

DataOrbis Standard Terms & Conditions

FOR THE SUPPLY OF SERVICES

1 INTRODUCTION

- 1.1 This Agreement records the standard terms and conditions that shall govern the relationship between DataOrbis and you (“**the Client**”) to whom DataOrbis provides any of its services, as stipulated in the agreed document setting out the particular service lines, fees, terms and conditions agreed to by DataOrbis and the Client entitled “DataOrbis Services, Fees, Terms and Conditions”, sent to you in a PDF format and as updated from time to time (“**Commercial Agreement**”), which services may include the information solutions provided by DataOrbis, data distribution services and/or, if required, access to the hosted software and all ancillary services connected therewith. Once you have signed the Commercial Agreement, you, the Client, becomes bound to all of the terms and conditions set out herein.
- 1.2 DataOrbis shall provide the services as defined herein to you with effect from the commencement date indicated in the signed Commercial Agreement and this Agreement shall endure for as long as DataOrbis is engaged by the Client to handle and process its data and/or for as long as the services endure, as stipulated in the Commercial Agreement, or until the earlier termination of this Agreement as provided for herein, save for those terms and conditions which by virtue of their nature continue to have force and effect after the expiration or termination of this Agreement.
- 1.3 End-Users (as defined below) are additionally bound by End-User undertakings accepted when accessing the software.
- 1.4 Please read these terms and conditions carefully. **YOUR ATTENTION IS DRAWN TO THE WARRANTIES, INDEMNITIES AND LIMITATIONS ON LIABILITY PROVIDED FOR IN THESE TERMS AND CONDITIONS.**
- 1.5 DataOrbis and the Client acknowledge and agree that their relationship shall at all times be governed by the principle of good faith and undertake to exercise their responsibilities towards each other with an appropriate degree of professionalism and consideration.
- 1.6 Nothing contained in this Agreement shall be construed as constituting or establishing any partnership, joint venture or agency relationship between DataOrbis and the Client. Under no circumstances shall the Client have any authority, whether express or implied, to incur any liability, give any warranty, make any representation or assume any obligation whatsoever on behalf of DataOrbis, save to the extent expressly agreed to in writing between DataOrbis and the Client.
- 2.13 “Cancellation Fees” means any cancellation fees expressly provided for in any Commercial Agreement accepted by the Client, and any other cancellation amounts due and payable to DataOrbis in terms of this Agreement, including as contemplated by clause 12.6 hereof;
- 2.14 “change in control” means the conclusion of any agreement which results in a de-facto change in control of the Client after the coming into effect of this Agreement and shall include any of the following events:
- 2.14.1 a change in the beneficial ownership of interests or shares in the Client resulting in a change to the natural or legal persons, or groups thereof, holding more than 50% of the total interests or shares in the Client or having the right to exercise more than 50% of the votes at any meeting of the owners;
- 2.14.2 a merger, acquisition or consolidation to which the Client is a Party in which the owners of the Client do not own or retain, directly or indirectly, at least a majority of the beneficial interest or shares of the merged, acquired or consolidated entity; or
- 2.14.3 the conclusion of an agreement for the sale or disposition by the Client of all, or substantially all, of its assets;
- 2.15 “Commercial Agreement” means the terms agreed between DataOrbis and the Client pertaining to the particular Services to be provided by DataOrbis to the Client under this Agreement and the fees and period pertaining thereto, which terms shall remain subject to the standard terms and conditions of this Agreement;
- 2.16 “Confidential Information” means information that is confidential or proprietary in nature including without being limited to:-
- 2.16.1 information relating directly or indirectly to the business of the respective Parties, including details of trade secrets, know-how, strategies, ideas, operations, compliance, information, processes, methodologies and practices;
- 2.16.2 works of authorship or products that are written and prepared by either Party including but not limited to software, Data, diagrams, charts, reports, specifications, inventions and working papers of similar materials of whatever nature or on whatever media;
- 2.16.3 any confidential information exchanged during the negotiations relating to this Agreement and all copies, notes or records thereof (in any form) made or generated by either of the Parties or their representatives; and
- 2.16.4 the terms of any agreement reached by the Parties or proposed by either Party (whether agreed to or not) in connection with this Agreement;
- 2.17 “Data” means any electronic information or files displayed, generated, processed or hosted in the software including, but not limited to, text or word files, emails, scanned files, PDF files, presentations, diagrams, images, charts, videos and audio files and the like;
- 2.18 “DataOrbis” means the relevant DataOrbis entity identified in the Commercial Agreement, and “DataOrbis Group” means DataOrbis and any of its holding companies, subsidiaries and/

2 INTERPRETATION

- 2.1 In this Agreement, unless the context expressly indicates otherwise, the following words and expressions shall have the meanings given to them below:
- 2.11 “Agreement” means these standard terms and conditions, any annexures or schedules hereto, other documents expressly incorporated by reference and the Commercial Agreement that is made and accepted as being subject to these terms and conditions as well as amendments or revisions to any of the foregoing that are accepted in writing by both Parties;
- 2.12 “Business Day” means any day excluding a Saturday, Sunday and any official public holiday in the country of registration of DataOrbis;

DataOrbis Standard Terms & Conditions

or other affiliate companies under common control with it from time to time;

