

**1. Standard Terms and Conditions**

**1.1 SERVICE PROVIDER**

1.1.1 The service provider is iSolve Business Solutions (Proprietary) Limited, registration number 2002/004446/07.

**1.2 DEFINITION OF TERMS**

1.2.1 The following expressions shall have the following meanings unless the context clearly indicates otherwise or unless stipulated otherwise in an Agreement or in a corresponding Schedule:

1.2.1.1 "the Company" means iSolve Business Solutions (Proprietary) Limited;

1.2.1.2 "the Client" means the party with whom the Company is engaging with in a business transaction;

1.2.1.3 "the Parties" shall mean the Company and the Client combined and "Party" means any one of them;

1.2.1.4 "the Engagement" means any agreement and all its corresponding schedules and/or annexures which shall form part of the engagement between the Client and the Company;

1.2.1.5 "the Agreement" means any form of service provided to the Client that has been agreed between the Parties to commence via a recognised duly authorised communication protocol, being a formal signed agreement or proposal, electronic mail or verbal instruction;

1.2.1.6 "the System" means the Information Technology System of the Client which is to be supported/developed by the Company;

1.2.1.7 "the Services" means the deliverables as documented in the Proposal documentation to be provided to the Client in respect of the System at the Supported Sites;

1.2.1.8 "Supported Sites" means the site(s) at which the Consultant is required to work;

1.2.1.9 "Contractual Period" means the duration of any Engagements between the Client and the Company;

1.2.1.10 "Client's Representative" means the authorised representative of the Client who from time to time is duly authorised to make executive decisions on behalf of the Client;

1.2.1.11 "the Consultant" means the individual provided by the Company to supply the Services to the Client;

1.2.1.12 "the Consulting Rate" means the applicable fee that is payable for the Services rendered;

1.2.1.13 "Time Sheet" means the internal Company time record system that the Consultant is obliged to complete on a weekly basis and have a printed copy authorised and signed by the authorised Client's Representative. The time sheet shall consist of a detailed description of the Consultant's time spent on the relevant project against activities conducted by the Consultant.

1.2.1.14 "Terms and Conditions" means the standard terms and conditions of the Company recorded in this document and all schedules and/or annexures hereto;

1.2.1.15 "Proposal documentation" means the proposal documentation provided by the Company to the Client in respect of the Services to be performed by the Company. This can be in the form of but is not limited to electronic mail, verbal communication or physical documentation;

1.2.1.16 "force majeure" means any event outside of a Party's reasonable control, and includes but is not limited to floods, drought, fire, high winds, extreme heat or cold, heavy rain, hail, lightning, strike, civil disturbance, state action, terrorism and any other similar events;

1.2.1.17 "Intellectual Property" means all intellectual property embodied in or attaching to the Services including, without limitation, all copyrights, patents or trademarks, whether registered or unregistered, as well as all trade secrets and know-how, Confidential and Proprietary Information.

1.2.1.18 "Confidential and Proprietary Information" shall mean any and all information, oral or written that is not generally known by persons not employed by or parties to contracts with the Company, including but not limited to:

1.2.1.18.1 Application, database, and other computer software developed or acquired by the Company, whether now or in the future, and all modifications, enhancements and versions thereof and all options available with respect thereto, and all future products developed or derived there from;

1.2.1.18.2 Source and object codes, flowcharts algorithms, coding sheets, routines, sub-routines, design concepts and related documentation and manuals;

1.2.1.18.3 Marketing techniques and arrangements, mailing lists, purchasing information, pricing policies,

quoting procedures, financial information, customer and prospect names and requirements, employee, customer supplier and distributor data and other materials and information relating to the Company's business and activities and the manner in which the Company does business;

1.2.1.18.4 Discoveries, concepts and ideas including, without limitation, the nature and results of research and development activities, processes, formulas, inventions, computer-related equipment or technology, techniques "know-how", designs, drawings and specifications;

1.2.1.18.5 Organizational charts, internal telephone lists and employee directories, salary information, benefits, and other personnel information that is not publicly available;

1.2.1.18.6 Pricing methodology and formulae;

1.2.1.18.7 Any other materials or information related to the business or activities of the Company that are not generally known to others engaged in similar businesses or activities;

1.2.1.18.8 All ideas which are derived from or relate to your access to or knowledge of any of the above enumerated materials and information;

1.2.1.18.9 Any materials or information related to the business or activities of the Third-Party Beneficiaries that are received by the Company or any associated company in confidence or subject to nondisclosure or similar covenants, including without limitation, confidential proprietary business records, financial information, trade secrets, strategies, methods and practices of licensees of the Company's software.

