



STANDARD TERMS AND CONDITIONS

As published on <http://www.currant.co.za>

1. INTRODUCTION

- 1.1. Currant Technologies is a broad-based advanced technology services provider to small-medium and medium-large businesses. Currant Technologies has an extensive product range in areas, including but not limited to, hardware and software sales, technical support, maintenance contracts, network infrastructure design and installations, disaster recovery planning, wireless connectivity and other internet services, virtual private networks, voice over internet protocol, website hosting, email solutions, server hosting, development of software-based business solutions, interactive design, creative marketing, brand development, strategic business analysis and related consulting services; and also supports various products from approved product partners.
- 1.2. Any "prospective customer" (as defined in clause 2 below and referred to hereinafter) and/or "prospective subscriber" (as defined in clause 2 below and referred to hereinafter) may have specific information technology service requirements, which services may be offered by Currant Technologies, however, any services so provided by Currant Technologies, will only be provided subject to its Standard Terms and Conditions.
- 1.3. It is conceivable that any prospective customer could become an "ad-hoc customer" (as defined in clause 2 below and referred to hereinafter) of the "service provider" (as defined in clause 2 below and referred to hereinafter) and any prospective subscriber could become a "subscriber" (as defined in clause 2 below and referred to hereinafter) of the service provider. Furthermore for purposes of clarification it is recorded that any ad-hoc customer in respect of a particular service of the service provider could also be a subscriber in respect of another service of the service provider and vice versa. Therefore to the extent that that the Standard Terms and Conditions refer to the same party in either capacity of subscriber or ad-hoc customer, such party shall be bound by the Standard Terms and Conditions in respect of the relevant capacity of such party to which the provisions thereof may apply, within the context of such provision.
- 1.4. Now therefore the following Standard Terms and Conditions intend to facilitate the conclusion of individual contracts in the form of "service contracts" (as defined in clause 2 below and referred to hereinafter) between the service provider and any prospective subscriber. Furthermore, together with the "service order(s)" (as defined in clause 2 below and referred to hereinafter) and/or "ad-hoc order(s)" (as defined in clause 2 below and referred to hereinafter) delivered and accepted in accordance with these Standard Terms and Conditions, these Standard Terms and Conditions establish the general terms and conditions under which the service provider shall provide the "services" (as defined in clause 2 below and referred to hereinafter) to the subscriber and/or any ad-hoc customer:

2. INTERPRETATION

In these Standard Terms and Conditions:

- 2.1. the headings of clauses are for reference purposes only and shall not be taken into account in construing the contents hereof, the singular will include the plural and vice versa, one gender will include the other gender, natural persons include created entities (incorporated or unincorporated) and vice versa and, unless inconsistent with the context, the following words will have the meanings ascribed to them:
 - 2.1.1. "**ad-hoc customer**" means any individual, partnership, close corporation or company (public or proprietary limited) who uses any of the services of the service provider on any other basis than that of becoming a subscriber to that service of the service provider.
 - 2.1.2. "**ad-hoc order**" means the legal tender by a prospective customer to transact with the service provider for the provision of any of the services, through an enquiry and/or specification and/or completion and submission of an application form, all of the aforementioned in either physical/paper/written or electronic format, including any addendum thereto, open for acceptance thereof by the service provider;
 - 2.1.3. "**agreement**" or "**the agreement**" means:
 - 2.1.3.1. in respect of the subscriber:
 - 2.1.3.1.1. any service contract entered into between the parties, consisting of, inter alia, these Standard Terms and Conditions (including any revisions, additions and/or deletions the service provider may make thereto, as provided for in clause 4 below), as well as any service order, signed by the subscriber;
 - 2.1.3.2. in respect of the ad-hoc customer:
 - 2.1.3.2.1. any agreement entered into between the parties (but specifically excluding service contracts), consisting of, inter alia, these Standard Terms and Conditions (including any revisions, additions and/or deletions the service provider may make thereto, as provided for in clause 4 below), as well as any ad-hoc order, signed by such ad-hoc customer;



- 2.1.4. "**anniversary date**" means each successive anniversary of the effective date (as defined in clause 2.1.9 below);
- 2.1.5. "**business day**" means every day of the week excluding Saturdays, Sundays and any official public holiday in the Republic of South Africa;
- 2.1.6. "**business hours**" means those hours between 08:00 and 17:30, Monday to Friday, excluding weekends and public holidays;
- 2.1.7. "**data message**" has the meaning as defined in the Electronic Communications And Transactions Act, 25 of 2002;
- 2.1.8. "**domicilium address**" shall have the meaning ascribed to it in clause 22.1 below;
- 2.1.9. "**effective date**" has the meaning ascribed to it in clause 8.3 below;
- 2.1.10. "**electronic communication**" has the meaning as defined in the Electronic Communications And Transactions Act, no. 25 of 2002;
- 2.1.11. "**general technical support services**" has the meaning ascribed to it in clause 9.1 below;
- 2.1.12. "**initial term**" means the initial contractual term entered into between the service provider and the subscriber during which the service provider shall provide the services to the subscriber as provided for in the individual service contract. Unless agreed to the contrary and for purposes of confirmation, the minimum period of the initial term shall be 12 (twelve) months and shall commence on the effective date;
- 2.1.13. "**intellectual property**" or "**intellectual property rights**" means all copyright, patents, designs and/or inventions as well as all rights to source codes, trade secrets, confidential information, know-how, database rights, network design, and rights in trade marks and designs (whether registered or unregistered), and all other rights of a similar character (regardless of whether such rights are registered and/or capable of registration) and all applications and rights to apply for protection of any of the same; and all other intellectual property rights and equivalent or similar forms of protection existing anywhere in the world;
- 2.1.14. "**internet**" means the global data network comprising interconnected local area networks and wide area networks using TCP/IP ("Transmission Control Protocol/Internet Protocol") to form a seamless packet switched network;
- 2.1.15. "**IP Address**" means a globally unique numerical identifier of a node connected to the internet;
- 2.1.16. "**Legal Notices Page**" has the meaning ascribed to it in clause 4.2 below;
- 2.1.17. "**Legal Website**" means the URL where, inter alia, the Standard Terms and Conditions of the service provider is published, being at: <http://www.currant.co.za> under such heading;
- 2.1.18. "**Official Use Regulations**" has the meaning ascribed to it in clause 7.5 below;
- 2.1.19. "**party**" means either one of the service provider or the subscriber or the ad-hoc customer, as the context may indicate, whilst "**parties**" or "**the parties**" means:
- 2.1.19.1. the signatories to the agreement, being, as the case may be, either the service provider and the subscriber (referred to collectively), or alternatively the service provider and the ad-hoc customer (referred to collectively); and/or
- 2.1.19.2. the legal entities being involved in any transaction involving the render and utilization of the services, being, as the case may be, either the service provider and the subscriber (referred to collectively), or alternatively the service provider and the ad-hoc customer (referred to collectively).
- 2.1.20. "**prime rate**" means the publicly quoted basic rate of interest per annum at which the Standard Bank of South Africa limited, lends on overdraft to its subscribers, compounded monthly in arrears and calculated on a 365 day year factor irrespective of whether the year is a leap year or not. A certificate purporting to be signed by someone who is identified in the certificate or otherwise, as a general, branch or other manager of such bank, setting out the prime rate from time to time, shall be proof of such rate until the contrary is proved;
- 2.1.21. "**proprietary marks**" means any trade marks, logos, copyright, brand names, trade names, domain names or other identifiable marks of either of the parties;
- 2.1.22. "**prospective customer**" has the meaning ascribed to it in clause 5.2.1 below;
- 2.1.23. "**prospective subscriber**" has the meaning ascribed to it in clause 5.1.1 below;



- 2.1.24. "**renewal term**" means a perpetual contractual term following on from the initial term between the service provider and the subscriber, subject to the provisions of clause 16.2.2 below, during which period the service provider shall provide the services to the subscriber as provided for in the individual service contract;
- 2.1.25. "**revision notices**" has the meaning ascribed to it in clause 4.2 below;
- 2.1.26. "**service**" means any information technology related service provided by the service provider to the subscriber and/or any ad-hoc customer, whilst "**services**" means any combination of each service as part of the collective total of each such service provided by the service provider, all of the aforementioned being subject to the service provider terms;
- 2.1.27. "**service contract**" means the agreement duly entered into between the service provider and the subscriber for the provision of any of the services, subject to the service provider terms and any documentation annexed to the service contract that expand on the services, including but not limited to, pricing, listing and the specification of equipment as well as the SLA summary (if and when applicable), which are attested to by both parties;
- 2.1.28. "**service fees**" means all the fees and charges payable by the subscriber and/or any ad-hoc customer (as the case may be) to the service provider relating to the services (excluding VAT), where:
- 2.1.28.1. in respect of the subscriber:
- 2.1.28.1.1. such service fees are contained in the service provider quotation and/or service order accepted by the service provider and/or the service contract including its annexures, completed and signed by the subscriber;
- 2.1.28.2. in respect of the ad-hoc customer:
- 2.1.28.2.1. such service fees are agreed to in any correspondence between the parties and/or the service provider quotation and/or the ad-hoc order accepted by the service provider and/or any other agreement including its annexures, completed and signed by the ad-hoc customer, as well as any general technical support fees (as defined in clause 9.1.6 below) payable to the service provider, for services rendered accordingly;
- 2.1.29. "**service levels**" means, unless specifically defined in any service contract, the criteria or parameters by which the services are logically grouped and/or designed and/or made available to provide the subscriber with a detailed list of each specific service provided by the service provider and any parameters applicable to it, against specific subscriber events which may trigger each specific service, within specified timeframes, all of which are contained in the service terms and/or the annexures thereto;
- 2.1.30. "**service order**" means the legal tender by a prospective subscriber to enter into a service contract (subject to the service provider terms) with the service provider for the provision of any of the services, through an enquiry and/or specification and/or completion and submission of an application form, all of the aforementioned in either physical/paper/written or electronic format, including any addendum thereto, open for acceptance thereof by the service provider;
- 2.1.31. "**service terms**" means the specific terms and conditions within the service provider terms that govern the use of each of the service provider's individual services, either subscribed to by the subscriber and/or used by any ad-hoc customer;
- 2.1.32. "**signed**" or "**signature**" means a hand-written signature, excluding any signature appended by electronic communication;
- 2.1.33. "**signature date**" has the meaning ascribed to it in clause 8.3.4 below;
- 2.1.34. "**SLA credits**" means, unless specifically defined in any service contract, the relevant discounts (exclusive of VAT) to be passed by the service provider for the benefit of the subscriber (if applicable and furthermore subject to limitations as provided for in the service provider terms), based on the degree of non compliance of the SLA standards by the service provider, within a prescribed time period;
- 2.1.35. "**SLA standards**" means, unless specifically defined in any service contract, those service levels which are measurable and guaranteed by the service provider to the subscriber in terms of minimum response times and/or minimum results or performance undertaken (if applicable), where non compliance thereof may render the service provider liable for SLA credits to the subscriber, subject to the terms and conditions furthermore contained in the service provider terms;
- 2.1.36. "**SLA summary**" means the service levels, SLA standards and SLA credits, all referred to collectively in terms of their provisions and applications within any service contract (if and when applicable);
- 2.1.37. "**Standard Rates Schedule**" means the relevant variable labour rates and travel charges (if applicable), subject to revisions and or additions from time to time (as provided for in clause 4 below), chargeable to any ad-hoc customer for general technical support services;



