

Terms of Service

1 Introduction

- 1.1 The Client appoints Cantaloupe to render the Services on the basis set out in this Agreement.
- 1.2 Cantaloupe and the Client have reached agreement on the terms and conditions, which will regulate the provision of the Services and wish to reduce the terms of their agreement to writing in the form of this Agreement.

2 Interpreting This Agreement

- 2.1 This Agreement contains a number of words and phrases which have specific meanings and most of which are capitalised. The Glossary, clause 22 below, contains many of these words and phrases (others are set out in this agreement's body and are designated in quotation marks).
- 2.2 Cantaloupe also applies certain rules when interpreting this Agreement as set forth in the Interpretation Guide.

3 Appointment and Duration

- 3.1 The Client hereby appoints Cantaloupe, which appointment Cantaloupe hereby accepts, to render the Services on the terms and conditions as set out in this Framework Agreement.
- 3.2 This Framework Agreement shall commence on the Signature Date and endure until terminated on the basis set out in this Framework Agreement.
- 3.3 Either Party may terminate this Framework Agreement on 3 months' notice by delivering a written Termination Notice to this effect (which is acceptable by way of electronic mail) and only after –
 - 3.3.1 the Services described in each set of Project Documents in effect at the time of such



notice have been fully rendered and the associated fees paid in full; or

- 3.3.2 the remaining Project Documents in effect at the time of such notice have been terminated in accordance with this Framework Agreement's provisions and the Client has paid any fees due to Cantaloupe as at the date of the notice in full.

4 Effect of Termination

- 4.1 In the event that this Agreement is terminated for any reason whatsoever, the following clauses shall survive termination:
- 4.1.1 Clause 7 pertaining to Fees;
 - 4.1.2 Clause 8 pertaining to Confidentiality;
 - 4.1.3 Clause 9 pertaining to the Prohibition on Solicitation or Interference;
 - 4.1.4 Clause 10 pertaining to Liability;
 - 4.1.5 Clause 11 pertaining to Breach;
 - 4.1.6 Clause 12 pertaining to Governing Law and Jurisdiction; and
 - 4.1.7 Clause 16 pertaining to Domicilium and Notices.

5 The Services

5.1 Proposals/Estimates

- 5.1.1 Cantaloupe shall, during the currency of this Agreement, render the Services on the basis set out in the Proposal/Estimates.
- 5.1.2 Proposals may be amended or wholly replaced by the Parties provided that each amended or replacement version of the Proposal shall be effected in writing, which shall be acceptable by way of electronic mail and shall, where possible, be signed by both Parties' representatives. It is noted that signature is not a requirement given that time is often of the essence and therefore communication of acceptance by electronic mail care of the parties representative shall suffice.
- 5.1.3 Proposal amendments or replacements may, at Cantaloupe's discretion, require



consequential changes to Cantaloupe's fees payable and delivery timeframes for the Services described in the amended or replacement Proposal. Cantaloupe shall notify the Client of any such changes in writing and Services based on such amended or replacement Proposal shall commence on acceptance of such changes by the Client.

- 5.1.4 Each version of the Proposals shall, become binding on the Parties upon signature of each version of the Proposals by both Parties and shall be governed by the terms of the main body of this Agreement.
- 5.1.5 Cantaloupe shall not be required to render Services until such time as the relevant Proposal is signed by the Parties. In the event Cantaloupe renders Services not described in a Proposal signed by both Parties, doing so shall not constitute Cantaloupe's waiver of the requirement for a signed Proposal in this clause.
- 5.1.6 The Proposal, as amended and signed by the Parties' representatives from time to time, shall specify the Services to be rendered by Cantaloupe pursuant to this Agreement, as well as any other responsibilities of the Parties.
- 5.1.7 To the extent a conflict or inconsistency arises between the terms of the Proposals, as amended from time to time, and the terms of the main body of this Agreement in respect of the Services' description, the Proposals' terms in respect of the Services' description shall prevail to the extent of the inconsistency.
- 5.1.8 The Services shall, unless specified in the Proposal or otherwise agreed in writing, be rendered during business hours.