1.2.1.19 Clause headings are for convenience only and shall not be used in interpretation of these Terms and Conditions.

1.2.1.20 In these Terms and Conditions, unless the context clearly otherwise indicates:

1.2.1.20.1 reference to the singular includes the plural and *vice versa*;

1.2.1.20.2 reference to any gender includes the other genders;

1.2.1.20.3 reference to a natural person includes a legal person and *vice versa*.

**1.3 RELATIONSHIP BETWEEN THE PARTIES**

1.3.1 The Parties enter into the Engagement as independent parties and nothing contained or implied in these Terms and Conditions and/or the Engagement shall constitute an agreement of employment or a partnership in any shape or form between the Parties.

1.3.2 Neither of the Parties shall be entitled to bind the credit of the other, save to the extent expressly provided to the contrary in these Terms and Conditions and/or the Engagement.

**1.4 OBLIGATIONS OF THE CLIENT**

1.4.1 The Client will provide any and all reasonable access and cooperation to enable the Consultant to fulfil his obligations in terms of any agreement in respect of Services to be provided by the Company to the Client.

1.4.2 The Client will provide the Consultant with suitable office space in which to work while on the Client's premises and/or the Supported Sites, including desk space, network and Internet connectivity for work purposes, as well as providing refreshments and parking at no cost to the Company and/or the Consultant.

1.4.3 The Client's Representative shall sign timesheets weekly acknowledging the work done by the Consultants in terms of the Services provided to the Client.

1.4.4 Unless explicitly specified, the Client will be responsible for the allocation of work to the Consultant and for managing the Consultant's completion of tasks.

**1.5 TRAVEL AND SUBSISTENCE**

1.5.1 Unless explicitly specified, all pricing is exclusive of travelling, accommodation and subsistence allowances, which amounts shall be for the account of the Client, unless otherwise agreed by the Company in writing.

**1.6 ON-SITE SERVICES**

1.6.1 Unless otherwise quoted for, the Client will be responsible for:

1.6.1.1 Supplying the necessary equipment (PC's / Printers) as per the Company's minimum requirement specification sheet,

1.6.1.2 Supplying software and server authorisations (log-in),

1.6.1.3 All travelling related costs, including but not limited to flight, car hire / km's travelled, accommodation, subsistence and parking costs.

1.6.2 Deviations - Restricted access to Client systems, supply of a non-functional technology system and not adhering to and/or compromising stipulated prerequisites could prevent on-time delivery of the

Services by the Company. In this instance, and where it directly affects project progress, changes to scope and costing will be applicable.

**1.7 PAYMENT AND PAYMENT TERMS**

1.7.1 The Client agrees to pay the Company the amounts as detailed in the Proposal documentation pursuant to the delivery of the Services by the Company and according to the payment schedule set out in the Proposal documentation.

1.7.2 Unless explicitly stated to the contrary, all prices quoted are for the Services and exclude all hardware and software licensing costs.

1.7.3 If the provision of the Services is delayed for reasons other than through the fault of the Company and/or the Consultants, the Company will be entitled to continue receiving payment in terms of the Engagement from the Client due to idle time as a result of any delay and/or wasted time incurred due to the default by the Client or by the provision by the Client of incorrect or insufficient information. In addition to the foregoing, any scheduled date for the completion of any part of the Services will be deferred by a reasonable period which shall be not less than the period of such delay.

1.7.4 Payment Terms are strictly 7 (seven) days from date of invoice.

1.7.5 The Client shall pay all sums due to the Company in terms of any Engagement without any set-off, deduction, counterclaim and/or any other withholding of monies.

1.7.6 If any amount due by the Client to the Company is not paid on due date, then without prejudice to any other remedy to which the Company may be entitled, all such overdue amounts shall bear interest at 2% (two percent) above the Company's bank's published minimum lending rate of interest per annum, compounded monthly in arrears, charged by the said bank on the unsecured overdrawn current accounts of its most favoured corporate clients in the private sector from time to time, reckoned from the due date to the date of payment. In the case of a dispute as to the rate so payable, the rate shall be certified by any manager or assistant manager of any branch of the said bank, whose appointment need not be proved and whose decision shall (in the absence of manifest error) be final and binding on the Parties.

1.7.7 Notwithstanding anything to the contrary contained or implied in these Terms and Conditions and without derogating from its rights in terms of these Terms and Conditions and/or the Engagement and/or in law, the Company shall be entitled to suspend the performance of any of its duties, functions and obligations hereunder or in terms of the Engagement should the Client be in breach of a material aspect of the performance of any of its duties, functions and obligations hereunder and/or in terms of the Engagement, including, but not limited to, the withholding of any payment due by the Client to the Company hereunder and/or in terms of the Engagement.

