



## STANDARD TERMS AND CONDITIONS OF SERVICE VERSION 21 June 2018

### 1. INTRODUCTION

- 1.1 Lima Bean provides integrated digital services, including software development, marketing, hosting and other services in relation to the Internet and the world wide web.
- 1.2 The Client wishes Lima Bean to provide the Services specified in the Proposal on the terms and conditions set out in this Agreement.

### 2. INTERPRETATION

- 2.1 In this Agreement unless the context indicates to the contrary:
  - 2.1.1 the singular shall include the plural and vice versa;
  - 2.1.2 a reference to a natural person shall be capable of being construed as a reference to a juristic or legal person and vice versa; and
  - 2.1.3 a reference to any one gender shall be capable of being construed as a reference to the other.
- 2.2 This agreement shall be governed by and construed and interpreted in accordance with the law of the Republic of South Africa. Section headings are inserted for convenience only and shall not be used in its interpretation.
- 2.3 Any reference in this Agreement to an enactment is to that enactment as at the signature date and as amended or re-enacted from time to time.
- 2.4 If any period is referred to in this agreement by way of reference to a number of days, the days shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a day which is not a business day, in which case the day shall be the next succeeding business day.
- 2.5 Reference in this Agreement to any schedule, proposal or specification shall also include any schedule, proposal or specification amended by written agreement between the parties.
- 2.6 A requirement that anything be recorded or given in writing in terms of this Agreement shall be met where recorded or given in the form of a "data message" as defined in the Electronic Communications and Transactions Act No. 25 of 2002 and a requirement that anything be signed in terms of this Agreement shall be met where signed by means of an "electronic signature" as defined in that Act.
- 2.7 The rule of interpretation that, in the event of ambiguity, a contractual provision shall be interpreted against the party responsible for the drafting or introduction thereof, shall not apply in the interpretation of this Agreement.
- 2.8 The expiration or termination of this Agreement shall not affect such provisions of this Agreement that are expressly intended to operate after any such expiration or termination

or which of necessity must continue to have effect after such expiration or termination.

- 2.9 Unless the context clearly indicates a contrary intention, the following words shall have the meanings assigned to them hereunder:
  - 2.9.1 "Acceptance Testing" means the carrying out by the Client of tests agreed to between Lima Bean and the Client (under the supervision of Lima Bean if requested) to which the Software (or, as the case may be, the Software prepared pursuant to section 8 that is proposed to be developed in partial substitution for, or as an addition to the Software), is to be subjected;
  - 2.9.2 "Agreement" means the agreement as set out herein, together with all appendices and schedules hereto and documents incorporated by reference;
  - 2.9.3 "Cancellation Fees" means all amounts due and payable to Lima Bean for work performed and services rendered up to and including the date of receipt of a written notice of cancellation from the Client plus 30% (thirty percent) of the remaining balance of the total Fees and Charges agreed upon and specified in writing at any time prior to delivery of the cancellation notice referred to in this clause plus the full amount of any monthly charges in respect of the month in which the notice of cancellation was received by Lima Bean;
  - 2.9.4 "Contingency Budget" means the budget for development contingencies set out in the Proposal whether expressed as a percentage, specific amount or number of hours;
  - 2.9.5 "Client" means the person or entity whose name is reflected in the Proposal;
  - 2.9.6 "Confidential Information" shall include, but not be limited to-
    - 2.9.6.1 any information of whatever nature which has been or may be obtained by either of the parties from the other, whether in writing or in electronic form or pursuant to discussions between the parties, or which can be obtained by examination, testing, visual inspection or analyses, including, without limitation, business or financial data, processes, designs, sketches, photographs, plans, drawings, Specifications, sample reports, models, client lists, pricing information, studies, findings, computer software or ideas;
    - 2.9.6.2 all trade secrets and know-how of any nature whatsoever disclosed in writing, orally or by other means by Lima Bean to the Client, which are confidential, proprietary or otherwise not generally available to the Client and the public; and
    - 2.9.6.3 any information which by its nature or by the circumstances in which it was given or obtained ought reasonably to be regarded by the parties as being confidential;
  - 2.9.7 "Development Services" means all services rendered in the process of developing the Software including analysis, design, programming and testing;