- 2.1.38. **"Standard Terms and Conditions"** shall mean these terms and conditions, including any revisions and or additions thereto from time to time (as provided for in clause 4 below), read with any agreement entered into with a subscriber or any ad-hoc customer for any of the services offered by the service provider and/or goods sold and delivered, and any additional or further schedules or any addendum containing specific and detailed reference to such an agreement which, once signed by both parties, shall be subject to these terms and conditions;
- 2.1.39. **"statement"** or collectively referred to as **"statements"** means a statement issued by or on behalf of the service provider to the subscriber and/or the ad-hoc customer, reflecting inter alia on a consolidated basis the gross amount owing by the subscriber and/or the ad-hoc customer to the service provider as at the last day of the month to which the statement pertains as reflected on such statement, in terms of invoices issued by the service provider to the subscriber and/or the ad-hoc customer during the course of such month for goods sold and delivered and/or the services rendered and including any outstanding balances owing by the subscriber and/or the ad-hoc customer to the service provider as at the last day of such month pertaining to invoices issued by the service provider to the subscriber and/or the ad-hoc customer during the course of preceding months for goods sold and delivered and/or the services rendered by the service provider;
- 2.1.40. **"supplier"** means the supplier of hardware and/or software to the service provider;
- 2.1.41. **"the ad-hoc customer specifics"** means usernames, passwords or email addresses provided to the subscriber as part of the services, but expressly excluding the ad-hoc customer domain names which may be managed by the service provider as part of the services;
- 2.1.42. **"the PAI Act"** or **"PAI Act"** means the Promotion of Access to Information Act, no 2 of 2000, as amended;
- 2.1.43. **"the service provider"** or **"service provider"** means Currant Technologies CC, with registration number CK98/16302/23;
- 2.1.44. **"the service provider terms"** or **"service provider terms"** means:
- 2.1.44.1. in respect of the subscriber:
- 2.1.44.1.1. all the terms and conditions agreed to in any service contract, incorporating:
- 2.1.44.1.1.1. the Official Use Regulations; and
- 2.1.44.1.1.2. these Standard Terms and Conditions; and
- 2.1.44.1.1.3. the Standard Rates Schedule.
- 2.1.44.2. in respect of any ad-hoc customer:
- 2.1.44.2.1. all the terms and conditions agreed to in any agreement (excluding service contracts) or any correspondence which relates to any transaction between the parties, incorporating:
- 2.1.44.2.1.1. the Official Use Regulations; and
- 2.1.44.2.1.2. these Standard Terms and Conditions; and
- 2.1.44.2.1.3. the Standard Rates Schedule.
- 2.1.45. **"the service provider quotation"** or **"service provider quotation"** means any quote which the service provider was requested to provide to any of (i) any prospective subscriber, (ii) the subscriber, (iii) any prospective customer, (iv) any ad-hoc customer (collectively referred to as **"quote parties"**) in respect of any of the services and/or goods to be sold and delivered, including the provisions, terms and conditions contained therein, which quote has been accepted by the quote parties, which quote shall furthermore be subject to these Standard Terms and Conditions;
- 2.1.46. **"the subscriber"** or **"subscriber"** means the party subscribing to any service of the service provider through the conclusion of a service contract, subject to the service provider terms;
- 2.1.47. **"the subscriber specifics"** means usernames, passwords or email addresses provided to the subscriber as part of the services, but expressly excluding the subscriber domain names which may be managed by the service provider as part of the services;
- 2.1.48. **"URL"** means Uniform Resource Locator, being the global address of documents and other resources on the internet;
- 2.1.49. **"National Credit Act"** means the National Credit Act, no 34 of 2005;
- 2.1.50. **"VAT"** means value added tax levied in terms of the Value Added Tax Act no 89 of 1991 or any other similar statutory tax or levy imposed on the supply or sale of goods and/or services;



- 2.1.51. "writing" or "written" includes any hand-written, typewritten or facsimile communications but excludes any communication by way of a data message, unless use of a data message has been expressly authorised in the agreement.
- 2.2. any reference to an enactment is to that enactment as at the signature date and as amended or re-enacted from time to time;
- 2.3. if any provision in a definition is a substantive provision, conferring rights, or imposing obligations, on any party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of the agreement;
- 2.4. expressions defined in the body of the agreement shall bear the same meanings in exhibits, schedules or appendices thereto which do not themselves contain their own definitions. For avoidance of doubt, any expressions defined in these Standard Terms and Conditions, shall bear the same meaning in any service contract, duly signed by the parties;
- 2.5. where any term is defined within the context of any particular clause in the agreement, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning given to it for all purposes in terms of the agreement, notwithstanding that such term has not been defined in this interpretation clause;
- 2.6. when any terms other than those defined within the agreement are interpreted, it shall be ascribed their plain English meaning, and those terms, phrases and abbreviations known in the Information Technology Industry will be interpreted in accordance with their generally accepted meanings;
- 2.7. when any period is prescribed in the agreement, that period shall be reckoned inclusively of the first day and inclusively of the last day unless the last day is not a business day, in which case the last day shall be the next succeeding business day;
- 2.8. in the agreement, where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail;
- 2.9. the expiration or termination of any service provider terms or the agreement shall not affect such of the provisions of the service provider terms or the agreement as it is expressly provided that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves may not expressly provide for this;
- 2.10. in the agreement, the use of the word "including" followed by a specific example/s shall not be construed as limiting the meaning of the general wording preceding it and the *eiusdem generis* rule shall not be applied in the interpretation of such general wording or such specific example/s;
- 2.11. the word "clause" refers to clauses of these Standard Terms and Conditions, unless otherwise specified;
- 2.12. in the event that any rate of interest which is to accrue on any amount in terms of the agreement, contravenes the maximum prescribed rate of interest which may accrue on such amount in terms of the National Credit Act, then such rate shall be deemed to have been substituted by a rate of interest equal to such maximum rate.

3. THESE TERMS AND CONDITIONS PREVAIL

- 3.1. It is recorded that the only basis upon which the service provider is prepared to do business with:
- 3.1.1. the subscriber is that, notwithstanding anything in the service order and/or any other documentation and/or discussion(s) to the contrary, the service provider terms shall operate in respect of any and all business between the subscriber and the service provider;
- 3.1.2. any ad-hoc customer is that, notwithstanding anything contained in any documentation and/or discussion(s) to the contrary, the service provider terms shall operate in respect of any and all business between any ad-hoc customer and the service provider;
- 3.2. Any and all business undertaken, between the service provider and:
- 3.2.1. the subscriber, including any advice, information or service provided by the service provider (whether gratuitously or not) or whether the subscriber contracts for a new or additional service or whether the subscriber changes or adds to the services which it receives or is about to receive from the service provider and whether the subscriber has contracted with the service provider through the conclusion of a written agreement, any electronic or telephonic registration or verbal application, is and shall be subject to the service provider terms and each term and condition shall be deemed to be incorporated in and to be a term and condition of any agreement between the service provider and the subscriber;
- 3.2.2. the ad-hoc customer, including any advice, information or service provided by the service provider (whether gratuitously or not), is and shall be subject to the service provider terms and each term and condition shall be deemed to be incorporated in and to be a term and condition of any agreement between the service provider and the ad-hoc customer;



4. REVISIONS / VARIATIONS / AMENDMENTS

- 4.1. The service provider reserves the right, at any time, to revise any of the following variable terms and conditions ("**variable terms**"), consisting of: (i) these Standard Terms and Conditions and/or (ii) the Official Use Regulations and/or (iii) the Standard Rates Schedule to which any subscriber and/or ad-hoc customer (as the case may be) is bound, without specific notice (other than what is provided for in clause 4.2 below). An updated version of the variable terms of the service provider will be published on its Legal Website.
- 4.2. The service provider undertakes to post on its Legal Website a notice of any change in the variable terms (the "**revision notice(s)**") and the relevant version number of such change, under the heading of Legal Notices (the "**Legal Notices Page**") at least 30 (thirty) days prior to the date upon which they become effective. For purposes of confirmation it is recorded that in the event that the service provider revises the variable terms and for any reason whatsoever neglects to post the relevant revision notice on the Legal Notices Page, the sole effect of that shall be that the subscriber and/or the ad-hoc customer shall be allowed 30 (thirty) days from the date the service provider posts the revision notice on the Legal Notices Page, before it shall take any effect on the subscriber and/or the ad-hoc customer ("**delayed force and effect**"), furthermore provided that the subscriber and/or the ad-hoc customer shall only be entitled to a delayed force and effect in the event that it requests it from the service provider prior to the expiry of a 30 days period calculated from the date the service provider posts the revision notice on the Legal Notices Page.
- 4.3. The subscriber and/or the ad-hoc customer agree that it is its responsibility to track any revisions in the variable terms (insofar as it may be applicable to the subscriber and/or the ad-hoc customer) and any revision notices relating thereto, posted on the Legal Notices Page of the Legal Website of the service provider and furthermore the subscriber and/or the ad-hoc customer undertake to regularly visit such Legal Notices Page in order to familiarize itself of any such revised and applicable variable terms.
- 4.4. The subscriber and/or the ad-hoc customer agree that, should it not be able to access the Legal Website of the service provider (for any reason whatsoever) for purposes of complying with its responsibility as per clause 4.3 above, then the subscriber and/or the ad-hoc customer shall bear the onus to contact the offices of the service provider to obtain a hard copy of the then most recent variable terms.
- 4.5. If there is any conflict between the provisions of the service provider terms and erstwhile agreements (if any), at any time, the provisions of the service provider terms shall prevail.
- 4.6. No revision (other than what is provided for in clauses 4.1 and 4.2 above) of any agreement or any provision or term thereof or of any agreement, bill or exchange or other document issued or executed pursuant to or in terms of any agreement and no settlement of any disputes arising under any agreement and no extension of time, waiver or relaxation or suspension of any of the provisions or terms of the service provider terms or of any agreement, bill of exchange or other document issued pursuant to or in terms of any agreement shall be binding unless recorded in a written document signed by an authorized representative of the service provider. Any such extension, waiver or relaxation or suspension which is so given or made shall be strictly construed as relating strictly to the matter in respect whereof it was made or given.
- 4.7. No extension of time or waiver, indulgence or relaxation of any of the provisions or terms of the service provider terms or any agreement, bill or exchange or other document issued or executed pursuant to or in terms of any agreement, shall operate as an *estoppel* against the service provider in respect of its rights under any agreement, nor shall it operate so as to preclude the service provider thereafter from exercising its rights strictly in accordance with the agreement, regardless of:
 - 4.7.1. any failure or delay on the service provider's part in exercising any of its rights, powers or privileges in terms of the service provider terms; or
 - 4.7.2. any single or partial exercise by the service provider of any of its rights, powers or privileges in terms of the service provider terms.
- 4.8. The service provider shall not be bound by any express or implied term, representation, warranty, promise or the like not recorded in the service provider terms, whether it induced any agreement between the service provider and subscriber and/or any ad-hoc customer, or not.
- 4.9. Each provision of the service provider terms or agreement is severable from the other provisions. Should any provision be found by an authority of competent jurisdiction to be invalid or unenforceable for any reason, the service provider reserves the right either to amend that provision in terms of clause 4.1 above or to remove that provision in its entirety. The remaining provisions of the service provider terms or agreement shall nevertheless remain binding and continue with full force and effect.
- 4.10. No person other than a duly authorized representative of the service provider has any authority to delete, amend or in any respect vary any of these conditions or accept any other conditions or agree to a consensual cancellation of any agreement entered into between the parties.

