresses and numbers provided on this web site.

Deemed Delivery. Notice will be deemed delivered on the date shown on the by hand, prepaid registered post, courier, facsimile or electronic mail confirmation of delivery.

Notice actually received. If a notice is actually received by a party, adequate notice will have been given.

CIRCUMSTANCES BEYOND CONTROL

No party will be responsible for any breach of the Agreement caused by circumstances beyond its control, including any breakdown or failure of power supply, the Internet, any telecommunications systems, or any computer hardware or software.

CESSION AND ASSIGNMENT

No Customer may delegate its duties under the Agreement or assign its rights under the Agreement, in whole or in part. Vendor may assign the Agreement to any successor or purchaser of its business or some of its assets.

GENERAL

Entire Agreement. The Agreement constitutes the entire agreement between the parties in respect of the subject matter of the Agreement.

Changes. The Agreement may be changed at any time by Vendor and where this affects the rights and obligations of a Customer, Vendor will notify the Customer of any changes by placing a notice in a prominent place on this web site (or by email). If a Customer does not agree with the change the Customer should stop using this web site. If a Customer continues to use this web site following notification of a change to the Agreement, the changed terms will apply to the Customer.

Fact related to web site. A certificate, signed by an administrator of this web site, of any fact related to this web site (including the version of the Terms that governs a particular Order or dispute and what content was published or functionality was available on the web site at a specific point in time) will be conclusive irrefutable proof of the correctness of the certificate's contents.

Waiver. No granting of time or forbearance will be, or be deemed to be, a waiver of the Agreement and no waiver of any breach will operate as a waiver of any continuing or subsequent breach.

Severability. If any term is void, unenforceable, or illegal, the term will be severed and the remainder of the Agreement will have full force and effect, provided the severance does not alter the nature of the Agreement.

Governing Law and jurisdiction. The Agreement is governed by and must be interpreted under the laws of the Republic of South Africa and Customer agrees to submit to the exclusive jurisdiction of the South African courts.

Right to reference. Each Customer consents to Vendor using its name in any marketing or sales material.

ECOMMERCE SERVICES TERMS

(specific terms for the provision of eCommerce Services)

INTRODUCTION

Each Order will contain the commercial terms between Vendor and Customer relating to the provision of eCommerce Services by Vendor to Customer. Vendor has developed or obtained the rights to provide the System. Vendor makes the System available in a platform as a service environment through which it provides eCommerce platform services including the design, hosting, maintenance, and support of the System. The provision of the eCommerce platform services enables Authorised Users of Customer to access the System and make use of the System Services. Customer wishes to make use of several of the eCommerce platform services provided by Vendor in order to sell its goods and services on the Internet.

DEFINITIONS

In an Order the following terms will have the meanings set out below:

"Authorised User" means a user who has been assigned a unique UserID and password. A UserID and password may not be shared by more than one individual natural person;

"Business Day" means any day other than a Saturday, a Sunday or a public holiday in the Republic of South Africa;

"Business Hours" means Vendor's normal business hours on Business Days;

"Client Software" means the software (if any) as set out in an Order, in object code form, which is loaded onto the Authorised Users' local computer and that is required by Customer to access the System;

"Documentation" means any available installation and operating instructions, user and support manuals and technical literature pertaining to the ShopFront as supplied by Vendor with the ShopFront;

"eCommerce Services" means the platform as a service comprising of the design services, the System Services, the hosting services, and the support services;

"Enhancements" means any changes to the ShopFront resulting in the addition to a feature or capability not present in the ShopFront prior to the introduction of the changes, as well as any changes to the ShopFront designed to permit the use of the ShopFront on hardware or in conjunction with operating system software other than that for which the ShopFront was initially designed;

"Equipment" means the equipment to be sold or rented to Customer by Vendor in accordance with a separate Order;

"Initial Period" means the period stipulated in the Order, commencing on the Effective Date;

"Specifications" means the functional and technical specifications of the ShopFront attached as Annexure A or in writing, dated and Signed by the Parties;