- 2.9.8 "Fees and Charges" means the amounts payable to Lima Bean in terms of the Proposal and any additional charges agreed in writing between the Client and Lima Bean;
- 2.9.9 "Hosting" means procuring or providing a dedicated or shared server on which the Software has been installed to enable the Software to accept requests from connected clients as part of a client-server architecture;
- 2.9.10 "Intellectual Property Rights" means all copyright, patents, service marks, designs, trademarks (whether registered or unregistered) as well as any applications for any of the foregoing and any other rights which may in the future be based thereon, together with all trade secrets, know-how and other Intellectual Property Rights in all parts of the world;
- 2.9.11 "Lima Bean" means Mindvate (Pty) Ltd, a company with limited liability and duly incorporated under the laws of the Republic of South Africa with registration number 2005/005418/07;
- 2.9.12 "Lima Bean Rates" means Lima Bean's prevailing hourly charges from time to time as notified in advance plus the cost of any materials utilised or provided and disbursements incurred on the Client's behalf;
- 2.9.13 "Maintenance Services" means modification of the Software after Acceptance Testing to support performance and correct faults including system updates and the remote provision of end-user support via Lima Bean's designated support channels but shall exclude the development of any new functionality and training services;
- 2.9.14 "Nominated Account" means Lima Bean's banking account, the details of which shall be provided by Lima Bean in writing and which Lima Bean shall be entitled to change from time to time on written notice to the Client;
- 2.9.15 "parties" means Lima Bean and the Client and "party" means either one of them;
- 2.9.16 "Prime Rate" means the rate of interest per annum which is equal to the published rate of interest per annum charged by the bank at which the Nominated Account is held on unsecured overdrawn current accounts of its most favourite corporate Clients in the private sector from time to time and, in the case of any dispute as to the rate payable, the rate shall be certified by any manager or assistant manager of any branch of the said bank, whose certificate shall be final and binding on the parties;
- 2.9.17 "Proposal" means a written proposal drawn by Lima Bean pertaining to the Services;
- 2.9.18 "Retained Copyright" means all computer code or script, whether compiled or not, written by Lima Bean in any computer language or program and all literary works authored by Lima Bean prior to the rendering of the Development Services;
- 2.9.19 "Services" mean the services stipulated in the Proposal including Software Development and Maintenance Services where applicable and shall exclude Hosting services unless expressly indicated to the contrary in the Proposal or unless agreed to the contrary between the parties in writing;
- 2.9.20 "Software" means the software and/or Website and/or web application software to be developed and / or maintained by Lima Bean in terms of this Agreement;
- 2.9.21 "Specification" means the functional and /or technical requirements and /or specifications for the Software agreed to by the Client, subject to any Specification Changes;
- 2.9.22 "Specification Change" means an amendment to the Specification agreed to between the parties in writing pursuant to paragraph 8.3;
- 2.9.23 "Third Party Copyright" means Intellectual Property Rights owned by third parties in any software as well as other third party copyright materials used by Lima Bean in the creation of the Software;
- 2.9.24 "Website" means a compilation of one or more web pages capable of being accessed via the Internet being a combination of text, data or information of whatever nature to be developed by Lima Bean pursuant to the Specification.
- 2.10 If any provision in a definition is a substantive provision conferring rights or imposing obligations on any party, effect shall be given to it as if it were a substantive clause in the body of the agreement, notwithstanding that it is only contained in the interpretation clause.

