

ALL TRIFOUR SERVICES AND/OR PRODUCTS ARE SUBJECT TO THESE TERMS AND CONDITIONS
PLEASE READ THESE TERMS AND CONDITIONS CAREFULLY BEFORE ORDERING/ USING ANY OF OUR SERVICE FOR THE FIRST TIME. BY ORDERING ANY OF OUR PRODUCTS OR USING ANY OF OUR SERVICES, YOU AGREE TO BE BOUND BY THESE TERMS AND CONDITIONS. WE RECOMMEND THAT YOU PRINT OR SAVE A COPY OF THESE TERMS AND CONDITIONS FOR FUTURE REFERENCE.

1 HOW THE CONTRACT IS FORMED (ELECTRONICALLY)

- 1.1 **By Clicking on "Register Now" or "Submit" for the first time or "I agree" or reply on proposal/quote email and instruct us to proceed, the user acknowledges that:-**
 - 1.1.1 He/she is authorised to act on behalf of the Customer;
 - 1.1.2 He/she has read these Terms and Conditions;
 - 1.1.3 He/she has read the specific terms and conditions below relating to the specific Services chosen (Software Subscription or Software License);
 - 1.1.4 He/she agrees to these Terms and Conditions, including the terms and conditions in relation to the specific Services chosen, on behalf of the Customer;
 - 1.1.5 The Customer will be bound by these Terms and Conditions when utilising the Services and/or Products made available by the Supplier; and
 - 1.1.6 **If he/she is not authorised to act on behalf of the Customer, that he/she will be personally bound by these Terms and Conditions and that all references to 'Customer' will be amended to the 'user'.**
- 1.2 **Services and/or Products description and/or pricing presented to the Customer (as per the Transaction Document):** is our invitation to the Customer to do business;
- 1.3 **The Offer:** the Customer's order (selection of the particular Service and/or Product as confirmed in a Transaction Document) ("**Order**") and submission of same to the Supplier, constitutes an offer by the Customer to acquire Services and/or Products from the Supplier.
- 1.4 **Acceptance of the Customer Order:** The Supplier's acceptance of the Customer's Order will take place on receipt of the Order and when the Supplier sends the Customer an email (or other similar) confirmation of the Supplier's acceptance or an authorised representative of the Supplier signs the Transaction Document, at which point a contract ("**Contract**") will come into existence between the Customer and The Supplier for the Services and/or Products as per the Order ("**Effective Date**").
- 1.5 **The Customer Order Number:** The Supplier will assign a reference number. Please use the reference number when enquiring on the Order or on acceptance of these Terms and Conditions via the Supplier website.
- 1.6 **Each Order as accepted above, shall be a separate and legally binding contract ("Contract") under which the Customer agrees to purchase and the Supplier agrees to supply certain Services and/or Products on the terms set out in these Terms and Conditions and the Transaction Document.**
- 1.7 Insofar as any term and condition of a proposal or quote conflicts with these Terms and Conditions the latter shall prevail.
- 1.8 Insofar as these Terms and Conditions conflicts with the Services and/or Product specific terms and conditions as per a Transaction Document, the latter will prevail.
- 1.9 The terms of one Contract will only apply to another Contract to the extent specifically and expressly stated therein.

2 ELECTRONIC COMMUNICATIONS & CONTRACT BETWEEN US

- 2.1 Data Message sent from the Supplier to the Customer have been sent from the Supplier's premises.
- 2.2 A data message is deemed to be sent, at the time shown on the message as having been sent, or if not so shown, at the time shown on the sender's information system as having been sent.
- 2.3 A data message is deemed to be received if sent by email, on the earliest of (i) the email being acknowledged by the recipient as received; (ii) receipt by the sender of an automated message indicating successful delivery or the email having been opened; or (iii) the expiry of 48 hours after transmission, provided that the sender has not received notification of unsuccessful transmission.
- 2.4 All information that are incorporated by using hyperlinks and / or other methods of reference form part of these Terms and Conditions;
- 2.5 **ATTRIBUTION OF DATA MESSAGES TO ORIGINATOR: THE CUSTOMER AGREES AND WARRANTS THAT THE DATA MESSAGE SENT, FROM ANY COMPUTER OR DEVICE THAT IS OWNED BY THE CUSTOMER OR PROGRAMMED BY THE CUSTOMER, TO US/SUPPLIER WAS SENT BY THE CUSTOMER.**

3 SOFTWARE LICENSE

The Commercial model for the Software License is selected by the Customer, and will either be a License Purchase Model, or a License Subscription Model based upon the number of concurrent users allowed to access the Software at any given time.

With the License Purchase Model, the Customer purchases a Perpetual Software License which requires the Customer to pay the Capital Purchase amount up front (once-off), an Annual License Fee and a Monthly Support Fee, all of which will be clearly stipulated in the quotation or proposal to the customer,

With the License Subscription Model, the Customer purchases a periodical subscription to the Software License, which lapses when the Subscription is not paid. The subscription period will either be monthly, or quarterly, dependant on Customer preference and includes software access, upgrades, maintenance and support services, whilst the subscription is paid for.