"ShopFront" means the shopfront as described in the Specifications and includes:

any one or more modules; and

the Documentation;

but excludes all Upgrades and Enhancements to the ShopFront;

"System" means the eCommerce platform accessed through the Web site through which Customer can access the System Services;

"System Policies" means general polices and limits concerning the use of the System;

"System Services" means the services provided or made available by Vendor to Customer through the mechanism of the System and Customer accessing and using the System;

"System Updates" means any updates, patches, corrections, by-passes or revisions to the System, excluding Upgrades, which add no functionality to the System that are provided to Customer under an Order;

"Time and Materials" means Vendor's standard time and materials fees and charges applicable from time to time;

"Upgrades" means any change or improvement to the ShopFront that relates to or affects the operating performance of the ShopFront or an aspect of the ShopFront, but does not change the basic operation or functioning of the ShopFront.

"System Upgrades" means any modification to the System, excluding System Updates, which increases the functionality or changes the technology or version of the technology of the System that are provided to Customer under an Order;

"User Parameters" means the parameters of use of the System;

"Web site" means the web site at the Customer's domain where the ShopFront will be available on the Internet.

EFFECTIVE DATE AND DURATION

Duration. Each Order will commence on the date that the Order is accepted by Vendor ("**Effective Date**") and, unless terminated in accordance with its terms, will continue in force indefinitely.

Termination. After the acceptance of the ShopFront, either party may terminate an Order on one calendar months notice. Terminations or cancellations by Customer are invalid unless Customer is in possession of a valid termination or cancellation document provided by Vendor acknowledging termination or cancellation.

THE ECOMMERCE SERVICES

Vendor agrees to provide the eCommerce Services to Customer on the basis contemplated in an Order that relate to the package selected by Customer.

DESIGN SERVICES

Vendor roles and responsibilities. Vendor will design the ShopFront relevant to the package selected by Customer in accordance with the Specifications.

Customer's roles and responsibilities. Customer will provide the assistance and input as Vendor may reasonably require to enable Vendor to design the ShopFront.

ACCEPTANCE OF THE SHOPFRONT

Commencement of acceptance testing. Customer will commence acceptance testing of the ShopFront immediately following delivery by Vendor using acceptance tests and data developed by Vendor in its reasonable discretion. The acceptance tests will be completed within 30 calendar days of the delivery of the ShopFront, or a longer period as may be agreed between the Parties in writing.

Vendor to provide reasonable assistance. At the request of Customer and upon reasonable notice, Vendor will, for the duration of the acceptance tests, provide Customer with all reasonable assistance that Customer may require to undertake and complete the acceptance tests.

Purpose. Acceptance testing will determine whether the delivered ShopFront operates materially in accordance with the Specifications.

Variations. Should Customer discover any material variances in the ShopFront from the Specifications during the course of the acceptance testing it will report the variances to Vendor who will, at its cost, correct all the variances within 30 calendar days of having been notified by Customer, or within a longer period as may be agreed by the Parties in writing.

Additional period for testing. Customer will have one further 30 calendar days to conduct acceptance tests on any ShopFront corrected by Vendor.

Confirmation of acceptance. Within three calendar days of conclusion of successful acceptance testing of the ShopFront, Customer must confirm acceptance to Vendor in writing.

Deemed acceptance. Vendor may, at any time after the expiry of the acceptance tests, deliver written notice to Customer requiring Customer to identify any part of the ShopFront that has failed to meet the Specifications and to provide a documented example of the fault in question. Should Customer fail to comply with any notice within seven [Verify? Is this too long?] days of receipt, then Customer will be deemed to have accepted the ShopFront.

AMENDMENTS TO THE SPECIFICATIONS

Procedure. Should either Party, at any stage, require any amendment to the Specifications, it will submit with a written change request to the other Party, setting out -

1. the nature of the desired changes;
2. the reason for the changes; and
3. the effect of the changes on the operation and functionality of the ShopFront.

Format. Should the proposal be made by -

Customer, Vendor will investigate the likely impact of any proposed changes (including the fees payable) and will provide Customer with a written response ("**Change Note**");

Vendor, Vendor will detail the likely impact of any proposed changes upon the fees payable in the Change Note.