5. SUBSCRIBER / AD HOC CUSTOMER CRITERIA

- 5.1. In respect of the subscriber:



- 5.1.1. Any individual, partnership, close corporation or company (public or proprietary limited) can complete a service order to become a subscriber to the service(s) provided by the service provider ("**prospective subscriber**"), subject to acceptance thereof by the service provider and furthermore subject to the provisions of clause 3 above.
 - 5.1.2. Should any person in a representative capacity on behalf of the subscriber (the "**subscriber representative**"), (whether such subscriber is an incorporated entity or an unincorporated association or partnership of individuals), enter into an agreement with the service provider, incorporating the service provider terms, the subscriber hereby:
 - 5.1.2.1. warrants that the subscriber representative is legally authorized to do so;
 - 5.1.2.2. warrants that all of the information relating to the subscriber which has been supplied to the service provider at any time is and will be true, accurate and complete;
 - 5.1.2.3. indemnifies the service provider against any loss or damage that the service provider may sustain resulting from the subscriber representative's lack of authority (if any).
 - 5.1.3. The service provider reserves the right to treat all misrepresentations by the subscriber or the subscriber representative as a fraud and in the eventuality the service provider discovers that the subscriber has fraudulently contracted for receipt of services or that the subscriber representative has contracted without authority to do so:
 - 5.1.3.1. the service provider will be entitled to terminate the agreement and/or or services summarily without any further obligation or liability to the subscriber whatsoever; and
 - 5.1.3.2. the subscriber will not be entitled to claim any restitution or refund of any amount already paid to the service provider, regardless of whether the subscriber used the services or not.
- 5.2. In respect of the ad-hoc customer:
- 5.2.1. Any individual, partnership, close corporation or company (public or proprietary limited) can complete an ad-hoc order to become an ad-hoc customer in respect of the service(s) provided by the service provider ("**prospective customer**"), subject to acceptance thereof by the service provider and furthermore subject to the provisions of clause 3 above.
 - 5.2.2. Should any person in a representative capacity on behalf of any ad-hoc customer (the "**ad-hoc customer representative**"), (whether such ad-hoc customer is an incorporated entity or an unincorporated association or partnership of individuals), enter into any agreement with the service provider, incorporating the service provider terms, such ad-hoc customer hereby:
 - 5.2.2.1. warrants that the ad-hoc customer representative is legally authorized to do so;
 - 5.2.2.2. warrants that all of the information relating to the ad-hoc customer which has been supplied to the service provider at any time is and will be true, accurate and complete;
 - 5.2.2.3. indemnifies the service provider against any loss or damage that the service provider may sustain resulting from the ad-hoc customer representative's lack of authority (if any).
 - 5.2.3. The service provider reserves the right to treat all misrepresentations by the ad-hoc customer or the ad-hoc customer representative as a fraud and in the eventuality the service provider discovers that the ad-hoc customer has fraudulently contracted for receipt of services or that the ad-hoc customer representative has contracted without authority to do so:
 - 5.2.3.1. the service provider will be entitled to terminate the agreement and/or or services summarily without any further obligation or liability to the ad-hoc customer whatsoever; and
 - 5.2.3.2. the ad-hoc customer will not be entitled to claim any restitution or refund of any amount already paid to the service provider, regardless of whether the ad-hoc customer used the services or not.

6. SERVICE TERMS

- 6.1. In respect of the subscriber:
 - 6.1.1. The subscriber may be subscribed to one or more different services offered by the service provider and to the extent that any service terms are binding upon the subscriber, each of those service terms are deemed included in these Standard Terms and Conditions, together with such other service provider terms as may be binding upon the subscriber.
 - 6.1.2. The subscriber will only be bound by such of the service terms as are applicable to the particular service of the service provider that the subscriber subscribes to and the subscriber will immediately be so bound upon first use thereof or upon signature of the parties of the service contract, whichever occurs first in time.



- 6.1.3. To the extent that the subscriber uses any one or more services offered by the service provider, the subscriber acknowledges that it is bound by the particular service terms relating to the specific services that it uses.
- 6.2. In respect of any ad-hoc customer:
 - 6.2.1. Any ad-hoc customer may transact for one or more different services offered by the service provider and to the extent that any service terms are binding upon the ad-hoc customer, each of those service terms are deemed included in these Standard Terms and Conditions, together with such other service provider terms as may be binding upon the ad-hoc customer.
 - 6.2.2. The ad-hoc customer will only be bound by such of the service terms as are applicable to the particular service of the service provider that the ad-hoc customer transacted for and the ad-hoc customer will immediately be so bound upon first use thereof or upon signature of any agreement in respect thereof by the parties, whichever occurs first in time.
 - 6.2.3. To the extent that any ad-hoc customer uses any one or more services offered by the service provider, the ad-hoc customer acknowledges that it is bound by the particular service terms relating to the specific services that it uses.

7. USE OF SERVICES

- 7.1. The services of the service provider may be used by the subscriber (for which it subscribes to by means of a valid and binding service contract) and/or any ad-hoc customer (pursuant to an ad-hoc order accepted by the service provider) for lawful purposes only and at the domicilium address chosen by the subscriber in the service contract or in the case of any ad-hoc customer, such address as agreed between the parties.
- 7.2. The subscriber and/or the ad-hoc customer warrants that it is aware of any and all applicable legislation and/or regulation and understands that whilst the service provider will use all reasonable endeavours to update the subscriber and/or the ad-hoc customer of regulatory and legislative developments (insofar as the services are affected), the service provider is not obliged to do so.
- 7.3. The subscriber and/or the ad-hoc customer will not (nor will the subscriber and/or the ad-hoc customer authorize or permit any other person to) use any of the services it subscribes to:
 - 7.3.1. to send or receive any material which is in violation of any law, regulation, regulatory authority or which is defamatory, offensive, abusive, indecent, obscene or menacing, or in breach of confidential, privacy, trade secrets, or in breach of any third party intellectual property rights, or in breach of any other rights which could reasonably be associated with the aforementioned;
 - 7.3.2. to cause any annoyance or inconvenience;
 - 7.3.3. in breach of any instructions the service provider has provided to the subscriber and/or the ad-hoc customer in respect of the use of the service; and/ or
 - 7.3.4. in breach of any rules of any regulatory authority.
- 7.4. The ad-hoc customer unconditionally accepts to be bound by the Standard Rates Schedule of the service provider, including any revisions and or additions thereto from time to time (as provided for in clause 4 above), in the event that it uses any of the services which the service provider provides, where no agreement exists between the parties in terms whereof rates for such services have been specifically agreed upon. The Standard Rates Schedule is available on request or may be viewed at the Legal Website of the service provider, the terms with which the ad-hoc customer declares itself familiar with.
- 7.5. The Official Use Regulations represent the terms and conditions pertaining generally to the subscriber's and/or the ad-hoc customer's use of the services and will commonly include, without limitation, privacy and confidentiality terms and conditions, use rules, security policies and similar policies which are, unless specifically stated to the contrary, of general application to all the service provider's subscribers and/or ad-hoc customers, regardless of the service which they may subscribe to and/or use ("**Official Use Regulations**"). The subscriber and/or the ad-hoc customer unconditionally accepts to be bound by, and warrants that it will abide by, the service provider's Official Use Regulations, including any revisions and or additions thereto from time to time (as provided for in clause 4 above), available on request or may be viewed at the Legal Website of the service provider, the terms with which the subscriber and/or the ad-hoc customer declares itself familiar with. Furthermore:
 - 7.5.1. To the extent that any service used by the subscriber and/or the ad-hoc customer is subject to a specific use term as identified in the applicable service terms, the Official Use Regulations shall be deemed to be amplified by such specific use terms for the purposes of use by the subscriber and/or the ad-hoc customer of that particular service;
 - 7.5.2. Should an amendment be done to the Official Use Regulations which would specifically cause the subscriber and/or the ad-hoc customer to be in breach of these Standard Terms and Conditions, the service provider undertakes to use its reasonable endeavours to notify the subscriber and/or the ad-hoc customer thereof;



- 7.5.3. For avoidance of doubt, unless the contrary is evident from the construction of a particular provision in any service terms and/or in the Official Use Regulations and/or in the Standard Rates Schedule, any term defined in these Standard Terms and Conditions and used in any service terms and/or Official Use Regulations and/or the Standard Rates Schedule shall bear the meaning as defined herein.
- 7.6. Notwithstanding any other right of recourse available to the service provider in the agreement, any breach of this clause 7 by the subscriber and/or any ad-hoc customer shall be deemed to be a material breach of these Standard Terms and Conditions and shall entitle the service provider to terminate any service contract or any of the particular services if possible, and, for this purpose, it shall be irrelevant whether the subscriber and/or the ad-hoc customer is aware of the content of any material so transmitted. Furthermore and/or alternatively:
- 7.6.1. the service provider may suspend any service without notice with immediate effect if, in the service provider's reasonable opinion:
- 7.6.1.1. the subscriber and/or the ad-hoc customer is in breach of these Standard Terms and Conditions;
- 7.6.1.2. during the subscriber's and/or the ad-hoc customer's use of the services, the service provider network or technical infrastructure is or potentially may be jeopardized, harmed and/or impeded.
- 7.6.2. Further to the provisions of clause 7.6.1 above and subsequent to the application thereof, the service provider may refuse to restore the service until the subscriber and/or the ad-hoc customer has given the service provider an acceptable assurance that there will be no further contravention.
- 7.7. The subscriber and/or the ad-hoc customer acknowledges and agrees that the service provider may monitor the graphs related to the use of the services and/or the service provider network, but it specifically excludes (unless the service provider becomes lawfully obliged to do so), any content transmitted over the service provider network, subject to the terms and conditions of clause 15 below.
- 7.8. The subscriber and/or the ad-hoc customer may use the service(s) to link into other networks and the subscriber and/or the ad-hoc customer agrees to conform to the acceptable use policies of such networks. The service provider reserves the right to restrict the passage of the subscriber communications and/or any ad-hoc customer communications until the subscriber and/or the ad-hoc customer gives the service provider an acceptable undertaking (in the sole discretion of the service provider) as to its use, in the event that:
- 7.8.1. communications by the subscriber and/or the ad-hoc customer do not conform to the said acceptable use policies of other networks;
- 7.8.2. the subscriber and/or the ad-hoc customer makes profligate use of the service provider network and/or the service to the detriment of the service provider or other subscribers and/or any ad-hoc customers.
- 7.9. In addition to the aforementioned, should the subscriber and/or any ad-hoc customer fail to act in accordance with or remedy any alleged breach as notified by the service provider, the service provider reserves its rights to unilaterally act in accordance with any applicable legislation and/or regulation so to avoid the service provider's exposure to potential damages and/or potential losses.
- 7.10. The subscriber and/or the ad-hoc customer shall indemnify the service provider and keep the service provider indemnified from any claim (howsoever arising), brought by any third party resulting from the subscriber's use and/or the ad-hoc customer's use of the service provider network and/or the telecommunication line and/or the service. Furthermore:
- 7.10.1. the subscriber and/or the ad-hoc customer will pay all costs, damages, awards, fees (legal fees on an attorney and own client scale whether incurred prior to or during the institution of legal proceedings or if judgement has been granted, in connection with the satisfaction of such judgement) and judgments finally awarded against the service provider arising from such claims, and will provide the service provider with notice of such claims, full authority to defend, compromise or settle such claims and all reasonable assistance necessary to defend such claims, at the subscriber's and/or any ad-hoc customer's (as the case may be) sole expense;
- 7.10.2. the service provider undertakes that any actions taken by the service provider in respect of such claims will be taken in reasonable consultation with the subscriber and/or the ad-hoc customer, subject to the service provider being entitled to direct all legal proceedings.