5.2 Scope Variation

- 5.2.1 Departures from Proposals will constitute a Scope Variation.
- 5.2.2 Cantaloupe shall not be required to render Services subject to a Scope Variation unless:
 - 5.2.2.1 the Scope Variation is appropriately recorded in an agreed amendment to or replacement of an existing Proposal or, where appropriate, a new Proposal; alternatively
 - 5.2.2.2 an estimate has been provided for the Scope Variation which has been approved and accepted by the Client per electronic email care of the Client's representative
- 5.2.3 To the extent the Client instructs Cantaloupe to render Services not described in an



existing and signed Proposal, such instructions shall signify the Client's agreement with additional Proposals describing the Services to be rendered subject to such instructions as well as Cantaloupe's fees associated with such Services.

5.3 Intellectual Property

- 5.3.1 All Intellectual Property Rights together with all right, title and/or interest therein attaching to –
 - 5.3.1.1 the Proprietary Material shall remain vested in Cantaloupe, and Cantaloupe shall grant the Client an exclusive Content License in respect of the Proprietary Material, until such time as Cantaloupe has been paid, in full, for the Proprietary Material, subject to –
 - 5.3.1.1.1 Cantaloupe receiving payment for the Proprietary Material in full; and
 - 5.3.1.1.2 The Client not materially breaching this Agreement.
 - 5.3.1.2 the Client's Material shall, at all times remain vested in the Client; and
 - 5.3.1.3 Cantaloupe's Material shall, at all times remain vested in Cantaloupe; and
 - 5.3.1.4 Third Party Material shall, at all times remain vested in the applicable third party owner; and nothing elsewhere this agreement shall be deemed to be a transfer of the aforesaid Intellectual Property Rights to either Party.
- 5.3.2 In the event that the Client materially breaches this Agreement, the licence granted to the Client in respect of the Proprietary Material shall automatically terminate should the Client fail to remedy its breach of this Agreement in the time period afforded to the Client in clause 11.1 .
- 5.3.3 The Client grants Cantaloupe a non-exclusive Content License in respect of the Client's Material and Third Party Material that the Client supplies Cantaloupe with pursuant to this Agreement.
- 5.3.4 Cantaloupe grants the Client a non-exclusive Content License in respect of Cantaloupe's Material.
- 5.3.5 Notwithstanding the provisions of clause 5.3.4 above, the Client shall not –
 - 5.3.5.1 save as may be required for the fulfilment of this Agreement, reproduce or modify



Cantaloupe's Material; or

5.3.5.2 cause or allow the discovery by any third party of the source code of any software owned by Cantaloupe; or

5.3.5.3 rent or lease Cantaloupe's Material or its direct derivatives; or

5.3.5.4 distribute Cantaloupe's Material to third parties.

5.3.6 Cantaloupe shall not:

5.3.6.1 remove and/or tamper with the copyright, trademark and other proprietary notices contained on or in the Client's / Third Party Proprietary Material and shall reproduce such notices on all copies of such material;

5.3.6.2 save as provided for herein, reproduce or modify the Client's / Third Party Proprietary Material; or

5.3.6.3 cause or allow the discovery by any third party of the source code of any software owned by the Client's and/or any third party, save for what is readily or easily attainable and not capable of being protected; or

5.3.6.4 rent or lease the Client's / Third Party Proprietary Material or its direct derivatives; or

5.3.6.5 distribute the Client's / Third Party Proprietary Material to third parties.

5.3.6.6 Both Parties warrant that they have sufficient Intellectual Property Rights to make Intellectual Property available to each other as contemplated herein.

5.4 Third party services

5.4.1 The Services may incorporate the use of third party websites and/or services.

5.4.2 The Client acknowledges that Cantaloupe does not render legal services and that the Client shall remain solely responsible for familiarising itself with and complying, as well as ensuring compliance, with the terms and conditions governing the use of those third party websites and/or services.