The following Software License Terms and Conditions (in this clause 3) and the General Terms and Conditions (in clauses 4, 5, and 6) shall apply:

3.1 DELIVERY, ACCEPTANCE AND INSTALLATION

- 3.1.1 The Supplier shall at the Location (stated in quotation or proposal) and within the agreed Project Plan, deliver and install on the Designated Equipment one copy of the Software to the Customer.
- 3.1.2 Within agreed Project Plan, the Customer shall supply data (Test Data) to the Supplier suitable to test whether the Software operates in accordance with the Specification (Acceptance Testing) together with the results (Test Results) it reasonably expects to be achieved by processing the Test Data using the Software. As per the Project Plan and on receipt of suitable Test Data and Test Results, the Supplier shall carry out Acceptance Testing in the presence of the Customer or its nominee or where Customer is not available as per the Project Plan in the Customer's absence.
- 3.1.3 If the initial Acceptance Testing fails, the Supplier shall, within a reasonable period and at its cost, correct the errors so disclosed and repeat the Acceptance Testing in the presence of the Customer or its Authorised Agent unless such failure is the direct result of the incorrect information as provided by the Customer which may result in possible costs to the Customer for any such corrections.
- 3.1.4 The Customer shall be deemed to have accepted the Software if:
 - 3.1.4.1 the Acceptance Testing is certified by the Supplier to be successful;
 - 3.1.4.2 the Customer fails to provide the Test Data and Test Results within the time limits as per the project Plan or such reasonable time limits as the Supplier may determine; or
 - 3.1.4.3 the Customer commences operational use of the Software.

3.2 GRANT OF LICENSE

- 3.2.1 In consideration of payment of the fees as set out in the quotation or proposal or order as presented to the Customer, the Supplier grants the Customer the Licensed Rights to the Software, subject to the conditions under these Terms and Conditions and including the specific Services and/or Product terms and conditions as agreed to between the parties and as set out herein (in clause 3).
- 3.2.2 The License Rights are **not** transferable without the prior written consent of Supplier.
- 3.2.3 Third-party Software is licensed to Customer under the terms of the license accompanying the Third-party Software. If no license agreement accompanies the Third-party Software, then this license will apply (Software provided under any open-source licensing model is governed solely by such open-source licensing).
- 3.2.4 Third Party software supplied by the Supplier will be subject to the Third party Software owner's licensing terms and conditions which in the event of conflict shall prevail over the provisions of these Terms and Conditions. The Supplier gives no warranty with regard to Third party Software. For the avoidance of doubt, where Third party Software is supplied by the Supplier to the Customer, Supplier's sole liability to the Customer in respect of such Third party Software shall be to use all reasonable endeavours to enforce, at the Customer's expense, the Supplier's rights (if any) against the relevant third party as the Customer may reasonably require.

3.3 SCOPE OF USE AND RESTRICTIONS

- 3.3.1 The Software may only be installed and used at the Location and on the Designated Equipment. The Customer shall maintain an accurate record of the number of copies and the location thereof of the Software under the Customer's control.
- 3.3.2 In relation to the Licensed Rights (clause 3.2.1 above), use of the Software shall be restricted to use of the Software in object code form for the purpose of processing the Customer's data for the normal business purposes of the Customer as per the configuration directed and/or approved by the Supplier from time to time.
- 3.3.3 Unless specifically agreed to in writing between the Supplier and the Customer, the Customer shall not, nor allow any third party to: (i) decompile, disassemble, reverse engineer, or otherwise attempt to reconstruct or discover any source code or underlying ideas or algorithms of the Software or any part thereof by any means whatsoever; (ii) remove any product identification, trademarks, copyright, or other notices; (iii) provide, sublicense, lease, lend, use for timesharing or service bureau purposes or facility management or outsourcing services, or otherwise use or allow others to use the Software for the benefit of third parties, including but not limited to data processing services to third parties; (iv) except as specified in the Documentation, modify, incorporate into or with other software or create a derivative work of any part of the Software; or (v) except with The Supplier's permission, disseminate performance or benchmark tests or analysis relating to the Software;
- 3.3.4 The Customer shall limit the use and disclosure of the Software to its employees and to its consultants who agree to be bound to the terms and conditions of this Service Schedule;
- 3.3.5 The Customer shall not make the Software and/or Products available to any third party in any form whatsoever, other than as is expressly allowed or unless prior written permission has been obtained from the Supplier in writing to do so.
- 3.3.6 If the Customer uses software in conjunction with the APIs, the Customer must ensure that the use of such open source software does not: (i) create, or purport to create, obligations on the Supplier with respect to the Software; or (ii) grant, or purport to grant, to any third party any rights to or immunities under the Supplier's intellectual property or proprietary rights in the APIs.
- 3.3.7 Customer may copy the Software in machine readable object code as necessary only for reasonable backup or disaster recovery purposes, provided that the copy is kept in a secure location and contains the copyright and other proprietary notices contained in the original. The Documentation accompanying the Software may not be copied for any reason whatsoever.
- 3.3.8 Supplier will not be responsible to Customer for loss of use of the Software or data or for any other liabilities arising from alterations, additions, adjustments or repairs which are made to the Software by other than authorised representatives of Supplier.
- 3.3.9 **Change to the Location of the Designated Equipment:** Should the Customer wish to change the Location of the Designated Equipment then the Customer should promptly (at least 30 (thirty) days prior to any move) notify The Supplier in writing of the proposed new location. Changes of Location may be subject to payment of additional fees. The new location will become the Location under this Service Schedule once confirmed in writing by The Supplier. Reinstallation should occur within thirty (30) days of de-installation. A post-move inspection may be required by Supplier and billed at Supplier time and material rates.
- 3.3.10 **Unauthorised Use:**
- 3.3.10.1 If any unauthorised modification is made either to the Software or the Designated Equipment on which it is used then the Customer shall be deemed to be in breach of contract and the Supplier shall be entitled to terminate the licence granted forthwith, and in the meantime the Customer's continued use of the Software shall be regarded as unauthorised.
- 3.3.10.2 If any unauthorised use is made of the Software and such is attributable to any act or default of the Customer, then without prejudice to the Supplier's other remedies, the Customer will immediately be liable to pay the Supplier an amount equal to the fees which would have been payable had the Supplier granted a licence to the unauthorised user at the beginning of the period of unauthorised use.