**1.8 COPYRIGHT**

1.8.1 All and any reference materials, specifications, proposals and general documentation and/or training manuals of the Company may not be copied or duplicated under any circumstances.

1.8.2 All material of the Company provided to the Client including but not limited to any Proposal documents, are subject to copyright laws and as such may under no circumstances be copied or distributed without the express written permission of a duly authorised representative of the Company.

1.8.3 The Company owns and shall retain all right, title and interest in and to the Intellectual Property.

1.8.4 The Company shall have the right, at its own expense, and solely in its own name, to apply for, prosecute and defend the Intellectual Property.

1.8.5 Nothing done pursuant to these Terms and Conditions and/or the Engagement shall transfer to the Client title or any other rights not expressly granted hereunder to any of the Intellectual Property.

**1.9 NON SOLICITATION**

1.9.1 Client and Company staff members may not in any form whatsoever entice, encourage or approach each other's employees with the view of offering them employment or enticing them to leave the employ of their respective companies.

1.9.2 The Client shall not make any offer of employment to, nor accept any offer of service from, any member of the Company's staff, any Consultant and/or any individual introduced by the Company to the Client at any time before, during or for a period of 12 (twelve) months after the termination of any Engagement. Should the Client want to retain the services of any of the Company's Consultants in a direct capacity or through a third party, for any means of consulting or

iSolve Business Solutions (Pty) Ltd

(Reg. No: 2002/004446/07)

(VAT Reg. No: 4410209292)

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Solve, tomorrow's IT issues, **Today!**