- 2.19 "End-User" means an individual natural person or a unique user profile that is able to access or use the software;
- 2.1.10 "Force Majeure" shall include, but not be limited to, acts of God, fire, flood, civil commotion, acts of war, acts of terrorism, malicious denial of service attacks, acts of government or statutory authority, breakdown or failure of energy supplies, telecommunications or third party data centre service providers, communications lines and network operator's radio access networks;
- 2.1.11 "host" means to directly or indirectly provide the right to access a dedicated or shared server under the root access control of DataOrbis onto which the software has been installed and that can accept requests from connected devices as part of a client-server architecture and the words "hosted" and "hosting services" shall be construed accordingly unless the context clearly indicates otherwise;
- 2.1.12 "Intellectual Property" means any category of intellectual property recognised in law, whether or not registered, including but not limited to copyright, patents, proprietary material, trademarks, design, know-how, trade secrets, new proprietary and secret concepts, methods, techniques, processes, adaptations, ideas, technical specifications and testing methods;
- 2.1.13 "maintenance and support services" means the maintenance of the infrastructure and servers that allow for the proper operation of the software and the provision of Updates where applicable, but excluding the development of any new functionality and the rectification of any faults arising as a result of any of the events described in clause 3.5;
- 2.1.14 "Nominated Account" means DataOrbis's banking account, the details of which shall be provided by DataOrbis to the Client in writing and which DataOrbis shall be entitled to change from time to time on written notice to the Client;
- 2.1.15 "Operating Environment" means the recommended or minimum operating environment on or through which the software is intended to be accessed or used including any third party software, middleware and network and connectivity infrastructure that may be specified or stipulated by DataOrbis from time to time;
- 2.1.16 "Party" means either DataOrbis or a Client and "Parties" shall, as the context requires, mean both of them;
- 2.1.17 "Personal Data" means information identifying and describing an identifiable individual, including, but not limited to information relating to their name, age, gender, reproductive status, marital status, national, ethnic or social origin, sexual orientation, physical or mental health, disability, conscience, belief, culture, language and birth of the individual; educational, criminal or employment history of the individual, financial status or information relating to financial transactions in which they have been involved and any identifying number, address or contact information of the individual;
- 2.1.18 "Personnel" means any employee, agent, contractor or subcontractor of DataOrbis, or any other person who performs any activity for or on behalf of DataOrbis;
- 2.1.19 "Services" means, unless the context indicates otherwise, any and all services for which DataOrbis may be responsible to the Client, as further specified in the Commercial Agreement
- and including but not limited to: (i) information solutions designed by DataOrbis; (ii) data distribution services; (iii) analysis and training services provided by DataOrbis to the Client; (iv) access to the software as further contemplated herein; (v) hosting services; (vi) benchmarking services; and (vi) maintenance and support services;
- 2.1.20 "software" means, unless the context indicates otherwise, any software supplied by DataOrbis and licensed to be accessed by the Client in terms of this Agreement, on a non-exclusive and non-transferable basis against payment of the relevant fees, and may also be referred to as "DataOrbis software";
- 2.1.21 "Standard Rates" means DataOrbis's prevailing fees and standard rates for its respective service categories and Personnel as contemplated by the Commercial Agreement accepted by the Client;
- 2.1.22 "Updates" means any patches, enhancements and improvements to the software which DataOrbis in its sole and unfettered discretion agrees to make available as part of its maintenance and support services and where not licensed by it separately; and
- 2.1.23 "User Documentation" means any written material that describes the features or capabilities of the software including any instructional manuals supplied therewith whether in paper or electronic format.
- 2.2 The headings to any clauses, schedules and appendices in this Agreement are for reference purposes only and shall in no way govern or affect the interpretation thereof.
- 2.3 If any provision in the Introduction or any definition contains a substantive provision conferring rights or imposing obligations on anyone, effect shall be given to it as if it were a substantive provision in the body of this Agreement.
- 2.4 Where figures are referred to in numerals and in words, if there is any conflict between the two, the numerals shall prevail unless a contrary intention can be proven.
- 2.5 Where any number of days is prescribed in this Agreement, same shall be recorded exclusive of the first day and inclusive of the last day unless the last day falls on a Saturday, Sunday or Public Holiday in the country of registration of DataOrbis, in which case the last day shall be the next succeeding Business Day and, where any day referred to in this Agreement falls on a day that is not a Business Day, that reference shall be taken to mean the first Business Day following any such day.
- 2.6 Expressions defined in this Agreement shall bear the same meanings in any annexures hereto and any Commercial Agreement made subject to this Agreement to the extent that they do not themselves contain their own definitions of such expressions.
- 2.7 Any reference in this Agreement to an Act of parliament shall include any such Act as amended from time to time.
- 2.8 A reference to a person shall include both natural and juristic persons unless the context expressly indicates otherwise.
- 2.9 A reference to a Party includes a Party's successors in title and permitted assigns.
- 2.10 The rule of construction that in the event of an ambiguity a contract or any provision thereof shall be interpreted against the Party responsible for the drafting thereof shall not apply in the interpretation of this Agreement.

DataOrbis Standard Terms & Conditions

- 2.11 The expiration or termination of this Agreement shall not affect such of the provisions of this Agreement which by virtue of their nature must continue to have effect after such expiration or termination notwithstanding that the clauses themselves do not expressly provide for this.

3 DATAORBIS RESPONSIBILITIES & UNDERTAKINGS

- 3.1 In addition to any other obligations contained elsewhere in this Agreement, DataOrbis undertakes in favour of the Client that it shall:

- 3.1.1 render the Services in a professional and workmanlike manner and using appropriately skilled and experienced Personnel as required by the nature of the Services and at all times have and maintain sufficiently skilled and experienced staff to render the Services and fill any vacancies that may arise within a reasonable period;

- 3.1.2 in the event that it engages any third party to perform any duty or obligation conferred upon it in terms of this Agreement, ensure that such third party shall be sufficiently qualified and shall possess the required expertise, experience and knowledge to fulfill the relevant duties and obligations in a professional and workmanlike manner, as well as comply with the further provisions of clause 15.2 hereof; and

- 3.1.3 make all reasonable efforts to ensure that the Services are carried out in a timely manner.

- 3.2 Unless expressly indicated to the contrary, where DataOrbis provides any cost and time estimates to the Client in respect of any aspect of the Services to be rendered on a time and materials basis, including in respect of any deliverable required to be produced by DataOrbis, the Client acknowledges and agrees that such estimates are provided to assist with planning and resource allocation and are based on anticipated resource utilisation and working days comprising of 8 hours. DataOrbis shall use all reasonable efforts to meet such estimates however the actual charges for any such Services or aspects thereof may differ based on the actual time and materials utilised in respect thereof.

- 3.3 In the event that the Client does not promptly carry out or perform any deliverables and the like as reasonably required in terms of any project or agreed project or services plan or does any other thing or omits to do anything that results in delays or service delivery interruptions or that requires increased allocation of any DataOrbis resources including Personnel, then DataOrbis shall have the right and discretion to continue charging for the allocation and commitment of its resources to any such project or service for the duration of any such delay or, alternatively, to remove or withhold its resources, in either which event DataOrbis shall, notwithstanding the provisions of clause 3.1, endeavor, but not be obliged, to meet the project or services resource requirements at a later date.

- 3.4 DataOrbis provides standard maintenance and support to the Client in the ordinary course. Repair of any faults arising as a result of any of the circumstances provided for in clause 3.5 below, however, are not included in the maintenance and support services provided in the ordinary course, but may be undertaken by DataOrbis at its discretion, subject to additional time and material charges in accordance with DataOrbis's prevailing Standard Rates, subject to prior approval by the Client, unless undertaken pursuant to the Client's breach, misuse or incorrect handling, as contemplated by clauses 3.5.1, 3.5.3 to 3.5.6 (inclusive) and 3.5.8 to 3.5.13 (inclusive).