3.4 PROJECT PLAN

- 3.4.1 The Supplier and Customer shall use their best endeavours and act in good faith to achieve completion of the Project as per the Project Plan;
- 3.4.2 The Supplier and the Customer agree that the Project Plan may be varied by mutual agreement on condition that the agreement is confirmed in writing; and
- 3.4.3 No service levels shall apply during the implementation and testing of the Software.

3.5 RISK

- 3.5.1 Following delivery, the Customer shall bear the entire risk of loss or destruction of or damage to the Software from any cause whatsoever save where the loss, destruction or damage is caused by the act or omission of Supplier, its employees, its agents or subcontractors.
- 3.5.2 Where the Customer bears the entire risk as aforesaid, the Supplier shall, where possible, supply replacement Software at the Customer's expense.

3.6 RIGHT TO AUDIT

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

4 SOFTWARE SUPPORT AND MAINTENANCE

The Supplier agrees to provide Service as per its [Support Services Policy](#). (6.18.41)

5 TERMS APPLICABLE TO ALL SERVICES AND/OR PRODUCTS REGARDLESS OF THE SOFTWARE MODEL CHOSEN BY CUSTOMER

5.1 IMPLEMENTATION AND ENABLING SERVICES

5.1.1 Where an Implementation Planning Study (IPS) is required:

- 5.1.1.1 The Supplier will execute an IPS, subject to the Customer's signing of an IPS Agreement, and undertake a full User Requirements Analysis (URA) with various members of the Customer's professional team to determine the Customer's system requirements, configuration, business rules, processes and notifications, to assess the Customer's business processes and requirements for purposes of utilising the Software or Services.
- 5.1.1.2 An IPS Certificate must be signed by the Customer, subsequent to the IPS, to confirm acceptance of the findings and identification of the Customer's requirements and confirmation that the Supplier may continue with the implementation of the Software or activation of the Services.
- 5.1.1.3 Subsequent to the Signature Date of the IPS Certificate or the Effective Date (whichever occurs first), the Supplier shall within the agreed timetable (as per the Project Plan) implement the Software or configure and activate the Services.
- 5.1.1.4 Where no IPS is required or subsequent to clause 6.1.1.3 above, clauses 6.1.2 to 6.1.5 below shall apply. The Supplier shall upon the successful completion of the IPS sign the IPS Certificate to show that the Supplier may continue to implementation and enabling of the Services.
- 5.1.2 The Supplier shall perform the implementation and enabling services as set out under;
- 5.1.3 Where customisation is required for the migration of data it will be the responsibility of the Customer to ensure that the information to enable the Supplier to customise the Services and the data submitted to the Supplier for purposes of possible data migration are accurate and in a format as prescribed by the Supplier from time to time. The Supplier shall not be responsible whatsoever for the accuracy of the data.
- 5.1.4 It is the responsibility of the Customer to test each component of the Services (including any customisation of Services) extensively prior to the activation of the Services to determine that it appears to be free of any major defects and that it is suitable for use by the Customer.
- 5.1.5 The Customer shall ensure that key personnel (especially the Administrator) are available to attend:
 - 5.1.5.1 To the necessary workshops and be able to make decisions with regard to the Customer's business to ensure a successful implementation; and
 - 5.1.5.2 training where required.
- 5.1.6 The Customer shall ensure that the necessary hardware and software infrastructure at the Customer (as per specifications from the Supplier from time to time) are available before any IPS, setup and training can commence. Any delay in the availability of the required infrastructure will delay the delivery date of the Software solution.
- 5.1.7 It is noted and agreed that the Project Plan and timelines are dependent upon the receipt of the required base information and unit data in the correct digital format as well as timeous Customer feedback.
- 5.1.8 No Service Levels shall apply during the implementation phase.
- 5.1.9 **Acceptance of the Software:**
 - 5.1.9.1 The Software shall be deemed to be accepted on the issuing of the license key and where the Customer uses the whole or any part of the Software in a live environment prior to conclusion of the acceptance test procedure(s).

