ODM Terms and Conditions of Sale

(HARDWARE, SOFTWARE AND/OR SERVICES)

Between: One Digital Media Proprietary Limited

And: Customer

CONTENTS

PARTIES:

This Agreement is made between:

(1)   One Digital Media Proprietary Limited, a private company registered in accordance with the laws of the Republic of South Africa under registration number 2005/031247/07 (ODM); and

(2)   The Customer is either a company registered in accordance with the laws of South Africa or an individual who has accepted the ODM quotation by either of the below methods:

     a.   Directly accepting the quotation online by clicking the 'ACCEPT QUOTE' button or;

     b.   Accepting the quote via electronic mail.

WHEREAS

A.   ODM is in the business of providing the Hardware, Software Licenses, Services and/or Online Services.

B.   The Customer wishes to obtain and ODM wishes to provide the Hardware, Software Licenses, Services and/or Online Services on the terms set out in this Agreement and in the applicable SOW/QUOTE

It is Agreed as Followed

1. ## DEFINITIONS AND INTERPRETATION

1.1 **Definitions**

For the purposes of this Agreement and the preamble above, unless the context requires otherwise, the following definitions apply:

1.1.1 **Affiliate**: any entity that directly or indirectly controls, is controlled by, or is under common control with another entity.

1.1.2 **Agreement**: this master supply agreement and includes its schedules which shall form part of it.

1.1.3 **Applicable Law**: any national (or provincial) legislation, statutes, ordinances and other laws and regulations and any by-laws of any legally constituted public authority.

1.1.4 **Business Day**: a day other than a Saturday, Sunday or statutory public holiday in South Africa .

1.1.5 **Business Hours**: the period from [9.00 am to 5.00 pm] on any Business Day.

1.1.6 **Change Order**: has the meaning given in clause 17.1.

1.1.7 **Customer/Client Order:** means a signed Cost Estimate or Quote. A Customer Order could replace the requirement for a SOW/QUOTE.

1.1.8 **Confidential Information**: all confidential information (however recorded or preserved) disclosed by a party to the other party whether before or after the Signature Date, including but not limited to:

1.1.8.1 the existence and terms of this Agreement;

1.1.8.2 any information that would be regarded as confidential by a reasonable business person relating to:

1.1.8.2.1 the business, affairs, customers, clients, suppliers, plans, intentions, or market opportunities of the disclosing party (or of any member of the group of companies to which the disclosing party belongs); and

1.1.8.2.2 the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing party (or of any member of the group of companies to which the disclosing party belongs);

1.1.8.3   any information developed by the parties in the course of carrying out this Agreement; and

1.1.8.4   any other information that would be regarded as confidential by a reasonable business person.

1.1.9   **Control**: the power to direct or cause the direction of the management and policies of an entity whether through the ownership of voting securities, by contract or otherwise, and **Controlled** and **Controlling** shall have a similar meaning.

1.1.10   **CPI:** the annual rate of change in the "Consumer Price Index, all items" and all urban areas, expressed as a percentage, as published by Statistics South Africa (or anybody authorised in its stead in terms of the Statistics Act No 66 of 1976, as amended, or any statute replacing such Act, to compile and publish national statistics) for the relevant month, over the Consumer Price Index, all items and all urban areas, published for the corresponding month in the previous year. The rate used shall be the latest available published rate.

1.1.11   **Consumables**: any equipment, including cables, screws, brackets, tools, systems or facilities, provided by ODM, its agents, subcontractors or consultants which is used directly or indirectly in the supply of the Hardware, Software Licenses, Services and/or Online Services including any such items specified in a SOW/QUOTE.

1.1.12   **Customer Materials**: all documents, information, items and materials in any form, whether owned by the Customer or a third party, which are provided by the Customer to ODM in connection with the Hardware, Software Licenses, Services and/or Online Services, including the items provided pursuant to clause 14.2.4.

1.1.13   **Deliverables**: deliverables set out in a SOW/QUOTE produced by ODM for the Customer.

1.1.14   **Dispute:** any dispute or difference between the parties in connection with or arising from this Agreement or any SOW/QUOTE in the widest sense, including without limitation any dispute or difference in connection with or in respect of the conclusion or existence of this Agreement or any SOW/QUOTE, the carrying into effect of this Agreement or any SOW/QUOTE, the interpretation or application of the provisions of this Agreement or any SOW/QUOTE, the parties' respective rights and/or obligations in terms of and/or arising out of this Agreement or any SOW/QUOTE and/or the validity, enforceability, rectification, termination or cancellation, whether in whole or in part, of this Agreement or any SOW/QUOTE.

1.1.15   **Effective Date:** the effective date of each SOW/QUOTE as stipulated in such SOW/QUOTE, failing which it shall be the signature date of such SOW/QUOTE.

1.1.16   **Force Majeure Event**: has the meaning given to it in clause 26.

1.1.17   **Hardware**: the hardware (or any part of them) set out in a SOW/QUOTE.

1.1.18   **Hardware Specification**: any specification for the Hardware, including any relevant plans or drawings, that is agreed in writing by the Customer and ODM.

1.1.19   **Insolvency Event**: the happening of any one or more of the following events:

1.1.19.1   a party convenes a meeting of its creditors, makes an offer of compromise or makes a proposal for any other composition or scheme of arrangement with its creditors generally; or

1.1.19.2   a party commits an act which, if committed by an individual, would constitute an act of insolvency in terms of Section 8 of the Insolvency Act of 1936; or

1.1.19.3   a party is unable to pay its debts as contemplated in item 9 of Schedule 5 (Transitional Arrangements) of the Companies Act of 2008, when read with and as set out in Section 345 of the Companies Act of 1973, as amended; or

1.1.19.4   any receiver, administrative receiver, administrator, compulsory manager, judicial custodian, liquidator or practitioner or the like is lawfully appointed in respect of a party or any material part of a party's assets or revenues or a party requests any such appointment; or

1.1.19.5   a party convenes a meeting for the purposes of passing a special resolution for its voluntary winding up (solvent or insolvent) for filing with the Companies and Intellectual Property Commission or similar regulatory body in any other jurisdiction where such person is domiciled; or

1.1.19.6   a party fails to satisfy a judgment debt or to take steps to have any judgment against it set aside within 30 days after such judgment has come to the attention of such party; or

1.1.19.7   a party is sequestrated or liquidated, as the case may be.

1.1.20   **Intellectual Property Rights or IPR**: patents, rights to inventions, copyright and related rights, trade-marks and service marks, business names, trade names and domain names, rights in get-up, rights to goodwill or to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use and protect the confidentiality of confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or

extensions of, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

1.1.21 **Maintenance Release:** release of the Software that corrects faults, adds functionality or otherwise amends or upgrades the Software, but which does not constitute a New Version;

1.1.22 **New Version:** any new version of the Software which from time to time is publicly marketed and offered for purchase by ODM in the course of its normal business, being a version, which contains such significant differences from the previous versions as to be generally accepted in the marketplace as constituting a new product.

1.1.23 **ODM's Equipment**: any equipment, including tools, systems, cabling or facilities, provided by ODM to the Customer and used directly or indirectly in the supply of the Hardware, Software Licenses, Services and/or Online Services, including any such items specified in a SOW/QUOTE.

1.1.24 **Online Services**: the online services to be provided by ODM to the Customer under the applicable SOW/QUOTE as set out in the Online Service Specification.

1.1.25 **Online Service Specifications**: the description or specification for the Online Services provided in writing by ODM to the Customer.

1.1.26 **Prime Rate:** the publicly quoted prime rate of interest (calculated on a 365-day year) charged by The Standard Bank of South Africa Limited, from time to time, as certified, in the event of any dispute, by any manager of such bank, whose appointment it shall not be necessary to prove.

1.1.27 **Services**: the services, including the Deliverables, to be provided by ODM to the Customer under the applicable SOW/QUOTE as set out in the Service Specification.

1.1.28 **Service Credits**: the service credits specified in any SOW/QUOTE.

1.1.29 **Service Levels**: the performance standards set out in a SOW/QUOTE in accordance with which ODM is to provide the Services to be provided under that SOW/QUOTE.

1.1.30 **Service Specification:** the description or specification for the Services provided in writing by ODM to the Customer.

1.1.31 **Signature Date: the signature date of this Agreement by the party signing it last in time.**

1.1.32 **Site**: has the meaning given in clause 5.2.

1.1.33   **Software**: the computer programs listed in any SOW/QUOTE or embedded in any Hardware provided under any SOW/QUOTE and any Maintenance Release which is acquired by the Customer during the subsistence of the Agreement.

1.1.34   **Software Licenses**: a licence to use the Software.

1.1.35   **Software Specification:** the description or specification for the Software provided in writing by ODM to the Customer.

1.1.36   **Statement of Work or SOW/QUOTE**: each statement of work concluded between ODM and the Customer for the supply of Hardware and/or, Software Licenses and/or Services and/or Online Services pursuant to this Agreement, agreed in accordance with clause 3. The Customer may choose to replace the SOW/QUOTE with a signed Customer Order or Quote.

1.1.37   **Third-Party Additional Terms:** the additional terms and conditions set out a SOW/QUOTE relating to Third-Party Software**.**

1.1.38   **Third-Party Software:** the third-party software listed in a SOW/QUOTE or embedded in the Hardware provided under any SOW/QUOTE.

1.1.39   **VAT**: means value-added tax, chargeable under the Value Added Tax Act of 1991, as amended or substituted from time to time.