- 3.5 Standard maintenance and support services provided by

DataOrbis shall exclude the repair of any fault, error or malfunction resulting from:

- 3.5.1 the Client's breach of the provisions of the Agreement;
- 3.5.2 any Force Majeure event;
- 3.5.3 misuse or incorrect handling or operation of the software by the Client, its servants, agents and/or sub-contractors;
- 3.5.4 use of the software other than in the ordinary course of the Client's activities;
- 3.5.5 operator error on the part of the Client or any person permitted by it to access or use the software;
- 3.5.6 faults arising in any hardware, software, products, materials or any other item/s supplied to or obtained by the Client from any third party;
- 3.5.7 the actions, omissions or service interruptions of any utilities provider or third party service provider, including those affecting the quality of internet connectivity of the Client, or those of other service providers including a telecommunications or data centre service;
- 3.5.8 the Client's incorporation or attachment of any program, plug-in or device to the software;
- 3.5.9 failure to provide a suitable operating environment for the software or accessing or using the software other than on the specified or recommended Operating Environment for same;
- 3.5.10 the unauthorised use of the Client user ID or password;
- 3.5.11 any failure by the Client to use a backup system in respect of Data used in or otherwise associated with the software;
- 3.5.12 use of the software for any other purpose other than that for which it was designed; or
- 3.5.13 any other exclusions expressly outlined elsewhere in this Agreement.

4 SECURITY OF DATA

- 4.1 DataOrbis hereby undertakes to take all reasonable measures and precautions in accordance with accepted industry practices, to keep the Client's Data safe and secure.
- 4.2 It is recorded that DataOrbis provides, maintains and upgrades both the infrastructure on which the software is hosted, and the software itself ("**the Platform**"). The Client has access to the Platform, by licensing the use of the software as further contemplated by this Agreement.
- 4.3 It is recorded that DataOrbis has built into the Platform a number of procedures and applications designed to enhance the security of the operation of the Platform, including inter alia the confidentiality of information communicated thereby, which procedures and applications are reliant on the Client complying with certain security procedures as notified by DataOrbis to the Client from time to time ("**the Security Procedures**"). The Client undertakes to comply with all such reasonable Security Procedures and applications in all respects and at all times.
- 4.4 DataOrbis hereby undertakes that when transferring the Client's Confidential Information over the internet and in communications between the Client and DataOrbis, it will use encryption, being the process of encoding messages or information in such a way so

DataOrbis Standard Terms & Conditions

that only authorised parties may read it.

45 In addition to and notwithstanding any other right or obligation arising under this Agreement, DataOrbis shall also take all appropriate technical and organisational security measures to ensure that where any Personal Data is provided to it in terms of this Agreement for processing by DataOrbis Personnel it shall be protected against loss, destruction and damage, and against unauthorised or accidental access, processing, erasure, transfer, use, modification, disclosure or other misuse.

46 In respect of Personal Data DataOrbis shall:

46.1 comply with any lawful request or direction made or given by any authorised representative of the Client;

46.2 use Personal Data only for the purposes of fulfilling its obligations under this Agreement and to comply with lawful instructions of the Client from time to time in connection with such Personal Data, and shall not retain Personal Data for any longer than is necessary for these purposes; and

46.3 not disclose Personal Data without the written authority of the Client (except for the purposes of fulfilling its obligations under this Agreement), and immediately notify the Client if it becomes aware that a disclosure of Personal Data may be required by law.

5 DATA PROVIDED BY THE CLIENT

51 The Client must ensure that any Data provided to DataOrbis by it, any of its employees, contractors, suppliers, distributors, other agents, representatives and/or any End-User who posts same to the software ("Client Data") does not infringe the Intellectual Property rights or other rights of any third party and is free of bugs, worms, viruses, or other malicious code or software.

52 The Client hereby warrants that it (or its distributors, suppliers or retailers who provide such Client Data to DataOrbis on its behalf) is authorized to provide the Client Data to DataOrbis for the purposes of receiving the Services under this Agreement, and hereby indemnifies DataOrbis and its respective officers, directors, shareholders, employees and agents, and their respective successors and assigns and holds them harmless from any and all claims, actions, causes of action, liabilities, losses, costs, damages or expenses, including reasonable attorney's fees, which directly or indirectly arise out of or in relation to a breach of this warranty, or a breach of the undertaking in 5.1 that the Client Data does not infringe the Intellectual Property rights of any third party.

53 If DataOrbis considers any part of the Client Data of which it is aware as exposing it to the risk of a claim or complaint by any third party or any loss, it may block the Client's access to any and/or all software or any Data and remove any or all of the relevant part of such Client Data, and the Client shall be obliged to provide all reasonable assistance in this respect.

54 The software may not be used for any unauthorised purpose, including but not limited to the advertising or selling of any Client goods and/or services to other software users.

55 The Client hereby warrants that except to the extent permitted by law or to the extent that it is authorised to do so, it shall not publish any information or Personal Data in relation to any third party without that party's consent and that wherever it uses the software to process any Personal Data, it shall have all consents, permission and/or lawful entitlement to do so.

56 End-Users will be expected to accept particular user undertakings when signing up for access to the Platform and will be expected to act in accordance therewith, and in accordance with acceptable usage policies generally. The Client hereby indemnifies and holds DataOrbis and its respective officers, directors, shareholders, employees and agents, and their respective successors and assigns harmless from any and all claims, actions, causes of action, liabilities, losses, costs, damages or expenses, including reasonable attorney's fees, which directly or indirectly arise out of or in relation to an End-User's breach of the aforesaid user undertakings, usage policies and/or unauthorised use of the software and/or unauthorised access to the Platform.

6 FURTHER CLIENT RESPONSIBILITIES & UNDERTAKINGS

61 In addition to any other obligations elsewhere contained in this Agreement, the Client agrees that it shall:-

6.1.1 make available suitably qualified and experienced personnel to fulfill its obligations under this Agreement;

6.1.2 co-operate fully with DataOrbis so as to enable DataOrbis to exercise its rights and fulfill its obligations in terms of this Agreement;

6.1.3 nominate, on DataOrbis's request, an authorised representative to liaise directly with DataOrbis in respect of any particular issue where required;

6.1.4 to the extent necessary, provide all required or relevant information or Data to DataOrbis in a timely manner or in accordance with any agreed timetable where applicable and in a complete and accurate form and implement and maintain appropriate back-up systems and procedures for all of its own information and Data;

6.1.5 direct any person in possession of relevant Client information required by DataOrbis to deliver same to DataOrbis without delay;

6.1.6 ensure that DataOrbis is provided with timely responses to requests for information or assistance made by DataOrbis;

6.1.7 ensure that it is lawfully permitted to provide DataOrbis with access to any property, including any Intellectual Property, materials, information or Data which it makes available to DataOrbis in terms of this Agreement; and

6.1.8 pay all amounts that may fall due to DataOrbis free of any deduction, set off, exchange or compromise.