### 3. AGREEMENT

- 3.1 In consideration for payment of the Fees and Charges, Lima Bean will provide the Services as set forth in the Proposal to the Client.
- 3.2 If the Client requests Lima Bean to perform any services not expressly covered by this Agreement, but relating to the development or maintenance of the Software, and Lima Bean agrees to perform such services, all such additional services shall be provided at Lima Bean Rates.

### 4. PRICE, PAYMENT AND CANCELLATION

- 4.1 Unless specifically indicated to the contrary:
- 4.1.1 all fees and charges due by the Client to Lima Bean in terms of this Agreement including the Fees and Charges, Lima Bean Rates and Cancellation Fees are indicated exclusive of VAT, and any taxes and / or levies due on any such fees and charges (including, but not be limited to, any Value Added Tax, Importation Tax, Withholding Tax and General Sales Tax) shall be paid by the Client on demand; and
- 4.1.2 where the Maintenance Services to be rendered or offered by Lima Bean are expressed as a budgeted amount or number of hours per month, such budgeted amount or number of hours shall be capable of being utilised and applied in one calendar month only and any budgeted amount or number of hours or any portion thereof not so utilised and applied in any one month shall not be capable of being accumulated, utilised or applied in any other month.

- 4.2 Lima Bean shall endeavour to complete all Development Services in accordance with the estimate of hours or charges that may be contained in the Proposal. Where reasonable grounds exist, Lima Bean may notify the Client of an increase to the Fees and Charges payable by the Client.
- 4.3 Subject to any contrary provision in the Proposal, the Client shall pay any invoice arising from this Agreement within 7 (seven) days of the invoice date by transferring the invoiced amount to the Nominated Account.
- 4.4 The Client acknowledges and agrees that, without in any way derogating from its responsibility to render the Services in a professional and workmanlike manner, Lima Bean shall retain the unfettered discretion to designate appropriate persons to execute and perform any or all of Lima Bean's responsibilities in terms of this Agreement based on its human resource capacity from time to time, the nature of the work to be performed and the degree of skill and experience required and the Client acknowledges and agrees that the actual number of hours of service to be performed by Lima Bean in terms of the Maintenance Services and in respect of any monthly retainer amount agreed to may vary or be reduced from the anticipated or budgeted number of hours where Lima Bean reasonably appoints senior personnel to execute and perform its responsibilities in any particular month.
- 4.5 If the Client fails to pay any invoice in accordance with clause 4.2, Lima Bean shall be entitled to suspend the Services or any component thereof until payment arrangements have been made to the satisfaction of Lima Bean and to charge interest on any sums outstanding from the invoice date until the date of payment at the rate of 2% (two percent) per annum above the Prime Rate, such interest to accrue on a daily basis and to be compounded monthly in arrears.
- 4.5.1 Any work, functionality or features of the Software remain the property of Lima Bean until full payment has been made by the Client.
- 4.5.2 Lima Bean reserves the right to roll back, remove, re-purpose or re-sell any Software features commissioned by the Client that have not been paid for in full and where payment is in arrears by more than 60 (sixty) days.
- 4.6 Non-delivery or non-performance by any third party other than Lima Bean shall not give the Client any right to delay, withhold or set off any payment to Lima Bean.
- 4.7 In the event that the Client wishes to cancel the Development Services at any stage, the Client shall be required to deliver a written notice of cancellation to Lima Bean, on receipt of which the Cancellation Fees shall immediately become due and payable.
- 4.8 Lima Bean shall be entitled to regard this Agreement as having been repudiated by the Client in the event that:-
- 4.8.1 payment of any portion of the Fees and Charges is not received by Lima Bean on the due date for same; or
- 4.8.2 the Client fails to pay any other sum due to Lima Bean under this Agreement or any other agreement; or
- 4.8.3 the Client, being a juristic or corporate legal entity, takes steps to deregister itself or is deregistered or a resolution is passed for its winding-up; or
- 4.8.4 the Client, being a natural person, takes steps to surrender his or her estate or his or her estate is sequestrated, whether provisionally or finally; or
- 4.8.5 the Client, being a company or close corporation, takes steps to place itself, or is placed in liquidation, whether voluntarily or compulsory, or under judicial management, in either case whether provisionally or finally; or
- 4.8.6 the Client, being a partnership, takes steps to terminate the partnership; or
- 4.8.7 the Client commits an act of insolvency as defined in the Insolvency Act No. 24 of 1936 as at the date of this Agreement, or, being a corporate body, commits an act which would be such an act of insolvency if committed by a natural person; or
- 4.8.8 the Client compromises or attempts to compromise generally with any of its creditors; or
- 4.8.9 the Client is unable to pay its debts (within the meaning of section 8 of the Insolvency Act or, if a company, within the meaning of section 345 of the Companies Act No. 61 of 1973 or, if a close corporation, within the meaning of section 69 of the Close Corporations Act No. 69 of 1984); or
- 4.8.10 the Client fails to satisfy a judgement against it within ten (10) days after it becomes aware of the judgement, except that if the Client provides evidence on an ongoing basis to the reasonable satisfaction of Lima Bean that steps have been initiated within ten (10) days to appeal, review or rescind the judgement and to procure suspension of execution and that such steps are being expeditiously pursued, then the period of ten (10) days shall run from the date the judgement becomes final or the attempt to procure suspension of execution fails; or
- 4.8.11 the Client commits a breach of any the terms of this Agreement and fails to remedy the breach to Lima Bean's satisfaction within seven (7) days of receipt of a written notice from Lima Bean to do so.
- 4.9 For the purposes of this Agreement, time of payment shall be of the essence.