1.2   **Interpretation**

1.2.1   Unless expressly provided to the contrary or inconsistent with the context, a reference in this Agreement to:

1.2.1.1   this Agreement or any other agreement, document or instrument, including a schedule, shall be construed as a reference to this Agreement or that other agreement, document or instrument as amended, varied, novated or substituted from time to time;

1.2.1.2   a clause, sub-clause, schedule, annexure or appendix is to a clause, sub-clause, schedule, annexure or appendix to this Agreement;

1.2.1.3   a person includes any natural person, firm, company, corporation, body corporate, juristic person, unincorporated association, government, state or agency of a state or any association, trust, partnership, syndicate, consortium, joint venture, charity or other entity (whether or not having separate legal personality);

1.2.1.4   a reference to a party includes its successors or permitted assigns;

1.2.1.5   any one gender, whether masculine, feminine or neuter, includes the other two;

1.2.1.6   the singular includes the plural and vice versa;

1.2.1.7   a word or expression given a particular meaning includes cognate words or expressions;

1.2.1.8   any number of days prescribed shall be determined by excluding the first and including the last day or, where the last day is a day that is not a Business Day, the next Business Day;

1.2.1.9   a statute or statutory provision includes any subordinate legislation made from time to time under that statute or provision and a reference to a statute or statutory provision includes that statute or provision as from time to time modified or re-enacted as far as such modification or re-enactment applies, or is capable of applying, to this Agreement and any SOW/QUOTE or any transaction entered into in accordance with this Agreement and any SOW/QUOTE;

1.2.1.10   the words **including**, **include** or **in particular** followed by specific examples shall be construed by way of example or emphasis only and shall not be construed, nor shall it take effect, as limiting the generality of any preceding words, and the *eiusdem generis* rule is not to be applied in the interpretation of such specific examples or general words;

1.2.1.11   the words **other** or **otherwise** shall not be construed *eiusdem generis* with any foregoing words where a wider construction is possible.

1.2.2   All the headings and sub-headings in this Agreement are for convenience and reference only and shall be ignored for the purposes of interpreting it.

1.2.3   A term defined in a particular clause or schedule in this Agreement, unless it is clear from the clause or schedule in question that application of the term is to be limited to the relevant clause or schedule bears the meaning ascribed to it for all purposes of this Agreement, notwithstanding that that term has not been defined in clause 1.1 and, where there is any inconsistency between any term defined in clause 1.1 and any term defined in any clause or schedule in this Agreement, then, for the purposes of construing such clause or schedule the term as defined in such clause or schedule prevails.

1.2.4   No rule of construction may be applied to the disadvantage of a party because that party was responsible for or participated in the preparation of this Agreement or any part of it.

1.2.5   If a definition confers substantive rights or imposes substantive obligations on a party, such rights and obligations shall be given effect to and are enforceable as substantive provisions of this Agreement, notwithstanding that they are contained in that definition.

2.   COMMENCEMENT AND DURATION

2.1   This Agreement shall commence on the Signature Date and shall continue indefinitely until it is terminated in accordance with the terms of this Agreement.

2.2   Each SOW/QUOTE will commence on the Effective Date of such SOW/QUOTE and shall continue for the period provided therein subject to termination as provided for in this Agreement.

2.3   ODM shall provide the Hardware, Software Licenses, Services and/or Online Services from the date specified in the relevant SOW/QUOTE.

3.   STATEMENTS OF WORK

3.1   Customer hereby appoints ODM to provide the Hardware, Software Licenses, Services and/or Online Services to the Customer, and ODM accepts such appointment, on the terms set out in this Agreement and any applicable SOW/QUOTE or Signed Order/Signed Quote.

3.2   This Agreement is an umbrella agreement under which the parties may from time to time agree for the provision of Hardware, Software Licenses, Services and Online Services by ODM. All terms and conditions applicable to the Hardware, Software Licenses, Services and/or Online Services (in addition to the applicable terms and conditions contained in this Agreement) shall be set out in SOW/QUOTEs that will incorporate the terms of this Agreement, as amended by those SOW/QUOTEs.

3.3   Except where specifically provided to the contrary in a SOW/QUOTE, and then only to the extent so specified, each SOW/QUOTE shall be subject to this Agreement. Insofar as any term and condition in a SOW/QUOTE conflicts with this Agreement in respect of –

3.3.1   the description of Hardware, Software Licenses, Services or Online Services, the terms and conditions in the SOW/QUOTE shall prevail; or

3.3.2   any other matter, this Agreement shall prevail.

3.4   Save where expressly provided to the contrary, the terms and conditions of one SOW/QUOTE shall not apply to any other SOW/QUOTE.

3.5   Insofar as the meaning of any term or condition in a schedule or annexure to a SOW/QUOTE or any other document referred to in a SOW/QUOTE, excluding this Agreement, conflicts with the meaning of the body of the relevant SOW/QUOTE, the meaning of the terms and conditions in the body of the relevant SOW/QUOTE shall prevail.

3.6   Each SOW/QUOTE shall be agreed in the following manner:

3.6.1   the Customer shall ask ODM to provide any or all of the Hardware, Software Licenses, Services and/or Online Services and provide ODM with as much information as ODM reasonably requests in order to prepare a draft SOW/QUOTE for the Hardware, Software Licenses, Services and/or Online Services requested;

3.6.2   following receipt of the information requested from the Customer ODM shall, as soon as reasonably practicable either:

3.6.2.1   inform the Customer that it declines to provide the requested Hardware, Software Licenses, Services and/or Online Services; or

3.6.2.2   provide the Customer with a draft SOW/QUOTE.

3.6.3   if ODM provides the Customer with a draft SOW/QUOTE pursuant to clause 3.6.2.2, ODM and the Customer shall discuss and agree that draft SOW/QUOTE; and

3.6.4   both parties shall sign the draft SOW/QUOTE when it is agreed.

3.7   ODM may charge for the preparation of Statements of Work on a time and materials basis in accordance with ODM's standard daily fee rates as set out in the Quote.

3.8   Once a SOW/QUOTE has been agreed and signed in accordance with clause 3.6.4, no amendment shall be made to it except in accordance with clause 17 or clause 29.4.

3.9   This Agreement will apply to each SOW/QUOTE to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

3.10   All of the terms and conditions contained in the main body of this Agreement shall apply to the supply of the Hardware, Software Licenses, Services and/or Online Services, where applicable, except where otherwise specified in the SOW/QUOTE.

4. SUPPLY OF HARDWARE

4.1   This clause 4 applies to the provision of any Hardware by ODM to the Customer under any SOW/QUOTE issued pursuant to this Agreement.

4.2   The Hardware is described in the Hardware Specification.

4.3   To the extent that the Hardware is to be manufactured in accordance with a Hardware Specification supplied by the Customer, the Customer shall indemnify ODM against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by ODM arising out of or in connection with any claim made against ODM for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with ODM's use of the Hardware Specification. This clause 4.2 shall survive termination of the SOW/QUOTE.

4.4   ODM reserves the right to amend the Hardware Specification if required by any applicable statutory or regulatory requirement, and ODM shall notify the Customer in any such event.

5. DELIVERY OF HARDWARE – IF ODM IS NOT INSTALLING THE HARDWARE

5.1   ODM shall ensure that:

5.1.1   each delivery of the Hardware is accompanied by a delivery note which shows the date of the SOW/QUOTE, the SOW/QUOTE number (if any), the type and quantity of the Hardware (including the code number of the Hardware, where applicable), special storage instructions (if any) and, if the Hardware is being delivered in instalments, the outstanding balance of Hardware remaining to be delivered; and

5.1.2   it states clearly on the delivery note any requirement for the Customer to return any packaging material to ODM. The Customer shall make any such packaging materials available for collection at such times as ODM shall reasonably request. Returns of packaging materials shall be at ODM's expense.

5.2   ODM shall deliver the Hardware to the location set out in the SOW/QUOTE or such other location as the parties may agree (**Site**) at any time after ODM notifies the Customer that the Hardware is ready.

5.3   Delivery of the Hardware shall be completed on the completion of unloading of the Hardware at the Site.

5.4   Any dates quoted for delivery of the Hardware is approximate only, and the time of delivery is not of the essence. ODM shall not be liable for any delay in delivery of the Hardware that is caused by a Force Majeure Event or the Customer's failure to provide ODM with adequate delivery instructions or any other instructions that are relevant to the supply of the Hardware.

5.5   If ODM fails to deliver the Hardware, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Hardware. ODM shall have no liability for any failure to deliver the Hardware to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide ODM with adequate delivery instructions for the Hardware or any relevant instruction related to the supply of the Hardware.

5.6   If the Customer fails to accept delivery of the Hardware within 3 (three) Business Days of ODM notifying the Customer that the Hardware is ready, then except where such failure or delay is caused by a Force Majeure Event or by ODM's failure to comply with its obligations under the SOW/QUOTE in respect of the Hardware:

5.6.1   delivery of the Hardware shall be deemed to have been completed at 9.00 am on the 3rd (third) Business Day following the day on which ODM notified the Customer that the Hardware were ready; and

5.6.2   ODM shall store the Hardware until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).

5.7   If 10 (ten) Business Days after ODM notified the Customer that the Hardware was ready for delivery the Customer has not accepted delivery of them, ODM may resell or otherwise dispose of part or all of the Hardware.

6.   INSTALLATION OF HARDWARE

6.1   The Customer shall be responsible (at the Customer's cost) for preparing the Site for the delivery and installation of the Hardware and for the provision of all necessary access and facilities reasonably required by ODM to deliver and install the Hardware. If ODM is prevented from carrying out delivery or installation of the Hardware on the specified date because no such preparation has been carried out, ODM may levy additional charges to recover its loss arising from this event.

6.2   On receipt by ODM of a notification from the Customer confirming that it's Site is ready, ODM's project manager shall inspect the Site and, if satisfied that the Site has been adequately prepared by the Customer, issue an installation start date. Notwithstanding the issue of a start date, the responsibility and the risk of preparing the Site will be that of the Customer.