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Sunninghill Ext. 71

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Fax 0860 476584  
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<p>contracting purposes, this will be considered a breach of these Terms and Conditions and the Client will become immediately liable to pay the Company a penalty of R3 000 000 (three million rand).</p> <p><b>1.10 ANNUAL PRICE REVIEW</b></p> <p>1.10.1 The Company reviews its pricing annually during August of every year and hereby reserves the right to implement new price lists effective from the 1<sup>st</sup> September each year. Ad hoc price increases due to exchange rate fluctuation and Service Provider cost changes shall be passed on to the Client as and when applicable.</p> <p><b>1.11 EXCHANGE RATE FLUCTUATIONS</b></p> <p>1.11.1 The Company reserves the right to change its pricing caused by exchange rate fluctuations where these materially affect the price of the Services.</p> <p><b>1.12 VALUE ADDED TAX</b></p> <p>1.12.1 All fees exclude VAT and any other taxes, which will be for the Client's account, calculated in accordance with South African law.</p> <p><b>1.13 FORCE MAJEURE</b></p> <p>1.13.1 If the performance of a material part of any Engagement is suspended due to <i>force majeure</i>, the one Party shall give the other Party written notice of the condition of <i>force majeure</i>.</p> <p>1.13.2 The Parties shall employ their best endeavours to ensure the provision of the Services during the course of the <i>force majeure</i>.</p> <p>1.13.3 The Party first affected by <i>force majeure</i> shall do its utmost to reinstate the performance due in terms of the Engagement in the shortest possible time.</p> <p>1.13.4 Relevant delivery dates or times allowed for performance shall be adjusted to allow for the effects of such <i>force majeure</i>, as may be agreed between the Parties by written notice.</p> <p>1.13.5 If the notice referred to in clause 1.13.1 is not given by the Party first affected by such <i>force majeure</i>, the other Party may, in its sole discretion, refuse to allow such adjustment of the relevant delivery dates or time allowed for performance, with regard to the delivery and performance due in terms of the Engagement, of the Party first affected by <i>force majeure</i>.</p> <p>1.13.6 Notwithstanding anything contained in this clause <b>Error! Reference source not found.</b>, performance of other material parts of the Engagement still due and possible of performance by the Party first affected by <i>force majeure</i>, shall continue to be performed.</p> <p>1.13.7 If a period of 4 (four) weeks has elapsed, and if the condition of <i>force majeure</i> persists beyond such period, either Party shall be entitled to cancel the Engagement by written notice to the other Party, with immediate effect and without prejudice to either Party's rights obtained in terms of the Engagement.</p> <p><b>1.14 WARRANTY OF AUTHORITY</b></p> <p>1.14.1 Each Party warrants to the other Party that it has the requisite power, authority and legal right to sign and enter into the Engagement and to bind the Parties to the Engagement and that the Engagement has been duly authorised by all necessary actions of its directors and constitutes valid and binding obligations on it in accordance with the terms of the Engagement.</p> <p><b>1.15 APPLICABLE LAW</b></p> <p>1.15.1 The laws of the Republic of South Africa shall apply to the Engagement and any dispute that may arise between the Parties in regard thereto shall be settled in the Republic of South Africa.</p> <p><b>1.16 BREACH</b></p> <p>1.16.1 Should either of the Parties commit a breach of the Engagement or fail to carry out any of the obligations imposed on it in terms thereof and should the defaulting Party fail to remedy such breach within 14 (fourteen) days after receipt of written notice from the aggrieved Party requiring such breach to be remedied, then and in such event the aggrieved Party shall, at its option and notwithstanding anything to the contrary contained herein be entitled to cancel the Engagement and claim such damages as it shall have suffered as a result of such breach.</p> <p>1.16.2 Notwithstanding the provisions of clause 1.15.1. above, the Engagement may be terminated without notice by either Party should either Party at any time be placed in liquidation, whether provisional or final liquidation, or if it goes into voluntary liquidation, other than solely for amalgamation or reconstruction or if it compromises with its creditors.</p> <p><b>1.17 DISPUTE RESOLUTION</b></p> <p>1.17.1 The Parties shall, considering the nature of the business relationship to be entered into, jointly decide on appropriate mechanisms to resolve any disputes, which may arise during the duration of the Engagement. The mechanism shall, as far as possible, endeavour to be as informal as possible</p>	<p>and to avoid any formal dispute resolution and to expedite the process as far as possible.</p> <p>1.17.2 In the event of any disagreement arising and the Parties being unable to reach agreement at the Account Manager level, the dispute will be referred to the next appropriate level of management of the Parties applicable in order to endeavour to settle the dispute through <i>bona fide</i> negotiations.</p> <p>1.17.3 As a last resort and in the event where the Parties are unable to reach agreement, the matter will be further discussed between the respective corporate executive officers or their appointed nominees of the Parties.</p> <p>1.17.4 If the dispute has not been resolved by such negotiation, the Parties shall submit the dispute to Arbitration Foundation of Southern Africa administered mediation, upon the terms set by the Arbitration Foundation of Southern Africa Secretariat. Failing such a resolution, the dispute, if arbitral in law, shall be finally resolved in accordance with the Rules of the Arbitration Foundation of Southern Africa by an arbitrator or arbitrators appointed by the Foundation.</p> <p>1.17.4.1 The arbitration shall be held –</p> <p>1.17.4.1.1 at Pretoria in the Republic of South Africa;</p> <p>1.17.4.1.2 on the basis that the proper law of the agreement contained in this clause 1.16 and of the Terms and Conditions in which this clause 1.16 is contained shall be the law of the Republic of South Africa;</p> <p>1.17.4.1.3 with only the legal and other representatives of the Parties to the dispute present thereat, it being the intention that the arbitration shall be held and completed as soon as possible.</p> <p>1.17.5 The arbitrator's award may be made an order of any court of competent jurisdiction including, for the avoidance of doubt, any court which is authorised to make such an order by virtue of any treaty or legislation relating to the reciprocal enforcement of foreign arbitral awards or judgments.