8. EFFECTIVE DATE AND TERM

- 8.1. In respect of the subscriber:
- 8.1.1. The subscriber acknowledges and agrees that the agreement and the service provider terms shall, subject to the service provider's credit vetting approval of the subscriber, become binding on the subscriber with effect from the effective date (as defined in clause 8.3 below).
- 8.2. In respect of any ad-hoc customer:



- 8.2.1. The ad-hoc customer acknowledges and agrees that any agreement in respect of the services of the service provider and the service provider terms shall, subject to the service provider's credit vetting approval of the ad-hoc customer (if applicable in terms of the service provider quotation), become binding on the ad-hoc customer with effect from the effective date (as defined in clause 8.3 below).
- 8.3. For purposes of the provisions of this clause 8, the effective date shall be deemed the date upon which any of the following events occur first in time (the "**effective date**"):
- 8.3.1. the date of receipt of the service order and/or the ad-hoc order by the service provider (the "**order date**"). Notwithstanding the aforementioned, the subscriber and/or the ad-hoc customer acknowledges and agrees that:
- 8.3.1.1. the service provider shall not be obliged to notify the subscriber and/or the ad-hoc customer either in writing or verbally that the service provider has received the service order and/or the ad-hoc order (as the case may be), but the service provider shall endeavour to do so;
- 8.3.1.2. the service provider shall not be obliged to send a written notice to the subscriber and/or the ad-hoc customer advising that its credit vetting has been approved (if applicable), however, in the event that it is applicable, the service provider shall endeavour to do so;
- 8.3.1.3. the service provider shall send a written notice to the subscriber and/or the ad-hoc customer (as the case may be) advising that its credit vetting has not been approved (if applicable) and as such, the agreement and/or the service provider terms will no longer be binding on the parties as envisaged in clause 8.1 above or in clause 8.2 above.
- 8.3.2. the date at which the service(s) are activated ("**commencement date**");
- 8.3.3. the date of first use of a service by the subscriber and/or the ad-hoc customer ("**service start date**");
- 8.3.4. the date of signature of the agreement by the party signing last in time ("**signature date**").
- 8.4. The subscriber and/or the ad-hoc customer acknowledges that the implementation and activation of the services might not be effected on the effective date and shall therefore not terminate the agreement and the service provider terms as a result of any delay caused by either the service provider and/or third parties (including without limitation Telkom) with regard to the implementation and activation of the services, provided the service provider uses its reasonable commercial endeavours to implement and activate the service within a reasonable time.
- 8.5. The parties undertake to do all such things, perform all such acts and take all such steps as may be necessary and procure the doing of all such things, incidental or conducive to the implementation of the terms and conditions of the agreement. In particular, the subscriber and/or the ad-hoc customer shall accept installation of and provision of the required service(s) whenever tendered by the service provider.
- 8.6. The subscriber and/or the ad-hoc customer further acknowledges that the term of all services is for an indefinite period unless:
- 8.6.1. the ad-hoc customer has agreed terms to the contrary in the service provider quotation and/or any other agreement in respect of the services with the service provider;
- 8.6.2. the subscriber has contracted for a particular service with the service provider in respect of which there is an initial term as set out in the service terms;
- 8.6.3. the subscriber and/or the ad-hoc customer has terminated the services in terms of the provisions of clauses 16, 17 and 18.3 below;
- 8.6.4. the service provider has terminated the services and/or cancelled the agreement in terms of the provisions of clauses 5.1.3.1 above, 7.6 above, 11.8.1.2 below, 15.2.3 below, 16.1, 16.2.1 and 16.2.3 below, 17.1 below and 18.3 below.
- 8.7. In case of those product services in respect of which a minimum duration or initial term applies, the term remains indefinite, however, the subscriber's right to terminate prior to the expiry of the initial term is limited (as provided for in clauses 16, 17 and 18 below).

9. GENERAL TECHNICAL SUPPORT

- 9.1. Should the ad-hoc customer require the service provider to provide general technical support in the absence of any service contract between the parties which specifically provides the terms and conditions for such services and subscription thereto ("**general technical support services**"), then the following standard terms and conditions shall apply ("**general technical support terms**"):
- 9.1.1. The fault logging protocol for general technical support services ("**ad-hoc fault logging protocol**") is as follows:
- 9.1.1.1. All faults, problems or any assistance required in terms of general technical support services should be directed at the service provider ("**ad-hoc fault logging call**") via email



to: helpdesk@currant.co.za and/or the ad-hoc customer must phone the service provider on 021 421 0868 or 0861 CURRANT ("**fault reporting destinations**") to log the fault.

- 9.1.1.2. The following information may be required by the service provider for an ad-hoc fault logging call placed by the ad-hoc customer:
- 9.1.1.2.1. full details regarding name of the ad-hoc customer, make of equipment, model and serial number (if required);
 - 9.1.1.2.2. description of fault and symptoms;
 - 9.1.1.2.3. physical address and department where faulty equipment is located;
 - 9.1.1.2.4. contact person on site, telephone and extension number;
 - 9.1.1.2.5. alternative contact person on site, telephone and extension number;
 - 9.1.1.2.6. contact person whom the service provider informs once the fault is cleared;
 - 9.1.1.2.7. any other information as may reasonably be required by the service provider to attend to the ad-hoc fault logging call.
- 9.1.1.3. Upon receipt of the ad-hoc fault logging call the service provider will provide a fault reference number ("**case reference number**") to the ad-hoc customer via email. The time recorded on such case reference number by the service provider shall be deemed the sole applicable time from which from which any undertaking by the service provider pursuant to such ad-hoc fault logging call shall be validated ("**the case log time**").
- 9.1.1.4. The first time at which the service provider attends to any ad-hoc fault logging call, shall be referred to as "**the actual response time**" which shall be deemed the time recorded on the timesheet of the service provider, as the start time of the service provided by the service provider to the ad-hoc customer in consequence to the ad-hoc fault logging call.
- 9.1.1.5. Any enquiries regarding the status of an ad-hoc fault logging call must be accompanied by the case reference number and must be made to the fault reporting destinations.
- 9.1.2. The general technical support protocol is as follows ("**general technical support protocol**"):
- 9.1.2.1. All calls by or on behalf of the ad-hoc customer, other than telephonic support as provided for in clause 9.1.3 below, will initially be dealt with remotely by the service provider in accordance with the provisions of clause 9.1.4 below. Should the service provider not be able to resolve any problem remotely and/or upon the customer's request, an on-site technician shall be dispatched to the premises of the ad-hoc customer to provide any of the relevant on-site support services as set forth in clause 9.1.5 below.
- 9.1.3. In respect of telephonic support:
- 9.1.3.1. Telephonic support will be provided by the service provider to the ad-hoc customer during business hours, upon request to:
 - 9.1.3.1.1. troubleshoot a problem; or
 - 9.1.3.1.2. provide general guidance, advice or recommendations.
 - 9.1.3.2. On receipt of the ad-hoc fault logging call and relevant information as set forth in the ad-hoc fault logging protocol detailed in clause 9.1.1 above, the service provider will provide the case log time to the ad-hoc customer via email;
 - 9.1.3.3. The service provider shall endeavour to resolve all of the problems the ad-hoc customer may have logged in connection with a case (and for which a case log time has been provided) by extending telephonic support to the ad-hoc customer, without having to log into any of the ad-hoc customer's systems or the equipment in connection therewith;
 - 9.1.3.4. The service provider shall provide the ad-hoc customer with a timesheet (which shall indicate to what extent the ad-hoc customer shall be billed) indicating the start time and the end time of the time spent on the case, upon:
 - 9.1.3.4.1. the service provider successfully having resolved the case of the ad-hoc customer, as a result of the ad-hoc fault logging call; or
 - 9.1.3.4.2. the service provider indicating that it would need to take alternative steps in terms of other services offered by the service provider (as detailed in clauses 9.1.4 and 9.1.5 below) to resolve the problem logged for the case; or



- 9.1.3.4.3. the ad-hoc customer no longer wishing to receive further telephonic support from the service provider in connection with the case.
- 9.1.3.5. All labour in respect of telephonic support shall be billed for by the service provider in minimum time accruals of 15 minutes and shall furthermore be charged in terms of the provisions of clause 9.1.6 below.
- 9.1.3.6. Where more than one call is necessary in respect of telephonic support to the ad-hoc customer regarding a single incident, each call shall be treated separately and each separate timesheet shall be used to calculate the total time charged by the service provider.
- 9.1.4. In respect of remote support:
- 9.1.4.1. Remote support will be provided by the service provider to the ad-hoc customer during business hours, upon request to attend to any problem the ad-hoc customer may have logged which relates to its equipment and which cannot be resolved through the telephonic support service of the service provider as detailed in clause 9.1.3 above.
- 9.1.4.2. On receipt of the ad-hoc fault logging call and relevant information as set forth in the ad-hoc fault logging protocol detailed in clause 9.1.1 above, the service provider will provide the case log time to the ad-hoc customer via email;
- 9.1.4.3. The service provider shall endeavour to resolve all of the problems the ad-hoc customer may have logged in connection with a case (and for which a case log time has been provided) by extending remote support to the ad-hoc customer, by logging into the ad-hoc customer's systems or its equipment (to which the ad-hoc customer specifically consents and hereby authorising the service provider to do so) or where it is relevant and possible, having to log into third party systems or equipment in connection therewith;
- 9.1.4.4. The service provider shall provide the ad-hoc customer with a timesheet indicating the start time and the end time of the time spent on the case, upon:
- 9.1.4.4.1. the service provider successfully having resolved the case of the ad-hoc customer, as a result of the ad-hoc fault logging call; or
- 9.1.4.4.2. the service provider indicating that it would need to take alternative steps in terms of other services offered by the service provider (as detailed in clause 9.1.5 below) to resolve the problem logged for the case; or
- 9.1.4.4.3. the ad-hoc customer no longer wishing to receive further remote support from the service provider in connection with the case.
- 9.1.4.5. All labour in respect of remote support shall be billed for by the service provider in minimum time accruals of 30 minutes and shall furthermore be charged in terms of the provisions of clause 9.1.6 below.
- 9.1.4.6. Where more than one session of remote support is necessary for general technical support to the ad-hoc customer regarding a single incident, each such session shall be treated separately and each separate timesheet shall be used to calculate the total time charged.
- 9.1.5. In respect of on-site support:
- 9.1.5.1. Should any of the equipment of the ad-hoc customer become faulty or in any way become unable to perform its function or service and subject to the procedures set out in the general technical support protocol of the service provider (as provided for in clause 9.1.2 above), pursuant to the ad-hoc fault logging protocol procedures of the service provider as set out in clause 9.1.1 above, the service provider shall dispatch an on-site technician to the premises of the ad-hoc customer to attend to such equipment, subject to the following:
- 9.1.5.1.1. In respect of hardware remedial services:
- 9.1.5.1.1.1. Upon arriving on the premises of the ad-hoc customer, the on-site technician shall firstly ascertain the extent of the problem and upon its confirmation that the equipment is indeed faulty or out of order, the on-site technician shall endeavour to repair the faulty equipment so as to restore such equipment to its normal operating condition. If the repair cannot be carried out on the premises and in the event that the equipment has been purchased from the service provider, the defective equipment shall be removed and shall be returned to the original manufacturer/distributor for repairs or a swap out, subject to the terms of the original manufacturer/distributor.



