

## TERMS & CONDITIONS

<p>1. <b>BACKGROUND</b></p> <p>(A). Mpowered has developed certain Software and platforms which it makes available to subscribers via the internet on a subscription basis for the purpose of <b>B-BBEE scorecard tracking and management</b>.</p> <p>(B). Customer wishes to use Mpowered's Services in its business operations.</p> <p>(C). Mpowered has agreed to provide and the Customer has agreed to take and pay for Mpowered's Services subject to these Terms and Conditions.</p> <p>2. <b>AGREED TERMS &amp; INTERPRETATION</b></p> <p>2.1 The definitions and rules of interpretation in this clause apply in these Terms &amp; Conditions.</p> <p>2.1.1 <b>Billing Period:</b> shall, unless otherwise stated in the Signed Quote, mean the Initial Subscription Period or Renewal Period;</p> <p>2.1.2 <b>Business Day:</b> any day which is not a Saturday, Sunday or public holiday in the Republic of South Africa.</p> <p>2.1.3 <b>Change of Control:</b> the direct or indirect acquisition of either the majority of the voting stock, or of all, or substantially all, of the assets, of a party by another entity in a single transaction or a series of transactions.</p> <p>2.1.4 <b>Confidential Information:</b> information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 12.5.</p> <p>2.1.5 <b>Customer:</b> the person/company purchasing a subscription from Mpowered.</p> <p>2.1.6 <b>Customer Data:</b> the data inputted by the Customer, Authorised Users, or Mpowered</p>	<p>2.1.7</p> <p>2.1.8</p> <p>2.1.9</p> <p>2.1.10</p> <p>2.1.11</p> <p>2.1.12</p> <p>2.1.13</p> <p>2.1.14</p> <p>2.1.15</p> <p>2.1.16</p>	<p><b>Documentation:</b> the document made available to the Customer by Mpowered online via <a href="http://www.mpowered.co.za">www.mpowered.co.za</a> or such other web address notified by Mpowered to the Customer from time to time which sets out a description of the Services and the user instructions for the Services.</p> <p><b>Effective Date:</b> the start date of the Subscription Term as set out in the Signed Quote.</p> <p><b>Implementation Fee (Private Cloud solution only):</b> the once-off implementation fee payable by the Customer to Mpowered for the Services, as set out in the Signed Quote.</p> <p><b>Initial Subscription Term:</b> the initial term as set out in the Signed Quote.</p> <p><b>Mpowered:</b> Mpowered Business Solutions (Pty) Ltd, Reg. no 2000/029482/07.</p> <p><b>Normal Business Hours:</b> 8.00 am to 5.00 pm, GMT + 2, each Business Day.</p> <p><b>Private Cloud:</b> a hosting environment where the Software will be hosted by the Customer and where the Customer is solely responsible for security and access of users and/or third parties.</p> <p><b>Private Cloud Subscription:</b> a Subscription where the Software is installed on a Private Cloud.</p> <p><b>Renewal Period:</b> the period described in clause 15.1.</p> <p><b>Services:</b> the subscription services provided by Mpowered to the Customer via <a href="http://www.mpowered.co.za">www.mpowered.co.za</a> or any other website notified to the Customer by Mpowered from time to time, as more particularly described in the Documentation.</p>
---	--	---

- 2.1.17 **Signed Quote:** the quote signed, agreed and accepted prior to the Subscription Term.
- 2.1.18 **Software:** the online software applications provided by Mpowered as part of the Services. For the purposes of the Private Cloud Subscriptions, this means the software applications as hosted on the Customer's Private Cloud.
- 2.1.19 **Subscription:** the subscription purchased by the Customer pursuant to clause 10.1 which entitle Users to access and use the Services and the Documentation in accordance with these Terms & Conditions.
- 2.1.20 **Subscription Fees:** the subscription fees payable by the Customer to Mpowered, as set out in the Signed Quote.
- 2.1.21 **Subscription Term:** has the meaning given in clause 15.1 (being the Initial Subscription Term together with any subsequent Renewal Periods).
- 2.1.22 **Users:** those employees, agents and independent contractors of the Customer who are authorised by the Customer to use the Services and the Documentation.
- 2.1.23 **Virus:** any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.
- 2.2 Clause, schedule and paragraph headings shall not affect the interpretation of these Terms & Conditions.
- 2.3 A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assigns.
- 2.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 2.5 Words in the singular shall include the plural and vice versa.
- 2.6 A reference to one gender shall include a reference to the other genders.
- 2.7 A reference to a statute or statutory provision is a reference to it as it is in force, for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 2.8 A reference to writing or written includes faxes and e-mail.
- 2.9 References to clauses and schedules are to the clauses and schedules of these Terms & Conditions.
- 2.10 No rule of construction shall be applied to the disadvantage of a party to these Terms & Conditions because that party was responsible for or participated in the preparation of these Terms & Conditions or any part of it.
3. **SUBSCRIPTION**
- 3.1 Subject to the Customer purchasing the Subscription in accordance with clause 4.3 and clause 10.1, the restrictions set out in this clause 3 and the other terms and conditions, Mpowered hereby grants to the Customer a non-exclusive, non-transferable right to permit the Users to use the Services and the Documentation during the Subscription Term