</p> <p>1.17.6 The Parties hereby consent to the non-exclusive jurisdiction of the High Court of South Africa (Transvaal Provincial Division), as presently constituted, in respect of the proceedings referred to in 1.17.5 to 1.17.7.</p> <p>1.17.7 The Parties agree to keep the arbitration including the subject matter of the arbitration and the evidence heard during the arbitration confidential and not to disclose the same to anyone except for the purposes of the arbitration proceedings in terms of this clause, any review thereof and obtaining an order in terms of 1.17.5.</p> <p>1.17.8 The provisions of this clause 1.17:-</p> <p>1.17.8.1 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 such provisions do not bind it;</p> <p>1.17.8.2 constitute a separate agreement, severable from the rest of the Engagement and shall remain in effect despite determination of or invalidity for any reason of the Engagement.</p> <p>1.17.9 It is an explicit term of the Engagement that unless a Party makes itself guilty of a material breach of the Engagement, the Parties shall proceed with the Engagement in its normal way whilst the dispute is being dealt with in terms of this clause.</p> <p><b>1.18 WAIVER</b></p> <p>1.18.1 Failure or neglect by either Party to, at any time, enforce any of the provisions of the Engagement shall not, in any manner, be construed to be a waiver of any of that Party's rights in that regard and in terms of the Engagement.</p> <p>1.18.2 Such failure or neglect shall not, in any manner, affect the continued, unaltered validity of the Engagement, or prejudice the right of that Party to institute subsequent action.</p> <p><b>1.19 CESSION</b></p> <p>1.19.1 Neither Party is, entitled to cede, delegate, assign, or in any other manner dispose of any of its rights or obligations in terms of the Engagement, without the prior, written consent of the other Party.</p> <p><b>1.20 SEVERABILITY</b></p> <p>1.20.1 If any term, condition, provision, performance and/or any part thereof in the Engagement is determined to be invalid, illegal, unlawful or unenforceable to any extent, that term, condition, provision or performance or the relevant part thereof shall be severed from the remaining terms, conditions, provisions and performance of the Engagement, and the Engagement so altered shall remain of force and effect, provided that the severing of the relevant portions does not affect the essence of the Engagement.</p> <p><b>1.21 LIMITATION OF LIABILITY</b></p> <p>1.21.1 Although the Company undertakes to perform its duties and obligations in terms of the Engagement in</p>	<p>a professional and proper manner, strictly in accordance with the Engagement, the Company and/or any of its employees, directors, associates of sub contractors shall, subject to Clause 1.21.2, not be liable or responsible to the Client for any loss of data and/or any indirect and/or consequential damages such as, but not limited to loss of profit or loss of production arising either directly or indirectly as a result of the performance of the Engagement.</p> <p>1.21.2 Each Party hereby indemnifies and holds free and harmless the other Party from any and all claims for loss of data and/or any indirect and/or consequential damages, provided that:</p> <p>1.21.2.1 Such damages or claims are not the direct result of the wilful acts or omissions and/or gross negligence on the part of the Party, its agents, assigns and personnel;</p> <p>1.21.2.2 The Parties shall be solely responsible for and hereby indemnify each other and hold each other free and harmless from any and all costs, damages and claims from or in connection with illness, injuries, or the death of any of their respective personnel, agents, and the personnel of their respective contractors and sub-contractors;</p> <p>1.21.2.3 The Parties hereby indemnify each other and hold each other free and harmless against any damages to the property of or such persons in any manner sustained or allegedly sustained in connection with the performance of the Engagement;</p> <p>1.21.2.4 The Parties shall ensure that they do not in any manner infringe or allow any infringement of a third party's intellectual property rights (copyright, patent rights and the like) in the performance of the Engagement and each Party hereby indemnifies the other Party against any claims arising against such other Party as a result of any such infringement.</p> <p>1.21.3 Save that the Company warrants and undertakes in favour of the Client that it shall perform the Services diligently and with reasonable care and skill, the Company gives the Client no warranties or undertakings and has made no representations to the Client in connection with the Services.</p> <p>1.21.4 The Company hereby chooses as domicilium citandi et executandi for all purposes of the Engagement, where all notices and processes may be served :-</p> <p>iSolve House 17 Sunninghill Office Park Peltier Drive Sunninghill Ext 71 Gauteng P. O. Box 997 Sunninghill 2157</p> <p><b>1.22 WHOLE AGREEMENT / AMENDMENTS</b></p> <p>1.22.1 No agreement purporting to vary the terms and conditions hereof shall be of any force and effect unless reduced to writing and signed by the Parties.</p> <p>1.22.2 These Terms and Conditions and the Engagement contains the entire agreement between the Parties relating to the subject matter hereof and no parties shall be bound by any undertakings, representations, warranties, promises or the like not recorded herein. These Terms and Conditions shall take precedence over any terms and conditions of the Client and shall be carried into effect.</p> <p><b>1.23 DISCLAIMER</b></p> <p>1.23.1 All Services provided by the Company to the Client are provided subject to these Terms and Conditions of the Company. These Terms and Conditions specifically exclude liability for any and all loss of or damage (including but not limited to direct, indirect and/or consequential loss) to any person(s) and/or property, whether or not such loss and/or damage has been caused by any negligence of the Company and/or its employees and/or its agents and/or its partners.</p> <p><b>1.24 CHANGES TO TERMS AND CONDITIONS</b></p> <p>1.24.1 The Company may, in its sole discretion, change it's Terms and Conditions or any part thereof at any time without notice.</p> <p><b>2. Acceptance of Terms &amp; Conditions</b></p> <p>Upon agreement and acceptance by means of a duly authorised communication protocol, all Proposal documents become binding contracts and the Client agrees to be bound by these Terms and Conditions which are incorporated in and form part of the Engagement.</p>
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