- 9.1.5.1.1.2. At any time subsequent to the faulty equipment being removed from the ad-hoc customer's premises until returned or swapped out by the original manufacturer/distributor, the service provider shall not be obliged to arrange for spare replacement equipment; neither shall it have to provide same to the ad-hoc customer. However, should it transpire that the service provider is indeed able to provide temporary spare replacement equipment; the service provider reserves the right to recover from the ad-hoc customer a reasonable and market related fee for the use of such temporary spare replacement equipment.
- 9.1.5.1.1.3. Should the ad-hoc customer at any time require the service provider to replace any of the equipment, the service provider shall subsequent to a service provider quotation deliver and install same to the ad-hoc customer's premises as soon as reasonably possible thereafter. Any such replacement equipment ("**replacement equipment**") shall be billed for separately by the service provider and shall be due and payable by the ad-hoc customer upon delivery thereof to the ad-hoc customer, unless otherwise agreed in the service provider quotation.
- 9.1.5.1.1.4. Where faults are reported on any equipment of the ad-hoc customer, the service provider's service personnel will use their reasonable endeavours to repair such faults without any loss of data or software.
- 9.1.5.1.1.5. Notwithstanding the contents of clause 9.1.5.1.1.4 above, the service provider shall not be liable for any damages, which the ad-hoc customer may suffer as a result of any loss of data during, or as a result of, any repairs or general technical support services carried out by the service provider's service personnel which has been duly authorised by the ad-hoc customer.
- 9.1.5.1.2. In respect of system software remedial services:
- 9.1.5.1.2.1. Upon arriving on the premises of the ad-hoc customer, the on-site technician shall firstly ascertain the extent of the problem and upon its confirmation that any equipment software is indeed faulty or unable to perform its function, the on-site technician shall endeavour to restore such equipment software to its normal operational condition. If the repair cannot be carried out, the on-site technician shall work towards a workaround solution in order to restore the service. If required, the case will be escalated to and be logged with the original vendor/manufacturer/supplier of the software for assistance. Should the ad-hoc customer so require, the service provider shall track such case with the vendor/manufacturer/supplier and in which case all such efforts on the part of the service provider shall be billed by the service provider to the ad-hoc customer in accordance with the provisions of its telephonic support service as set forth in clause 9.1.3 above.
- 9.1.5.1.2.2. The service provider shall in any event not be liable for any losses or damages whatsoever as a result of any delays or inability on the part of original vendor/manufacturer/supplier of the software to restore such services.
- 9.1.5.1.2.3. Any new software shall upon request be installed by the service provider, provided that the ad-hoc customer provides the service provider with such original software and any media, drivers, activation and registration codes and any other relevant tools as the case may be.
- 9.1.5.1.2.4. System software will be restored in the event where it is clear through diagnostics that the current system software on the equipment is deemed to be defective, provided that the ad-hoc customer provides the service provider with such original software and any media, drivers, activation and registration codes and any other relevant tools as the case may be.



- 9.1.5.1.2.5. A recent configuration back up restoration could form part of the software restoration referred to in clause 9.1.5.1.2.4, provided the ad-hoc customer supplies the service provider with such back up. The service provider does not warrant that any such back up restoration shall be reliable or in any way a true reflection of what data is expected to be contained in such back up restoration.
 - 9.1.5.1.2.6. Where faults are reported on any equipment of the ad-hoc customer, the service provider's service personnel will use their reasonable endeavours to repair such faults without any loss of data or software.
 - 9.1.5.1.2.7. Notwithstanding the contents of clause 9.1.5.1.2.6 above , the service provider shall not be liable for any damages, which the ad-hoc customer may suffer as a result of any loss of data during, or as a result of, any repairs or general technical support services carried out by the service provider's service personnel.
- 9.1.5.2. All labour in respect of on-site support shall be billed for by the service provider in minimum time accruals of 30 minutes and shall furthermore be charged in terms of the provisions of clause 9.1.6 below to the ad-hoc customer.
- 9.1.5.3. In respect of on-site support the following additional charges ("**additional on-site support charges**") shall be payable by the ad-hoc customer to the service provider, when applicable:
- 9.1.5.3.1. Material costs - all materials and consumables used (excluding any replacement equipment or any other items in the service provider quotation) by the service provider will be charged to the ad-hoc customer;
 - 9.1.5.3.2. Travel fees – any ad-hoc customer who requires on-site support services in any location other than the building in which the service provider operates from, shall pay travel costs in minimum kilometer accruals of 50 km round trip distance traveled per vehicle ("**minimum travel fee**"), charged in accordance with the Standard Rates Schedule of the service provider;
 - 9.1.5.3.3. Any national or international phone calls on behalf of the ad-hoc customer (as requested by the ad-hoc customer), shall be charged at the applicable Telkom rates to the ad-hoc customer.
 - 9.1.5.3.4. Any costs relating to parking and/or toll fees which the service provider may have pursuant to a on-site support request by the ad-hoc customer, shall be charged to the ad-hoc customer at the cost thereof to the service provider.
 - 9.1.5.3.5. Any other direct third party costs which the service provider may have as a result of any request by the ad-hoc customer shall be charged to the ad-hoc customer at the cost thereof to the service provider.
- 9.1.6. The service provider shall be entitled to charge the ad-hoc customer the relevant labour charges as outlined in this clause 9, based on the relevant service category, in accordance with the Standard Rates Schedule of the service provider as well as any additional on-site support charges (when applicable) for any general technical support services rendered ("**general technical support fees**").
- 9.1.7. Should the ad-hoc customer record an ad-hoc fault logging call with the service provider for general technical support to any of the other services that it may have transacted for with the service provider and/or which it may in fact be a subscriber for and the service provider subsequently discover that there is a defective third party service (e.g. Telkom service), then:
- 9.1.7.1. The service provider shall be entitled to charge the relevant general technical support fees for the time spent on the diagnostic actions the service provider was required to take to ascertain the cause of the problem;
 - 9.1.7.2. The service provider shall upon request by the ad-hoc customer log such problem with the relevant third party and provide the ad-hoc customer with the relevant case reference number ("**third party case reference number**"), for which the service provider shall be entitled to charge the relevant general technical support fees;
 - 9.1.7.3. The service provider shall furthermore upon request do a continuous follow up of the problem logged under the third party case reference number and will provide the ad-hoc customer with regular feedback, until the problem is resolved as far as reasonably possible, for which the service provider shall be entitled to charge the relevant general technical support fees.



10. THE SUBSCRIBER / AD HOC CUSTOMER SPECIFICS AND IP ADDRESS

10.1. In respect of the subscriber:

- 10.1.1. Any subscriber specifics allocated to the subscriber or created by the subscriber using the services will, subject to the subscriber remaining in compliance with the service provider terms, entitle the subscriber to access the services for which the subscriber has contracted.
- 10.1.2. The subscriber specifics are personal to the subscriber and the subscriber will be liable for any loss or damage sustained by the service provider or by any third party as a result of any actions by the subscriber or any other person to whom the subscriber has disclosed its subscriber specifics.
- 10.1.3. The subscriber agrees accordingly to keep its subscriber specifics confidential as well as to advise the service provider immediately should any other person gain access to its subscriber specifics. In addition, the subscriber hereby indemnifies the service provider against any claim howsoever arising from:
 - 10.1.3.1. the subscriber's disclosure of its subscriber specifics to a third person;
 - 10.1.3.2. (i) the use of such subscriber specifics by a third person and/or (ii) any action by the subscriber or third party as a result of it.
- 10.1.4. The subscriber shall not permit and/or initiate a simultaneous network logon while utilizing one username and not attempt to circumvent the service provider's user authentication processes or attempt to gain access to the services if it is not expressly authorised to do so.
- 10.1.5. Any IP Address allocated by the service provider to the subscriber shall at all times remain the sole property of the service provider and the subscriber will have a non-exclusive, non-transferable license to use such address for the duration of this service contract and accordingly the subscriber may not sell, lease, transfer, assign or otherwise alienate its rights in respect of the IP Address(es) and/or the subscriber specifics. Therefore should this service contract be terminated for whatever reason, the subscriber's license to use the IP Address shall immediately without prejudice, automatically terminate.

10.2. In respect of the ad-hoc customer:

- 10.2.1. Any ad-hoc customer specifics allocated to the ad-hoc customer or created by the ad-hoc customer using the services will, subject to the ad-hoc customer remaining in compliance with the service provider terms, entitle the ad-hoc customer to access the services for which the ad-hoc customer has transacted.
- 10.2.2. The ad-hoc customer specifics are personal to the ad-hoc customer and the ad-hoc customer will be liable for any loss or damage sustained by the service provider or by any third party as a result of any actions by the ad-hoc customer or any other person to whom the ad-hoc customer has disclosed its ad-hoc customer specifics.
- 10.2.3. The ad-hoc customer agrees accordingly to keep its ad-hoc customer specifics confidential as well as to advise the service provider immediately should any other person gain access to its ad-hoc customer specifics. In addition, the ad-hoc customer hereby indemnifies the service provider against any claim howsoever arising from:
 - 10.2.3.1. the ad-hoc customer's disclosure of its ad-hoc customer specifics to a third person;
 - 10.2.3.2. (i) the use of such ad-hoc customer specifics by a third person and/or (ii) any action by the ad-hoc customer or third party as a result of it.
- 10.2.4. The ad-hoc customer shall not permit and/or initiate a simultaneous network logon while utilizing one username and not attempt to circumvent the service provider's user authentication processes or attempt to gain access to the services if it is not expressly authorised to do so.
- 10.2.5. Any IP Address allocated by the service provider to the ad-hoc customer shall at all times remain the sole property of the service provider and the ad-hoc customer will have a non-exclusive, non-transferable license to use such address for the duration of this service contract and accordingly the ad-hoc customer may not sell, lease, transfer, assign or otherwise alienate its rights in respect of the IP Address(es) and/or the ad-hoc customer specifics. Therefore, in the event that this service contract is terminated for whatever reason, the ad-hoc customer's license to use the IP Address shall immediately, without prejudice, automatically terminate.

11. SERVICE FEES, CHARGES AND PAYMENT

- 11.1. For the purposes of this clause 11 "month" or "monthly" may not refer to a calendar month, but to a billing month as determined by the service provider from time to time.
- 11.2. Unless otherwise agreed, all service fees payable by the subscriber and/or the ad-hoc customer in terms of the service provider terms for services are payable in advance on the first day of the month for the month the services are to be provided by the service provider.



- 11.3. Where the subscriber's and/or the ad-hoc customer's use of any services commences during a month at any time other than at the start of that month, the subscriber and/or the ad-hoc customer (as the case may be) will be charged on a pro rata basis (in advance in so far as it is possible) for those services provided (or to be provided) during that month, unless agreed to the contrary between the parties.
- 11.4. To the extent that the service provider elects to debit its service fees due to it as provided for in clause 11.2 above on a monthly basis (alternatively quarterly or annually or upon any other periodic basis), the subscriber and/or the ad-hoc customer hereby authorizes the service provider to effect the necessary automatic transfers from the subscriber's and/or the ad-hoc customer's designated bank account (the "**debit order payment mechanism**") at the beginning of each and every month (or other period as agreed) for the continued duration of the agreement or relevant services.
- 11.5. Should the service provider agree to invoice the subscriber and/or the ad-hoc customer rather than utilise the debit order payment instruction, the service provider will invoice the subscriber and/or the ad-hoc customer monthly (or otherwise as agreed) in advance in respect of the service fees payable in terms of the agreement and/or the service provider quotation (the "**non-debit order payment mechanism**") and the subscriber and/or the ad-hoc customer shall be obliged to pay such service fees on the payment date specified in the invoice. Save as set out herein or otherwise agreed to the contrary in the service provider terms, the service provider shall be under no obligation to send invoices and/or statements to the subscriber and/or the ad-hoc customer. As such, the subscriber and/or the ad-hoc customer waive the benefit of a defence to non-payment based upon late or non-receipt of monthly invoices and/or statements.
- 11.6. It is specifically recorded that, in respect of specific services the "**payment mechanism**" (the debit order payment mechanism, the non-debit order payment mechanism or any other) may be set forth in the service terms. In such instances, payment of the amounts owing by the subscriber and/or ad-hoc customer will be effected in accordance with the provisions contained in the service terms.
- 11.7. Any service fees in respect of once-off fees or set-up of services shall under no circumstances be refundable.
- 11.8. The service provider reserves the right to amend or vary the service fees from time to time ("**service fees amendment**") and any such service fees amendments will be deemed a revision of the service provider terms. In the event that the service provider impose a service fees amendment, it will give the subscriber and/or the ad-hoc customer at least 30 (thirty) days prior notice of such service fees amendment. However, in respect of the subscriber:
- 11.8.1. should the subscriber in writing object to any service fee amendment, at the election of the service provider, the service provider shall be entitled to:
- 11.8.1.1. waive the said service fee amendment and the service fee shall revert to what it was immediately prior to the service fee amendment (the "**service fee amendment waiver**") effective up and to the next anniversary date of the service contract, upon which the subscriber shall be entitled to either:
- 11.8.1.1.1. give notice to terminate the agreement in accordance with the provisions of clause 16.2.1.1 below or clause 16.2.3.1 below (as the case may be); or
- 11.8.1.1.2. renew the agreement for the renewal term (including accidental renewal and failure to give proper notice to terminate the agreement as provided for in clause 16.2.2 below) in which case the service provider shall be entitled to the service fees amendment for the renewal term of the same amount as it introduced at the time when such service fees amendment was objected to as referred to in clause 11.8.1 above, plus a further 10% (ten percent).
- 11.8.1.2. terminate the agreement with the subscriber upon the terms and conditions set forth in clause 16.2.1.1 below or clause 16.2.3.1 below (as the case may be).
- 11.8.2. the service provider shall at any stage subsequent to an earlier service fees amendment be entitled to introduce a further service fees amendment, provided that provisions of clause 11.8 shall prevail.
- 11.9. The subscriber and/or the ad-hoc customer acknowledges that it is not entitled to withhold any payment of any service fees due to the service provider by reason of any alleged breach of the service provider terms by the service provider or for any other reason whatsoever.
- 11.10. In all instances, regardless of the means by which the subscriber and/or the ad-hoc customer contracts for any of the services or transacts with the service provider for any of the services, the subscriber and/or the ad-hoc customer acknowledges that it is its responsibility to familiarise itself with the service fees and the date of payment of the service fees applicable to such services. Upon the subscriber's and/or the ad-hoc customer's acceptance of any of the service provider terms or any agreement, the subscriber and/or the ad-hoc customer will be deemed to have agreed to the then current service fee in respect of the services for which the subscriber has contracted or the ad-hoc customer has transacted with the service provider.
- 11.11. Should a dispute arise in respect of the validity of any service fees due to the service provider, such dispute shall only be capable of being raised as a valid dispute for possible retraction of, or deduction from such service fees,