- solely for the Customer's internal business operations.
- 3.2 The rights provided under this clause 3 are granted to the Customer only and shall not be considered granted to any subsidiary or holding company of the Customer, unless the subsidiary or holding company has also purchased a Subscription.
- 3.3 In relation to the Users, the Customer undertakes that:
- 3.3.1 each User shall keep a secure password for his use of the Services and Documentation and that each User shall keep his password confidential;
- 3.3.2 it shall maintain a written, up to date list of current Users and provide such list to Mpowered within 5 (five) Business Days of Mpowered's written request at any time or times;
- 3.3.3 it shall permit Mpowered to audit the Services in order to establish the name of each User. Such audit may be conducted no more than once per month, at Mpowered's expense, and this right shall be exercised with reasonable prior notice, in such a manner as not to substantially interfere with the Customer's normal conduct of business.
- 3.4 The Customer shall not access, store, distribute or transmit any Virus, or any material during the course of its use of the Services that:
- 3.4.1 is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
- 3.4.2 facilitates illegal activity;
- 3.4.3 depicts sexually explicit images;
- 3.4.4 promotes unlawful violence;
- 3.4.5 is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
- 3.4.6 in a manner that is otherwise illegal or
- causes damage or injury to any person or property;
- and Mpowered reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's access to any material that breaches the provisions of this clause.
- 3.5 The Customer shall not:
- 3.5.1 except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties:
- 3.5.1.1 and except to the extent expressly permitted under these Terms & Conditions, attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Documentation (as applicable) in any form or media or by any means; or
- 3.5.1.2 attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or
- 3.5.2 access all or any part of the Services and Documentation in order to build a product or service which competes with the Services and/or the Documentation; or
- 3.5.3 use the Services and/or Documentation to provide services to third parties; or
- 3.5.4 subject to clause 20.1, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Documentation available to any third party except the Users, or
- 3.5.5 attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under this clause 3.

3.6 If the Customer is a consultant, regardless of clause 3.5.3, it may use the Services and/or Documentation to provide services to third parties.

3.7 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify Mpowered.

#### 4. **ADDITIONAL SUBSCRIPTIONS**

4.1 Subject to clause 4.2 and clause 4.3, the Customer may, from time to time during any Subscription Term, purchase additional Subscriptions and Mpowered shall grant access to the Services and the Documentation to such additional Users in accordance with the provisions of these Terms & Conditions.

4.2 If the Customer wishes to purchase additional Subscriptions, the Customer shall notify Mpowered in writing. Mpowered shall evaluate such request for additional Subscriptions and respond to the Customer with approval or rejection of the request.

4.3 If Mpowered approves the Customer's request to purchase additional Subscriptions, the Customer shall, within 30 days of the date of Mpowered's invoice, pay to Mpowered the relevant fees for such additional Subscriptions as set out in the Signed Quote and, if such additional Subscriptions are purchased by the Customer part way through a Billing Period, such fees shall be pro-rated for the remainder of the Billing Period.

#### 5. **SERVICES**

5.1 Mpowered shall, during the Subscription Term, provide the Services and make available the Documentation to the Customer on and subject to these Terms & Conditions.

5.2 Mpowered shall use commercially reasonable endeavours to make the Services available 24 (twenty-four) hours a day, 7 (seven) days a week. To this end, Mpowered will use

reasonable endeavours to provide Customers with at least 5 (five) days notice prior to scheduled maintenance being conducted.

5.3 Mpowered will, as part of the Services and at no additional cost to the Customer, provide the Customer with Mpowered's standard customer support services during Normal Business Hours in accordance with Mpowered's Support Services Level Policy in effect at the time that the Services are provided. Mpowered may amend the Support Services Level Policy in its sole and absolute discretion from time to time. The Customer may purchase additional support services separately at Mpowered's then current rates.