6.3   ODM shall install the Hardware on the Site on the date specified in the SOW/QUOTE following the issue of a start date by ODM's project manager. ODM's obligation to install the Hardware excludes the following –

6.3.1   electrical installation;

6.3.2   data cabling;

6.3.3   provision and installation of data points;

6.3.4   Any required shop fit, cabinet or bulkhead design change re-enforcement;

6.3.5   installation of electrical plug points;

6.3.6   additional travel that may be required;

6.3.7   courier/shipping costs;

6.3.8   DHCP enabled router;

6.3.9   on-site hardware support (unless otherwise indicated);

6.3.10   overtime/after hour installation work;

6.3.11   cladding and design costs;

6.3.12   additional costs due to delays in the site being ready; and

6.3.13   all other work needed to install the Hardware that is not quoted for by ODM;

6.3.14   content creation;

6.3.15   LAN cables/Cat5e from the media player to the router and the network points as well as any Wi-Fi boosters or range extenders;

6.3.16   any item not included in the cost estimate.

7. QUALITY OF HARDWARE SUPPLIED BY ODM

7.1 ODM warrants that on delivery, and for the warranty period (detailed in the Quote/SOW/QUOTE), the Hardware shall:

7.1.1 conform in all material respects with the Hardware Specification; and

7.1.2 be free from material defects in design, material and workmanship.

7.2 Subject to clause 7.3, ODM shall, at its option, repair or replace the defective Hardware, or refund the price of the defective Hardware in full if:

7.2.1 the Customer gives notice in writing during the Hardware Warranty Period within a reasonable time of discovery that some or all of the Hardware do not comply with the warranty set out in clause 7.1;

7.2.2 ODM is given a reasonable opportunity of examining such Hardware; and

7.2.3 the Customer (if asked to do so by ODM) returns such Hardware to ODM's place of business at the Customer's cost, unless the Customer successfully institutes a claim against ODM under the Hardware warranty, in which event the costs will be for ODM's account.

7.3 ODM shall not be liable for the Hardware' failure to comply with the warranty in clause 7.1 if:

7.3.1 the Customer makes any further use of such Hardware after giving a notice in accordance with clause 7.2;

7.3.2 the defect arises because the Customer failed to follow ODM's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Hardware or (if there are none) good trade practice;

7.3.3 the defect arises as a result of ODM following any drawing, design or Hardware Specification supplied by the Customer;

7.3.4 the Customer alters or repairs such Hardware without the written consent of ODM;

7.3.5 the Customer causes or is responsible for the fault or failure;

7.3.6 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or

7.3.7   the Hardware differ from the Hardware Specification as a result of changes made to ensure they comply with Applicable Law.

7.4   Except as provided in this clause 7, ODM shall have no liability to the Customer in respect of the Hardware' failure to comply with the warranty set out in clause 7.1.

7.5   This Agreement shall apply to any repaired or replacement Hardware supplied by ODM.

8.   OWNERSHIP AND RISK IN HARDWARE SUPPLIED BY ODM

8.1   The Hardware shall be at the risk of ODM until delivery to the Customer at the Site. ODM shall off-load the Hardware at the Customer's risk.

8.2   If the Hardware is purchased by the Customer from ODM pursuant to this Agreement and a SOW/QUOTE, ownership in and to the Hardware shall not pass to the Customer until ODM receives payment in full (in cash or cleared funds) for the Hardware and any other hardware that ODM has supplied to the Customer, in which case ownership in and to the Hardware shall pass at the time of payment of all such sums.

8.3   Until ownership in and to the Hardware have passed to the Customer, the Customer shall:

8.3.1   store the Hardware separately from all other hardware held by the Customer so that they remain readily identifiable as ODM's property;

8.3.2   not at any time remove or relocate such Hardware from the Site, in whole or in part, without ODM's prior written consent;

8.3.3   not sell, pledge or otherwise dispose of or encumber the Hardware or any part thereof;

8.3.4   not remove, deface or obscure any identifying mark or packaging on or relating to the Hardware;

8.3.5   maintain the Hardware in satisfactory condition and keep them insured against all risks for their full price on ODM's behalf from the date of delivery;

8.3.6   notify ODM immediately if it becomes subject to any of the events listed in clause 24.2.2; and

8.3.7   give ODM such information relating to the Hardware as ODM may require from time to time.

8.4   Subject to clause 8.5, the Customer may use the Hardware in the ordinary course of its business (but not otherwise) before ODM receives payment for the Hardware.

8.5   If, before ownership of the Hardware passes to the Customer, the Customer becomes subject to any of the events listed in clause 24.2.2, then, without limiting any other right or remedy ODM may have:

8.5.1   the Customer's right to use the Hardware in the ordinary course of its business ceases immediately; and

8.5.2   ODM may at any time:

8.5.2.1   require the Customer to deliver up all Hardware in its possession; and

8.5.2.2   if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Hardware is stored in order to recover them.

8.6   If the Hardware is leased by the Customer from ODM pursuant to this Agreement and a SOW/QUOTE, the following provisions will apply:

8.6.1   **Rental Period and Renewal**: The rental period shall be the period specified as such in the SOW/QUOTE.

8.6.2   **Ownership:** Ownership of the Hardware will remain vested in ODM or its successor in title at all times.

8.6.3   **Rent-to-own**: Ownership of the hardware will pass to the Customer at the full term of the Agreement period if a Rent-to-Own Agreement is in place.

8.6.4   **Terms:** The provisions set out in clauses 8.3 to 8.5 will apply to such SOW/QUOTE with the necessary changes.

8.6.5   **Liens, Hypothecs and Encumbrances:** The Customer waives any lien or right to retain possession of any items or documents belonging to ODM, which lien or right the Customer may have or acquire as a consequence of this Agreement. If the premises at which the Hardware is installed is leased, the Customer will, within 5 (five) business days of the Signature Date, give written notice (and shall send proof of such notice having been given) and hereby also consents to ODM giving written notice to any landlord or land owner, on which any Hardware owned by ODM are stored, that such Hardware is owned by ODM and that the Hardware is not subject to any lien or hypothec in favour of the landlord. The Customer shall otherwise ensure that such Hardware remains free from any and all liens, hypothecs and encumbrances at all times.

8.6.6   **Accession**: For purposes of this Agreement, the Hardware is deemed not to accede to the Site and on termination of this Agreement for any reason, ODM may remove the Hardware without

compensation to the Customer. The Customer must within 5 (five) Business Days of request, give ODM and its personnel access to the Hardware for this purpose.

8.6.7   **Software**: If the Hardware includes Software: (a) the Customer must return the Software to ODM with the Hardware at the expiration of the lease period or upon the earlier termination of the Agreement; (b) the Customer must comply with all terms and conditions of all Software Licences pertaining to the Software; and (c) the Customer will not allow any person to copy or use the Software in any manner unless they are specifically authorised to do so under the terms and conditions of all applicable Software Licences pertaining to the Software.

8.6.8   **Option**: The applicable Hardware SOW/QUOTE may be renewed, for the renewal period stated therein (if any) on written agreement between the parties.

8.6.9   **Removal on Termination**: At the expiration or earlier termination of this Agreement, the Customer shall allow ODM the required access to all Sites in order to allow for the removal of the Hardware.

If the Hardware is "Rent to Own" by the Customer

8.7   If the Hardware is purchased by the Customer from ODM pursuant to this Agreement and a SOW/QUOTE, pursuant to which the purchase price of such Hardware is paid to ODM in instalments, ownership in and to the Hardware shall not pass to the Customer until ODM receives payment in full (in cash or cleared funds) for the Hardware and any other hardware that ODM has supplied to the Customer, in which case ownership in and to the Hardware shall pass at the time of payment of all such sums.

8.8   The provisions set out in clause 8.5 will apply to such SOW/QUOTE with the necessary changes.

8.9   The Customer will give written notice (and shall send proof of such notice having been given) and hereby also consents to ODM giving written notice to any landlord or land owner, on which any Hardware owned by ODM are stored, that such Hardware is owned by ODM and ODM shall otherwise ensure that such Hardware remain free from any and all liens, hypothecs and encumbrances at all times.

General

8.10   The Customer shall permit ODM to inspect and have access to any Site or other premises (and to the computer equipment located there) at or on which the Hardware is being kept or used, and have access to any records kept in connection with the Hardware, for the purposes of ensuring that the Customer is complying with the terms of this Agreement, provided that ODM provides reasonable advance notice to the Customer of such inspections, which shall take place at reasonable times.

9. USE OF THIRD-PARTY HARDWARE

If the Customer does not procure the Hardware from ODM –

9.1   ODM will not be responsible or liable for any faults or defects in respect of such hardware;

9.2   the Customer acknowledges that the only warranties in relation to such third-party hardware or the supply thereof are those contained in the agreement between the Customer and such third-party supplier(s) of the same, and that to the extent that any of such warranties are given to ODM, it will pass on the benefit of such warranties to the Customer;

9.3   the maintenance and repairs of such third-party hardware will be provided pursuant to the agreement between the Customer and such third-party supplier(s) of the same, and the Customer shall bear any and all costs associated with such maintenance and repairs;

9.4   ODM does not warrant that the third-party hardware will operate in conjunction with any Hardware, Software Services and/or Online Services supplied by ODM;

9.5   ODM shall not be liable for any costs or losses sustained or incurred by the Customer in procuring or using such third-party hardware;

and the Customer hereby indemnifies and holds ODM harmless for and against any and all losses, damages, liabilities, costs, expenses, fines, penalties, claims and all related costs and expenses which ODM sustains or incurs as a result of (i) the Customer's failure to comply with its obligations under this clause 9; (ii) any liability to any third party for costs or charges relating to such third party hardware.