62 The Client agrees to indemnify and hold DataOrbis harmless in respect of all claims, penalties, liabilities, costs or expenses that are made or imposed against DataOrbis by any party as a result of any unlawful or negligent act or omission by the Client or any breach by the Client of the provisions of this Agreement.

7 CHANGE CONTROL

7.1 If at any time during the course of this Agreement the Client wishes to change, including by reducing, expanding or modifying, the scope or requirements of the software licensed to it by DataOrbis or any Services to be rendered or provided by DataOrbis, the Client shall supply DataOrbis with the full details of all such requested changes in writing.

DataOrbis Standard Terms & Conditions

- 72 DataOrbis shall exercise its reasonable endeavours to accommodate the Client's requests or any requirements for changes or modifications but shall not be obliged under any circumstances to accept or concede to any such request or requirement.
- 73 Where the requested changes or modifications are accepted by DataOrbis, DataOrbis may, at its option, either quote the Client a fixed price for implementing the requested changes or modifications or estimate the cost on a time and materials basis in accordance with its Standard Rates.

8 WARRANTIES AND EXCLUSIONS

In addition to any other warranties made elsewhere in this Agreement:

- 81 each Party warrants that it shall comply with all applicable law, including provincial, national or international statutes, regulations, regulatory guidelines, rules, codes, directives, circulars and/ or judicial or administrative interpretations to which it may be subject in the performance of any of its obligations in terms of this Agreement;
- 82 DataOrbis makes no warranty that operation of the software supplied by it shall be completely error-free, nor that the software may be accessed through any operating environment other than the specified Operating Environment, nor that it will be compatible with any particular web browser or other software other than those expressly identified or otherwise approved of by DataOrbis;
- 83 DataOrbis does not warrant or represent that the software will import or process Data from any particular database system, data structure or data format other than the database systems, data structures and data formats expressly agreed to in writing between DataOrbis and the Client;
- 84 no warranty, condition, undertaking, term, or otherwise is given or to be implied as to the suitability of any Services rendered or software supplied by DataOrbis for the Client for any particular purpose including compliance with any legal obligation to which the Client may be subject, or for use under any specific conditions, notwithstanding that any such purpose or conditions may be known or made known to DataOrbis and all such warranties, conditions, undertakings and terms are hereby expressly excluded; and
- 85 each Party hereby warrants in favour of the other that it knows of no facts or reasons which would preclude it from lawfully concluding this Agreement and the person accepting this Agreement on behalf of the Client warrants that he or she is duly authorised to do so and has all necessary permissions and consents required to enable him or her to do so.

9 CONFIDENTIALITY

- 91 Subject to the provisions of this clause 9.1 and clause 9.3, and save as otherwise expressly provided in this Agreement, neither Party shall during the operation of this Agreement nor thereafter disclose to any person or use for any purpose any Confidential Information made available to it (the **"Recipient Party"**) by the other Party (the **"Disclosing Party"**) other than where it:
- 91.1 discloses such Confidential Information to such of its employees or professional advisers (which shall include lawyers, accountants and auditors) who have a need to know such Confidential Information for the proper performance of their duties, provided that the Recipient Party has given prior written instructions to its employees and/or professional advisors as to the restrictions on use and disclosure contained in this Agreement; or

91.2 uses such Confidential Information in the proper exercise of its rights and the performance of its obligations under this Agreement. In this regard, DataOrbis shall be authorised to share, utilise and analyse Data provided to it in order to provide the Services to the Client. The Client also agrees that DataOrbis, if specifically authorised by the Client, may share certain Data with suppliers and/or trading partners of the Client. Moreover, the Client hereby consents to the use of its Data, provided that it has been properly aggregated with the data of other clients and specifically anonymised so as to avoid any Confidential Information being made known or available to any third party, for the purpose of the provision of a "benchmarking" service to be rendered by DataOrbis.

- 92 The Recipient Party shall use its reasonable endeavours to minimise the risk of unauthorised disclosure or use of the Confidential Information and undertakes to take proper care and all reasonable measures to protect the confidentiality of the Confidential Information using a standard of care which is no less than that standard of care which it applies for the protection of its own Confidential Information.
- 93 Subject to clause 9.6, the restrictions on use and disclosure of Confidential Information under clause 9.1 shall not apply to any Confidential Information which the Recipient Party can prove:-
- 93.1 was already known to it prior to its receipt thereof from the Disclosing Party; or
- 93.2 was subsequently disclosed to it lawfully by a third party who did not obtain the same (whether directly or indirectly) from the Disclosing Party; or
- 93.3 was in the public domain at the time of receipt by the Recipient Party or has subsequently entered into the public domain other than by reason of the breach of the provisions of this clause or any obligations of confidence owed by the Recipient Party to the Disclosing Party; or
- 93.4 is required to be disclosed by law, regulation, order or regulators.
- 94 Confidential Information shall be subject to the obligations of confidence irrespective of whether such Confidential Information is communicated orally or in writing by the Disclosing Party or its authorised representatives or obtained through observations made by representatives of the Recipient Party.
- 95 Confidential Information shall not be exempted under clause 9.3 from restriction under this Agreement by reason only that:
- 95.1 some or all of its features (but not the combination and/or principle thereof) are or become public knowledge or are in the possession of or become available to the Recipient Party as mentioned in clause 9.3; or
- 95.2 such information could be derived or obtained from information which is or becomes public knowledge or is in the possession of or becomes available to the Recipient Party as mentioned in clause 9.3 if to obtain or derive such information would require substantial skill, labour or expense.
- 96 DataOrbis shall retain Client Confidential Information only for as long as specified in this Agreement or as otherwise necessary to satisfy the purposes for which it was provided to DataOrbis, except only to the extent that longer retention is required by applicable law. To the extent reasonably practicable, DataOrbis shall further return, delete or destroy all Client Confidential Information then in its possession or under its control, including without limitation all

DataOrbis Standard Terms & Conditions

originals and copies of such Client Confidential Information, on termination of this Agreement for any reason.

- 97 This clause dealing with confidentiality shall survive termination of this Agreement.