No changes until sign-off. Until the time as any changes have been mutually agreed in writing, the Parties will continue to perform their respective obligations under an Order.

SYSTEM SERVICES

The System Services.

System Services. The System will provide the services or enable Customer to use the functions that are available through the System from time to time. [Insert description of the system services or functions that it is able to perform]

Access. Vendor will provide Customer with access to the System via the Web site. Access will be restricted to Authorised Users. Any additional users will be subject to additional charges. Only Authorised Users may access the System. Customer is responsible for ensuring that Authorised Users who are no longer authorised to use the System do not use the System. Customer and the Authorised Users will at all times be responsible for the confidentiality and safekeeping of the UserID and password. Vendor will not be liable for any loss or damage attributable to Customer by the Authorised User's failure to maintain the confidentiality of the UserID and password.

The User Parameters.

Production environment. The production environment in respect of which the System may be used (Customer may not transfer or use the System to or in respect of any other production environment): data voice systems

The Territory. The territory in respect of which the System may be used: the whole world.

Data Repositories and back-up storage. Data, which is stored in the data repositories available on-line through the System Services will be maintained by Vendor for a period of the then current month and for one month thereafter in production and will thereafter be provided to Customer. [Verify?]

Disaster Recovery. Vendor has contracted with Disaster Recovery Procedures (DRP), a division of Internet Solutions, which is a division of Dimension Data to provide Vendor with a disaster recovery facility and a disaster recovery plan that will be made available to Customer upon request. In the event of a disaster, Vendor will implement the disaster recovery plan.

The Service Levels.

Availability. Vendor will use all reasonable efforts to make the System available 24 hours per day, seven days per week and 365 days of each year, as specified in an Order.

Routine maintenance. From time to time, it may be necessary for Vendor to schedule routine maintenance of the System. Therefore a monthly system downtime of seven hours to perform routine maintenance is reserved for each server forming part of the System. Vendor will use all reasonable efforts to minimise the impact of scheduled routine maintenance on the System Services (including typically performing the scheduled routine maintenance from midnight Sunday through to Monday morning). If the scheduled maintenance is to endure for a period longer than 120 minutes then Vendor will provide Customer with prior notice. Vendor may perform emergency maintenance when necessary.

Customer Responsibilities.

Customer will not provide access to any person other than an Authorised User and comply with all statutory or regulatory restrictions, which may be applicable to Customer in utilising the System or any information or data in relation to Vendor.

Specific Exclusions.

Access. Vendor will not be responsible or liable for providing or procuring access from Customer's system to the System, including -

1. Internet access, telecommunications, security satellite or other infrastructure required to access the System; and
2. any Vendor or Customer interface or integration with any existing Vendor and Customer system. Where any interface or integration is identified, the interface or integration or any related services will be considered other services and will be dealt with under a separate Order; and
3. software enhancements or modifications, other than limited changes to screens and menus to include Customer branding.

Customer Data. The System Services do not include any services in connection with the compilation, creation, conversion, or migration of Customer Data or test Customer Data.

Failure to provide information. Any delay or failure by Customer to provide any information, details, or equipment as required in the Order to enable Vendor to provide the System Services may result in additional charges.

HOSTING SERVICES

The Services.

System. The hosting, maintaining and administration of the System by Vendor on a server that is controlled by or on behalf of Vendor.

Management of the System. The management by Vendor of the System.

System Updates. Vendor undertakes promptly to install and implement any System Updates.

System Upgrades. Vendor will configure, install, and implement any System Upgrades as soon as they are made generally available to other customers of Vendor.

Data Repositories and back-up storage. Data that is stored in the data repositories available on-line through the System will be backed-up by Vendor. At the request and additional cost of Customer, Vendor agrees to provide Customer with copies of the data processed by the System in respect of Customer in CD-ROM format.

Disaster Recovery. Vendor agrees to maintain a disaster recovery plan that will be made available to Customer upon request. In the event of a disaster, Vendor will implement the disaster recovery plan.

Exclusions and limitations.