10. SUPPLY OF SERVICES

10.1   This clause 10 applies to the provision of any Services by ODM to the Customer under any SOW/QUOTE issued pursuant to this Agreement.

10.2   ODM shall supply the Services to the Customer in accordance, in all material respects, with the Service Specification.

10.3   ODM shall use its reasonable commercial endeavours to meet any performance dates for the Services specified in the SOW/QUOTE, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.

10.4   ODM reserves the right to amend the Service Specification if necessary to comply with any Applicable Law, or if the amendment will not materially affect the nature or quality of the Services, and ODM shall notify the Customer in any such event.

10.5   ODM warrants to the Customer that –

10.5.1   the Services will be provided using reasonable care and skill; and

10.6   Where any Service is stated in a SOW/QUOTE to be subject to a specific Service Level, ODM shall:

10.6.1   use its reasonable commercial endeavours to provide that Service in such a manner as will ensure that the Achieved Service Level in respect of that Service is equal to or higher than such specific Service Level;

10.6.2   provide the Customer with a monthly report setting out ODM's performance against the Service Levels (including details of the Achieved Service Levels and any failure by ODM to achieve the relevant Service Levels) in the immediately preceding month.

11.   SERVICE AND COST EXCLUSIONS

11.1   Unless stated otherwise in a SOW/QUOTE, the following is excluded from the Services provided by ODM to the Customer and ODM shall not be responsible and/or liable for any of the following (without prejudice to any other rights of ODM under this Agreement or in law):

11.1.1   any failure or delay by ODM to provide the Hardware, Software Licenses, Services and/or Online Services resulting from any cause whatsoever which is outside of the reasonable control of ODM;

11.1.2   cost of all parts and consumables not covered by the manufacturer warranty or by the ODM Hardware warranty;

11.1.3   any services required as a result of the wilful or negligent acts of the Customer or a third party;

11.1.4   defects or faults in the Hardware which are not covered by the ODM Hardware warranty;

11.1.5   the use by the Customer or its suppliers of any hardware, software or services which is unsuitable for use with the Hardware, Software Licenses, Services and/or Online Services;

11.1.6   installation or removal of the Hardware by a third party not approved by ODM;

11.1.7   services (including shop fitting) which may be required due to the movement, relocation and/or alteration of the Hardware and attachments, devices, lines or software which do not comply with the interface specifications of ODM;

11.1.8   changes to Software functionality and new Software designs or developments;

11.1.9   damage or increase in service time resulting from force majeure, political unrest and/or sabotage, adverse environmental conditions, fire, water, lightning, surges in the main electricity supply, accident, negligence of the Customer, misuse or use other than that for which the Hardware is designed, failure of electrical power, air-conditioning or humidity control;

11.1.10 specification changes, relocation of the Hardware (or services in respect thereof), adding or removing accessories, attachments or other devices;

11.1.11 operation or user functions which should be carried out by the Customer in terms of the operator and user manuals supplied by ODM;

11.1.12 power source interruptions or any damages caused to hardware or software by such interruptions or incorrect supply of power;

11.1.13 onsite support services / call-outs;

11.1.14 replacement of cabling external to the equipment;

11.1.15 back-up, rectification or recovery of lost or corrupt data arising for any reason;

11.1.16 changes to support services resulting from any changes, alterations, additions, modifications, or variations to the Hardware or operating environment, made or committed without the prior written approval of ODM;

11.1.17 hardware not purchased from ODM directly or hardware not installed by ODM, unless otherwise agreed to between the Parties in writing. ODM has the right to increase the Service charges per Site where ODM is required to support third party hardware not purchased from ODM directly.

12.   SOFTWARE LICENCE

12.1   **Software Ownership**

The Customer acknowledges that all Intellectual Property Rights in the Software and any Maintenance Releases belong and shall belong to ODM or the relevant third-party owners (as the case may be), and

the Customer shall have no rights in or to the Software other than the right to use it in accordance with the terms of this Agreement and the applicable SOW/QUOTE.

12.2 Software Licence

12.2.1   In relation to the Software, and subject to the payment by the Customer of any fees in respect thereof, ODM grants to the Customer a non-exclusive licence for the term of this Agreement OR applicable SOW/QUOTE to use the Software at the Site only.

12.2.2   In relation to scope of use:

12.2.2.1   for the purposes of clause 12.2.1, use of the Software shall be restricted to use of the Software in object code form for the normal business purposes of the Customer (which shall not include allowing the use of the Software by, or for the benefit of, any person other than an employee of the Customer).

12.2.2.2   For the purposes of clause 12.2.1, unless specified otherwise in a SOW/QUOTE, "use of the Software" means loading the Software into temporary memory or permanent storage on the relevant computer, provided that installation on a network server for distribution to other computers is not "use" if the Software is licensed under this licence for use on each computer to which the Software is distributed.

12.2.2.3   the Customer may not use the Software other than as specified in clause 12.2.1 and clause 12.2.2.1 without the prior written consent of ODM, and the Customer acknowledges that additional fees may be payable on any change of use approved by ODM.

12.2.2.4   the Customer has no right (and shall not permit any third party) to copy, adapt, reverse engineer, decompile, disassemble, modify, adapt or make error corrections to the Software in whole or in part except to the extent that any reduction of the Software to human readable form (whether by reverse engineering, decompilation or disassembly) is necessary for the purposes of integrating the operation of the Software with the operation of other software or systems used by the Customer, unless ODM is prepared to carry out such action at a reasonable commercial fee or has provided the information necessary to achieve such integration within a reasonable period, and the Customer shall request ODM to carry out such action or to provide such information before undertaking any such reduction.

12.2.2.5   if the Software incorporates Third-Party Software, the use of such Third-Party Software shall be deemed subject to the Software Licence and to the Third-Party Additional Terms.

12.2.2.6   the Customer shall indemnify and hold ODM harmless against any loss or damage which it may suffer or incur as a result of the Customer's breach of any Third-Party Additional Terms howsoever arising.

12.2.2.7   ODM may treat the Customer's breach of any Third-Party Additional Terms as a breach of the Software Licence.

12.2.3   The Customer may not use any such information provided by ODM or obtained by the Customer during any such reduction permitted under clause 12.2.2.4 to create any software whose expression is substantially similar to that of the Software nor use such information in any manner which would be restricted by any copyright subsisting in it.

12.2.4   The Customer shall not: (i) sub-license, assign or novate the benefit or burden of the Software Licence in whole or in part; (ii) allow the Software to become the subject of any charge, lien or encumbrance; and (iii) deal in any other manner with any or all of its rights and obligations under this Agreement or any SOW/QUOTE, without the prior written consent of ODM, such consent not to be unreasonably withheld or delayed.

12.2.5   The Customer shall: (i) ensure that the number of persons using the Software does not exceed the number permitted in the SOW/QUOTE; (ii) ensure that the Software is installed on designated equipment only; (iii) keep a complete and accurate record of the Customer's copying and disclosure of the Software and its users, and produce such record to ODM on request from time to time; (iv) notify ODM as soon as it becomes aware of any unauthorized use of the Software by any person; (v) pay, for broadening the scope of the licences granted under the Software Licence to cover the unauthorized use, an amount equal to the fees which ODM would have levied (in accordance with its normal commercial terms then current) had it licensed any such unauthorised use on the date when such use commenced.

12.2.6   The Customer shall permit ODM to inspect and have access to the Site and/or any premises (and to the computer equipment located there) at or on which the Software is being kept or used, and have access to any records kept in connection with this Agreement, for the purposes of ensuring that the Customer is complying with the terms of the Software Licence, provided that ODM provides reasonable advance notice to the Customer of such inspections, which shall take place at reasonable times.

12.3   **Maintenance releases**

ODM will provide the Customer with all Maintenance Releases generally made available to its customers. ODM warrants that no Maintenance Release will adversely affect the then existing facilities or functions of the Software. The Customer shall install all Maintenance Releases as soon as reasonably practicable after receipt.

12.4   **Delivery, acceptance and installation**

12.4.1   ODM shall deliver the Software [electronically **OR** on disk] to the Customer at the Site of the Customer. Risk in any tangible media on which the Software is delivered shall pass on delivery.

12.4.2   If in the SOW/QUOTE it is stated that the Software must be subjected to acceptance testing then, except to the extent required otherwise in the SOW/QUOTE, the following clauses 12.4.3 to 12.4.8 shall apply to test the Software.

12.4.3   Within 24 hours of installation, the Customer shall supply data (Test Data) to ODM suitable to test whether the Software operates in accordance, in all material respects, with the Software Specification together with the results it reasonably expects to be achieved by processing the Test Data using the Software**.**

12.4.4   If ODM notifies the Customer that the Test Data or Test Results are not suitable for Acceptance Testing, the Customer shall make such amendments to the Test Data and Test Results as ODM may reasonably request and provide the amended versions to ODM within 7 (seven) days of the request.

12.4.5   Within 7 (seven) days of receipt of suitable Test Data and Test Results, ODM shall carry out Acceptance Testing. ODM shall notify the Customer when the Acceptance Testing will be carried out and the Customer shall be entitled to be present to witness such testing.

12.4.6   If the initial Acceptance Testing fails, ODM shall, within 7 (seven) days of the Acceptance Testing, or such longer period as may be reasonable in the circumstances, and at its cost, correct the errors so disclosed and repeat the Acceptance Testing in the presence of the Customer.

12.4.7   If the subsequent Acceptance Testing fails, the Customer may discontinue the Software Licence by written notice, or require ODM to repeat the actions described in clause 12.4.5 and clause 12.4.6 as often as the Customer wishes (subject to the limitation specified below). If the Software Licence is so discontinued, ODM shall, within 7 (seven) days of receipt of that notice, refund all monies paid by the Customer under the SOW/QUOTE in respect of the Software, and on receipt of that refund the Software Licence shall terminate. If subsequent Acceptance Testing continues to fail, the Customer shall continue to have the same rights as described above until failure of the [3rd (third)] Acceptance

Testing, or (if earlier) the date on which ODM reasonably determines that further Acceptance Testing will not be successful within a reasonable period, whereupon the Customer shall discontinue the Software Licence.