5.2 TRAINING

- 5.2.1 As part of the implementation services the Supplier will train the Customer Software users as per the Project Plan and the agreed location(s);
- 5.2.2 The costs for this any additional Client staff training as may be identified by the Client from time to time, will be covered by a separate agreement outside of this Agreement;
- 5.2.3 The Customer shall ensure that an appropriate number of suitably skilled people (The Customer's staff) are trained and certified in the effective use and application of the Software and maintain the knowledge. The Customer agrees that non-compliance with this clause will negatively impact the Supplier's ability to support the Software and that this could include extended support times and/or costs and/or additional training for the account of the Customer.
- 5.2.4 Supplier shall train the Customer's System Administrator on all new deployed features added to the Software, free of charge. The System Administrator is required to train the Customer's staff on all new features added to the Software, including retraining Customer staff on any existing features in the Software;
- 5.2.5 Any training that Supplier may need to repeat due to unavailability of Customer staff or non -availability of any supporting infrastructure will be for the cost of the Client; and
- 5.2.6 Training shall take place during Office Hours and performed at a venue to be identified and provided by the Customer with sufficient infrastructure support that should include at least training workstations, networks and servers, white boards and flip charts, desks and chairs, free of interruption and disturbance to any of the trainees.

5.3 SUPPLIER'S OBLIGATIONS

- 5.3.1 The Supplier undertakes that the Services will be performed and Products delivered substantially in accordance with the Documentation and with reasonable skill and care.
- 5.3.2 In addition to the specific responsibilities and obligations of the Supplier set out elsewhere in these Terms and Conditions, the Supplier shall:
 - 5.3.2.1 keep abreast and comply with Applicable Law and shall ensure that it complies fully with Applicable Law that are applicable to the Services and/or Products (including but not limited to changes in the rules of the hospital industry relevant in the Customer's country of operation, which involves a certain group of customers and as agreed between the Supplier and the Customers);
 - 5.3.2.2 maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under these Terms and Conditions; and
 - 5.3.2.3 promptly advise the Customer representative should (i) the Customer fail to provide information that is necessary for the fulfilment of the Services; or (ii) the non-compliance by the Customer with its duties and responsibilities which is likely to result in a situation where the Fees payable by the Customer may need to **be increased**.
- 5.3.3 The undertakings under clauses 6.3.1 and 6.3.2 above will not apply to the extent of any non-conformance which is caused by use of the Services or Products contrary to the Supplier's instructions, or modification or alteration of the Services or Products by any party other than the Supplier or the Supplier's duly authorised contractors or agents. If the Services or Products do not conform with the foregoing undertaking, the Supplier will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in this clause.
- 5.3.4 Notwithstanding the foregoing, the Supplier:
 - 5.3.4.1 does not warrant that the Customer's use of the Services or the use of the Products will be uninterrupted or error-free; or that the Services, Products, Documentation and/or the information obtained by the Customer through the Services will meet the Customer's requirements; and
 - 5.3.4.2 is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services, Products and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 5.3.5 The Supplier warrants that to the best of its knowledge, the Services and/or Products (and all enhanced versions as released by the Supplier, where applicable) are free of all known errors and issues, workmanship and materials.
- 5.3.6 The Contract shall not prevent the Supplier from entering into similar agreements with third parties, or from independently developing, using, selling

or licensing documentation, products and/or services which are similar to those provided under the Contract.

- 5.3.7 The Supplier warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under the Contract and these Terms and Conditions.