5.5 Outsourced services

- 5.5.1 As at the commencement of this Agreement, certain of the Services set out in the Proposal and which are to be provided by Cantaloupe to the Client in terms of this Agreement (the “Outsourced Services”) may be outsourced by Cantaloupe to third party service providers (the “Service Provider/s”);
- 5.5.2 Cantaloupe shall be entitled at any time and from time to time to change the identity of any Service Provider and/or to sub-contract any of the Outsourced Services to a new Service Provider and/or to delegate to one or more existing or new Service Provider all or any part of its obligations to provide any particular Service to the Client in terms of this Agreement.
- 5.5.3 The Client acknowledges that the Service Providers’ terms and conditions of service shall govern the provision of the outsourced services as between Cantaloupe and such Service Provider. The Parties further record and agree that Cantaloupe shall, at anytime during the term of this Agreement, be entitled to appoint and/or terminate the services of such Service Providers provided that such appointment and/or termination of Service Providers shall not be materially detrimental to Cantaloupe’s performance of its obligations and/or compromise the service levels agreed to in terms of this Agreement.

5.6 Service Levels

- 5.6.1 Cantaloupe hereby undertakes to ensure that the standard of the Services it shall render to the Client in terms of this Agreement shall be in accordance with the Proposal or, in the absence of the Proposal, in accordance with relevant industry standards.

6 Representatives

- 6.1 Cantaloupe and the Client hereby appoint those persons identified on page 3 of this document as their representatives for purposes of this Agreement. The persons so nominated by Cantaloupe and the Client shall liaise with each other in relation to all matters pertaining to the Parties’ performance in terms of this Agreement.
- 6.2 Any notice or communication, which either Party may provide to the other Party other than by the agency of the respective representatives identified on the third page of this



document, shall be invalid and ineffectual.

7 Fees

- 7.1 The Client shall, as consideration for the Services to be rendered by Cantaloupe in terms of this Agreement, effect payment to Cantaloupe of its fees which are set out in the Cost Estimate.
- 7.2 The Client shall pay the fees, to Cantaloupe, in the amounts and on the terms stated in Cantaloupe's interim and final invoices issued to the Client from time to time. In the event that Cantaloupe's invoices do not state Cantaloupe's payment terms, invoices are payable immediately on the invoice's date.
- 7.3 Unless otherwise agreed in writing, the fees shall escalate at the rate of 10% on 01 March of every year following the commencement date of this Framework Agreement.
- 7.4 Cantaloupe may require deposits, payable in advance, for the Services and such deposits shall be reflected in the Cost Estimate. Cantaloupe shall not be required to render Services subject to deposits until such time as the deposits are paid in full. Due to the nature of the Services, deposits are non-refundable.
- 7.5 In the event Proposals are amended or replaced, the corresponding Cost Estimates shall be amended appropriately.
- 7.6 Where Cantaloupe requires a deposit from the Client, it shall not be required to render the Services until such time as the deposit is received into Cantaloupe's designated bank account.
- 7.7 In the event Cantaloupe renders the Services at the Client's request before such time as the Client signs a Cost Estimate in respect of such Services, the Client agrees that it shall be liable for Cantaloupe's usual fees for similar Services.

7.8 Expenses

- 7.8.1 The Client agrees to pay any expenses Cantaloupe incurs on the terms on which they are invoiced.
- 7.8.2 The Client acknowledges and agrees that certain expenses may be payable in advance due to the nature and purpose of the expenses concerned and, further, that



related Services may be delayed until such time as these expenses are paid in full. The Client shall not hold Cantaloupe liable for any delays in the Services resulting from delayed expense payments by the Client.

7.8.3 Cantaloupe shall take reasonable steps to procure the Client's written approval of any necessary expenses before incurring such expenses however the Client agrees that it shall be liable for reasonable and necessary expenses incurred by Cantaloupe should it receive a written request for approval and fail to respond to the written request within 2 days or such time period as may be reasonable in the circumstances.