## 5. THE CLIENT'S OBLIGATIONS

- 5.1 The Client undertakes to secure all necessary permissions, licences or consents where necessary for the inclusion of any material, data and information provided by the Client or its agents or representatives to Lima Bean pursuant hereto, to enable Lima Bean to incorporate such material, data and information into the Software.
- 5.2 The Client undertakes that it will provide or procure the provision of the information, data and material required for the purposes hereof by Lima Bean in whatever formats and within the time scales agreed by the parties and set out in the Specification or Proposal.
- 5.3 The Client undertakes to keep secure from third parties any passwords issued to the Client by Lima Bean.
- 5.4 The Client undertakes to virus-check all data and files supplied or delivered by the Client or its agents or representatives to Lima Bean pursuant to this Agreement and shall ensure that

all such data and files are free from any viruses or other harmful, malicious or destructive properties.

- 5.5 In the event that the Client wishes to enter into a maintenance agreement with a third party after development of the Software, the Client undertakes to enter into appropriate licences with the owners of any Third Party Copyright as notified by Lima Bean and to pay all costs associated therewith.
- 5.6 The Client undertakes that during Acceptance Testing of the Software it will conduct all such tests as are necessary to satisfy itself that the Software conforms to the Specification.
- 5.7 The Client agrees to permit Lima Bean to include an acknowledgement, whether in the form of a word or logo or other graphic on the Software, and if a Website, a hypertext link to another Website of Lima Bean's nomination on the front page of the Website, such acknowledgement to be in keeping with the design and layout of the Website. The Client agrees not to remove such link and acknowledgement without the prior written agreement of Lima Bean.

## 6. RELATIONSHIP MANAGERS

- 6.1 As soon as is reasonably possible after commencement of this Agreement, the parties undertake to designate and provide a relationship manager for the duration of the Agreement, who will be the authorised representative of that party for all purposes of this Agreement. The parties may appoint different relationship managers in their discretion from time to time.
- 6.2 Lima Bean will establish and endeavour to maintain a schedule of the work to be done in terms of this Agreement and on request of the Client will provide the Client with regular progress reports in respect of the Services.
- 6.3 The relationship managers shall-
- 6.3.1 oversee the implementation of this Agreement; and
- 6.3.2 meet as required to discuss delivery of the Services and progress against the Specification.
- 6.4 In addition to the foregoing, the relationship managers shall-
- 6.4.1 consider and make recommendations to each of Lima Bean and the Client regarding all matters relating to this Agreement with the objective of maintaining good relations between the parties; and
- 6.4.2 consider and make recommendations to each of Lima Bean and the Client regarding the Services from time to time, in an attempt to resolve any issues that may arise.