#### 6. **CUSTOMER DATA**

6.1 The Customer shall own all right, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data.

6.2 In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy shall be for Mpowered to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by Mpowered in accordance with its recovery procedure. Mpowered shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (except those third parties sub-contracted by Mpowered to perform services related to Customer Data maintenance and back-up).

6.3 Mpowered shall, in providing the Services, comply with its Privacy & Security Policy relating to the privacy and security of the Customer Data as notified to Customer from time to time, or as made available to Customer at such website address as may be notified to the Customer from time to time, as such document may be amended from time to time by Mpowered in its sole discretion.

6.4 If Mpowered processes any personal data on

the Customer's behalf when performing its obligations under these Terms & Conditions, the parties record their intention that the Customer shall be the data controller and Mpowered shall be a data processor and in any such case:

- 6.4.1 the Customer acknowledges and agrees that the personal data may be transferred or stored anywhere in South Africa, regardless of where the Customer and/or the Users are located in order to carry out the Services and Mpowered's other obligations under these Terms & Conditions;
- 6.4.2 the Customer shall ensure that the Customer is entitled to transfer the relevant personal data to Mpowered so that Mpowered may lawfully use, process and transfer the personal data in accordance with these Terms & Conditions on the Customer's behalf;
- 6.4.3 the Customer shall ensure that the relevant third parties have been informed of, and have given their consent to, such use, processing, and transfer as required by all applicable data protection legislation;
- 6.4.4 each party shall take appropriate technical and organisational measures against unauthorised or unlawful processing of the personal data or its accidental loss, destruction or damage.

## 7. **THIRD PARTY PROVIDERS**

The Customer acknowledges that the Services may enable or assist it to access the website content of, correspond with, and purchase products and services from, third parties via third-party websites and that it does so solely at its own risk. Mpowered makes no representation or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party website, or any transactions completed, and any contract entered into by the Customer, with any such third party. Any contract entered into and any transaction completed via any third-party website is between the Customer and

the relevant third party, and not Mpowered. Mpowered recommends that the Customer refers to the third party's website terms and conditions and privacy policy prior to using the relevant third-party website. Mpowered does not endorse or approve any third-party website nor the content of any of the third-party website made available via the Services.

## 8. **MPOWERED'S OBLIGATIONS**

- 8.1 Mpowered undertakes that the Services will be performed substantially in accordance with the Documentation and with reasonable skill and care.
- 8.2 The undertaking at clause 8.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to Mpowered's instructions, or modification or alteration of the Services by any party other than Mpowered or Mpowered's duly authorised contractors or agents. If the Services do not conform with the foregoing undertaking, Mpowered will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 8.1. Notwithstanding the foregoing, Mpowered:
- 8.2.1 does not warrant that the Customer's use of the Services will be uninterrupted or error-free; or that the Services, Documentation and/or the information obtained by the Customer through the Services will meet the Customer's requirements; and
- 8.2.2 is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such

communications facilities.

8.3 These Terms & Conditions shall not prevent Mpowered from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under these Terms & Conditions.

8.4 Mpowered warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under these Terms & Conditions.

## 9. CUSTOMER'S OBLIGATIONS

The Customer shall:

9.1 provide Mpowered with:

9.1.1 all necessary co-operation in relation to these Terms & Conditions; and

9.1.2 all necessary access to such information as may be required by Mpowered;

in order to provide the Services, including but not limited to Customer Data, security access information and configuration services;

9.2 comply with all applicable laws and regulations with respect to its activities under these Terms & Conditions;

9.3 carry out all other Customer responsibilities set out in these Terms & Conditions in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, Mpowered may adjust any agreed timetable or delivery schedule as reasonably necessary;

9.4 ensure that the Users use the Services and the Documentation in accordance with these Terms & Conditions and shall be responsible for any User's breach thereof;

9.5 obtain and shall maintain all necessary licences, consents, and permissions necessary for Mpowered, its contractors and agents to perform their obligations under these Terms &

Conditions, including without limitation the Services;

9.6 ensure that its network and systems comply with the relevant specifications provided by Mpowered from time to time; and

9.7 be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to Mpowered's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.