7.8.4 The reasonableness and necessity of expenses shall be determined in Cantaloupe's sole discretion and communicated to the Client as soon as is reasonably possible after Cantaloupe makes such a determination.

7.9 Payments

7.9.1 The Client shall pay the fees and expenses due, to Cantaloupe, in the amounts and on the terms stated in Cantaloupe's interim and final invoices issued to the Client from time to time. In the event that Cantaloupe's invoices do not state Cantaloupe's payment terms, all fees are payable on receipt of invoice.

7.9.2 The Client agrees that it shall be liable for Cantaloupe's fees and/or expenses reasonably incurred from time to time and, in will be liable for fees and expenses associated with partially rendered Services where the Client is responsible for interruptions to the Services or otherwise delays their completion.

7.9.3 Unless otherwise agreed in writing and where appropriate, fees shall escalate at the rate of 10% per annum on the anniversary of the commencement date of this Agreement.

7.9.4 In the event of the Client failing to timeously effect payment of any amount due to Cantaloupe in terms of this Agreement, Cantaloupe shall, furthermore, be entitled to

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7.9.4.1 suspend the provision of the Services in terms of this Agreement for any period in which any payment remains outstanding; and/or

7.9.4.2 retain any or all relevant Services deliverables and/or materials under Cantaloupe's effective control until such time as the outstanding amounts are paid in full.



- 7.9.5 Cantaloupe reserves the right to charge a reasonable cancellation fee, which shall be specified in the Cost Estimate where appropriate, should the Client unilaterally terminate this Agreement in a manner and/or for a reason not expressly provided for in this Agreement.
- 7.9.6 The Client agrees that it shall pay all Cantaloupe's expenses in recovering any amounts the Client owes Cantaloupe, including legal costs on the attorney and client scale, collection charges and tracing fees, and VAT thereon.

8 Confidentiality

- 8.1 The Receiving Party shall not, without the prior written consent of the Disclosing Party (which consent may, for the avoidance of doubt, be withheld in the unfettered discretion of the Disclosing Party) disclose such Confidential Information to any person, and/or make use of such Confidential Information for any purposes other than in connection with the rendering of the Services.
- 8.2 The Receiving Party may disclose Confidential Information to its officers, employees and sub-contractors but only to the extent required for the purposes of the rendering of the Services pursuant to the provisions hereof.
- 8.3 The Receiving Party shall inform any officer, employee or sub-contractor to whom it provides Confidential Information, that such information is confidential and shall instruct them to keep it confidential and not to disclose it to any third party (other than those persons to whom it has already been disclosed in accordance with the terms of this Agreement), on the basis that the Disclosing Party is responsible for any disclosure, in breach of this clause 7, by the person to whom it is disclosed.
- 8.4 Notwithstanding the provisions of this clause 8, either Party shall be entitled in its discretion from time to time to publish and/or to make known to members of the public, including (without limitation) its shareholding, the details of its financial performance, its financial performance forecast and the Party's strategic planning.

9 Prohibition on Interference and Solicitation

- 9.1 Neither Party shall knowingly, for the duration of this Agreement and for a period of 1



year after this Agreement terminates for any reason, furnish any information or advice to anyone else which results in any staff member or any representative and/or agent of the other Party who was involved in the implementation or execution of this Agreement to terminate his employment with that Party and/or any other contractual relationship and/or becoming employed by, or directly or indirectly interested in any manner in, any concern which carries on business, directly or indirectly, in competition with any part, aspect or facet of the business conducted by the other Party.

- 9.2 Should any provisions of this clause or part thereof be found by any competent court to be defective or unenforceable for any reason whatever, the remaining provisions of this clause shall continue to be of full force and effect.