provided such dispute was raised by the subscriber and/or the ad-hoc customer within 7 days of it being invoiced by the service provider. Therefore:

- 11.11.1. the parties agree that any disputes (as outlined in clause 11.11 above) raised after 7 days from it being invoiced by the service provider, shall automatically be invalid and such service fees shall be deemed payable by the subscriber and/or the ad-hoc customer, to the service provider.
- 11.12. Should the subscriber and/or the ad-hoc customer ever dispute the service provider's authority to receive payment by any means whatsoever, the subscriber and/or the ad-hoc customer acknowledges that any use by the subscriber and/or the ad-hoc customer of any service in the month in respect of which such payment is disputed or any acceptance by the subscriber and/or the ad-hoc customer of any of the service provider terms will constitute an authorization by the subscriber and/or the ad-hoc customer in favour of the service provider to receive payment of its service fees in the form the service provider dictates.
- 11.13. The service fees due and payable by the subscriber and/or the ad-hoc customer to the service provider at any time shall be determined and proved by a certificate signed by either the general manager or financial manager of the service provider, whose appointment, qualification and authority need not be proved.
- 11.14. The subscriber and/or the ad-hoc customer acknowledges that, subject to the service provider being required to do so by any law of any jurisdiction in which the subscriber and/or the ad-hoc customer is resident or to which the subscriber and/or the ad-hoc customer is subject, the service provider is entitled to receive and claim payment from the subscriber and/or the ad-hoc customer in respect of any VAT on the provision of services to the subscriber and/or the ad-hoc customer.

12. SET OFF OF INDEBTEDNESS

- 12.1. The subscriber agrees that it shall not set off any indebtedness it may have to the service provider from any indebtedness the service provider may have to the subscriber and the ad-hoc customer agrees that it shall not set off any indebtedness it may have to the service provider from any indebtedness the service provider may have to the ad-hoc customer, nor demand any discount, rebate or reduction in respect of any service fees owed to the service provider. Furthermore, the subscriber agrees that as a practical arrangement, the service provider shall be entitled to set off any indebtedness it may have to the subscriber by means of a deduction of such indebtedness from any amount owed by the subscriber to the service provider (for whatever reason, howsoever arising) and the ad-hoc customer agrees that as a practical arrangement, the service provider shall be entitled to set off any indebtedness it may have to the ad-hoc customer, by means of a deduction of such indebtedness from any amount owed by the ad-hoc customer to the service provider (for whatever reason, howsoever arising), however, the service provider shall not be obliged to do so in either of the two aforementioned cases.
- 12.2. In respect of the subscriber:
 - 12.2.1. The subscriber specifically authorizes the service provider to retain any of the subscriber's property which may be in the service provider's possession in consequence of its provision to the subscriber of a particular service, when the subscriber is indebted to the service provider (for whatever reason, howsoever arising). Furthermore:
 - 12.2.1.1. if the subscriber fails to make settlement of all amounts owed to the service provider within 90 (ninety) days of any notice by the service provider to the subscriber in such regard, the service provider is entitled, but not obliged, to dispose of such property in order to defray any the service provider expenses as well as any amounts owed by the subscriber to the service provider;
 - 12.2.1.2. if the subscriber is in possession of any of the service provider's property in consequence of the provision to the subscriber of a particular service and the services to which that property relates are terminated, the subscriber will immediately return such property to the service provider, and shall not be entitled to retain such property for any reason whatsoever.
- 12.3. In respect of the ad-hoc customer:
 - 12.3.1. The ad-hoc customer specifically authorizes the service provider to retain any of the ad-hoc customer's property which may be in the service provider's possession in consequence of its provision to the ad-hoc customer of a particular service, when the ad-hoc customer is indebted to the service provider (for whatever reason, howsoever arising). Furthermore:
 - 12.3.1.1. if the ad-hoc customer fails to make settlement of all amounts owed to the service provider within 90 (ninety) days of any notice by the service provider to the ad-hoc customer in such regard, the service provider is entitled, but not obliged, to dispose of such property in order to defray any the service provider expenses as well as any amounts owed by the ad-hoc customer to the service provider;
 - 12.3.1.2. where the ad-hoc customer is in possession of any of the service provider's property in consequence of the provision to the ad-hoc customer of a particular service and the services to which that property relates are terminated, the ad-hoc customer will immediately return such property to the service provider, and shall not be entitled to retain such property for any reason whatsoever.



13. INTELLECTUAL PROPERTY RIGHTS

- 13.1. The subscriber and/or the ad-hoc customer is obliged to comply with all laws applicable to any intellectual property rights in respect of any data, files and/or information accessed, retrieved or stored by the subscriber and/or the ad-hoc customer through the subscriber's and/or the ad-hoc customer's use of the services.
- 13.2. The subscriber and/or the ad-hoc customer is prohibited from using any of the service provider's proprietary marks without the prior written approval of the service provider.
- 13.3. The subscriber and/or the ad-hoc customer hereby grants the service provider a non-exclusive license to use its proprietary marks for the limited purposes of enabling the service provider to exercise its rights or to fulfill its obligations under the service provider terms.
- 13.4. Other than as specifically provided in the service provider terms, the service provider will wholly and exclusively:
 - 13.4.1. retain all existing intellectual property right(s) employed in or otherwise related to its network infrastructure, e-commerce network infrastructure, business and the provision of any of the services in terms of the service provider terms;
 - 13.4.2. become the exclusive and unencumbered owner of all intellectual property right(s) employed in or otherwise related to its network infrastructure, e-commerce network infrastructure, business and the provision of any of the services in terms of the service provider terms.

14. CONFIDENTIALITY

- 14.1. Each party undertakes to the other party, for the continuance of the agreement and for a period of 2 (two) years from the expiry or termination thereof, as the case may be:
 - 14.1.1. to keep confidential all information whether written (including information contained in electronic format) or oral concerning the business and affairs of the other party that it obtains or receives from the other party or any third party as well as the terms and conditions of the agreement ("**confidential information**");
 - 14.1.2. not without the other party's written consent to disclose the confidential information in whole or in part to any person save its employees, agents and/or consultants involved in the implementation of this agreement, and who have a need to know the confidential information;
 - 14.1.3. to use the confidential information solely in connection with the implementation of the agreement and not for its own benefit or that of any third party; and
- 14.2. The provisions of clause 14.1 shall not apply to the whole or any part of the confidential information which is:
 - 14.2.1. already known to the recipient without obligation of confidence;
 - 14.2.2. independently developed by the recipient;
 - 14.2.3. publicly available without breach of the agreement;
 - 14.2.4. lawfully received from a third party;
 - 14.2.5. released for disclosure by the disclosing party with its written consent; or
 - 14.2.6. required to be disclosed in response to a valid order of court or other governmental agency or if disclosure thereof is otherwise required by law.
- 14.3. If a party is obliged to divulge confidential information in terms of clause 14.2.6, it shall (provided that circumstances permit the necessary time) forthwith and before releasing the confidential information, inform the other party of such obligation.
- 14.4. Each party undertakes to the other to make all its relevant employees, agents and consultants aware of the degree of confidentiality of the confidential information and the provisions of this clause and to take all such reasonable steps as shall from time to time be necessary to ensure compliance by its employees, agents and consultants with the provisions of this clause, subject to the terms and conditions of clause 19.6.2 below.
- 14.5. Upon the expiry or termination of the agreement for any reason, each party shall promptly return to the other party all documents, diskettes, drawings and any other mediums containing the confidential information of the other party (as well as all copies, notes or reproductions thereof) and delete and remove the confidential information from its electronic data bases.
- 14.6. Save for compliance by a party with the requirements of the JSE Securities Exchange and the Securities Regulation Panel, no party may publish any announcement of any transaction without the prior written consent of the other party, which approval shall not be unreasonably withheld.



- 14.7. Notwithstanding clause 14.1 above, the service provider will be entitled to disclose the fact that the subscriber and/or the ad-hoc customer is a client of the service provider and vice versa. However, the service provider shall not be entitled to disclose any other details of or related to the agreement without the prior consent of the subscriber and/or the ad-hoc customer, which consent will not be unreasonably withheld.
- 14.8. For the avoidance of doubt, no provision of the agreement should be construed in such a way that the disclosing party is deemed to have granted its consent to the receiving party to disclose the whole or any part of the confidential information in the event that the receiving party received a request for the whole or any part of the confidential information in terms of the provisions of the PAI Act. The receiving party shall be obliged to notify the disclosing party immediately when it receives such a request to enable the disclosing party to object and approach a court of competent jurisdiction if necessary, to protect its interests.

15. MONITORING OF CONTENT

- 15.1. The subscriber and/or the ad-hoc customer (in this clause 15 hereinafter referred to as the “**use customer(s)**”) acknowledge that it is bound by the Official Use Regulations in relation to its use of the services.
- 15.2. For the avoidance of doubt, and without in any manner limiting the enforceability of the Official Use Regulations, the use customers acknowledges that the service provider has no knowledge of, nor interest in the content of such use customers which may be hosted by the service provider or published by the service provider on the use customer's behalf or by the use customers using the services and further that the service provider does not in any way contribute or approve such content. Accordingly the use customers agree that if the service provider, in its sole discretion determines that any content of the use customers is in violation of any law or of the Official Use Regulations, it may:
- 15.2.1. forthwith request the relevant use customer to remove such content; and/or
- 15.2.2. forthwith require the relevant use customer to amend or modify such content; and/or
- 15.2.3. without notice terminate access to any services and/or suspend or terminate any services; and/or
- 15.2.4. without notice, delete the offending content from the services.
- 15.3. Save as specifically provided in clause 19.5 below, the use customers confirm that nothing that the service provider does in the performance of its obligations in this regard will be construed as an assumption of responsibility or liability by the service provider for the use customer content and/or the publication thereof, whether or not the service provider has knowledge of such content. The use customers hereby indemnify the service provider against any liability and any claims or fines or penalties of whatever nature made by any person for any loss or damage suffered arising directly or indirectly from the service provider's hosting of any use customer content and/or the publication thereof (whichever may be applicable).
- 15.4. The service provider will use its reasonable endeavours to notify the relevant use customer of any action taken in terms of this clause 15, but does not warrant that notice shall be given to the use customer prior to such action being taken.