## 7. TESTING AND ACCEPTANCE OF THE SOFTWARE

- 7.1 Once Lima Bean determines that the development of the Software has been completed, Lima Bean will notify the Client in writing and provide the Client with an opportunity to test the Software in a operating environment that reasonably replicates the intended installation environment recorded in the Specification or that is reasonably determined by Lima Bean to be appropriate for testing purposes.
- 7.2 The Client shall carry out and complete Acceptance Testing following the receipt of a notification in terms of paragraph

7.1 (or a notification in terms of paragraph 7.4 as the case may be) and, within 10 working days of receipt of any such notification, shall advise Lima Bean of the results of Acceptance Testing in writing.

- 7.3 For the purpose of Acceptance Testing, all errors observed shall be categorised as follows –
- 7.3.1 Category 1: an operational problem which severely affects the operational integrity of the Software or renders it completely inaccessible to users of the Internet;
- 7.3.2 Category 2: an operational problem which renders the Software materially inconsistent with the Specification and renders it partially inaccessible to users of the Internet;
- 7.3.3 Category 3: any other problem with the operation, format or appearance of the Software that constitutes a deviation from the Specification but which does not affect the operational integrity or accessibility of the Software; and
- 7.3.4 Category 4: any other observation which does not constitute a deviation from the Specification and is not trivial in nature.
- 7.4 Once all category 1 and 2 errors reported during the 10 (ten) day period referred to in paragraph 7.2 have been rectified by Lima Bean or, in the case of a category 3 error, once a reasonable work-around has been made available to the Client (whose acceptance thereof shall not be unreasonably refused); Lima Bean shall notify the Client that it may re-test the Software and the provisions of paragraphs 7.1, 7.2 and 7.3 of this Agreement shall apply in respect of such re-testing save that the period referred to in paragraph 7.2 shall be reduced to 5 working days in respect of any such further testing.
- 7.5 The Software will have passed Acceptance Testing where no verifiable category 1, 2 or 3 errors are reported by the Client during the period provided for testing (or re-testing as the case may be) in terms of paragraph 7.2
- 7.6 For the avoidance of doubt it is recorded that all category 4 errors and any errors reported to Lima Bean outside the period allotted for the completion of Acceptance Testing in terms of paragraph 7.2, or any extension thereof granted by Lima Bean in writing, shall be dealt with and addressed at the discretion of Lima Bean and on such terms and conditions as Lima Bean may determine including the invoicing for any further work, time or materials according to the Lima Bean Rates or as part of the Maintenance Services where applicable.
- 7.7 Unless otherwise agreed in writing by the parties, after acceptance of the Software and payment of all sums due by the Client, Lima Bean agrees to assign in writing the copyright in the Software to the Client with the exclusion of any Retained Copyright or Third Party Copyright incorporated into the Software.

## 8. CHANGE CONTROL

- 8.1 If at any time during the course of this Agreement, the Client wishes to modify the Services or the Specification in any respect, the Client shall supply to Lima Bean full details of the requested modifications.

- 8.2 Any request made in terms of paragraph 8.1 shall be dealt with and addressed at the discretion of Lima Bean and on such terms and conditions as Lima Bean may determine appropriate and Lima Bean may at its option quote the Client a fixed price for any requested modifications or estimate the costs on a time and materials basis in accordance with Lima Bean Rates, however nothing in this Agreement shall oblige Lima Bean to accept any request for a modifications in or to the Services.
- 8.3 Any modifications or variations agreed to between the parties shall be recorded in writing, including any revision to the Proposal or any terms as to payment.
- 8.4 Any Specification Change will be incorporated into this Agreement and the modification covered will, subject to contrary terms in the Specification Change, be effected on the terms and conditions of this Agreement.