5.4 CUSTOMER'S OBLIGATIONS

- 5.4.1 The Customer shall:
- 5.4.1.1 Provide the Supplier with: (i) all necessary co-operation in relation to the Contract and these Terms and Conditions; and (ii) all necessary access to such information as may be required by the Supplier;
in order to provide the Services, including but not limited to Customer Data, security access information and configuration services;
- 5.4.1.2 without affecting its other obligations under these Terms and Conditions and the Contract, comply with all Applicable Laws with respect to its activities under these Terms and Conditions and the Contract;
- 5.4.1.3 carry out all other Customer responsibilities set out in these Terms and Conditions and the Contract in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, the Supplier may adjust any agreed timetable or delivery schedule as reasonably necessary;
- 5.4.1.4 ensure that the Authorised Users (where applicable) use the Services and the Documentation in accordance with these Terms and Conditions and the Contract and shall be responsible for any Authorised User's breach of these Terms and Conditions and the Contract;
- 5.4.1.5 obtain and shall maintain all necessary licences, consents, and permissions necessary for the Supplier, its contractors and agents to perform their obligations under these Terms and Conditions and the Contract, including without limitation the Services;
- 5.4.1.6 ensure that its network and systems comply with the relevant specifications provided by the Supplier from time to time;
- 5.4.1.7 be, to the extent permitted by law and except as otherwise expressly provided in these Terms and Conditions and the Contract, solely responsible for procuring, maintaining and securing its network connections and telecommunications links from its systems to the Supplier's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet; and
- 5.4.1.8 not contact, and shall ensure that the Customer's staff/employees shall not contact, any third party to render such assistance in terms of the Contract, unless the prior consent of the Supplier has been obtained in writing. If services are provided by any third party without consent from the Supplier, The Supplier may terminate the specific Contract with immediate effect without affecting any other rights the Supplier may have in terms of these Terms. Customer shall ensure that an appropriate number of suitably skilled people (The Client's staff) are trained and certified in the effective use and application of TriMed. The Client agrees to continuously monitor and assess its staff's knowledge of TriMed and request training and/or certification of its staff that do not comply. The Client agrees that non-compliance with this clause will negatively impact TriFour's ability to support TriMed and that this could include extended support times and/or costs
- 5.4.1.9 not do anything that may bring the Supplier into disrepute or reflect adversely on the business and integrity the Supplier.
- 5.4.1.10 The Customer shall ensure that an appropriate number of suitably skilled people (The Customer's staff) are trained and certified in the effective use and application of Software and/or Products. The Customer agrees to continuously monitor and assess its staff's knowledge of Software and/or Products and request training and/or certification of its staff that do not comply. The Customer agrees that non-compliance with this clause will negatively impact the Supplier's ability to support the Software and/or Products and that this could include extended support times and/or costs.
- 5.4.2 The Customer shall maintain an accurate record of the number of copies and the location thereof of Software and/or Products under the Customer's control in terms of the Services selected in a Transaction Document and shall allow the Supplier access to such record on request.
- 5.4.3 The Customer shall be responsible for the following:
- 5.4.3.1 Ensuring a stable and system friendly environment;
- 5.4.3.2 Ensuring maintenance of the hardware, network and peripheral devices according to international standards;
- 5.4.3.3 Ensuring the effective execution of system processes and housekeeping procedures according to the Supplier's standards, as described to the systems administrator during training; and
- 5.4.3.4 The Customer will be required to sign a CSR (Client Service Report) for all site visits to indicate the Customer's agreement that planned and agreed work has been executed.

5.5 THIRD PARTY PRODUCT AND SERVICE DEPENDENCIES AND/OR INTERACTIONS

- Where the Supplier is required to engage with third party service providers ("Third Party Service Providers") to enable any of the Services the following terms and conditions will apply:-
- 5.5.1 The Supplier has no legal, contractual and/or other relations with such Third Party Service Provider and will only act on instructions from the Customer;
- 5.5.2 Use of the third party software shall be subject to the third party additional terms and in the sole discretion of the Supplier.
- 5.5.3 Any third party product licenses must be obtained separately by the Customer;
- 5.5.4 The Supplier shall not be liable for any actions and/or omissions of the Third Party Service Provider, even if the Supplier has been notified of same;
- 5.5.5 The Customer shall indemnify and hold the Supplier harmless against any loss or damage which it may suffer or incur as a result of the Customer's breach of any Third-Party Additional Terms howsoever arising;
- 5.5.6 The Supplier will make available the API specifications where there is a requirement for the Customer to interface with the Services via a Third Party Service Provider service and/or software. The API specifications shall be made available to Third Party Service Providers subject to written instructions from the Customer;
- 5.5.7 All API and any enhancements thereto made available by the Supplier to the Customer or its selected Third Party Service Providers are the property of the Supplier and shall only be utilize for purposes of the Services;
- 5.5.8 Each Third Party Service Provider shall be subject to the applicable API license and
- 5.5.9 The Supplier may treat the Customer's breach of any Third-Party Additional Terms as a breach of the Supplier's granted licence.
- 5.5.10 The Customer shall not or allow any third party to, except as may be allowed by any Applicable Law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under these Terms and Conditions:
- 5.5.10.1 attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software or Services and/or Documentation (as applicable) in any form or media or by any means; or
- 5.5.10.2 attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software or Services; or
- 5.5.10.3 access all or any part of the Services and Documentation in order to build a product or service which competes with the Services and/or the Documentation; or
- 5.5.10.4 use the Services and/or Documentation to provide services to third parties; or
- 5.5.10.5 license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Documentation available to any third party except the Authorised Users, or
- 5.5.10.6 attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under this clause 6.

5.6 LIMITED WARRANTY:

THE SERVICE OBLIGATIONS SET FORTH IN THESE GENERAL TERMS AND CONDITIONS ARE IN LIEU OF ALL WARRANTIES, EXPRESS OR IMPLIED. SERVICES PROVIDED UNDER THESE TERMS AND CONDITIONS DO NOT ASSURE THE UNINTERRUPTED OPERATION OF THE SOFTWARE.