Testing environment. Vendor will provide access to a testing environment established and maintained by Vendor for an additional fee calculated on a Time and Materials basis. The hosting services will not apply to the testing environment.

Bandwidth. Bandwidth will be subject to System Policies.

Storage space. Storage space will be unlimited.

SUPPORT SERVICES

The Services.

Vendor will provide a Help Desk for the resolution of problems with the System.

Support Level One – Customer Support.

Support level one will be the responsibility of Customer, and includes the initial recording and diagnosis of errors or problems reported to a Customer help desk. Customer will resolve user errors and handle information requests.

Customer support resource will, before logging a call with the Vendor help desk, thoroughly research any problem encountered and will make sure that all the details relating to the problem are available to disclose to the Vendor help desk and arise out of the System and not the Equipment.

Support Level Two – Help Desk Support.

Customer support resource will place a support request on the Vendor help desk, stating the requested information. The call will be made via e-mail or a telephone call.

Upon receipt of the call, the Vendor help desk will assign a unique problem log number and inform Customer support resource of the anticipated time within which the problem will be rectified or that the advice will be available. Due to the variable nature of problems, the times will serve as an indication only and will not be conclusive.

The Vendor help desk provides a single point of contact for Customer to Vendor.

The Vendor help desk will operate on the principle of “no number, no call”, meaning that no Service Levels will apply to any call for which Customer support resource does not acquire a unique log problem number.

If there is a problem meeting the stipulated target times specified in these terms the Vendor help desk will inform the relevant Authorised User of the anticipated rectification date.

Once a problem has been resolved the Vendor help desk will inform Customer support resource. Customer support resource will within a reasonable period thereafter (having regard to when the problem would reasonably be detected by Customer again) inform Vendor through the Vendor help desk whether the correction was satisfactory to Customer or not. If no notice is received then the problem will be deemed to have been corrected to the satisfaction of Customer.

The Service Levels.

Hours of Service. The support services will be provided during business hours.

Support Request Priorities. Support requests are prioritised according to the definitions given below, and the target will be to respond within the target periods specified in the section performance objectives. Vendor will make all reasonable endeavours to respond to all support requests within the shortest practical time, consistent with the following:

Priority	Effect on the System	Response Resolution Time	Problem Definition Notes
----------	----------------------	--------------------------	--------------------------

1	Critical	Response: ½ Business Hour Resolution: 4 Business Hours	The entire System, or a business critical element, is inoperable to all users or an entire department; No acceptable workaround is available; Customer management to be contacted.
2	High	Response: 2 Business Hours Resolution: 8 Business Hours	A business-critical element of the System is inoperable to all users, or to an entire department, but an acceptable workaround is available. A non-business-critical element of the System is inoperable to all users, or to an entire department. No acceptable workaround is available.
3	Medium	Response: 4 Business Hours Resolution: 10 Business Days	A non-business-critical element of the System is inoperable to all users or to an entire department, but an acceptable workaround is available.
4	Low	Response: 4 Business Hours Resolution: To be determined by Vendor	Peripheral issues which have no significant adverse effect on trading activities. A query regarding the future or potential use of the System.

The above priorities and targets are for calls relating to a live system; in general, calls relating to other systems, for example a test system, will be allocated a lower call priority. In the event of a communications failure, the call response time will exclude the time during which the call could not be responded to due to the communications failure. Vendor will inform the Customer's system administrator by e-mail or telephone call of a communications failure preventing response to a support request.

Support Request Processing.