16. TERMINATION

- 16.1. Unless the subscriber has contracted for a particular service in respect of which there is an initial term, or in terms of which the termination period is different, or the ad-hoc customer has agreed terms contrary to the following, either party may terminate the agreement (subject to the provisions of clause 18.3 below) together with all services, or any individual services (as the case may be), on 1 (one) calendar month's written notice (the “**informal notice period**”) to the other party.
- 16.2. Notwithstanding the provisions of clause 17 below, where the subscriber has contracted for a particular service in respect of which there is an initial term, as set out in the service terms:
- 16.2.1. such service may only be terminated at the end of the specified initial term, by way of 2 (two) calendar months' prior written notice (the “**contract notice period**”), unless:
- 16.2.1.1. the service provider introduced a service fees amendment during the initial term, where the subscriber's objection to such service fees amendment could result in termination of the service contract, subject to the provisions of clause 11.8 above, in which case the informal notice period shall apply.
- 16.2.2. should notice to terminate at the end of the initial term not be given in terms of clause 16.2.1 above the agreement shall automatically be renewed for a further period equal to the initial term (the “**renewal term**”), which will in turn automatically be renewed at each subsequent anniversary date of the renewal term, unless notice to terminate any such renewal term is given in terms of clause 16.2.3 below;
- 16.2.3. similar to the cancellation of the initial term in clause 16.2.1 above, the parties may during the renewal term(s) terminate the agreement at the end of each renewal term by giving the other party 2 (two) calendar months' prior written notice, being the contract notice period, unless:



- 16.2.3.1. the service provider introduced a service fees amendment during the renewal term, where the subscriber's objection to such service fees amendment could result in termination of the service contract, subject to the provisions of clause 11.8 above, in which case(s) the informal notice period shall apply.
- 16.3. Any written notices are to be sent to the domicilium address of each party and any purported notice of termination sent to either party at any address other than their respective domicilium, shall be deemed invalidly given and without force or effect.
- 16.4. A termination notified in terms of the clauses 16.2.1 and 16.2.3 above shall take effect upon the first day of the month following the expiry of the contract notice period, unless where such termination notice is given and received on a day other than the first day of any month, such notice will take effect upon the first day of the following month.
- 16.5. If the subscriber terminates the service contract and/or breaches any of the service provider terms (subject to the terms and conditions as provided for in clauses 17 below and 18.3 below) prior to the end of the initial and/or renewal term(s), whichever applicable, the subscriber shall pay to the service provider all service fees provided up to and including the actual date of such termination and/or breach together with a cancellation charge equal to the balance of the applicable service fees (in effect at the time of cancellation) for such cancelled services that otherwise would have become due for the unexpired portion of that term ("**the cancellation charge**").
- 16.6. If the subscriber terminates the agreement in order to upgrade to a "higher level" of the service provider's services at any time, the subscriber shall not be liable to pay any cancellation charges, subject however to the subscriber entering into a new service contract for the similar or higher level of the service provider's services, for a period/ amount at no less equal to the remaining portion of the initial term.

17. BREACH AND SUSPENSION

17.1. If either party:

- 17.1.1. commits any breach of the service provider terms (subject to the provisions of clause 17.3 below) and fails to remedy the breach within 30 (thirty) calendar days after receipt from the other party of written notice calling upon it to do so;
- 17.1.2. commits a breach of any payment obligation in terms of the service provider terms and fails to make payment within 7 (seven) calendar days after receipt from the other party of written notice calling upon it to do so;
- 17.1.3. commits an act of insolvency within the ambit of Section 8 of the Insolvency Act, No 24 of 1936, or is deemed unable to pay its debts within the ambit of Section 345 of the Companies Act (alternatively Section 69 of the Close Corporations Act, as the case may be), or finds itself in circumstances capable of being wound up in terms of Section 344 of the Companies Act (alternatively Section 68 of the Close Corporations Act, as the case may be), or is deregistered or applies for deregistration in terms of Section 73 of the Companies Act (alternatively Section 26 of the Close Corporations Act, as the case may be), or is subject to application by a person other than a party for the provisional winding up or judicial management of such party, or a special resolution is passed for the winding up of such party;
- 17.1.4. has judgment taken against it and fails to satisfy or apply to have same set aside within 7 (seven) calendar days of becoming aware thereof;

then the other party shall be entitled, in addition to and without prejudice to any other right it may have in law or in terms of the agreement: (a) to enforce specific performance of the service provider terms; or (b) subject to clause 17.3 below, cancel the agreement or the provision/use of the service; and (c) in either event, subject to clause 18.3.1 below, recover such damages as it may have sustained.

17.2. Notwithstanding the provisions of clause 17.1 above:

- 17.2.1. should the subscriber be in breach of any of the service provider terms or any service contract, then the service provider is entitled, without prejudice to any other rights that the service provider may have and without notice to the subscriber, to:-
- 17.2.1.1. forthwith claim immediate payment of all outstanding service fees due to the service provider, including the cancellation charge (as provided for in clause 16.5 above);
- 17.2.1.2. terminate or suspend the subscriber's use of any or all of the services;
- 17.2.1.3. terminate its relationship with the subscriber;
- 17.2.1.4. list the subscriber with any of the credit bureau agencies (if applicable in terms of any outstanding indebtedness)
- 17.2.1.5. to appoint tracing and/or collection agents as required, for which all costs shall be for the account of the subscriber ;



- 17.2.1.6. retain all service fees and charges already paid by the subscriber and recover all of its costs associated with the subscriber's breach, including without limitation, legal costs on an attorney and own client scale whether incurred prior to or during institution of legal proceedings or if judgement has been granted, in connection with the satisfaction of such judgement or in regard to the enforcement of the service provider terms or the agreement;
- 17.2.1.7. to charge the subscriber an additional re-connection fee should it request the service provider to restore any service that has been suspended by the service provider;
- 17.2.2. should the ad-hoc customer be in breach of any of the service provider terms, then the service provider is entitled, without prejudice to any other rights that the service provider may have and without notice to the ad-hoc customer, to:-
 - 17.2.2.1. forthwith claim immediate payment of all outstanding service fees due to the service provider;
 - 17.2.2.2. terminate or suspend the ad-hoc customer's use of any or all of the services;
 - 17.2.2.3. terminate its relationship with the ad-hoc customer;
 - 17.2.2.4. list the ad-hoc customer with any of the credit bureau agencies (if applicable in terms of any outstanding indebtedness)
 - 17.2.2.5. to appoint tracing and/or collection agents as required, for which all costs shall be for the account of the ad-hoc customer;
 - 17.2.2.6. retain all service fees and charges already paid by the ad-hoc customer and recover all of its costs associated with the ad-hoc customer's breach, including without limitation, legal costs on an attorney and own client scale whether incurred prior to or during institution of legal proceedings or if judgement has been granted, in connection with the satisfaction of such judgement or in regard to the enforcement of the service provider terms or the agreement;
 - 17.2.2.7. to charge the ad-hoc customer an additional re-connection fee should it request the service provider to restore any service that has been suspended by the service provider;
- 17.3. In respect of clause 17.1.1, an aggrieved party shall only be entitled to cancel the agreement if the breach is material and is not capable of being remedied by payment of money or, if it is capable of remedy by payment of money, if the other party fails to make payment within 14 (fourteen) calendar days after final determination of the amount.
- 17.4. No claim may be instituted against the service provider (excluding the provisions of the SLA summary, if applicable, as provided for in the service terms) arising from the terms of the agreement or performance by the parties in terms thereof unless dispute resolution proceedings are instituted in terms of these Standard Terms and Conditions by the subscriber and/or the ad-hoc customer within 1 (one) year of such purported cause of action arising.
- 17.5. Any amount due by any party, which is not paid on its due date, shall attract interest at the prime rate, plus 2 (two) percentage points.

18. FORCE MAJEURE AND LIMITATION

- 18.1. Neither party shall have any claim against the other party ("**the affected party**") for any delay or failure of the affected party to carry out any of its obligations under the agreement arising from or attributable to acts of god, of public enemy, fire, explosion, earthquake, perils of the sea, flood, storm or other adverse weather conditions, war declared or undeclared, terrorism, civil war, revolution, labour action or unrest civil commotion or other civil strife, riot, blockade, embargo, sanctions, epidemics, act of any government or other authority, compliance with government orders, demands or regulations or any circumstance of like or different nature and failure of suppliers or contractors or any other cause whatsoever beyond the control of the affected party ("**force majeure**").
- 18.2. The performance of the obligations of the affected party shall, subject to clause 18.3, be suspended for the duration of the force majeure, which shall be deemed to commence only upon the date of written notice by the affected party to the other party. Upon cessation of the force majeure, the agreement shall again become fully operative and the affected party shall immediately resume its performance.
- 18.3. If the suspension of performance continues for more than 60 (sixty) consecutive calendar days, then either party may summarily terminate the agreement by written notice to the other party, prior to the cessation of the force majeure, without having to give consideration to the cancellation charge as provided for in clause 16.5 above (in respect of the subscriber). Furthermore:
 - 18.3.1. Notwithstanding specific SLA credits in consequence to SLA standards which may have been provided for in the service terms, any claim by the subscriber and/or the ad-hoc customer against the service provider (if applicable) howsoever arising shall in the aggregate be limited to the aggregate of service fees paid by the subscriber and/or the ad-hoc customer to the service provider in terms of the



agreement for a period of 3 (three) calendar months immediately prior to the institution of the claim by the subscriber and/or the ad-hoc customer. In any event, the service provider will not be liable to the subscriber and/or the ad-hoc customer for:

- 18.3.1.1. indirect or special damages (other than what may be provided for in the provision for SLA credits in consequence to the SLA standards in the service terms) and/or
 - 18.3.1.2. loss of income or profit (other than what may be provided for in the provision for SLA credits in consequence to the SLA standards in the service terms), howsoever arising whether or not caused by its employees, agents and/or contractors, and regardless of form or cause of action.
- 18.3.2. the provisions of clause 18.3.1 above are also stipulated for the benefit of the employees, agents and/or contractors of the service provider.