## 10. CHARGES AND PAYMENT

10.1 The Customer shall pay the Subscription Fees and Implementation Fee, where applicable, to Mpowered for the Subscription and Services, respectively, in accordance with this clause 10 and the Signed Quote.

10.2 The Subscription Fees and Implementation Fee excludes any fees for accommodation, subsistence & travel for Services to be rendered outside of a 100km radius of the Mpowered office. These fees will either be paid by the Customer directly or be charged to the Customer by Mpowered, whichever option the Customer would prefer.

10.3 The Customer shall on the Effective Date provide to Mpowered valid, up-to-date, approved and complete purchase order information acceptable to Mpowered and any other relevant valid, up-to-date and complete contact and billing details and, if the Customer provides:

10.3.1 purchase order information to Mpowered, Mpowered shall invoice the Customer:

10.3.1.1 on the Effective Date for the once-off Implementation Fee, where applicable, and the Subscription Fees payable in respect of the relevant Billing Period, and

10.3.1.2 subject to clause 15.1,

- 10.3.1.2.1 at least 30 days prior to each Billing Period thereafter (where such Billing Period is a Renewal Period), or
- 10.3.1.2.2 on the commencement of each Billing Period (where such Billing Period is other than as stated in 10.3.1.2.1),  
for the Subscription Fees payable in respect of that Billing Period
- 10.3.1.3 and the Customer shall pay each invoice on presentation of such invoice.
- 10.4 If Mpowered has not received payment within 30 (thirty) calendar days after the due date of the invoice, and without prejudice to any other rights and remedies of Mpowered:
  - 10.4.1 Mpowered may, without liability to the Customer:
    - 10.4.1.1 Disable the Customer's password, account and access to all or part of the Services and Mpowered shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid;
    - 10.4.1.2 In terms of a Private Cloud Subscription, remove the Software from the Customer's Private Cloud (via either electronic or physical access), disable the Customer's password, account and access to all or part of the Services and Mpowered shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and
  - 10.4.2 All legal costs enquire by Mpowered to recover any outstanding amount will be added to the Customer's account
- 10.5 All amounts and fees stated or referred to in these Terms & Conditions:
  - 10.5.1 shall be payable in South African Rands;
  - 10.5.2 are, subject to clause 14.4.2, non-cancellable and non-refundable;
- 10.5.3 are exclusive of value added tax, which shall be added to Mpowered's invoice(s) at the appropriate rate.
- 10.6 For calculation of any time based charges, 30 (thirty) minutes or less will constitute a half-hour and more than 30 (thirty) minutes, but less than 60 (sixty) minutes will constitute an hour.
- 10.7 Mpowered shall be entitled to increase the Subscription Fees and/or the fees payable in respect of the additional Subscriptions purchased pursuant to clause 4.3 at the start of each Renewal Period upon 90 (ninety) days' prior notice to the Customer and the Signed Quote shall be deemed to have been amended accordingly.
- 11. **PROPRIETARY RIGHTS**
  - 11.1 The Customer acknowledges and agrees that Mpowered and/or its licensors own all intellectual property rights in the Services and the Documentation. Except as expressly stated herein, these Terms & Conditions do not grant the Customer any rights to, or in, patents, copyrights, database right, trade secrets, trade names, trademarks (whether registered or unregistered), or any other rights or licences in respect of the Services or the Documentation.
  - 11.2 Mpowered confirms that it has all the rights in relation to the Services and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of these Terms & Conditions.
- 12. **CONFIDENTIALITY**
  - 12.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under these Terms & Conditions. A party's Confidential Information shall not be deemed to include information that:
    - 12.1.1 is or becomes publicly known other than through any act or omission of the receiving party;