1. **Support Request Evaluation.** Once logged, the support request will be automatically allocated to the designated support person. The support person will be responsible for and knowledgeable about Customer's operations. The support owner will evaluate the support request on the basis of the information supplied and will verify that an appropriate priority code has been assigned.
2. **Support Request Routing.** Throughout the life of the support request it may be passed between different expertise teams within Vendor. This includes escalation to an engineering team for technical support. At each stage of the investigation, the support request is forward assigned to the most appropriate section for further investigation and possible defect repair on the basis of the information gathered to date and the results from ongoing investigation and problem simulation.
3. **Support Request Progress Tracking.** Customer may establish the progress of a support request, or update the support request with additional information, which may come to light, at any time by e-mail or telephonic intervention.
4. **Support Request Suspension.** Support requests may be suspended in agreement with Customer personnel who raised the support request or their representative. Vendor will record the date and time of the support request suspension, the name of the individual who agreed it, and the time when the support request should be re-opened.
5. **Support Request Closure.** When Vendor has resolved the problem for which a support request was made, they will contact the Customer assigned contact to explain the resolution and agree to a support request closure. The resolution may be a full one, or a short term one pending a later full resolution (for example a software error correction).
6. **Support Request Re-opening.** If, subsequent to a support request being closed, the problem is not overcome, Customer should contact the Vendor support manager and request that the support request be re-opened.
7. **Escalation.** Vendor will, in certain circumstances, on High priority problems, assign additional problem management effort and escalate the issue. Customer can escalate issues by contacting the support manager, who will update the support request with any additional information, which is provided, and raise the priority of the call if appropriate.

After Hours Support. Any support required outside of Business Hours will be handled as per the support request priorities for Customer's account on a Time and Materials basis.

Customer Responsibilities.

Support Request Initiation. Customer will provide at least the following information for an initial support request:

1. Customer contact name and contact numbers;
2. Time of original failure;
3. Summary of current System operational status;
4. Support request priority code in accordance with table defined;

5. Detailed description of the nature and symptoms of the fault;
6. Detailed description of preceding fault isolation activities;
7. If known, most likely faulty subsystem.

The support manager will allocate a unique support request number and this reference should be quoted in any future contact with Vendor relating to this problem.

Retrieve email. Customer must retrieve email spooled on Vendor's server at least once every five days, as the mail spool file gets cleared every five days. Vendor will not be responsible for any email lost due to non-retrieval by Customer.

Specific Exclusions.

Exclusions. Vendor will not be responsible or liable for :

1. the maintenance of the Equipment or Client Software, operating system and infrastructure, including operational support and maintenance of third party software;
2. providing support directly to Authorised Users, which will include telephone support directly to users;
3. the maintenance of any system other than the System;
4. the correction of defects caused by the use of the System by Customer in an incorrect manner;
5. the correction of defects caused by the use of the computer programs and applications not compatible with the System;
6. the training of Customer staff;
7. the correction of errors caused by a defect in the Equipment; or
8. the diagnosis or correction of errors arising in Customer's system.

Customer Data. The support services do not include any services in connection with the compilation, creation, conversion, or migration of any Customer data or test Customer data.

FEES

Customer will pay Vendor the fees that relate to the package selected by Customer in advance, upon receipt of a valid tax invoice. The Fee will cover the System and no other software or database. Vendor will be entitled to increase the Fee once during each successive period of 12 calendar months calculated from the Effective Date, subject to 14 days' prior written notice to Customer and not in excess of twice the Consumer Price Index, all urban consumers and other goods and services as published by the SA Department of Economic Affairs during the previous calendar year. If, after the Effective Date, the fee payable by Customer increases as a result of any increase in the System Services, including Customer electing to use additional services, Customer will pay Vendor the additional fee agreed by the Parties as being applicable to the System Services.

PAYMENT

Payment. The setup fee for the Design services and the monthly fee for the 1st calendar month is payable on the Effective Date. The monthly fee for all other calendar months will be automatically billed between the 1st and the 7th day of every month. Customer will receive a monthly invoice for charges.

Unpaid Debit Orders. Customer will pay a fee of R60 each time a debit is returned unpaid.

Breach. If the fees are not paid on the due date, Vendor reserves the right to terminate Customer's account or deactivate Customer's ShopFront with immediate effect and without notice.

CHARGES

Charges for materials.

1. Road travel will be invoiced to Customer at Automobile Association rates with the source location being Noordhoek.
2. Air travel will be invoiced to Customer at an Economy Class travel rate, with source location being Noordhoek.
3. Hotel accommodation will be invoiced to Customer at a rate of a three star hotel.
4. Meals will be invoiced to Customer at "Out of Town" allowance rates as outlined by the Department of Labour.

Other charges.