12.4.8   The Customer shall be deemed to have accepted the Software if:

12.4.8.1   the Acceptance Testing is certified by ODM to be successful OR the Acceptance Testing are successful;

12.4.8.2   the Customer fails to provide the Test Data and Test Results within either of the time limits set out in clause 12.4.4 and clause 12.4.5 (as to which time shall be of the essence); or

12.4.8.3   the Customer commences use of the Software other than for testing purposes pre-agreed in writing with ODM.

13.   ACCESS TO ONLINE SYSTEM AND PROVISION OF ONLINE SERVICES

13.1   If ODM provides Online Services to the Customer then this will be specified in the SOW/QUOTE or notified by ODM in writing to the Customer.

13.2   The provision by ODM of Online Services to the Customer may require that ODM provide the Customer with access to an ODM or third-party computer system specified in the SOW/QUOTE.

13.3   Subject to the terms and conditions of and during the term specified in the SOW/QUOTE, or if no term is specified then for the duration of the Online Services, ODM grants to the Customer a non-exclusive, non-transferable, non-sub-licensable licence to:

13.3.1   (If applicable) access the Online Service;

13.3.2   allow not more than 2 Customer's employees to use the Online Services solely for the purposes stated in the SOW/QUOTE.

13.4   All rights granted to the Customer under this clause must only be used for purposes directly relating to the Stated Purpose and are subject to any guidelines, rules, or terms and conditions that may from time to time be established by or imposed on the Customer including by ODM.

13.5   The Customer shall not be entitled to delegate, sub-license or assign all or any of the rights licensed to it under this clause to any third parties without the prior written consent of ODM.

13.6   ODM may continue to develop the functionality provided by or make changes to the Online Service or Online System, and reserves the right to make these changes at any time.

13.7   Unless explicitly stated to the contrary any new features to the Online System or Online Services will be subject to the terms and conditions of this Agreement and/or the applicable SOW/QUOTE.

13.8   Customer is solely responsible in all respects for all use of and for protecting the confidentiality of any username, e-mail verification and password that may be given to or selected by Customer for access to the Online Service. Customer shall not share these with or transfer them to any third parties. Customer shall immediately notify ODM of any authorised use of them or any other beach of security regarding the Online System.

13.9   If the Customer fails to pay any amount due to ODM under any SOW/QUOTE on or before the due date then, without prejudice to ODM's other rights, ODM may suspend Customer's access to the ODM System or the supply of any further Online Services without penalty until the outstanding amounts and any associated interest are paid to ODM.

13.10   ODM shall use its reasonable commercial endeavors to make the Online System available but cannot guarantee that the Online System will operate continuously or without interruptions or be error free and can accept no liability for its unavailability. The Customer will not attempt to interfere with the proper working of the Online System and in particular the Customer shall not attempt to circumvent security, tamper with, hack into, or otherwise disrupt any computer system, server, website, router or any other internet connected device.

13.11   The Customer shall be responsible for ensuring that its computer system meets all relevant technical specifications necessary to use the Online Service and is compatible with the Online System. ODM cannot and does not guarantee or warrant that any material available for downloading from the Online System will be free from infection, viruses and/or other code that has contaminating or destructive properties. The Customer shall be responsible for implementing sufficient procedures and virus checks (including anti-virus and other security checks) to satisfy any particular requirement.

13.12   ODM retains all Intellectual Property Rights in the Online Service, the Online System and all trademarks, trade names, service marks, trade dress, logos, URLs or identifying slogans which are included in, accompany or available on the Online System, whether or not registered, and save as expressly provided in this Agreement or the relevant SOW/QUOTE, nothing shall be taken to grant any rights to the Customer in respect of such Intellectual Property Rights.

14. CUSTOMER'S WARRANTIES AND OBLIGATIONS

14.1   The Customer warrants that –

14.1.1   it is a juristic person with a net asset value or annual turnover, at the time of conclusion of this Agreement, that exceeds R1 million and that it is accordingly not a "credit receiver" for purposes of the National Credit Act, 2005;

14.1.2   it is a juristic person with a net asset value or annual turnover, at the time of conclusion of this Agreement, that exceeds R2 million and that it is accordingly not a "consumer" for purposes of the Consumer Protection Act, 2008.

14.2   The Customer shall:

14.2.1   ensure that the terms of the SOW/QUOTE and any information it provides in the Service Specification, Online Service Specification and the Hardware Specification are complete and accurate;

14.2.2   co-operate with ODM in all matters relating to Hardware, Software Licenses, Services and Online Services;

14.2.3   provide ODM, its employees, agents, consultants and subcontractors, in a timely manner and at no charge, with access to the Customer's premises, office accommodation and other facilities as reasonably required by ODM to provide the Hardware, Software Licenses, Services and Online Services;

14.2.4   provide to ODM in a timely manner all document, information, items and materials in any form (whether owned by the Customer or a third party) required under a SOW/QUOTE or otherwise reasonably required by ODM in connection with the Hardware, Software Licenses, Services and Online Services and ensure that they are accurate and complete;

14.2.5   supply the Customer's Equipment and ensure that all the Customer's Equipment is in good working order and suitable for the purposes for which it is used;

14.2.6   keep all materials, ODM's Equipment, documents and other property of ODM at the Customer's premises in safe custody at its own risk, maintain ODM Materials in good condition until returned to ODM, and not dispose of or use ODM Materials other than in accordance with ODM's written instructions or authorisation;

14.2.7   obtain and maintain all necessary licences, permissions and consents which may be required for the Hardware, Software Licenses, Services and Online Services before the date on which the Services are to be delivered and/or to start;

14.2.8   comply with all Applicable Laws;

14.2.9   inform ODM of all health and safety and security requirements that apply at the Customer's Site;

14.2.10   comply with any additional responsibilities of the Customer as set out in the relevant SOW/QUOTE; and

14.3   If ODM's performance of any of its obligations under a SOW/QUOTE is prevented or delayed by any act or omission by the Customer, its agents, subcontractors, consultants or employees or the failure by any one of them to perform any relevant obligation, without limiting or affecting any other right or remedy available to it:

14.3.1   ODM shall have the right to suspend the supply of the Hardware, Software Licenses, Services and Online Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays ODM's performance of any of its obligations; or

14.3.2   ODM shall be allowed an extension of time to perform its obligations equal to the delay caused by the Customer; and

14.3.3   ODM shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from ODM's failure or delay to perform any of its obligations as set out in this clause 14.3; and

14.3.4   the Customer shall reimburse ODM on written demand for any costs or losses sustained or incurred by ODM arising directly or indirectly from the Customer Default.

15.   **ODM'S RESPONSIBILITIES**

15.1   ODM shall use reasonable endeavours to provide the Hardware, Software Licenses, Services and Online Services to the Customer, in accordance with a SOW/QUOTE in all material respects.

15.2   ODM shall use reasonable endeavours to meet any performance dates specified in a SOW/QUOTE but any such dates shall be estimates only and time for performance by ODM shall not be of the essence of this Agreement.

15.3   ODM shall use reasonable endeavours to observe all health and safety and security requirements that apply at the Customer's premises and that have been communicated to it under clause 14.2.9, provided that it shall not be liable under this Agreement if, as a result of such observation, it is in breach of any of its obligations under this Agreement.

16.   NON-SOLICITATION

16.1   The Customer shall not, without the prior written consent of ODM, at any time during the term of this Agreement and any SOW/QUOTE and for a period of 12 (twelve) months after the termination or expiration of the last of the SOW/QUOTE issued thereunder, solicit or entice away from ODM or employ or attempt to employ any person who is, or has been, engaged as an employee, consultant or subcontractor of ODM in the supply of such Hardware, Software Licenses, Services and/or Online Services.

17.   CHANGE CONTROL

17.1   Either party may propose changes to the scope or execution of the Hardware, Software Licenses, Services and/or Online Services but no proposed changes shall come into effect until a relevant **Change Order** has been signed by both parties. A Change Order shall be a document setting out the proposed changes and the effect that those changes will have on:

17.1.1   the Hardware, Software Licenses, Services and/or Online Services;

17.1.2   the charges payable pursuant the relevant SOW/QUOTE;

17.1.3   the timetable for delivery or performance of the Hardware, Software Licenses, Services and/or Online Services; and

17.1.4   any of the other terms of the relevant SOW/QUOTE.

17.2   If ODM wishes to make a change to the Hardware, Software Licenses, Services and/or Online Services it shall provide a draft Change Order to the Customer.

17.3   If the Customer wishes to make a change to the Hardware, Software Licenses, Services and/or Online Services:

17.3.1   it shall notify ODM and provide as much detail as ODM reasonably requires of the proposed changes, including the timing of the proposed change; and

17.3.2   ODM shall, as soon as reasonably practicable after receiving the information at clause 17.3.1, provide a draft Change Order to the Customer.

17.4   If the parties:

17.4.1   agree to a Change Order, they shall sign it and that Change Order shall amend the relevant SOW/QUOTE; or

17.4.2   are unable to agree a Change Order, either party may require the disagreement to be dealt with in accordance with the dispute resolution procedure in clause 27.

17.5   ODM may charge for the time it spends on preparing and negotiating Change Orders which implement changes proposed by the Customer pursuant to clause 17.3 on a time and materials basis at ODM's daily rates specified in the Quote.