10 Liability

10.1 Disclaimers and limitation of liability

- 10.1.1 To the fullest extent permissible by law, Cantaloupe disclaims all warranties of any kind, whether express or implied in respect of the Services and the Client utilises the Services at its own risk.
- 10.1.2 The Client agrees that Cantaloupe is unable to, and is not required to, guarantee a particular result or set of results.
- 10.1.3 The Client agrees that neither Cantaloupe nor Cantaloupe's Associates shall be liable for any Losses however arising and whatever the cause, in particular pursuant to and in furtherance of this Agreement.
- 10.1.4 The Client irrevocably waives any claims it may have against Cantaloupe arising out of, or related to (and agrees not to institute any proceedings in respect of), the Services or this Agreement more than 1 year after the cause of action relating to such claim or legal action arose.
- 10.1.5 Cantaloupe's liability to the Client pursuant to the provisions of 10.1.2 shall furthermore be limited to the total amount of the fees charged and paid by the Client in the year in which the liability arose.



10.2 Indemnity

- 10.2.1 The Client hereby indemnifies Cantaloupe and Cantaloupe's Associates from any Losses, which may arise as a result of the Client's unlawful conduct, wilful misconduct, negligence and/or gross negligence.

11 Breach

- 11.1 Subject to any other provision of this Agreement providing for the remedy of any breach of any provision hereof, should either Party ("the Offending Party") commit a breach of any provision of this Agreement and fail to remedy such breach within 10 days of receiving written notice from the other Party ("the Aggrieved Party") requiring the Offending Party to do so, then the Aggrieved Party shall be entitled, without prejudice to its other rights in law to -
- 11.1.1 cancel this Agreement, provided the breach in question is a breach going to the root of this Agreement; or
- 11.1.2 claim specific performance of all of the Offending Party's obligations whether or not due for performance,
- 11.1.3 in either event without prejudice to the Aggrieved Party's right to claim damages.
- 11.2 Either Party shall be entitled to summarily terminate this Agreement in the event of the other Party being placed in liquidation or under judicial management, whether provisionally or finally, or in the event of the other Party entering into a compromise with its creditors generally. All amounts due by the other Party in terms of this Agreement shall, in the circumstances contemplated in this clause, immediately become due and payable to the prejudiced Party.

12 Governing Law and Jurisdiction

- 12.1 This Agreement shall be governed in all respects by and shall be interpreted in accordance with the laws of the Republic of South Africa and the Parties hereby consent and submit to the jurisdiction of the Gauteng Local Division, Johannesburg.
- 12.2 The Client consents to the jurisdiction of the Magistrates Court in respect of any claim



arising out of or pertaining to this Agreement or the Services even though any claim Cantaloupe may have against the Client exceeds the monetary jurisdiction of the Magistrates Court.

13 Interruption Event

- 13.1 An Interrupted Party shall be relieved of its obligations in terms of this Agreement during the period that the Interruption Event and its consequences continue, only to the extent so prevented, and shall not be liable for any Losses which the other Party may suffer as a result.
- 13.2 The Interrupted Party shall notify the other Party of an Interruption Event in writing as soon as it becomes reasonably aware of the Interruption Event as such.
- 13.3 In the event that an Interruption Event exceeds –
 - 13.3.1 20 consecutive days and in the event that alternative services and/or facilities cannot be provided by the Interrupted Party or its nominee, the Parties agree to meet and negotiate the suspension, termination or restructuring of this Agreement; or
 - 13.3.2 3 consecutive months and in the event that alternative services and/or facilities cannot be provided by the Interrupted Party or its nominee, either Party may terminate this Agreement and shall only remain liable for performance under this Agreement which fell due immediately prior to the Interruption Event.

14 Assignment

- 14.1 Save as expressly stated to the contrary herein, no Party ("the Ceding Party") shall be entitled to cede, delegate, assign or otherwise transfer all or any of its rights, interests or obligations under and/or in terms of this Agreement except with the prior written consent of the other Parties.
- 14.2 The Parties may not unreasonably withhold the necessary consent as mentioned in clause 14.1 above.



15 Severability

- 15.1 If any clause or term of this Agreement shall have been held by a court of competent jurisdiction to be invalid, unenforceable or illegal, then the remaining terms and provisions of this Agreement shall be deemed to be severable therefrom and shall continue in full force and effect unless such invalidity, unenforceability or illegality goes to the root of this Agreement.