Vendor will be entitled to charge Customer additional charges on a Time and Materials basis for time that in the reasonable opinion of Vendor it spends in relation to or on account of any of the following:-

1. data restoration or re-establishment or other assistance required by Customer that does not result from inherent errors in the System;
2. unauthorised use of the System;
3. providing the support services outside the Business Hours;
4. providing any other services, including services or work required as a result of any Customer modifications to the System in breach of the provisions of an Order;
5. providing services to Customer in circumstances where any reasonably skilled and competent system administrator would have judged Customer's request to have been unnecessary.

CUSTOMER EQUIPMENT AND CLIENT SOFTWARE

Unless otherwise agreed in a separate Order, Customer will, at its own expense, procure, install, and maintain all Client Software, other equipment and software, telecommunications services, airtime, SIM cards, telephone lines, communication interfaces, and cabling necessary to enable Customer to access the System. Any Client Software provided with the Equipment will be subject to and governed by the licensor's end user licence agreement that accompanies or is applicable to the Client Software.

SOURCE CODE ESCROW

Establishment. Vendor will establish with a reputable escrow agent selected by Vendor an escrow arrangement for the source code of the System within 30 calendar days of Customer requesting Vendor to do so.

Escrow Agreement. The escrow arrangement will be subject to the terms of a written escrow agreement to be concluded between the Vendor, Customer, and the escrow agent ("Escrow Agreement").

Release of source code. The source code of the System will be released to Customer in accordance with the terms of the Escrow Agreement.

Fees and expenses. All and any fees and other expenses associated with the establishment, maintenance, termination and Customer's participation under the Escrow Agreement, including any fees charged by the escrow agent for any consulting services provided by the escrow agent will be paid by Customer in accordance with the Escrow Agreement. All reasonable fees and expenses of Vendor incurred by it in giving effect to the provisions of the Escrow Agreement will be paid by Customer and such payment will be made upon request.

THE SYSTEM

License to use the System. During the term of an Order, Vendor grants each Customer a limited, revocable license to use the System as required for the use of the System, subject to the Order.

System Policies. Vendor may establish System Policies. Vendor may log off, deactivate, or delete any Customer account that is inactive for an extended period.

Support and performance. Customer is responsible for implementing and maintaining support for its ShopFront, including correcting any faults. Customer must ensure that its ShopFront does not unduly degrade the performance of the System, including exceeding the quotas and limitations set by Vendor (for example, Vendor API calls, or bandwidth). If this happens, Vendor may suspend the ShopFront.

Changes to the System. Vendor may modify, suspend, or discontinue providing the System (or any part of the System) with or without notice and will not be liable.

Vendor API. Permitted Customer may access their Vendor account via the Vendor API. Users will not abuse the Vendor API specification or implementation or allow excessively frequent requests to Vendor via the Vendor API.

RESTRICTIONS

Customer will not, whether directly or indirectly, except as specifically provided in an Order -

1. copy, translate, modify, adapt, decompile, disassemble or reverse engineer the System;
2. merge or combine the whole or any part of the System with any other software or documentation without the prior written consent of Vendor;
3. grant any third party direct access to the System, including by way of lease, download, software as a service or as an application, bureau or on-demand software service provider or any other method;
4. use the System to provide a service to any third party similar to the System Services;
5. lend or transfer any part of the System to any third party; or

6. sub-license or otherwise transfer the use of the System to any third party.

ACCEPTABLE USE AND CONDUCT

Responsibility. Customer is responsible for its conduct, or ShopFront on the System. Customer must ensure that its Authorised Users have the correct permissions to act on the System.