- 12.1.2 was in the other party's lawful possession before the disclosure;
- 12.1.3 is lawfully disclosed to the receiving party by a third party without restriction on disclosure;
- 12.1.4 is independently developed by the receiving party, which independent development can be shown by written evidence; or
- 12.1.5 is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.
- 12.2 Each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of these Terms & Conditions.
- 12.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of these Terms & Conditions.
- 12.4 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.
- 12.5 The Customer acknowledges that details of the Services, and the results of any performance tests of the Services, constitute Mpowered's Confidential Information.
- 12.6 Mpowered acknowledges that Customer Data is the Confidential Information of the Customer.
- 12.7 This clause 12 shall survive termination of these Terms & Conditions, however arising.
- 13. INDEMNITY**
- 13.1 The Customer shall defend, indemnify and hold harmless Mpowered against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Customer's use of the Services and/or Documentation, provided that:
- 13.1.1 the Customer is given prompt notice of any such claim;
- 13.1.2 Mpowered provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and
- 13.1.3 the Customer is given sole authority to defend or settle the claim.
- 13.2 Mpowered shall defend the Customer, its officers, directors and employees against any claim that the Services or Documentation infringes any South African patent effective as of the Effective Date, copyright, trademark, database right or right of confidentiality, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that:
- 13.2.1 Mpowered is given prompt notice of any such claim;
- 13.2.2 the Customer provides reasonable co-operation to Mpowered in the defence and settlement of such claim, at Mpowered's expense; and
- 13.2.3 Mpowered is given sole authority to defend or settle the claim.
- 13.3 In the defence or settlement of any claim, Mpowered may procure the right for the Customer to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate the Subscription on 2 (two) Business Days' notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.
- 13.4 In no event shall Mpowered, its employees, agents and sub-contractors be liable to the



- Customer to the extent that the alleged infringement is based on:
- 13.4.1 a modification of the Services or Documentation by anyone other than Mpowered; or
- 13.4.2 the Customer's use of the Services or Documentation in a manner contrary to the instructions given to the Customer by Mpowered; or
- 13.4.3 the Customer's use of the Services or Documentation after notice of the alleged or actual infringement from Mpowered or any appropriate authority.
- 13.5 The foregoing and clause 14.4.2 states the Customer's sole and exclusive rights and remedies, and Mpowered's (including Mpowered's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trademark, database right or right of confidentiality.
- 14. LIMITATION OF LIABILITY**
- 14.1 This clause 14 sets out the entire financial liability of Mpowered (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer:
- 14.1.1 arising under or in connection with these Terms & Conditions;
- 14.1.2 in respect of any use made by the Customer of the Services and Documentation or any part of them; and
- 14.1.3 in respect of any representation, statement or delictual act or omission (including negligence) arising under or in connection with these Terms & Conditions.
- 14.2 Except as expressly and specifically provided in these Terms & Conditions:
- 14.2.1 the Customer assumes sole responsibility for results obtained from the use of the Services and the Documentation by the Customer, and for conclusions drawn from such use. Mpowered shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to Mpowered by the Customer in connection with the Services, or any actions taken by Mpowered at the Customer's direction;
- 14.2.2 all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from these Terms & Conditions; and
- 14.2.3 the Services and the Documentation are provided to the Customer on an "as is" basis.
- 14.3 Nothing in these Terms & Conditions excludes the liability of Mpowered:
- 14.3.1 for death or personal injury caused by Mpowered's negligence; or
- 14.3.2 for fraud or fraudulent misrepresentation.
- 14.4 Subject to clause 14.2 and clause 14.3:
- 14.4.1 Mpowered shall not be liable whether in delict (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under these Terms & Conditions; and
- 14.4.2 Mpowered's total aggregate liability in contract (including in respect of the indemnity at clause 13.2), delict (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of these Terms & Conditions shall be limited to the total Subscription Fees paid for the Subscriptions during the 12 (twelve) months immediately

preceding the date on which the claim arose.

## 15. RENEWAL TERMS AND TERMINATION

15.1 These Terms & Conditions shall, unless otherwise terminated as provided in this clause 15, commence on the Effective Date and shall continue for the Initial Subscription Term and, thereafter, shall be automatically renewed for successive periods of 12 (twelve) months (each a **Renewal Period**), unless:

15.1.1 either party notifies the other party of termination, in writing, at least 60 (sixty) days before the end of the Initial Subscription Term or any Renewal Period, in which case these Terms & Conditions shall terminate upon the expiry of the applicable Initial Subscription Term or Renewal Period; or

15.1.2 otherwise terminated in accordance with the provisions of these Terms & Conditions;

and the Initial Subscription Term together with any subsequent Renewal Periods shall constitute the Subscription Term.

15.2 Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate these Terms & Conditions without liability to the other if:

15.2.1 the other party commits a material breach of any of these Terms & Conditions and (if such a breach is remediable) fails to remedy that breach within 30 (thirty) days of that party being notified in writing of the breach; or

15.2.2 the other 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

15.2.3 the other party commits an act which, if committed by an individual, would constitute an act of insolvency within the meaning of Section 8 of the Insolvency

Act, 24 of 1936; or is unable to pay its debts as contemplated in item 9 of Schedule 5 (Transitional Arrangements) of the Companies Act, 71 of 2008, when read with and as set out in Section 345 of the Companies Act, 61 of 1973, as amended; or is sequestrated or liquidated, as the case may be.