## 9. TIME

- 9.1 Whilst any target dates set out in the Specification or elsewhere which relate to the Services are not binding and for guidance purposes only, Lima Bean shall use its reasonable endeavours to meet such targets.
- 9.2 Without prejudice to the terms of clause 9.1, if any circumstances, including any failure by the Client to adhere to the terms of this Agreement, lead to any delays, any target dates shall be extended so as to accommodate fully the effects of such delay.
- 9.3 To the extent that any delay is directly or indirectly caused by any act or omission of the Client, Lima Bean shall be entitled to charge the Client for the effects of such delay on a time and materials basis at Lima Bean Rates.

## 10. INTELLECTUAL PROPERTY RIGHTS AND INDEMNITIES

- 10.1 Without prejudice to any Intellectual Property Rights owned by the Client prior to this Agreement, and subject to clause 7.7, the Client agrees to waive and acknowledges that it obtains no ownership rights or claims to any Intellectual Property Rights whatsoever by virtue of this Agreement including, without limitation, in the whole or part of the Specification.
- 10.2 The Client shall immediately bring to the attention of Lima Bean any infringement or suspected infringement by any third party of any of Lima Bean's Intellectual Property Rights or Third Party Copyright of which it is or becomes aware and shall at the request and expense of Lima Bean take such action or assist Lima Bean in taking such action as Lima Bean may deem appropriate to protect the Intellectual Property Rights.
- 10.3 The Client agrees to indemnify Lima Bean against all damages, liabilities, costs and expenses which Lima Bean may incur or sustain including the costs of defending any suit arising from the use of any material or data provided by or on behalf of the Client in the Software, or any act or omission by the Client, its employees or agents on the attorney and own client scale.
- 10.4 The Client hereby grants, licences and consents to Lima Bean without charge to use its Intellectual Property Rights to the extent necessary for the purpose of this Agreement.

- 10.5 The Client agrees to indemnify Lima Bean in respect of any failure on the Client's part to comply with the terms of this Agreement, or to abide by the terms of licenses granted in respect of Third Party Copyright.

## 11. LIMITATION OF LIABILITY

- 11.1 It is the Client's exclusive responsibility to ensure that the parameters of the Software are fully detailed in the Specification and that any particular requirements are comprehensively recorded therein. The consequences of any failure so to do, financial or otherwise, will be for the sole account of the Client who shall be bound to accept Lima Bean's reasonable interpretation and understanding of the Specification based on its understanding of the Client's requirements and its professional expertise.
- 11.2 Under no circumstances shall Lima Bean be liable for any direct, indirect, incidental or consequential damages (including but not limited to loss of profits, business, revenue, data or goodwill) howsoever arising, suffered by the Client or third party and arising in any way in connection with this Agreement or the Services contemplated herein or for any liability of the Client to any third party including, but not limited to, any circumstances or consequences arising by virtue of Lima Bean exercising any of its rights in accordance with the provisions of paragraph 4.5 hereof.
- 11.3 No liability whatsoever shall be accepted by Lima Bean for any use of the Website by the Client or any third party.
- 11.4 Lima Bean shall have no responsibility whatsoever for the consequences of the Client's failure to comply with any of the provisions of this Agreement.
- 11.5 Lima Bean is not liable for any viruses uploaded to the Software by third parties or the Client's employees or agents.
- 11.6 The Client alone is responsible for virus-checking any programs, macros, data files or other material accessed through the Internet or received by it from Lima Bean.
- 11.7 Lima Bean is not liable for any failure in respect of its obligations hereunder which result directly or indirectly from failure or interruption in software or services provided by third parties.
- 11.8 Notwithstanding the provisions of clause 11.1, Lima Bean's maximum aggregate liability to the Client under or in connection with this Agreement in respect of any direct loss, no matter how many claims are made, whatever the basis of such claims, and whether such claims arise in contract or in delict, shall not exceed a sum equal to the amount of the Fees and Charges which the Client has paid at the time such claim arises.
- 11.9 The Client agrees that it is in a better position than Lima Bean to foresee and estimate any loss it may suffer in connection with this Agreement and that the Fees and Charges have been set after taking full account of the limitations and exclusions in this clause 11.