Prohibited conduct. Nothing may be unlawful, harmful, threatening, abusive, harassing, defamatory, libellous, invasive of another's privacy, or harm minors in any way. Do not harass, stalk, degrade, intimidate, or be hateful toward an individual or group of individuals. Customer may not impersonate any person, falsely state, or otherwise misrepresent its affiliation with any person. Do not include personal or identifying data about another person without that person's explicit consent. Nothing may be false, deceptive, misleading, deceitful, or constitute "bait and switch". Do not infringe any patent, trademark, trade secret, copyright, or other proprietary rights of any party. Any chain letter, pyramid scheme, or advertisement that a Customer is prohibited by law from sending, is prohibited. The advertising and provision of any illegal service or the sale of any goods that are prohibited or restricted by applicable law are prohibited. Malware or badware is prohibited. Do not negatively affect the ability of any other customer of Vendor to use the System. Do not employ misleading email or IP addresses, or forged headers or otherwise manipulated identifiers in order to disguise the origin of data transmitted through the System. Customer may not impose an unreasonable or disproportionately large load on Vendor's infrastructure. Do not attempt to gain unauthorised access to the System or engage in any activity that disrupts or diminishes the quality of, interferes with the performance of, or impairs the functionality of the System. Customer may not use the System to send unsolicited communications.

CUSTOMER FAILURE

Should Customer fail to provide any information or resources required by Vendor for a period in excess of five days after receiving a written request for the information or resources from Vendor, the failure will constitute a material breach of an Order. In addition to any remedies Vendor may have arising out of the breach:

1. Customer will pay Vendor for all Idle Time occasioned by the failure. For these purposes "Idle Time" will be the aggregate time of all Vendor personnel assigned to provide the eCommerce Services, calculated on an eight hour day and five day week basis, between the Effective Date and the date on which the required information or resources are finally provided or Vendor terminates an Order under the Agreement (whichever is the sooner); and
2. if Customer fails to provide the resources or information within the notice period contemplated, Vendor may reassign its assigned consultants to other projects, in which event, should Vendor elect not to terminate the Order, the Effective Date will be postponed to a date to be determined by Vendor in its sole and absolute discretion.

OTHER SERVICES

Should Customer require any services other than the eCommerce Services, then the other services will be provided subject to the terms of a separate Order that will be concluded between the Parties.

MANAGEMENT OF ECOMMERCE SERVICES

Modification of eCommerce Services. Despite anything to the contrary in the Agreement, Vendor may modify, amend, enhance, update or provide an appropriate replacement for any of the eCommerce Services, or any element, at any time; provided that Vendor will not reduce the functionality, availability or reliability of the eCommerce Services.

Management of resources. Vendor will have the right to manage all resources used in providing the eCommerce Services as Vendor schedules on a project by project basis.

OWNERSHIP OF SOFTWARE AND RELATED MATERIAL

Intellectual property rights vest in Vendor. All right, title and interest, including all rights under all copyright, patent, and other intellectual property laws, in and to the ShopFront will vest in Vendor.

Licence. Upon acceptance of the ShopFront by Customer, Vendor will grant Customer a licence to use the ShopFront in accordance with a separate Order to be entered into between the Parties.

Survival. This clause will survive termination of an Order.

WARRANTIES

ShopFront not error-free. Whilst not warranting that the ShopFront will be error free after acceptance by Customer, Vendor does warrant that the ShopFront delivered under an Order will conform and continue to conform in all material respects to the Specifications; provided that -

1. the ShopFront is used or operated in accordance with the Documentation and the Agreement;
2. no Enhancements, Upgrades, modifications or other changes have been made by persons other than Vendor or without the prior written consent of Vendor;
3. the ShopFront is not used or operated on any Goods not specifically supplied or approved in writing by Vendor.

ShopFront free of malicious software. Vendor warrants that the ShopFront will be free of malicious software.

Customer warranties. Customer warrants that it is the owner or holds the license to use the trademarks it intends to use in connection with the eCommerce Service and that these trademarks will not infringe the intellectual property rights of any third parties in the trademarks. Customer grants Vendor a license to use these trademarks in any promotional material of Vendor.

Survival. This clause will survive termination of an Order.

EFFECT OF TERMINATION

In addition and without prejudice to the effect of termination provisions in the Agreement, upon any termination of an Order for whatever reason each Party will, within 14 calendar days of the termination date return, or at the other Party's option, destroy, all documentation, technical information and any other data relating to the other Party's proprietary software and all and any copies made of the whole or any part of the same and each Party will furnish the other Party with a certificate, certifying that the same has been done.