16 Domicilium and Notices

- 16.1 The Parties choose domicilium citandi et executandi ("domicilium") for all purposes arising from or pursuant to this Agreement, their address and contact details set out on the third page of this Agreement.
- 16.2 Any Party hereto shall be entitled to change its domicilium from time to time, provided that any new domicilium selected by it shall be an address other than a box number in the Republic of South Africa, and any such change shall only be effective upon receipt of notice in writing by the other parties of such change.
- 16.3 All notices, demands, communications or payments intended for any Party shall be made or given at such Party's domicilium for the time being.
- 16.4 A notice sent by one Party to another Party shall be deemed to be received:
- 16.4.1 on the same day, if delivered by hand;
 - 16.4.2 on the same day of transmission if sent by email with receipt received confirming completion of transmission;
 - 16.4.3 on the third day after despatch, if sent by prepaid courier.
- 16.5 Notwithstanding anything to the contrary herein contained a written notice or communication actually received by a Party shall be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen domicilium citandi et executandi.



17 Miscellaneous

- 17.1 This document constitutes the sole record of the Agreement between the Parties in regard to the subject matter thereof.
- 17.2 No Party shall be bound by any express or implied term, representation, warranty, promise or the like, not recorded herein.
- 17.3 No addition to, variation or consensual cancellation of this Agreement, or this clause, shall be of any force or effect unless in writing and signed by or on behalf of all the Parties.
- 17.4 No indulgence, which any of the Parties (“the Grantor”) may grant to any other or others of them (“the Grantee(s)”), shall constitute a waiver of any of the rights of the Grantor, who shall not thereby be precluded from exercising any rights against the Grantee(s) which might have arisen in the past or which might arise in the future.
- 17.5 The Parties undertake at all times to do all such things, to perform all such acts and to take all such steps and to procure the doing of all such things, the performance of all such actions and the taking of all such steps as may be open to them and necessary for or incidental to the putting into effect or maintenance of the terms, conditions and import of this Agreement.

18 Interpretation Guide

- 18.1 In this Agreement, headings are for convenience and are not intended to be used to interpret the Agreement.
- 18.2 If the Agreement refers to a party who is liquidated or sequestrated (or has been through a comparable process under a different legal system), then the Agreement will also be applicable to and binding on that party’s liquidator or trustee, as the case may be.
- 18.3 Unless this Agreement indicates to the contrary, any references to any gender includes the other genders, a natural person includes an artificial person and vice versa, the singular includes the plural and vice versa.
- 18.4 The rule of construction that the contract shall be interpreted against the Party



responsible for the drafting or preparation of this Agreement, shall not apply.

- 18.5 Where in this Agreement provision is made for the Parties (or either of them) to agree on or grant approval in respect of any matter, such Agreement or approval shall only be valid and binding on the Parties thereto if reduced to writing and signed by the duly authorised representative of such Parties.
- 18.6 The use of the word "including" followed by a specific example 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.
- 18.7 Where this Agreement specifies any number of days, the number of days excludes the first day and includes the last day unless the last day falls on a Saturday, Sunday or gazetted public holiday in the Republic of South Africa, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or gazetted public holiday in the Republic of South Africa. Generally speaking, references to a "day" are references to typical business days.
- 18.8 Any reference to "business hours" shall be construed as being the hours between 08h30 (eight hours and thirty minutes) and 17h00 (seventeen hours) on any Business Day. Any reference to time shall be based upon South African Standard Time;
- 18.9 All annexures, addenda and amendments to this Agreement form an integral part of this Agreement and, therefore, Cantaloupe's contract with the Client.

19 Promotion of Access to Information Act

- 19.1 Should the Client/Cantaloupe receive a request for disclosure of the whole or any part of the Confidential Information in terms of the provisions of the Promotion of Access to Information Act, No. 2 of 2000, as amended ("the Act") -
- 19.1.1 the Party receiving such request shall notify the other party of that fact in writing;
- 19.1.2 the Party will disclose only that portion of the Confidential Information which it is legally required to disclose;
- 19.1.3 the Party will use its reasonable endeavours to protect the confidentiality of such Confidential Information to the greatest extent possible in the circumstances.