10 INTELLECTUAL PROPERTY

- 101 The Client at all times owns the Client Data (being the Data in its raw form provided by it, or on its behalf, to DataOrbis under this Agreement) and all Intellectual Property therein. The Client acknowledges and agrees that DataOrbis (or the relevant affiliate in the DataOrbis Group) shall exclusively own and retain all Intellectual Property rights including copyright in the software and the Platform (including source codes), information solutions and/or products, work, deliverables, training materials, the templated reports, studies, designs, drawings, compilations of all anonymized and aggregated Data, including a compilation using Data of the Client that has been properly aggregated and anonymized with the Client's consent, other software development (including source codes), documentation, specifications, tests, inspections, reports, know-how, methodologies, tools and processes that it uses in the normal course of its business or that have been designed or created for the purposes of carrying out the Services, as well as all other Data prepared or developed by DataOrbis and any registered or unregistered Intellectual Property rights thereto.
- 102 Where DataOrbis (or the relevant affiliate in the DataOrbis Group) incorporates the Intellectual Property of any third party into the software, DataOrbis shall ensure that it has all necessary permissions and consents required to enable it do so. DataOrbis shall ensure that the Client shall be licensed to make use of any such third party Intellectual Property rights on terms and conditions to be disclosed to the Client by DataOrbis. The Client agrees to indemnify DataOrbis and its affiliates in respect of any failure on the Client's part to comply with the terms of this Agreement, or to abide by the terms of any specific licenses granted to it in respect of any such third party Intellectual Property rights.
- 103 DataOrbis hereby grants the Client a non-exclusive right to use any Intellectual Property rights and work product (including reports) as contemplated by clause 10.1, other than software arising pursuant to the rendering of the Services under this Agreement, in accordance with the terms and conditions of this Agreement. It is further agreed that any reports and/or analysis generated by DataOrbis during the currency of this Agreement and for Client's use may be retained by Client after the termination of this Agreement.
- 104 In relation to the use of the software, DataOrbis grants to the Client a license to access and use the software in accordance with the standard terms and conditions of license contained in clause 11. The Client shall immediately bring to the attention of DataOrbis any infringement or suspected infringement by any person of any of DataOrbis's Intellectual Property rights or third party copyright of which it is or becomes aware and shall at the request and expense of DataOrbis take such action or assist DataOrbis in taking such action as DataOrbis may deem appropriate to protect the Intellectual Property rights.
- 105 The Client agrees to indemnify DataOrbis and its affiliates against all damages, liabilities, costs and expenses which DataOrbis 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 to DataOrbis, or any act or omission by the Client, its employees or agents on the attorney and own client scale.
- 106 The Client hereby grants, licenses and consents to DataOrbis using without charge any of its Intellectual Property rights to the extent necessary for the purpose of this Agreement and performance of the Services by DataOrbis.

11 USE OF THE SOFTWARE

- 111 Where expressly contemplated and provided for, and against full and up to date payment of all fees in respect thereof, DataOrbis shall grant the Client a non-exclusive, non-transferable and non-perpetual licence to use the software and User Documentation on the terms and conditions set out in this clause 11. The Client acknowledges that it obtains no moral rights or rights of ownership to the software or User Documentation whatsoever.
- 112 The Client shall access and use the software in object code format only and shall not copy, modify, translate or create derivative works based on the software or User Documentation, nor disassemble, decompile or reverse engineer the software, whether in whole or in part, or otherwise attempt to derive any source code subject to DataOrbis's copyright, nor shall it permit, whether directly or indirectly, any third party to do so; nor shall it sell, lease, encumber, sub-license, transfer or assign the software or User Documentation; nor shall it exploit the software or User Documentation for commercial gain under any circumstances whatsoever and shall use it for its own purposes only; nor shall it remove or alter any proprietary notices, logos or labels on or in the software or User Documentation.
- 113 The Client shall not use the software to circulate, send or distribute any information or Data that would be in contravention of any regulations or legislation including regulations or legislation governing financial services, money laundering or anti-terrorism or which is offensive, abusive, indecent, defamatory, obscene or menacing, in breach of confidence or any other laws.
- 114 The software component parts may not be separated for use on different devices or hardware items other than as expressly agreed to in writing.
- 115 The software will be accessed by the Client, used by its End-Users and charged for by DataOrbis as further set out in the Commercial Agreement. Where the software is licensed on a pay-per-usage basis, then the Client shall be responsible for all usage charges that accrue against its account irrespective of whether all such usage was authorised by it or not. The Client's right to access and use the software shall endure only for as long as the Client meets all of its payment obligations to DataOrbis.
- 116 DataOrbis warrants that it owns the software and/or has licensed the software and/or acquired the right to re-license the software and/or has obtained valid licenses for all third party software used in the development of the DataOrbis software and that all Services rendered by it in relation to the software will be rendered with reasonable care and skill by properly qualified personnel employing good quality materials, techniques and standards in accordance with accepted computing standards. The warranties set forth above in this clause are exclusive and in lieu of all other warranties pertaining to the software, whether statutory, express or implied. DataOrbis licenses and supplies the software and Services "as is" and does not warrant that the operation thereof will be uninterrupted or error free. No warranty is given nor is to be implied as to the suitability of the software or any related service for any particular purpose notwithstanding that any such purpose may be known or ought reasonably to have been known by DataOrbis.
- 117 Nothing contained in this Agreement shall convey any title or proprietary rights to the Client in or over the software or any customisation thereof that may be carried out for the Client.
- 118 DataOrbis shall, at its own expense, defend any action or claim instituted against the Client alleging that the supply, use or possession of the software as provided by DataOrbis to the Client, or any part thereof, constitutes an infringement or alleged infringement of any third parties' intellectual property rights

DataOrbis Standard Terms & Conditions

provided that DataOrbis shall be notified immediately in writing by the Client of any claim or pending claim of which it is aware and provided further that DataOrbis shall have sole control over the defense of any such action or claim, which shall include all settlement negotiations; provided further that the Client shall give its permission, on receipt of a written request, for its name to be used in any such proceedings (such permission not to be unreasonably withheld or delayed) and provided further that the Client shall give all reasonable assistance required of it by DataOrbis in defending any action or claim.

- 11.9. It is acknowledged and understood by the Client that certain components of the software may have been developed using open source DataOrbis proprietary software and open standard technologies. If the software is held to constitute an infringement of any third party's intellectual property rights or, as part of the settlement negotiations of any action concerning an infringement then, and in that event, DataOrbis may at its sole option and expense procure for the Client the rights to continue using the software; modify the software so that it is non-infringing, without detracting from its overall performance and functionality; or substitute for the infringing software other non-infringing computer programs having the same capability as the DataOrbis software. DataOrbis may, having used all reasonable endeavours to resolve an infringement in the manner set out above, terminate this agreement forthwith by notice in writing to the Client.
- 11.10 It is understood and acknowledged by the Client that the DataOrbis software is not intended to guarantee or ensure compliance with any common law, statutory or regulatory requirement or obligation to which the Client may be subject. Use of the software is entirely at the risk of the Client and the Client acknowledges that it should seek legal advice before making any business or legal decisions based on any content or procedure detailed in the software.