18.   CHARGES AND PAYMENT

18.1   The price for Hardware supplied by ODM:

18.1.1   shall be the price set out in the SOW/QUOTE or, if no price is quoted, the price set out in ODM's published price list as at the date of the SOW/QUOTE; and

18.1.2   shall be exclusive of all costs and charges of packaging, insurance, transport of the Hardware, which shall be invoiced to the Customer.

18.2   In consideration of the Software Licence, the Customer shall pay to ODM the licence fees in the amounts specified in the SOW/QUOTE.

18.3   In consideration of the Online Services, the Customer shall pay to ODM the fees in the amounts specified in the SOW/QUOTE.

18.4   Where the charges for the Services are calculated on a time and materials basis:

18.4.1   the charges shall be calculated in accordance with ODM's daily fee rates, as set out in the SOW/QUOTE;

18.4.2   ODM's daily fee rates for each individual person are calculated on the basis of an eight-hour day from 8.00 am to 5.00 pm worked on Business Days;

18.4.3   ODM shall be entitled to charge an overtime rate, at an agreed rate above that of the daily fee rate on a pro-rata basis for each part day or for any time worked by individuals whom it engages on the Services outside the hours referred to in clause 18.4.2; and

18.4.4   ODM shall ensure that every individual whom it engages on the Services completes time sheets to record time spent on the Services, and ODM shall indicate the time spent per individual in its invoices;

18.4.5   ODM shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom ODM engages in connection with the Services including travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by ODM for the performance of the Services, and for the cost of any materials.

18.5   Where the charges for the Services are calculated on a fixed price basis, the amount of those charges shall be as set out in a SOW/QUOTE.

18.6   ODM reserves the right to:

18.6.1   increase the charges for the Services in accordance with the SOW/QUOTE or, if no such increase is provided for, on an annual basis with effect from each anniversary of the date of this Agreement in line with the percentage increase in the CPI in the preceding 12-month period and the first such increase shall take effect on the first anniversary of the date of this Agreement and shall be based on the latest available figure for the percentage increase in the CPI;

18.6.2   increase the price of the Software Licences in accordance with the SOW/QUOTE or, if no such increase is provided for, on an annual basis with effect from each anniversary of the date of this Agreement in line with the percentage increase in the CPI in the preceding 12-month period and the first such increase shall take effect on the first anniversary of the date of this Agreement and shall be based on the latest available figure for the percentage increase in the CPI;

18.6.3   increase the price for the Online Services in accordance with the SOW/QUOTE or, if no such increase is provided for, on an annual basis with effect from each anniversary of the date of this Agreement in line with the percentage increase in the CPI in the preceding 12-month period and the first such increase shall take effect on the first anniversary of the date of this Agreement and shall be based on the latest available figure for the percentage increase in the CPI;

18.6.4   increase the price of the Hardware, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Hardware to ODM that is due to:

18.6.4.1   any factor beyond the control of ODM (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);

18.6.4.2   any request by the Customer to change the delivery date(s), quantities or types of Hardware ordered, or the Hardware Specification; or

18.6.4.3   any delay caused by any instructions of the Customer in respect of the Hardware or failure of the Customer to give ODM adequate or accurate information or instructions in respect of the Hardware.

18.7   In respect of Hardware and Software Licences, ODM shall invoice the Customer on the date or at such intervals as specified in the SOW/QUOTE, if no such date or intervals are specified, on or at any time after completion of delivery.

18.8   In respect of Services, ODM shall invoice the Customer on the date or in such intervals as is set out in the SOW/QUOTE, failing which on completion of the Services, for project Services and monthly in arrears, for reoccurring Services.

18.9   The Customer shall pay each invoice submitted by ODM:

18.9.1   within 30 (thirty) days of the date of the invoice or such other date as may be specified in the SOW/QUOTE; and

18.9.2   in full and in cleared funds to a bank account nominated in writing by ODM, and

18.9.3   time for payment shall be of the essence of the SOW/QUOTE.

18.10   All amounts payable by the Customer under this Agreement and a SOW/QUOTE are exclusive of amounts in respect of VAT. Where any taxable supply for VAT purposes is made under the SOW/QUOTE by ODM to the Customer, the Customer shall, on receipt of a valid VAT invoice from ODM, pay to ODM such additional amounts in respect of VAT as are chargeable on the supply of the Hardware, Software Licenses, Services and/or Online Services at the same time as payment is due for the supply of the Hardware, Software Licenses, Services and/or Online Services.

18.11   Without prejudice to any other right or remedy that it may have, if the Customer fails to pay ODM any sum due under this Agreement or a SOW/QUOTE on the due date the Customer shall pay interest on the overdue amount at the Prime Rate plus 2% (two percent). Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.

18.12   All amounts due under this Agreement and a SOW/QUOTE shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

19.   INTELLECTUAL PROPERTY RIGHTS

19.1   All Intellectual Property Rights in the Software, any Maintenance Releases, the Hardware, Services and/or Online Services belong and shall belong to ODM or the relevant third-party owners (as the case may be), and the Customer shall have no rights in or thereto other than the right to use it in accordance with the terms of this Agreement and/or a SOW/QUOTE.

19.2   ODM grants to the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free and irrevocable licence OR licence during the term of the SOW/QUOTE to copy the Deliverables (excluding the Customer Materials) for the purpose of receiving and using the the Hardware, Software Licenses, Services and/or Online Services and the Deliverables.

19.3   The Customer shall not sub-license, assign or otherwise transfer the rights granted by clause 19.2.

19.4   In relation to the Customer Materials, the Customer:

19.4.1   and its licensors shall retain ownership of all IPRs in the Customer Materials; and

19.4.2   grants to ODM a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify the Customer Materials for the term of the SOW/QUOTE for the purpose of providing the Hardware, Software Licenses, Services and/or Online Services to the Customer.

19.5   ODM:

19.5.1   warrants that the use of the Hardware, Software Licenses, Services and/or Online Services by the Customer in accordance with the terms of this Agreement and/or a SOW/QUOTE shall not infringe the Intellectual Property Rights of any third party;

19.5.2   shall, subject to clause 23.3, keep the Customer indemnified in full against all reasonable losses, damages, costs (including legal fees) and expenses incurred by or awarded against the Customer as a result of or in connection with any claim brought against the Customer for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the use of the Hardware, Software Licenses, Services and/or Online Services in accordance with the terms of this Agreement and/or a SOW/QUOTE; and

19.5.3   shall not be in breach of the warranty set out in clause 19.5.1, and the Customer shall have no claim under the indemnity at clause 19.5.2 to the extent the infringement arises from:

19.5.3.1   possession or use of the Hardware, Software Licenses, Services and/or Online Services (or any part thereof) by the Customer other than in accordance with the terms of this Agreement and/or a SOW/QUOTE;

19.5.3.2   use of the Hardware, Software Licenses, Services and/or Online Services in combination with any hardware or software not supplied or specified by ODM if the infringement would have been avoided by the use of the Hardware, Software Licenses, Services and/or Online Services not so combined;

19.5.3.3   any modification of the Hardware, Software Licenses, Services and/or Online Services or any Deliverable, other than by or on behalf of ODM;

19.5.3.4   use of a non-current release of the Software;

19.5.3.5   the use of Customer Materials in the development of, or the inclusion of the Customer Materials in, the Hardware, Software Licenses, Services and/or Online Services or any Deliverable; or

19.5.3.6   compliance with the Customer's specifications or instructions.

19.6   The Customer:

19.6.1   warrants that the receipt and use in the performance of this Agreement or a SOW/QUOTE by ODM, its agents, subcontractors or consultants of the Customer Materials shall not infringe any Intellectual Property Rights; and

19.6.2   shall keep ODM indemnified in full against all costs, expenses, damages and losses, including any interest, fines, legal and other professional fees and expenses awarded against or incurred or paid by ODM as a result of or in connection with any claim brought against ODM, its agents, subcontractors or consultants for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the receipt or use in the performance of this Agreement and/or a SOW/QUOTE of the Customer Materials.

19.7   If either party Indemnifying Party is required to indemnify the other party Indemnified Party under this clause 19., the Indemnified Party shall:

19.7.1   notify the Indemnifying Party in writing of any claim against it in respect of which it wishes to rely on the indemnity at clause 19.5.2 or clause 19.6.2 (as applicable);

19.7.2   allow the Indemnifying Party, at its own cost, to conduct all negotiations and proceedings and to settle the IPRs Claim, always provided that the Indemnifying Party shall obtain the Indemnified Party's prior approval of any settlement terms, such approval not to be unreasonably withheld;

19.7.3   provide the Indemnifying Party with such reasonable assistance regarding the IPRs Claim as is required by the Indemnifying Party, subject to reimbursement by the Indemnifying Party of the Indemnified Party's costs so incurred; and

19.7.4   not, without prior consultation with the Indemnifying Party, make any admission relating to the IPRs Claim or attempt to settle it, provided that the Indemnifying Party considers and defends any IPRs Claim diligently, using competent counsel and in such a way as not to bring the reputation of the Indemnified Party into disrepute.

19.8   If any such claim is made against the Customer, or in ODM's reasonable opinion is likely to be made, against the Customer, ODM may at its sole option and expense:

19.8.1   procure for the Customer the right to continue to use the Hardware, Software Licenses, Services and/or Online Services (or any part thereof) in accordance with the terms of this Agreement and/or the applicable SOW/QUOTE;

19.8.2   modify the Hardware, Software Licenses, Services and/or Online Services so that it ceases to be infringing;

19.8.3   replace the Hardware, Software Licenses, Services and/or Online Services with non-infringing hardware, software licenses, services and/or online services; or

19.8.4   terminate the any or all of the applicable SOW/QUOTE/s immediately by notice in writing to the Customer and refund the fees paid under such SOW/QUOTE by the Customer as at the date of termination (less a reasonable sum in respect of the Customer's use of the Hardware, Software Licenses, Services and/or Online Services to the date of termination) on return of the Hardware, Software Licenses, Services and/or Online Services and all copies thereof,

provided that if ODM modifies or replaces the Hardware, Software Licenses, Services and/or Online Services, the modified or replacement Hardware, Software Licenses, Services and/or Online Services must comply with the warranties contained in clause 7 and the Customer shall have the same rights in

respect thereof as it would have had under those clauses had the references to the date of this Agreement and/or the SOW/QUOTE been references to the date on which such modification or replacement was made.