5.7 LIMITED WARRANTY AND DISCLAIMER

- 5.7.1 Supplier warrants that it has the right to License the Software;
- 5.7.2 Unless otherwise stated, Third Party Software is provided and utilised with no warranties of any kind, including warranties of design, merchantability, and fitness or a particular purpose, non-infringement, or arising from a course of dealing, usage or trade practice;
- 5.7.3 Subject to the conditions and limitations on liability stated herein and clause 6.7.2 above, Supplier warrants that the Software licensed hereunder will conform to the Documentation for such Software;
- 5.7.4 This warranty will only apply for problems reported in writing to Supplier and will not apply if: i) the Software is not used in accordance with the Documentation; ii) the Software or any part thereof has been altered, modified deleted or addition by Customer or any other 3rd Party without the prior written consent of Supplier; iii) a defect in the Software has been caused by any of Customer's malfunctioning equipment; or iv) any other use within the control of Customer results in the Software becoming inoperative, including but not limited to Customer's use of Software in combination with software or hardware not provided by Supplier or specified as compatible by Supplier.
- 5.7.5 Any liability of Supplier with respect to the Software or the performance thereof under any warranty, negligence, strict liability or other theory will be limited exclusively to, as per Supplier's sole discretion, Software repair or replacement or, if such repair or replacement is inadequate as a remedy or, in Supplier' opinion, impractical, the refund of the License Fee pro-rated over a 3 (three) month period from the Effective date;
- 5.7.6 If the problem is found upon investigation not to be Supplier's responsibility under the provisions of this clause 6.6, Supplier may charge the Customer forthwith for all reasonable costs and expenses incurred by Supplier or its authorized 3rd Party service provider in the course of or in consequence of such investigation;
- 5.7.7 The Customer accepts responsibility for the selection of the Software to achieve its intended results and acknowledges that the Software has not been developed to meet the individual requirements of the Customer. Customisation of the Software (where required by the Customer) does not mean the Software has been developed specifically to meet the individual requirements of the Customer.
- 5.7.8 The Customer acknowledges that any Open-Source Software provided by the Supplier is provided "as is" and expressly subject to the disclaimer in clause 6.7.9.
- 5.7.9 Supplier and its Suppliers disclaims all other warranties, either express or implied, including but not limited to warranties of merchantability or fitness for a particular purpose, performance or the results of the use or those implied by statute, common law, custom, trade usage, course of dealing or otherwise, all of which are hereby excluded to the fullest extent permitted by law. Customer understands that Supplier is not responsible for and will have no liability for hardware, software, or other items or any services provided by any persons other than Supplier.

5.8 DURATION AND TERMINATION

- 5.8.1 Each Contract (see 1 above) shall endure for a period as specified in the Transaction Document or quotation or proposal ("Initial" period or "Initial" Subscription Term), calculated from the **Effective Date (and shall continue for the Implementation Phase, where applicable)** unless terminated in accordance with this clause 6.8, and thereafter shall be renewed automatically for successive periods of 12 (Twelve) months ("Subsequent" period), unless terminated at the end of the initial period or any renewal period by either party giving at least 3 (three) months' written notice ("Termination Notice") to the other party prior to the expiry of the initial period or the expiry of the renewal period, or unless otherwise terminated in accordance with the provisions herein;
- 5.8.2 **Either party may terminate a Contract immediately if:**
- 5.8.2.1 the breaching party fails to cure any material breach of the Contract within 30 (thirty) days of receiving written notice of such breach from the non-breaching party;
- 5.8.2.2 if the other party commits an act of insolvency;
- 5.8.2.3 convenes a meeting of creditors (for arrangements) or passes a resolution for the winding up, or suffers a petition for winding up, or has an administrative receiver or receiver appointed over the whole or part of its assets, or compounds with its creditors; or
- 5.8.2.4 allows any judgment against it to remain unsettled for more than 10 (ten) days without taking immediate steps to have it rescinded and successfully prosecuting the application for rescission to its final end; and
- 5.8.3 Supplier may terminate a Contract if the Customer attempts to assign or transfer a Contract without the prior written consent of Supplier;
- 5.8.4 **The Supplier reserves the right to terminate a Contract immediately upon written notice to Customer if:-**
- 5.8.4.1 any such alteration, addition, adjustment or repair adversely affects Supplier ability to render Services to the Software; or
- 5.8.4.2 the Customer's fails to pay any Fees due and payable subsequent to 7 (seven) days written notice from the Supplier or its nominee.
- 5.8.5 Upon termination of a Contract, for whatsoever reason, all of Customer's or its Subsidiaries or other Group Members' right to use the Software shall immediately cease and/or the Services will immediately be terminated and access to Services restricted and Customer shall (i) immediately purge all copies of the Software from all CPUs and from any storage device on which the Customer has placed or permitted others to place copies of the Software in whole or in part; and (ii) at its own cost, and at the election of Supplier, either return to Supplier, or destroy the Software and User Documentation and shall not remove any extracts, copies or summaries thereof, and (iii) furnish Supplier with a certificate, signed by a duly authorised representative of the Customer, confirming the return or destruction, as the case may be, of the Software and User Documentation. Notwithstanding the above, the immediate cessation, deletion and inspection obligations shall be subject to any agreed exit management period in terms of clause 5.8.9;
- 5.8.6 On receiving the Termination Notice of a Contract both parties shall endeavour to cancel all binding legal commitments which are associated with or related to the Software in any manner whatsoever so that the binding legal commitments shall terminate in conjunction with the termination of this agreement or as soon as possible.
- 5.8.7 Any termination of a Contract (howsoever occasioned) shall not affect any accrued rights or liabilities of either party nor shall it affect the coming into force or the continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination. Upon termination any Fees due under a Contract that are unpaid shall be immediately payable;
- 5.8.8 Termination of any Contract by the Customer prior to delivery shall only be permitted provided that the Customer indemnifies Supplier against all loss (including loss of profit) costs and expenses incurred by Supplier as result of termination.
- 5.8.9 **Exit Management Services**
- 5.8.9.1 Upon termination or expiry of a Contract for any reason, the Supplier shall, at the Customer's written request, provide reasonable exit management assistance for a period not exceeding one (1) month, for the purpose of facilitating an orderly transition of the Services.
- 5.8.9.2 Exit management services may include data extraction, handover support, reasonable cooperation with a replacement service provider, and operational disengagement activities.
- 5.8.9.3 All exit management services shall be subject to the Customer paying the Supplier's then-current fees for such services, and the Supplier shall have no obligation to provide exit management assistance unless and until such fees are paid in full.