19.2 The Parties acknowledge that the provisions of clause 19.1 shall not be construed in such a manner as to exclude the applicability of any other ground of refusal contained in the Act which may be applicable in the event that the Client/Cantaloupe receives a request for the whole or any part of the Confidential Information in terms of the Act.

20 Data Protection

- 20.1 To the extent that data will be or is processed by the either Party, the Parties warrant that all such data will be acquired and process in compliance and in accordance with by applicable data protection laws, such as but not limited to the Protection of Personal Information Act 4 of 2013, and the EU General Data Protection Regulation 2016/679.
- 20.2 The Client further warrants to Cantaloupe that any data/information which has been transmitted to Cantaloupe will have been acquired lawfully and not in contravention any applicable data protection laws.

21 Termination

- 21.1 Cantaloupe may, without prejudice to its rights in terms of this Agreement or at law and notwithstanding any provisions in this Agreement to the contrary, terminate this Agreement upon 30 days written notice in the event that the Client –
- 21.1.1 effects or attempts to effect a compromise or composition with its creditors;
 - 21.1.2 is provisionally or finally liquidated or is placed under judicial management/business rescue, whether provisionally or finally;
 - 21.1.3 ceases or threatens to cease to carry on its normal line of business in the Republic of South Africa or defaults or threatens to default in the payment of its liabilities generally;
 - 21.1.4 commits an act of insolvency;
 - 21.1.5 disposes of a material portion of its undertaking or assets.



22 Glossary

- 22.1.1 “Agreement” means these terms and conditions as well as any amendments or addenda to these terms and conditions from time to time;
- 22.1.2 “Cantaloupe” means Cantaloupe Web Design and Email Marketing CC, a close corporation duly registered and incorporated in accordance with the laws of the Republic of South Africa and with registration number 2007/175815/23;
- 22.1.3 “Cantaloupe’s Associates” means Cantaloupe’s officers, servants, agents or contractors or other persons in respect of whose actions Cantaloupe may be held to be vicariously liable.
- 22.1.4 “Client” means the Party identified on the third page of this Agreement as the Client;
- 22.1.5 “Confidential Information” means any information or data of any nature, tangible or intangible, oral or in writing and in any format or medium, which by its nature or content is or ought reasonably to be identifiable as confidential and/or proprietary to the Disclosing Party or which is provided or disclosed in confidence, and which the Disclosing Party or any person acting on behalf of the Disclosing Party may disclose or provide to the Receiving Party or which may come to the knowledge of the Receiving Party by whatsoever means. Without limitation, the Confidential Information of the Disclosing Party shall include the following even if it is not marked as being “confidential”, “restricted” or “proprietary” (or any similar designation) –
- 22.1.5.1 information relating to the Disclosing Party’s business activities, business relationships, products, services, processes, data, and Staff, including agreements to which the Disclosing Party is a party;
- 22.1.5.2 the Disclosing Party’s technical, scientific, commercial, financial and market information, methodologies, formulae and trade secrets;
- 22.1.5.3 the Disclosing Party’s architectural information, demonstrations, plans, designs, drawings, processes, process maps, functional and technical requirements and specifications, and the data relating thereto;
- 22.1.5.4 Intellectual Property that is proprietary to the Disclosing Party or that is proprietary to a third party, including but not limited to Third Party Products and data relating to the Clients of the Disclosing Party; and



22.1.5.5 where the Disclosing Party is the Client, demographic and other data relating to any Staff or potential Staff of the Client, which data may be disclosed to the Vendor by the Client in order for the Vendor to perform the Services for the Client in terms of this Agreement.