12 PAYMENT AND RATES/CHARGES

- 121 Unless specifically recorded to the contrary in the Commercial Agreement or other payment schedule:
- 12.1.1 all fees and charges that may fall due for payment by the Client to DataOrbis in terms of this Agreement including the Standard Rates provided for in the Commercial Agreement are indicated exclusive of value added tax and any other applicable taxes or levies due on any such fees and charges (including, but not limited to, Importation Tax, Withholding Tax and General Sales Tax), all of which shall be paid by the Client; and
- 12.1.2 where any particular Services to be rendered or offered by DataOrbis are expressed as a fixed amount or number of hours per month, such amount or number of hours shall be capable of being utilised and applied in one calendar month only and any number of hours or any portion thereof not fully utilised and applied in any one month shall not result in any credit to the Client nor be capable of being accumulated, utilised or applied in any other month nor applied to any other category of service.
- 122 Subject to any contrary provision in the Commercial Agreement, the Client shall pay any invoice arising from this Agreement within 30 days' of receipt of invoice by transferring the invoiced amount to the DataOrbis Nominated Account.
- 123 The Client acknowledges and agrees that, without DataOrbis in any way derogating from its responsibility to render all Services in a professional and workmanlike manner, DataOrbis shall retain the unfettered discretion to designate appropriate persons to execute and perform any or all of DataOrbis's responsibilities in terms of this Agreement based on its human resource capacity from time to time, the nature of the work to be performed and the degree of skill and experience required. The Client acknowledges and agrees that the actual number of hours of service to be performed by DataOrbis in terms of any maintenance and support services or in respect of any monthly

retainer amount agreed to may vary or be reduced from the anticipated or budgeted number of hours where DataOrbis reasonably appoints Personnel having a different level of skill and seniority than the Personnel that were previously intended to be utilised to execute and perform its responsibilities in any particular month.

- 124 If the Client fails to pay any invoice in accordance with clause 12.2, DataOrbis shall forthwith be entitled to suspend the supply of Services, including hosting services and to either suspend or finally terminate the Client's right to access and make use of any DataOrbis software and to charge interest on any sums outstanding from the invoice date until the date of payment at the interest rate stipulated in the Commercial Agreement, such interest to accrue on a daily basis and to be compounded monthly in arrears.
- 125 The Client acknowledges and agrees that non-delivery or non-performance by any of its customers, distributors, suppliers or any third party other than DataOrbis shall not give the Client any right to delay, withhold or set off any payment that falls due to DataOrbis, even if DataOrbis has been unable to deliver reports timeously due to this delay.
- 126 In the event that the Client cancels any particular Services to be rendered or being rendered by DataOrbis at any stage prior to the termination of the anticipated duration of such Service as set out in the Commercial Agreement, and such cancellation is not due to any material breach of DataOrbis, then the full amount of fees and charges that would have been due in the event that the particular Service had not been cancelled, will accelerate and shall immediately become due and payable, and any further Cancellation Fees as stipulated in the Commercial Agreement, shall also apply.
- 127 Where the resources and/or support required by the Client to access and use the software increases at any time from that contemplated and provided for in accepted Commercial Agreement, then the Parties acknowledge and agree that DataOrbis may be required to allocate increased time and resources to the provision of the Services, including support and maintenance and, in such event, the Parties shall agree upon a reasonable and appropriate additional monthly fee to be charged by DataOrbis to enable same.
- 128 DataOrbis and the Client may agree at any time to adjust any of the fees and charges payable by the Client to DataOrbis. Subject to any other agreement set out in the Commercial Agreement, on each anniversary of the commencement date of any particular Services charged for by DataOrbis on a monthly basis, DataOrbis shall have the right to increase such monthly charges in accordance with the increase provision set out in the Commercial Agreement.

13 LIMITATION OF LIABILITY AND INDEMNITY

- 13.1 Subject always to the provisions of clauses 13.2 and 13.3, and notwithstanding anything to the contrary anywhere else in this Agreement, DataOrbis's liability under this Agreement howsoever arising shall be limited to direct damages only and in no event shall DataOrbis be liable to the Client for any consequential, incidental, indirect or special damages including, without limitation, arising from loss of income, loss of goodwill or profits or business interruption, regardless of whether such liability is based on breach of this Agreement or not.
- 13.2 DataOrbis's liability for any direct damages to the Client or any of its affiliates, officers, directors, shareholders, employees and/ or agents and their respective successors and assigns shall in respect of each claim be limited to an amount equal to the greater of the sum of the fees paid by the Client to DataOrbis during the month in which DataOrbis's aforesaid liability arose and the

DataOrbis Standard Terms & Conditions

proceeds of such insurance policies as DataOrbis may have in place, if any, in relation to such liability.

- 133 Each Party (**"the Indemnifying Party"**) shall protect, defend, indemnify and hold the other Party or their respective affiliates and their respective officers, directors, shareholders, employees and agents, and their respective successors and assigns (collectively referred to as the **"Indemnified Parties"**) harmless from any and all claims, actions, causes of action, liabilities, losses, costs, damages or expenses, including reasonable attorney's fees (collectively **"Losses"**), which directly or indirectly arise out of or in relation to the implementation of this Agreement which Losses are caused by gross negligence or wilful misconduct of the Indemnifying Party.
- 134 Without in any way derogating from the provisions of clauses 13.1 to 13.3 (inclusive), DataOrbis shall have no liability for any failure to meet any of its obligations in terms of this Agreement which result directly or indirectly from the failure or interruption of software or services provided by third parties, nor shall DataOrbis have any liability to the Client or any third party for any loss or harm suffered as a result of any of the events or circumstances described in clauses 3.5.1 to 3.5.13.
- 135 The Client alone is responsible for virus-checking any programs, macros, data files or other material accessed through the Internet or received by it from DataOrbis. DataOrbis shall have no liability for any viruses uploaded to the software or to any information systems of the Client by third parties or by the Client's employees or agents.
- 136 The Client agrees that it is in a better position than DataOrbis to foresee and estimate any loss it may suffer in connection with this Agreement or any DataOrbis Services and that DataOrbis's fees and charges have been agreed to after taking full account of the limitations and exclusions contained in this clause.
- 137 The obligations set forth in this clause 13 shall survive the expiration, cancellation or other termination of this Agreement.