## 12. WARRANTIES

- 12.1 Lima Bean warrants that the Services will be rendered in a professional and workmanlike manner and, for 30 (thirty) days after the Software has passed Acceptance Testing, Lima Bean

warrants that the Software will perform in all material respects in accordance with the Specification. If the Software is modified at any time and in any way by any person (including the Client) other than Lima Bean, this warranty will immediately lapse and be of no force and effect.

- 12.2 Lima Bean makes no warranty that operation of the Software will be uninterrupted or error-free, nor that the Software will be compatible with any particular browser, operating system or other software nor any hardware or middleware other than as specifically stipulated in the Specification.
- 12.3 No warranty, condition, undertaking, term, or otherwise is given or to be implied as to the suitability of the Software for any particular purpose or for use under any specific conditions, other than the purpose it was developed for, notwithstanding that such purpose or conditions may be known to Lima Bean and all such warranties, conditions, undertakings and terms are hereby nullified and excluded.
- 12.4 The Client hereby warrants that it has not been induced to enter into this Agreement by any prior representations, whether oral or in writing, except as expressly contained in this Agreement and the Client hereby waives any claim for breach of any such representations which are not so expressly mentioned.

### 13. CONFIDENTIALITY

- 13.1 Each party shall ensure that it and its officers and employees treat any Confidential Information supplied or to be supplied to it by the other pursuant to this Agreement as strictly confidential, and will not disclose any Confidential Information or any part thereof to any third party except as may necessarily be disclosed in terms of clauses 13.2.1 to 13.2.3 hereunder.
- 13.2 The obligations contained herein shall survive the expiry or termination of this Agreement and/or any subsequent agreement concluded between the parties for any reason whatsoever except -
- 13.2.1 as may be required pursuant to the lawful requirements of any government, administrative body, authority or department;
- 13.2.2 as may be required to be disclosed to any Court in the event of legal action by or against any party, including for the purpose of asserting or attempting to enforce any rights, or defending any action in connection with this Agreement; or
- 13.2.3 if a party gives its prior written consent to the other to disclose any Confidential Information supplied by it to the other party.

### 14. PERSONNEL

Lima Bean will use its reasonable endeavours to maintain continuity in the staff engaged on the Services and neither party will, without the prior written consent of the other party, during the currency of this Agreement or within 12 months of its completion, solicit, employ or make any offer of employment to any member of the other's employees, its consultants or agents nor cause, assist or facilitate any other person to do any of the foregoing acts on its behalf.

### 15. ASSIGNMENT AND SUB-CONTRACTING

- 15.1 Subject to the provisions of paragraph 7.7 of this Agreement and with the exception of the copyright to be assigned to the Client in terms thereof, the rights and obligations of the Client under this Agreement are personal to the Client and may not be ceded, assigned, transferred, charged, sub-licensed, sub-contracted or otherwise delegated, transferred or disposed of in whole or in part.
- 15.2 Lima Bean reserves the right to sub-contract any of the work required to fulfil the Client's order(s) but shall remain responsible to the Client for fulfilment of all of its obligations in terms hereof.

### 16. DISPUTE RESOLUTION

- 16.1 If the parties are unable to resolve any dispute resulting from this Agreement by means of joint co-operation or discussion between the individuals directly involved with the execution of this Agreement, within 1 (one) week after a dispute arises, or such extended period of time as the Parties may allow in writing, then such dispute shall be submitted to the most senior executives of the Parties who shall endeavour to resolve this dispute within 5 (five) calendar days after it has been referred to them.
- 16.2 Should the dispute not be resolved in the aforesaid manner, then the Parties may institute action in any Court of competent jurisdiction. Nothing in the preceding clause 16.1 shall be construed as prohibiting either party from making application to any Court of competent jurisdiction for urgent injunctive relief.