19.9   Notwithstanding any other provision in this Agreement or a SOW/QUOTE, clause 19.5.2 shall not apply to the extent that any claim or action referred to in that clause arises directly or indirectly through the possession or use of any Third-Party Software or through the breach of any Third-Party Additional Terms by the Customer.

19.10   This clause 19 constitutes the Customer's exclusive remedy and ODM's only liability in respect of any claim brought against the Customer and, for the avoidance of doubt, is subject to clause 23.1.

20. COMPLIANCE WITH LAWS

20.1   In performing its obligations under this Agreement, ODM shall comply with the Applicable Laws.

20.2   Changes to the Hardware, Software Licenses, Services and/or Online Services required as a result of changes to the Applicable Laws shall be agreed via the change control procedure set out in clause 17.

21. DATA PROTECTION AND DATA PROCESSING

21.1   The Customer and ODM acknowledge that for the purposes of the Protection of Personal Information Act, 2013, the Customer is the responsible party and ODM is the operator in respect of any personal information.

21.2   ODM shall process the personal information only in accordance with the Customer's instructions from time to time and shall not process the personal information for any purposes other than those expressly authorised by the Customer.

21.3   ODM shall take reasonable steps to ensure the reliability of all its employees who have access to the personal information.

21.4   Each party warrants to the other that it will process the personal information in compliance with all Applicable Laws.

21.5   ODM warrants that, having regard to the state of technological development and the cost of implementing any measures, it will:

21.5.1 take appropriate technical and organisational measures against the unauthorised or unlawful processing of personal information and against the accidental loss or destruction of, or damage to, personal information to ensure a level of security appropriate to:

21.5.1.1 the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction or damage; and

21.5.1.2 the nature of the data to be protected; and

21.5.2 take reasonable steps to ensure compliance with those measures.

21.6 Each party agrees to indemnify and keep indemnified and defend at its own expense the other party against all costs, claims, damages or expenses incurred by the other party or for which the other party may become liable due to any failure by the first party or its employees or agents to comply with any of its obligations under this clause 21.

21.7 The Customer acknowledges that ODM is reliant on the Customer for direction as to the extent to which ODM is entitled to use and process the personal information. Consequently, ODM will not be liable for any claim brought by a data subject arising from any action or omission by ODM, to the extent that such action or omission resulted directly from the Customer's instructions.

21.8 ODM may authorise a third party (**sub-contractor**) to process the personal information provided that the sub-contractor's contract:

21.8.1 is on terms which are substantially the same as those set out in this Agreement; and

21.8.2 terminates automatically on termination of this Agreement for any reason**.**

22. CONFIDENTIALITY

22.1 Each party undertakes that it shall not at any time during this Agreement, and for a period of five years after termination of this Agreement, disclose to any person any Confidential Information, except as permitted by clause 22.2.1.

22.2 Each party may disclose the other party's Confidential Information:

22.2.1 to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with

this Agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's Confidential Information comply with this clause 22.; and

22.2.2   as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

22.3   No party shall use the other party's Confidential Information for any purpose other than to exercise its rights and perform its obligations under or in connection with this Agreement.

23.   LIMITATION OF LIABILITY

23.1   Nothing in this Agreement of any SOW/QUOTE shall limit or exclude ODM's liability for:

23.1.1   death or personal injury caused by its negligence;

23.1.2   fraud or fraudulent misrepresentation; or

23.1.3   any other liability which cannot be limited or excluded by Applicable Law.

23.2   Subject to clause 23.1, neither party shall be liable to the other party, whether in contract, delict (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this Agreement or any SOW/QUOTE for loss of profits, loss of sales or business, loss of agreements or contracts, loss of anticipated savings, loss of or damage to goodwill, loss of use or corruption of software, data or information and any indirect or consequential loss.

23.3   Subject to clause 23.1, ODM's total liability to the Customer, whether in contract, delict (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with and any SOW/QUOTE shall be limited to the lower of: (i) the aggregate charges paid by the Customer to ODM under such SOW/QUOTE; (ii) and the aggregate charges paid by the Customer to ODM in the 12 (twelve) month period preceding the date on which the case of action giving rise to the claim arose under such SOW/QUOTE.

23.4   Save for amounts due by the Customer to ODM in respect of the charges for the supply of the Hardware, Software Licenses, Services and/or Online Services under a SOW/QUOTE and any interest thereon, the Customer total liability to ODM, whether in contract, delict, breach of statutory duty, or otherwise, arising under or in connection with any SOW/QUOTE shall be limited to the total charges paid by the Customer to ODM under the SOW/QUOTE issued under this Agreement.

24. TERMINATION

24.1   Without affecting any other right or remedy available to it, either party may terminate this Agreement:

24.1.1   by giving the other party not less than **6** months' written notice;

24.1.2   immediately on written notice if an Insolvency Event occurs in respect of the other;

24.1.3   immediately on written notice if the other party sells all of its assets or is merged or re-organised in circumstances where it is not the surviving entity;

24.1.4   immediately on written notice if the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or

24.1.5   if any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clauses 24.1.2 to 24.1.4 (inclusive).

24.2   Without affecting any other right or remedy available to it, either party may terminate a SOW/QUOTE:

24.2.1   if the other party commits a material breach of its obligations under such SOW/QUOTE and such breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of **30 thirty** days after being notified in writing to do so;

24.2.2   immediately on written notice if an Insolvency Event occurs in respect of the other;

24.2.3   immediately on written notice if the other party sells all of its assets or is merged or re-organised in circumstances where it is not the surviving entity;

24.2.4   immediately on written notice if the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or

24.2.5   if any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clauses 24.2.2 to 24.2.4 (inclusive).

24.3   Without affecting any other right or remedy available to it, ODM may terminate this Agreement and/or any and/or all SOW/QUOTE with immediate effect by giving written notice to the Customer if:

24.3.1   the Customer fails to pay any amount due under this Agreement or a SOW/QUOTE on the due date for payment and remains in default not less than **7 (seven)** days after being notified in writing to make such payment; or

24.3.2   there is a change of Control of the Customer.

24.4   Without affecting any other right or remedy available to it, ODM may suspend the supply of Hardware, Software Licenses, Services and/or Online Services under this Agreement and/or any SOW/QUOTE if the Customer fails to pay any amount due under this Agreement and/or a SOW/QUOTE on the due date for payment, the Customer becomes subject to any of the events listed in clauses 24.2.2 to 24.2.4 (inclusive), or ODM reasonably believes that the Customer is about to become subject to any of them.

25.   CONSEQUENCES OF TERMINATION

25.1   The effect of terminating this Agreement will be to terminate the ability of either party to enter into subsequent SOW/QUOTEs that incorporate the terms of this Agreement. Termination of this Agreement will not, by itself, result in the termination of any SOW/QUOTEs previously entered into (or extensions of the same) that incorporate the terms of this Agreement. The terms of this Agreement will continue in effect for the purposes of such SOW/QUOTEs unless and until each such SOW/QUOTE itself is terminated or expires.

25.2   Termination of any SOW/QUOTE will not, by itself, result in the termination of this Agreement or of any other SOW/QUOTE.

25.3   On termination or expiry of a SOW/QUOTE:

25.3.1   the Customer will immediately discontinue the use of any ODM Hardware, Software Licenses, Services and/or Online Services provided under the applicable SOW/QUOTE (and the Customer's Software Licenses will terminate with immediate effect);

25.3.2   the Customer shall immediately pay to ODM all of ODM's outstanding unpaid invoices and interest and, in respect of the Hardware, Software Licenses, Services and/or Online Services supplied but for which no invoice has been submitted, ODM may submit an invoice, which shall be payable immediately on receipt;

25.3.3   the Customer shall return all of ODM's Equipment and/or ODM Material. If the Customer fails to do so, then ODM may enter the Customer's premises and take possession of ODM's Equipment and/or

ODM Material. Until ODM's Equipment has been returned or repossessed, the Customer shall be solely responsible for its safe keeping;

25.3.4   ODM shall on request return any of the Customer Materials not used up in the provision of the Hardware, Software Licenses, Services and/or Online Services; and

25.3.5   the following clauses shall continue in force: clause 1.2 (Interpretation), clause 3.3 (Conflict), clause 16 (Non-solicitation), clause 19 (Intellectual property rights), clause 22 (Confidentiality), clause 23 (Limitation of liability), clause 25 (Consequences of termination), clause 27. (Dispute resolution procedure) and clause 29 (General).

25.3.6   Termination or expiry of this Agreement and/or any SOW/QUOTE shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.

25.3.7   Any provision of this Agreement and/or any SOW/QUOTE that expressly or by implication is intended to have effect after termination or expiry shall continue in full force and effect.

26. FORCE MAJEURE

26.1   **Force Majeure Event** means any circumstance not within a party's reasonable control including, without limitation: (i) acts of God, flood, drought, earthquake or other natural disaster; (ii) epidemic or pandemic; (iii) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations; (iv) nuclear, chemical or biological contamination or sonic boom; (v) any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition; (vi) collapse of buildings, fire, explosion or accident; (vii) any labour or trade dispute, strikes, industrial action or lockouts; (viii) non-performance by suppliers or subcontractors (other than by companies in the same group as the party seeking to rely on this clause; and (ix) interruption or failure of utility service, provided that the failure by either party to make payment of any amounts due on the due date therefor in terms of this Agreement or a SOW/QUOTE does not constitute a Force Majeure Event.