14 NON-SOLICITATION

- 141 It is acknowledged that the Services contemplated in this Agreement are to be provided by high-level and expertly trained DataOrbis Personnel and that the provision of the Services contemplated in this Agreement will enable each of the Parties to become intimately concerned with the business affairs and employees/personnel of the other Party. At all times, DataOrbis Personnel members will remain subject to the conditions of employment, and management of DataOrbis. Each Party acknowledges that the other Party is likely to suffer economic or other prejudice should it solicit and/or employ the employees/ personnel of the other Party.
- 142 DataOrbis and the Client agree that, for a period of one year after completion by DataOrbis of any particular Services to the Client, neither Party will hire or engage, nor offer to hire or engage, directly or indirectly, whether as an employee, consultant, independent contractor or in any other capacity, any Client employee or DataOrbis Personnel member who was directly involved in the receipt or rendering of any such Services. If any such employee / Personnel member enters into any contract of employment or any other agreement of engagement, service or association with the other Party within the aforementioned period without the relevant Party's prior and express written consent thereto (**"the Aggrieved Party"**), then the other Party agrees to pay to the Aggrieved Party on commencement of any such engagement a finder's fee equal to 25% (twenty five percent) of the annual cost to company salary which was paid to the employee by the Aggrieved Party during the calendar year preceding the resignation of said employee. The finder's fee shall be payable within 30 (thirty) calendar days of receipt of an invoice from the Aggrieved Party and shall be without prejudice to

any other rights to which the Aggrieved Party may be entitled in terms of this Agreement or in law. Both Parties agree that the restraint and non-solicitation provisions contained herein are reasonable as to the duration and subject matter thereof and that the finder's fee constitutes a genuine pre-estimate of the damages suffered by the Aggrieved Party by reason of a breach of this clause 14.

15 CESSION, ASSIGNMENT AND SUBCONTRACTING

- 151 All of the rights and obligations of the Client under this Agreement are personal to the Client and may not be ceded, assigned, transferred, charged, sub-licensed, sub-contracted or otherwise delegated, transferred or disposed of in whole or in part without the prior written consent of DataOrbis.
- 152 In the event that DataOrbis delegates any obligation in this Agreement by engaging a third party (including any sub-contractor), then DataOrbis shall ensure that:
- 152.1 the third party shall be appointed on terms no less onerous than those contained herein;
- 152.2 the terms and conditions of this Agreement shall at all times take precedence over any agreement that DataOrbis may enter into with a third party and be duly implemented by the Parties;
- 152.3 notwithstanding any such appointment, DataOrbis shall be and remains liable for the due performance of its obligations under this Agreement; and
- 152.4 the Client shall make payment directly to DataOrbis. For the avoidance of any doubt, liability and responsibility for any payment due to any such third party shall at all times lie with DataOrbis.
- 152.5 Save as provided for above, and for DataOrbis being entitled to cede or assign this Agreement or any part thereof to any entity within the DataOrbis group, neither Party shall assign, transfer or make over any of their obligations in terms of this Agreement without the written consent of the other Party, which consent shall not be unreasonably withheld.

16 TERMINATION

- 161 In the event that either Party commits a breach of any of the material terms and conditions of this Agreement and, in the case of a remediable breach, remains in default for a period of 10 Business Days after receipt of a written notice from the other Party calling for such breach to be remedied, then the other Party shall be entitled, without prejudice to any other rights it may have hereunder or in law, to claim specific performance or to cancel and terminate this Agreement.
- 162 Either Party may forthwith terminate this Agreement at any time by giving the other Party written notice of such termination:
- 162.1 if a final and unappealable judgment against the other Party remains unsatisfied for a period of 15 Business Days or more after it comes, or ought reasonably to have come, to the attention of such Party;
- 162.2 the other Party commits any act of insolvency as set forth in any insolvency legislation that is applicable to it, as amended from time to time;
- 162.3 the other Party makes any arrangement or composition with its creditors generally or ceases or threatens to cease trading; or

DataOrbis Standard Terms & Conditions

- 16.24 the other Party is, other than for the purposes or reconstruction or amalgamation, placed under voluntary or compulsory liquidation or under judicial management or under the equivalent of the foregoing.
- 16.3 DataOrbis shall be entitled to forthwith terminate the provision of any or all Services to the Client in the event that:
- 16.3.1 the Client ceases trading;
- 16.3.2 there is a change in control of the Client which results or shall result in control of the Client falling under any person whom DataOrbis reasonably regards as being its competitor or as being likely to negatively affect the reputation or goodwill of DataOrbis; or
- 16.3.3 the Client, its contractors and staff or any End-User makes use of any DataOrbis software, systems or facilities for any purpose which violates the terms and conditions of this Agreement or which DataOrbis reasonably determines to be detrimental to its good name and reputation.
- 16.4 Any termination pursuant to the provisions of 16.3 shall be without prejudice to any claim that either Party may have against the other, including for damages, in respect of any breach or any prior breach of the terms and conditions of this Agreement.
- 16.5 Save as provided for in clauses 16.1 to 16.3 above, under no other circumstances shall the supply of any products and Services by DataOrbis be capable of being terminated on less notice than that set out in the Commercial Agreement, and subject further to any early Cancellation Fees provided for in this Agreement and/or the Commercial Agreement.
- 16.6 Upon the expiration or earlier termination of this Agreement for any reason whatsoever:
- 16.6.1 the Client shall immediately return all DataOrbis documents, manuals and other materials in the Client's possession to DataOrbis at the Client's own expense;
- 16.6.2 the Client shall be entitled to retain any reports and/or analysis that have been completed by DataOrbis at the date of termination; and
- 16.6.3 DataOrbis will provide the Client with all reasonable assistance requested by the Client to facilitate the handing over of responsibility for the Services being provided by DataOrbis prior to termination provided that the Parties shall agree upon additional rates for any such assistance requested of DataOrbis.
- 16.7 The provisions of clause 9.6 shall apply in relation to the return of the Client's Confidential Information on the expiration or earlier termination of this Agreement.
- ## 17 FORCE MAJEURE
- 17.1 If either Party is prevented or restricted directly or indirectly from carrying out all or any of its obligations under this Agreement, including any service to be rendered by it, by reason of any Force Majeure then that Party shall be relieved of such obligations during the period that the Force Majeure and its consequences continue but only to the extent that it is so prevented and in which circumstances it shall not be liable for any delay or failure in the performance of such obligations or for any losses or damages whether general, special or consequential which the other Party may suffer due to or resulting from such delay or failure, provided always that written notice shall forthwith be given by the affected Party of its inability to perform, from the commencement of the Force Majeure on which it seeks to rely.
- 17.2 Any Party invoking Force Majeure shall upon the termination of such event giving rise thereto immediately give written notice thereof to the other Party. Should such Force Majeure have continued from the time of notice given in clause 17.1 until termination thereof as aforesaid for a period of more than 30 days, then the Parties shall
- 17.2.1 in good faith determine if there is a way to resolve the matter reasonably given the circumstances, which may include (in the discretion of DataOrbis) a renegotiation concerning the timing of payment of fees, if applicable; and
- 17.2.2 to the extent it is not possible to resolve the matter by agreement as contemplated by clause 17.2.1, then either Party shall be entitled forthwith to cancel this Agreement in respect of any obligations still to be performed hereunder.
- ## 18 DISPUTE RESOLUTION
- 18.1 If the Parties are unable to resolve any dispute resulting from this Agreement by means of joint co-operation or discussion between the individuals directly involved with the execution of this Agreement or the relevant Services where applicable, within 1 week of any such dispute arising, 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 Business Days of it having been referred to them.
- 18.2 Should a dispute not be resolved in the aforesaid manner, then the Parties hereby expressly agree to the non-exclusive jurisdiction of the Cape High Court for purposes of resolving any such dispute or for enforcing any of their rights and without detracting from either Party's right to institute action against the other in any other Court of competent jurisdiction. Notwithstanding the provisions of 18.1, neither Party shall be prohibited from making application to the Cape High Court or any Court of competent jurisdiction for urgent injunctive relief at any time.
- 18.3 In the event that the Parties agree to refer a dispute to arbitration, such arbitration shall be held subject to the provisions of this clause:
- 18.3.1 in Cape Town; and
- 18.3.2 in accordance with the provisions of the Arbitration Act, No. 42 of 1965, as amended, and the rules of the Arbitration Foundation of South Africa, and, it being the intention that, if possible, it shall be held and concluded within 21 Business Days after it has been demanded.
- 18.4 The arbitrator shall be if the question in issue is:
- 18.4.1 primarily an accounting matter, a practising accountant of not less than 10' experience agreed upon between the Parties;
- 18.4.2 primarily a legal matter, a practising advocate of not less than 10 years' experience agreed upon between the Parties; or
- 18.4.3 any other matter, an independent person agreed upon between the Parties.
- 18.5 If the Parties cannot agree upon a particular arbitrator within 7 Business Days after the arbitration has been demanded, the nomination in terms of 18.4.1, 18.4.2 and 18.4.3 above, as the case may be, shall be made by the President of the Law Society of the Cape of Good Hope (or its successor), within 7 Business Days after the Parties have so failed to agree.
- 18.6 The Parties irrevocably agree that the decision in these arbitration proceedings:

DataOrbis Standard Terms & Conditions

- 18.6.1 shall be binding on them;
- 18.6.2 shall be carried into effect;
- 18.6.3 shall not be subject to review;
- 18.6.4 may be made an order of any Court of competent jurisdiction; and
- 18.6.5 shall not exclude the Parties' right to urgent relief.

19 NOTICES AND DOMICILIUM

- 19.1 The Client's physical address as recorded on the cover page of this Agreement and its facsimile number if applicable and electronic mail address in the Commercial Agreement shall serve as its domicilium citandi et executandi for all purposes arising out of or in connection with this Agreement.
- 19.2 Any notice given in terms of this Agreement shall be in writing and
 - 19.21 if delivered by hand during the normal business hours of the addressee at the addressee's domicilium for the time being shall be presumed, unless the contrary is proved by the addressee, to have been received by the addressee at the time of delivery;
 - 19.22 if posted by prepaid registered post be deemed, unless the contrary is proved by the addressee, to have been received by the addressee on the 8th day following the date of such posting; or
 - 19.23 if sent by courier to the addressee at the addressee's domicilium for the time being shall be presumed, unless the contrary is proved by the addressee, to have been received by the addressee on the date of delivery by the courier service concerned; or
 - 19.24 if sent by facsimile machine or electronic mail, be deemed, until the contrary is proved by the addressee, to have been received within 1 hour of transmission where transmitted during the hours of 08h00 – 16h00 of any Business Day or at noon on the following business day where transmitted outside of such business hours.
- 19.3 Notwithstanding anything to the contrary contained in this Agreement, a written notice or communication actually received by one of the Parties from another including by way of email or facsimile transmission shall be adequate written notice or communication to such Party.

20 GENERAL

- 20.1 **Survival of Rights, Duties and Obligations:** Termination of this Agreement for any cause whatsoever shall not release either Party from any liability which at the time of termination has already accrued to the other or which thereafter may accrue in respect of any act or omission prior to such termination.
- 20.2 **Entire agreement:** This Agreement (as read with the Commercial Agreement) contains the entire agreement between the Parties and neither Party shall be bound by any undertakings, representations, warranties, promises or the like not recorded herein.

- 20.3 **Supersession:** The terms and conditions set out herein as read with the terms of a signed Commercial Agreement cancel and supersede all prior negotiations and agreements entered into between the Parties relating to the matters set forth herein. In the event of any conflict between this Agreement and any other agreement between the Parties relating to the matters set forth herein, whether oral or in writing, this Agreement shall take precedence and be duly implemented, save that if the conflict is between the provisions in the main body of this Agreement on the one hand and the provisions of the Commercial Agreement on the other hand, the relevant provision in the Commercial Agreement shall prevail.
- 20.4 **Further Assurance:** The Parties shall co operate with each other and execute and deliver to the other of them such other instruments and documents and take such other actions as may be reasonably requested of either of the Parties from time to time in order to carry out, evidence and confirm its rights and the intended purpose of this Agreement.
- 20.5 **Indulgences:** No indulgence, leniency or extension of time which any Party ("the grantor") may grant or show to the other shall operate as an estoppel or in any way prejudice the grantor or preclude the grantor from exercising any of its rights in the future.
- 20.6 **Governing law:** This Agreement shall be governed by and interpreted in accordance with the laws of the Republic of South Africa. All disputes, actions and other matters in connection with this Agreement shall be determined in accordance with such laws.
- 20.7 **Invalidity:** Any provision of this Agreement which is held invalid or unenforceable in any jurisdiction shall be ineffective to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable the remaining provisions hereof, and any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.
- 20.8 **Severability:** Each undertaking in this Agreement shall be construed as a separate undertaking and if one or more of the undertakings contained in this Agreement is found to be unenforceable or in any way unreasonable (including any restraint of trade) the remaining undertakings shall continue to bind the Parties. To the extent possible in any jurisdiction to which this Agreement may apply or in which this Agreement may be enforced, if any undertaking contained in this Agreement is found to be void but would be valid if the period of application thereof were reduced or if some part of the undertaking were deleted, the undertaking in question shall apply with such modification as may be necessary to make it valid and effective.
- 20.9 **Cumulative Rights and Remedies:** The rights and remedies of the Parties under this Agreement are cumulative and in addition to any rights and remedies provided by law.