19. GENERAL LIMITATION

Save as specifically provided to the contrary in the service terms:

- 19.1. Subject to the SLA standards which may have been agreed upon, the services are provided "as is" and "as available" and without any warranty of any nature whatsoever, whether implied, including without limitation, warranties of merchantability, fitness for purpose, title or non-infringement.
- 19.2. Any third party services and products accessible or used in conjunction with the services, but which are not provided by the service provider, are provided subject to those terms specified by the providers thereof.
- 19.3. Other than as may be provided for in the SLA credits in consequence to the SLA standards (which SLA credits are limited, as provided for in the service terms):
 - 19.3.1. The service provider is not liable and will not be liable under any circumstances for any direct, indirect, incidental, special, punitive or consequential loss or damages which arise, or may arise, out of the services and/or use thereof. This exclusion of liability applies notwithstanding the fact that the service provider may have been advised of the possibility of such loss or damage being incurred prior to its occurrence.
 - 19.3.2. The service provider is not liable and will not be liable under any circumstances for any direct, indirect, incidental, special, punitive or consequential loss or damages which result or may result from the subscriber's use and/or the ad-hoc customer's use of any third party services or products accessible or used in conjunction with the services, but not provided by the service provider. This exclusion of liability applies notwithstanding the fact that the service provider may have been advised of the possibility of such loss or damage being incurred prior to its occurrence.
 - 19.3.3. The subscriber's and/or the ad-hoc customer's sole and exclusive remedy if it is dissatisfied with the services for any reason whatsoever, is termination of the services, or part thereof, as provided for and upon the terms stated in clause 16 above.
- 19.4. The subscriber and/or the ad-hoc customer acknowledges that the services are provided subject to all applicable laws and regulations and that the subscriber and/or the ad-hoc customer hereby indemnifies the service provider from any liability for any loss or damage suffered by the subscriber and/or the ad-hoc customer or any third party as a consequence of any interruption or unavailability of the services attributable to any regulatory body or civil or criminal process instituted against the service provider.
- 19.5. The subscriber and/or the ad-hoc customer hereby unconditionally and irrevocably indemnifies the service provider and agrees to hold the service provider free from all costs, losses, claims, harm, liabilities, expenses, damages, fines or injury of whatsoever nature suffered or incurred by the service provider or instituted against the service provider by any third party as a direct or indirect result of the subscriber's use and/or the ad-hoc customer's use of the services, the subscriber's failure to comply and/or the ad-hoc customer's failure to comply with any of the service provider terms, or any downtime, outage, interruption in or unavailability of the services, included, but without limitation, within the ambit of downtime, outage, interruption in or unavailability of the services, any of the following:
 - 19.5.1. software or hardware service, repairs, maintenance, upgrades, modification, alterations, replacement or relocation of premises affecting the services;
 - 19.5.2. non-performance or unavailability, of whatever nature and howsoever arising of any of the services provided by a third party telecommunications service provider (including but not limited to, line failure) or in any international services or remote mail servers;
 - 19.5.3. non-performance or unavailability, of whatever nature and howsoever arising, of external communications networks to which the subscriber and/or the ad-hoc customer or the service provider's network infrastructure is connected; and
 - 19.5.4. repairs, maintenance, upgrades, modification, alterations or replacement of any hardware forming part of the services or any faults or defects of whatever nature in such hardware.



- 19.6. the subscriber and/or the ad-hoc customer acknowledges that it has no claim against the service provider and the subscriber and/or the ad-hoc customer hereby indemnifies the service provider against any liability in respect of any loss, damage or cost caused by or arising from:
- 19.6.1. any infringement of the subscriber's rights of privacy and/or the ad-hoc customer's rights of privacy and/or any other like rights (including those of any other person or entity), arising from the services;
 - 19.6.2. any breach of security by any third party or any breach of confidentiality by a third party or otherwise arising from any access howsoever obtained by a third party to the subscriber's and/or the ad-hoc customer's information, data or content;
 - 19.6.3. damage, contamination or corruption of any kind of the subscriber's and/or the ad-hoc customer's data, material, information and/or content howsoever occasioned;
 - 19.6.4. repairs, maintenance, upgrades, modification, alterations, replacement or work of any nature done on the subscriber's and/or the ad-hoc customer's hardware, software or systems by any party other than the service provider;
 - 19.6.5. without limiting the foregoing, any fact, cause or circumstances whatsoever and howsoever arising if the service provider substantially performed its obligations under the service provider terms.
- 19.7. The service provider reserves the right to take whatever action it may deem necessary at any time to preserve the security and reliable operation of its network infrastructure and the subscriber and/or the ad-hoc customer undertakes that it will not do or permit anything to be done which will compromise the service provider's security.
- 19.8. Although the service provider applies reasonable endeavours to provide disaster recovery, the service provider does not specify any recovery time, nor is the service provider liable for any loss or damage of whatever nature incurred or suffered by the subscriber and/or the ad-hoc customer arising from or in connection with any cause whatsoever as a result of its failure to provide, or delay in providing, or providing only partial, disaster recovery. Nothing contained in the service provider terms shall be construed as a representation that any back-ups of data implemented by the service provider will be successful or will avoid disaster in any way.
- 19.9. The service provider is entitled to suspend temporarily its obligations in terms of the service provider terms in order to service, repair, maintain, upgrade, modify, alter, replace or improve any of the services. Where the circumstances permit, the service provider will apply best endeavours to provide prior notice of any such suspension to the subscriber and/or the ad-hoc customer and the service provider is not liable for any loss or damage of whatever nature incurred or suffered by the subscriber and/or the ad-hoc customer arising from or in connection with from any cause whatsoever as a result of such suspensions.

20. GENERAL PROVISIONS

- 20.1. The subscriber and/or the ad-hoc customer acknowledges that in the service provider's provision of the services to the subscriber and/or the ad-hoc customer, the service provider shall be entitled to do all things necessary in order to give effect to any legislation, regulation or ruling of a competent authority.
- 20.2. The subscriber and/or the ad-hoc customer is not entitled to cede, assign or delegate or in any manner whatsoever transfer (including but not limited to the sub-letting or re-sale of any bandwidth, disk space, server capacity or web hosting) any subscriber rights or obligations and/or the ad-hoc customer rights or obligations under the service provider terms without the service provider's prior written consent.
- 20.3. The service provider is entitled to cede, assign, transfer or delegate all or any of its rights or obligations under the service provider terms without the subscriber's and/or the ad-hoc customer's consent.
- 20.4. The service provider terms will in all respects be governed by and construed under the laws of the Republic Of South Africa and all disputes, actions and other matters relating thereto will be determined in accordance with such law.
- 20.5. Unless the service provider otherwise elects, only South African courts and/or other competent South African regulatory authorities shall have jurisdiction to hear any disputes arising pursuant to the agreement. Furthermore:
- 20.5.1. to the extent that the service provider elects to proceed against the subscriber and/or the ad-hoc customer in a South African Magistrate's court, the subscriber and/or the ad-hoc customer hereby consents to the jurisdiction of the Cape Town Magistrate Court notwithstanding the fact that the amount of any claim against the subscriber may exceed the jurisdiction of those courts;
 - 20.5.2. to the extent that the service provider elects to proceed in any dispute in a South African High court, the subscriber and/or the ad-hoc customer hereby consents to the jurisdiction of the Cape Town local division of the High Court of South Africa (the aforementioned court options in this clause and clause 20.5.1 above, collectively referred to as the "**service provider court options**") and upon the election of the service provider from the service provider court options, such court shall be referred to as the "**service provider elected court**";



- 20.5.3. to the extent that the subscriber and/or the ad-hoc customer elects to proceed in any dispute against the service provider, the subscriber and/or the ad-hoc customer hereby consents to the jurisdiction of the Cape Town local division of the High Court of South Africa;
- 20.5.4. in respect of the subscriber:
- 20.5.4.1. the subscriber hereby agrees that all legal costs awarded in the service provider's favour shall be payable by the subscriber on the scale as between attorney and own client.
- 20.5.5. In respect of the ad-hoc customer:
- 20.5.5.1. the ad-hoc customer hereby agrees that all legal costs awarded in the service provider's favour shall be payable by the ad-hoc customer on the scale as between attorney and own client.
- 20.6. The subscriber and/or the ad-hoc customer agree that any notices (other than legal process) that the service provider may send to the subscriber and/or the ad-hoc customer may be sent via e-mail.
- 20.7. Nothing in the agreement constitutes either party as the agent, principal, representative or partner of the other, and no party shall be entitled to hold out to any third party that the relationship between the parties is that of a partnership, joint venture or the like.
- 20.8. Unless otherwise agreed in writing between the parties, no party shall for the duration of any agreement or any business between the parties and for a period of 12 (twelve) months after expiry or termination of the last thereof, for its own benefit or as a representative of or agent for any third party, persuade, induce, encourage, procure or solicit (or procure such persuasion, inducement, encouragement, procurement or solicitation of) the employees and /or personnel of the other party or of the service provider:
- 20.8.1. to become employed, or interested, directly or indirectly in any manner whatsoever, by it or in any business which is in competition with the business carried on by the other party or by the service provider; or
- 20.8.2. to terminate his/her employment with the other party or with the service provider;
- 20.9. The parties agree that the default agreed penalty for a breach of the terms outlined in clause 20.8 above, shall be an amount payable by the party in breach to the other party, equal to 24 months salary of the employee(s) and or personnel affected by such breach.
- 20.10. Save as expressly provided to the contrary in the service provider terms, any conflict in the provisions stated in these Standard Terms and Conditions and those stated in the service terms, Official Use Regulations and the Standard Rates Schedule, will be resolved in accordance with the following order of precedence (i) the service terms, (ii) these Standard Terms and Conditions, (iii) the Standard Rates Schedule and (iv) the Official Use Regulations.

21. ARBITRATION AND DISPUTE RESOLUTION

- 21.1. Notwithstanding the provisions of clause 20.5 above should any dispute arise out of or in connection with the service provider terms the parties may at any time, by agreement, refer the dispute for resolution by way of arbitration. Therefore in case of an agreed arbitration:
- 21.1.1. Each party:
- 21.1.1.1. agrees that the arbitration will be held in Cape Town in accordance with the then current rules of the Arbitration Foundation Of South Africa ("AFSA") ("**the arbitration rules**") by 1 (one) arbitrator appointed by agreement between the parties. If the parties cannot agree on the arbitrator within a period of 10 (ten) business days after the date on which the parties agreed in writing to refer the dispute to arbitration the arbitrator shall be appointed by the secretariat of AFSA;
- 21.1.1.2. expressly consents to any arbitration in terms hereof being conducted as a matter of urgency; and
- 21.1.1.3. irrevocably authorises the other party to apply, on behalf of both parties, in writing, to the secretariat of AFSA, in terms of article 23(1) of the arbitration rules, for the arbitration to be conducted on an urgent basis.
- 21.1.2. The decision or award resulting from the arbitration may be made an order of court at the instance of either party and the parties hereby irrevocably submit to the jurisdiction of the relevant service provider's elected court in South Africa, should either party wish to make the arbitrator's award an order of court.
- 21.1.3. There shall be a right of appeal as provided for in article 22 of the arbitration rules.
- 21.1.4. The arbitration will be held in camera, in the English language and will be kept confidential by the parties.



- 21.1.5. The provisions of this clause 21 shall not preclude any party from access to an appropriate court of law for interim relief in the form of an interdict, mandamus or order for specific performance pending the outcome of the arbitration in terms of this clause 21 or in respect of such arbitration, for which purpose the parties irrevocably submit to the jurisdiction of the Cape Town local division of the High Court of South Africa.

22. DOMICILIUM AND NOTICES

- 22.1. The parties choose their respective *domicilium citandi et executandi* ("**domicilium address**") for all purposes under the agreement at the addresses set out in the relevant clause(s) of the service contract(s) or its annexures, provided that the domicilium address for the service provider in respect of all legal documents and for purposes of receiving legal process and notices shall be:

Attention: Andre van As
Currant Technologies CC
Unit 301, Soho on Strand
128 Strand Street
CAPE TOWN
8001
Fax No. (021) 421-0986

- 22.2. The subscriber and/or the ad-hoc customer shall be entitled from time to time, by written notice to the service provider, to vary its domicilium address to any other address within the Republic Of South Africa which is not a post office box or poste restante. For purposes of confirmation the service provider shall be allowed to vary its domicilium address by means of a revision of these Standard Terms and Conditions as provided for in clause 4 above;
- 22.3. In relation to the subscriber and/or the ad-hoc customer, all notices given in terms of the agreement shall be in writing and any notice given by subscriber which :
- 22.3.1. is delivered by hand or transmitted by facsimile, shall be deemed to have been received by the service provider on the first business day after the date of delivery or transmission, as the case may be;
- 22.3.2. is posted by pre-paid registered post from an address within the Republic Of South Africa to the service provider at its domicilium address for the time being shall be deemed to have been received by the service provider on the 10th (tenth) business day after the date of such posting;
- 22.3.3. is delivered by e-mail shall be deemed to have been received by the service provider only once the service provider has acknowledged receipt thereof in writing, provided that it shall not be permissible to give any notice relating to a dispute, demand, breach, legal proceedings, renewal, cancellation or termination by e-mail.
- 22.4. Any purported notice of termination or breach sent to the service provider at any address other than its domicilium address or alternatively specified on the legal website may, at the service provider' sole discretion, be deemed invalidly given and without force or effect.