26.2   Provided it has complied with clause 26.3, if a party is prevented, hindered or delayed in or from performing any of its obligations under this Agreement or a SOW/QUOTE by a Force Majeure Event the Affected Party shall not be in breach of this Agreement or the relevant SOW/QUOTE or otherwise liable

for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.

26.3   The Affected Party shall:

26.3.1   as soon as reasonably practicable after the start of the Force Majeure Event but no later than **5 (five)** days from its start, notify the other party in writing of the Force Majeure Event, the date on which it started, it's likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the Agreement or the relevant SOW/QUOTE; and

26.3.2   use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

26.4   If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than **30 (thirty)** days, the party not affected by the Force Majeure Event may terminate this Agreement or the relevant SOW/QUOTE by giving **30 (thirty)** days' written notice to the Affected Party.

27. DISPUTE RESOLUTION PROCEDURE

27.1   Should any Dispute arise out of, or relating to, this Agreement or any SOW/QUOTE, the parties shall use all reasonable endeavours to resolve the Dispute amicably within a period of 5 (five) Business Days from the date on which the Dispute arose (or such longer period as may be agreed between the parties).

27.2   If the Dispute is not resolved amicably within the period contemplated in clause 27.1, either party shall be entitled to refer the Dispute to arbitration on written notice to the other party. The parties may agree on the arbitration procedure and on the arbitrator and, failing agreement within 5 (five) Business Days of the written notice referring the Dispute to arbitration, the arbitration shall be conducted in accordance with the UNCITRAL Arbitration Rules in force at the time of the Dispute. The appointing authority in terms of the UNCITRAL Arbitration Rules shall be the Association of Arbitrators (Southern Africa).

27.3   Unless agreed otherwise in writing by the parties, the arbitration shall be administered by the parties and the number of arbitrators shall be 1 (one). The place of the arbitration shall be Sandton, Johannesburg. The governing procedural law of the arbitration shall be the law of South Africa. The arbitrator shall have the same remedial powers as a court of law in South Africa would have were it adjudicating the dispute. The arbitrator shall deliver an award together with written reasons within 30

(thirty) days from the date upon which the arbitration hearing ends. The decision of the arbitrator shall be final and binding.

27.4   Nothing in this clause 27 shall preclude a party from seeking interim or urgent relief from a court of competent jurisdiction.

28.   ADDRESSES FOR LEGAL PROCESSES AND NOTICES

28.1   The parties choose for the purposes of this Agreement and, unless otherwise stated in a SOW/QUOTE, all SOW/QUOTE the following addresses and email addresses:

28.1.1   ODM   Block F, Kara Place, Olive Grove Industrial Estate, Ou Paardevlei Road, Somerset West, 7130 South Africa

Email address:	sales@onedigitalmedia.com
Marked for the attention of	Andrew Ridl
With a copy to be sent to:	andrew@onedigitalmedia.com

28.2   Customer Address as contained it the New Customer/Client documentation supplied by the Customer to ODM in order to create an account on the ODM Accounting System. Any legal process to be served on either of the parties may be served on it at the address specified for it in clause 28.1 and it chooses that address as its *domicilium citandi et executandi* for all purposes under this Agreement and all SOW/QUOTE.

28.3   Any notice or other communication to be given to either of the parties in terms of this Agreement or a SOW/QUOTE is valid and effective only if it is given in writing, provided that any notice given by telefax or email is regarded for this purpose as having been given in writing.

28.4   A notice to any party which is sent by registered post in a correctly addressed envelope to the address specified for it in clause 28.1 is deemed to have been received within 7 (seven) days from the date it was posted, or which is delivered to the party by hand at that address is deemed to have been received on the day of delivery, provided it was delivered to a responsible person during ordinary business hours.

28.5   A notice to any party which is sent by overnight courier in a correctly addressed envelope to the address specified for it in clause 28.1 is deemed to have been received on the business day following the date it is sent.

28.6 Notwithstanding anything to the contrary in this clause 28, a written notice or other communication actually received by any party is adequate written notice or communication to it notwithstanding that the notice was not sent to or delivered at its chosen address.

28.7 Any party may by written notice to the other party change its address or telefax number or email address for the purposes of clause 28.1 to any other address (other than a post office box number) provided that the change will become effective on the day following receipt of the notice.

29. GENERAL

29.1 **Communications between the parties**: All notices, demands and other oral or written communications given or made by or on behalf of either of the parties to the other party shall be in English or accompanied by a certified translation into English.

29.2 **Remedies**: No remedy conferred by this Agreement or a SOW/QUOTE is intended to be exclusive of any other remedy which is otherwise available at law, by statute or otherwise. Each remedy is cumulative and in addition to, and not exclusive of, every other right or remedy given hereunder or now or hereafter existing at law, by statute or otherwise. The election of any one or more remedies by either of the parties does not constitute a waiver by such party of the right to pursue any other remedy.

29.3 **Entire Agreement**: This Agreement, together with each SOW/QUOTE concluded pursuant hereto, constitute the entire agreement between the parties in regard to its subject matter. Neither of the parties shall have any claim or right of action arising from any undertaking, representation or warranty not included in this Agreement together with the applicable SOW/QUOTE.

29.4 **Variations**: No agreement to vary, add to or cancel this Agreement or any SOW/QUOTE shall be of any force or effect unless recorded in writing and signed by or on behalf of both the parties.

29.5 **Data Messages**: For the purposes of this Agreement and any SOW/QUOTE, any reference to **writing** or **written** shall not include email or other data messages and **signed** shall not include electronic signature, as defined in the Electronic Communications and Transactions Act, 2002.]

29.6 **No Waiver**

29.6.1 A waiver of any right or remedy under this Agreement, any SOW/QUOTE or by law is only effective if given in writing and is not deemed a waiver of any subsequent breach or default. For the purposes of this clause 29.6, "writing" shall not include email or other data messages.

29.6.2   A failure to exercise or a delay by a party in exercising any right or remedy provided under this Agreement, any SOW/QUOTE or by law does not constitute a waiver of that or any other right or remedy, nor does it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this Agreement, any SOW/QUOTE or by law prevents or restricts the further exercise of that or any other right or remedy.

29.7   **Survival of Rights, Duties and Obligations**: Termination or expiry of this Agreement or any SOW/QUOTE for any cause does not release either party from any liability which at the time of termination or expiry has already accrued to such party or which thereafter may accrue in respect of any act or omission prior to such termination or expiry.

29.8   **Apportionment of Damages**: If any loss or damage arising out of or in connection with this Agreement or a SOW/QUOTE is caused partly by the fault of Customer, and partly by the fault of ODM, the damages recoverable shall be reduced to such an extent as may be just and equitable, having regard to the degree in which each party was at fault in relation to the damage as if the provisions of the Apportionment of Damages Act 34 of 1956, as amended from time to time, were applicable to a claim for breach of this Agreement or a SOW/QUOTE.

29.9   **No Partnership or Agency**

29.9.1   Nothing in this Agreement or a SOW/QUOTE is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

29.9.2   Each party confirms it is acting on its own behalf and not for the benefit of any other person.

29.10   **Severance**: If any provision of this Agreement or any SOW/QUOTE that is not material to its efficacy as a whole is rendered void, illegal or unenforceable in any respect under any law of any jurisdiction, the validity, legality and enforceability of the remaining provisions are not in any way affected or impaired thereby and the legality, validity and unenforceability of such provision under the law of any other jurisdiction are not in any way affected or impaired.

29.11   **Assignment**: Save as expressly permitted by the provisions of this Agreement or any SOW/QUOTE, neither party may cede any of its rights or delegate any of its obligations under this Agreement or such SOW/QUOTE. ODM may at any time assign, cede and/or delegate any of their rights or obligations under this Agreement or any SOW/QUOTE to an Affiliate.

29.12   **Further Assurance**. Each party shall co-operate with the other party and execute and deliver to the other party such other instruments and documents and take such other actions as may be reasonably requested from time to time in order to carry out, evidence and confirm that party's rights and the intended purpose of this Agreement or a SOW/QUOTE.

29.13   **Publicity**. Neither party shall publish or disclose the existence of this Agreement or any SOW/QUOTE without the prior written consent of the other party, except to the extent that such disclosure is necessary for the performance of this Agreement or any SOW/QUOTE, or is required by law.

29.14   **Third Party Rights**. No one other than a party to this agreement shall have any right to enforce any of its terms.

29.15   **Counterparts**

29.15.1   This Agreement and any SOW/QUOTE may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

29.15.2   Transmission of an executed counterpart of this Agreement or any SOW/QUOTE (but for the avoidance of doubt not just a signature page) by (i) fax or (ii) email (in PDF, JPEG or other agreed format), shall take effect as delivery of an executed counterpart of this Agreement or such SOW/QUOTE. If either method of delivery is adopted, without prejudice to the validity of the agreement thus made, each party shall provide the others with the original of such counterpart as soon as reasonably possible thereafter.

29.15.3   No counterpart shall be effective until each party has executed at least one counterpart.

29.16   **Good Faith**. Each party undertakes with the other to do all things reasonably within its power which are necessary or desirable to give effect to the spirit and intent of this Agreement and a SOW/QUOTE.

29.17   **Applicable law**: This Agreement and each SOW/QUOTE are governed by and shall be construed in accordance with the laws of South Africa.

Costs. Each party must pay its own costs (direct or otherwise) in relation to the negotiation, preparation, execution, delivery, stamping, registration, completion, variation and discharge of this Agreement and any SOW/QUOTE concluded pursuant hereto.