5.9 FEES AND PAYMENTS

- 5.9.1 In consideration of the Software and the Services, the Customer shall pay the Fees;
- 5.9.2 **License Fees:** As agreed between the parties under a Transaction Document. In the absence of any agreed payment terms the Customer shall pay all Fees within 30 (thirty) days from the date of invoice.
- 5.9.3 **Maintenance Fees, if applicable:** Maintenance Fees will be invoiced monthly in advance, and any one-time charge will be invoiced as incurred;
- 5.9.4 Customer shall be responsible for any alternative transport and out of town costs, should this be necessary e.g. air travel, accommodation, car hire etc. Supplier will use the most economic rate reasonably available and after approval be billed directly to the account of the Customer;
- 5.9.5 **Discount:** where any discount applies, same shall be agreed to under the Transaction Document in the sole discretion of the Supplier.
- 5.9.6 Customer may not, for any reason whatsoever, defer, adjust, set-off or withhold any payment due to Supplier in terms of or arising out of any Contract;

- 5.9.7 If Customer fails to make any payment or portion of a payment due in terms of a Contract, Supplier may, without prejudice to Supplier's rights in terms of a Contract or at law, to charge interest on any unpaid amount from the date the account became due until the date of payment, at the prevailing prime overdraft rate of ABSA Bank Limited, plus 2% (two per centum);
- 5.9.8 Supplier may, in its sole discretion and notwithstanding any instructions by Customer, appropriate any payment received from or on behalf of Customer, to any indebtedness of Customer to Supplier arising from any cause whatsoever;
- 5.9.9 In the event of non-payment or late payment by the Customer, for any reason whatsoever, Supplier reserves the right, upon giving not less than seven (7) days' written notice to the Customer, to suspend usage of the Software by the Customer. Usage of the Software will only be restored once Supplier, at its sole discretion, is satisfied with the circumstances of any such restoration. All costs and risks associated with service suspension will be borne by the Customer;
- 5.9.10 The Customer shall be responsible for paying all sales, use, excise, value-added, and other tax or governmental charges imposed on the licensing or use of the Software or Documentation as referred to in these Terms and Conditions;
- 5.9.11 All prices and/or costs quoted by Supplier shall be inclusive of all applicable taxes but excluding South African Value Added Tax, which shall be shown clearly and separately to the agreed fees charged in terms of any Contract;
- 5.9.12 Any amount payable by the Customer to Supplier in a currency other than South African Rand shall be paid in South African Rand unless specifically agreed between the Parties. Currency/Index-linked products may have their price adjusted between proposal/quotation date and invoice date.
- 5.9.13 **Invoices.** The Supplier will issue the Customer an invoice in accordance with the requirements under the Value Added Tax Act of 1991 and South African Revenue Services guidelines and all invoices shall be due and payable within 30 (thirty) days from date of invoice;
- 5.9.14 **Lapse of Coverage for Maintenance Service.** In the event that coverage for Maintenance Service lapses as a result of either termination by Customer for any reason or by Supplier for Customer's non-payment, renewal of such service will require payment by Customer of a reinstatement fee to Supplier equal to one hundred percent (100%) of the sum of the fees for any previously unpaid contract period(s) plus full payment for the subsequent annual period against the then current Annual Licence Fee (ALF) and Maintenance Fee/Fee rate.
- 5.9.15 **Escalation.** Fees will escalate annually, on the 1st October each year, by the CPI rate as published by Statistics South Africa + 2% (two percent). No other discretionary, ad hoc or "within reason" fee increases shall apply.
- 5.9.16 **Currency Fluctuations:** Where any Fees are quoted or denominated in a currency other than South African Rand, the exchange rate applicable as at the date of the Transaction Document shall apply. Should the exchange rate fluctuate by more than five percent (5%) to the detriment of the Supplier, the Supplier shall be entitled to adjust the Fees to reflect the revised exchange rate, provided that the Customer is notified in writing and furnished with reasonable supporting calculations.