22.1.5.6 Confidential Information excludes information or data which –

22.1.5.6.1 is lawfully in the public domain at the time of disclosure thereof to the Receiving Party; or

22.1.5.6.2 subsequently becomes lawfully part of the public domain by publication or otherwise; or

22.1.5.6.3 is or becomes available to the Receiving Party from a source other than the Disclosing Party which is lawfully entitled without any restriction on disclosure to disclose such Confidential Information to the Receiving Party; or

22.1.5.6.4 is disclosed pursuant to a requirement or request by operation of law, regulation or court order but then only to the extent so disclosed and then only in the specific instance and under the specific circumstances in which it is obliged to be disclosed;

provided that

22.1.5.6.4.1 the onus shall at all times rest on the Receiving Party to establish that such information falls within such exclusions; and

22.1.5.6.4.2 the information disclosed will not be deemed to be within the foregoing exclusions merely because such information is embraced by more general information in the public domain or in a Party's possession; and

22.1.5.6.4.3 any combination of features will not be deemed to be within the foregoing exclusions merely because individual features are in the public domain or in a Party's possession, but only if the combination itself is in the public domain or in a Party's possession; and

22.1.5.6.5 The determination of whether information is Confidential Information shall not be affected by whether or not such information is subject to, or protected by, common law or statute related to copyright, patent, trademarks or otherwise;

22.1.5.7 "Content License" means a perpetual, worldwide, royalty-free and sub-licensable



license to reproduce, adapt, modify, translate, publish, publicly perform, publicly display and distribute the subject matter of the license;

- 22.1.5.8 “Copyright Act” means the Copyright Act (No. 98 of 1978), as amended from time to time;
- 22.1.5.9 “Cost Estimate” means the document within the Project Documents setting out Cantaloupe’s fees and charges associated with the Services;
- 22.1.6 “Disclosing Party” means the Party disclosing Confidential Information to the Receiving Party;
- 22.1.7 “Intellectual Property” means the expression and/or representation of an intellectual and/or creative process and includes, but not be limited to, any text, images, data, multimedia, ideas, source code, concepts, know-how, data processing techniques, copyrights, trademarks, logos, patents, designs, inventions;
- 22.1.8 “Intellectual Property Rights” shall include rights in Intellectual Property attaching to material –
- 22.1.8.1 Created, invented and/or developed by Cantaloupe at the Client’s specific instance and request of pursuant to a Proposal (“the Proprietary Material”); and
- 22.1.8.2 Developed independently and/or owned by Client (“Client’s Material”); and/or
- 22.1.8.3 Developed independently and/or owned by Cantaloupe (“Cantaloupe’s Material”); and/or
- 22.1.8.4 Developed and owned by any third party (“Third Party Material”);
- 22.1.9 “Interruption Event” means theft, strike, lock-out, fire, explosion, floods, riot, war, accident, act of nature, embargo, legislation, shortage of or a breakdown in transportation facilities, civil commotion, unrest or disturbances, cessation of labour, government interference or control, or any other cause or contingency beyond the control of the Party concerned;
- 22.1.10 “Interrupted Party” means a Party prevented or restricted directly or indirectly from carrying out all or any of its obligations under this Agreement by reason of an Interruption Event;
- 22.1.11 “Losses” means all losses (including, but not limited to those in respect of injury,



damage to physical property or loss of life), liabilities, costs, expenses, fines, penalties, damage, damages and claims, and all related costs and expenses (including legal fees on the scale as between attorney and own client, tracing and collection charges, costs of investigation, interest and penalties);

- 22.1.12 "Parties" means Cantaloupe and the Client ("Party" shall have a corresponding meaning);
- 22.1.13 "Project Documents" comprises the Proposal or Cost Estimate, where applicable =;
- 22.1.14 "Proposal" means descriptions of Cantaloupe's roles and responsibilities as well as Services rendered.
- 22.1.15 "Receiving Party" means the Party directly or indirectly receiving Confidential Information from the Disclosing Party;
- 22.1.16 "Scope Variation" means a material change in the Services' scope described in a Proposal;
- 22.1.17 "Services" means the services to be rendered by Cantaloupe to the Client as described in the Proposal;
- 22.1.18 "Signature Date" means the date this Agreement is signed by the last signing of its signatories;