### 17. FORCE MAJEURE

Neither party shall be liable for any loss suffered by the other, or be deemed to be in default for any delays or failures in performance hereunder resulting from acts or causes beyond its reasonable control, or from any acts of God, acts or regulations of any governmental or supra-national authority, acts of war, terrorism or national emergency, accident, fire, riots, denial of service attacks, strikes, lock-outs, labour troubles, illness, labour or transportation difficulties, inability to obtain export or import licences, failure or fluctuation of electric power, telecommunications or Internet services, air conditioning or humidity control, or failure related to the inability of the Software to process any data data correctly.

### 18. NOTICES AND DOMICILIUM

- 18.1 The Parties choose as their domicilia citandi et executandi their respective addresses set out in the Proposal for all purposes arising out of or in connection with this Agreement at which addresses all processes and notices arising out of or in connection with this Agreement, its breach or termination may validly be served upon or delivered to the Parties.
- 18.2 Any notice given in terms of this Agreement shall be in writing and shall -
- 18.2.1 if delivered by hand be deemed to have been duly received by the addressee on the date of delivery;

18.2.2 if posted by prepaid registered post be deemed to have been received by the addressee on the 8th (eighth) day following the date of such posting; or

18.2.3 if sent by facsimile machine or electronic mail, be deemed, until the contrary is proved by the addressee, to have been received within one (1) hour of transmission where transmitted during the hours of 08h00 – 16h00 of any business day or at noon on the following business day where transmitted outside of such business hours.

18.3 Notwithstanding anything to the contrary contained in this Agreement, a written notice or communication actually received by one of the Parties from another including by way of email or facsimile transmission shall be adequate written notice or communication to such party.

## 19. WHOLE AGREEMENT

This Agreement constitutes the whole agreement between the Parties as to the subject-matter hereof and no agreements, representations or warranties between the Parties other than those set out herein are binding on the Parties.

## 20. VARIATION

No addition to or variation, consensual Registration, cancellation or novation of this Agreement and no waiver of any right arising from this Agreement or its breach or termination shall be of any force or effect unless reduced to writing and signed by both of the Parties or their duly authorised representatives.

## 21. RELAXATION

No latitude, extension of time or other indulgence which may be given or allowed by either party to any other party in respect of the performance of any obligation hereunder or the enforcement of any right arising from this Agreement and no single or partial exercise of any right by any party shall under any circumstances be construed to be an implied consent by such party or operate as a waiver or a novation of, or otherwise affect any of that party's rights in terms of or arising from this Agreement or estop such party from enforcing, at any time and without notice, strict and punctual compliance with each and every provision or term hereof.

## 22. WAIVER

The waiver by either party of a delay, breach or default in any of the provisions of this Agreement, or disagreement by the other party, shall not be construed as a waiver of any succeeding delay, breach, default or provision of this Agreement. No failure of a party to exercise any right to it hereunder, or to insist upon compliance by the other party of any obligation hereunder, or comply with any provision of this Agreement, shall constitute a waiver of the Parties' rights to demand exact compliance with the terms hereof.

## 23. SEVERABILITY

In the event that any of the terms of this Agreement are found to be invalid, unlawful or unenforceable, such terms will be severable from the remaining terms, which will continue to be valid and enforceable.

## 24. WARRANTY OF AUTHORITY

Each representative of the parties concluding the Agreement warrants that s/he has the power, authority and legal right to conclude this Agreement and each Party warrants to the other that the entering into of this Agreement has been duly authorised and creates valid and binding obligations on it in accordance with the terms of this Agreement.