15.2.4 there is a Change of Control of the other party within the meaning of the Companies Act, Act 71 of 2008; or

15.2.5 the other party takes or suffers any similar or analogous action in any jurisdiction in consequence of debt.

15.3 On termination of these Terms & Conditions, for any reason:

15.3.1 all licences granted under these Terms & Conditions shall immediately terminate;

15.3.2 each party shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other party;

15.3.3 Mpowered may destroy or otherwise dispose of any of the Customer Data in its possession unless Mpowered receives, no later than 10 (ten) days after the effective date of the termination of these Terms & Conditions, a written request for the delivery to the Customer of the then most recent back-up of the Customer Data. Mpowered shall use reasonable commercial endeavours to deliver the back-up to the Customer within 30 days of its receipt of such a written request, provided that the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Customer shall pay all reasonable expenses incurred by Mpowered in returning or disposing of Customer Data;

15.3.4 Regardless of 15.3.3, should Mpowered receive, no later than 10 (ten) days after

- the effective date of the termination of these Terms & Conditions, a written request for retention of Customer Data, Mpowered will retain the Customer Data for a period not exceeding 5 (five) years, calculated from the effective date of the termination of these Terms & Conditions; and
- 15.3.5 the accrued rights of the parties as at termination, or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination, shall not be affected or prejudiced.
16. **FORCE MAJEURE**
- Mpowered shall have no liability to the Customer under these Terms & Conditions if it is prevented from or delayed in performing its obligations under these Terms & Conditions, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of Mpowered or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of Mpowered or sub-contractors, provided that the Customer is notified of such an event and its expected duration.
17. **WAIVER**
- 17.1 A waiver of any right under these Terms & Conditions is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and to the circumstances for which it is given.
- 17.2 Unless specifically provided otherwise, rights arising under these Terms & Conditions are cumulative and do not exclude rights provided by law.
18. **SEVERANCE**
- 18.1 If any provision (or part of a provision) of these Terms & Conditions is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.
- 18.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.
19. **ENTIRE AGREEMENT**
- 19.1 These Terms & Conditions, and any documents referred to in it constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover.
- 19.2 Each of the parties acknowledges and agrees that in entering into these Terms & Conditions it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to these Terms & Conditions or not) relating to the subject matter of these Terms & Conditions, other than as expressly set out in these Terms & Conditions.
20. **ASSIGNMENT**
- 20.1 The Customer shall not, without the prior written consent of Mpowered, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under these Terms & Conditions.
- 20.2 Mpowered may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under these Terms & Conditions.
21. **NO PARTNERSHIP OR AGENCY**
- Nothing in these Terms & Conditions is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on

behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

## 22. **THIRD PARTY RIGHTS**

These Terms & Conditions do not confer any rights on any person or party (other than the parties to these Terms & Conditions and, where applicable, their successors and permitted assigns).

## 23. **NOTICES**

23.1 Any notice required to be given under these Terms & Conditions shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in Signed Quote, or such other address as may have been notified by that party for such purposes, or sent by fax or email to the other party's fax number or email address as set out in the Signed Quote.

23.2 A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first Business Day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by fax or email shall be deemed to have been received at the time of transmission (as shown by the timed printout obtained by the sender).

## 24. **APPORTIONMENT OF DAMAGES**

If any loss or damage arising out of or in connection with these Terms & Conditions and for which Mpowered is liable and which is caused partly by the fault of Mpowered, and partly by the fault of Customer, 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 of 1956, as amended from time to time, were applicable to a claim for breach of this framework agreement.

## 25. **GOVERNING LAW AND JURISDICTION**

25.1 These Terms & Conditions and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by and construed in accordance with, the laws of the Republic of South Africa.

25.2 The parties irrevocably agree that the courts of the Republic of South Africa have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with these Terms & Conditions or its subject matter or formation (including non-contractual disputes or claims), and in the event of any dispute arising in relation to these Terms & Conditions, the Customer hereby consents in terms of Section 45 of the Magistrates Court Act No 32 of 1944 to Mpowered taking action or enforcing its rights under these Terms & Conditions in the Magistrates Court. Mpowered nevertheless, at its option, is entitled to institute proceedings in any division of the High Court of South Africa which has jurisdiction.

These Terms & Conditions have been entered into on the Effective Date.