5.10 LIMITATION OF REMEDIES AND DAMAGES

- 5.10.1 This clause 6.10 sets out the entire financial liability of the Supplier (including liability for acts or omissions of its employees, agents, directors and sub-contractors) to the Customer or its licensors:
- 5.10.1.1 arising under or in connection with these Terms and Conditions;
- 5.10.1.2 in respect of any use made by the Customer of the Services and Documentation or any part of them; and
- 5.10.1.3 in respect of any representation, statement or tortious act or omission (including negligence) arising under or in connection with these Terms and Conditions.
- 5.10.2 Except as expressly and specifically provided in these Terms and Conditions:
- 5.10.2.1 the Customer assumes sole responsibility for results obtained from the use of the Services and the Documentation by the Customer, and for conclusions drawn from such use. The Supplier shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to the Supplier by the Customer in connection with the Services, or any actions taken by the Supplier at the Customer's direction;
- 5.10.2.2 all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from these Terms and Conditions; and
- 5.10.2.3 the Services and the Documentation are provided to the Customer on an "as is" basis.
- 5.10.3 IN NO EVENT WILL THE SUPPLIER OR ITS LICENSORS BE LIABLE TO THE CUSTOMER FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT OR SPECIAL DAMAGES, INCLUDING BUT NOT LIMITED TO ANY LOST PROFITS OR LOST SAVINGS, EVEN IF A LICENSOR'S REPRESENTATIVE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR FOR ANY CLAIM BY ANY THIRD PARTY, SAVE FOR DIRECT DAMAGES AS EXPRESSLY PERMITTED UNDER CLAUSE 5.10.4.
- 5.10.4 Under no circumstances shall the total liability incurred by the Supplier, as a result of any Contract, exceed the sum of the License fee and/or the Maintenance Fee incurred by the Customer during the 6 (six) months preceding the event that may have resulted in the liability.
- 5.10.5 Since the performance of computer systems cannot normally be calculated precisely in advance of actual use information given or statements made by Supplier to the Customer (whether before or after the date of a Contract) as to capacity throughput or performance shall be deemed to be general guidance as to the expectations of Supplier and not statements of fact. Such information given or statements made shall not be incorporated into a Contract and no liability shall attach thereto unless such information was given or such statement made fraudulently.
- 5.10.6 Nothing in these Terms and Conditions excludes liability of either party for:
- 5.10.6.1 death or personal injury caused by the negligence of the Supplier, its officers, employees, contractors or agents;
- 5.10.6.2 fraud or fraudulent misrepresentation;
- 5.10.6.3 willful misconduct;
- 5.10.6.4 any breach by a party of its obligations under these Terms and Conditions in respect of Confidential Information;
- 5.10.6.5 infringement of a third party's intellectual property; or
- 5.10.6.6 any other liability which may not be excluded by law.
- 5.10.7 All dates supplied by the Supplier for the delivery of the Software, or the provision of Services, shall be treated as approximate only. The Supplier shall not in any circumstances be liable for any loss or damage arising from any delay in delivery beyond such approximate dates.

5.11 CONFIDENTIALITY

- 5.11.1 The Parties may not use in any way for its own account or the account of any third party, nor disclose to any third party, any Confidential Information revealed to it by the other Party other than to fulfil its express obligations under these General Terms and Conditions. The Parties will take every reasonable precaution to protect the Confidential Information.
- 5.11.2 The obligation not to disclose confidential information shall not apply where such information is demonstrated by dated written documents -
- 5.11.2.1 to be in the public domain (not as a result of a breach of this clause by a party);
- 5.11.2.2 to have been obtained or acquired in good faith from a third party not under a similar obligation of confidence;
- 5.11.2.3 to have been independently developed by the receiving Party prior to its receipt from the disclosing Party;
- 5.11.2.4 is required to be disclosed under the operation of law; or
- 5.11.2.5 as required in response to a lawful order of a court of competent jurisdiction, provided that the requested Party takes reasonable steps to first give the other Party sufficient prior notice to contest such order;
- 5.11.3 Neither Party shall, during the continuance of any Contract and for a period of twelve (12) months immediately following the date of termination of the last Contract, directly or indirectly solicit or offer employment or any other form of contract for Services to any person that may have been employed during the period under any Contract at the other Party, without such Party's written consent;
- 5.11.4 The Customer agrees not to intervene with- or jeopardize, directly or indirectly, any existing business relationship between Supplier and any of its existing service providers or licensors relevant with regard to the Software, associated services or any part thereof;

- 5.11.5 The Customer agrees that the restraints imposed upon it in terms of this clause 6.11 are reasonable as to subject matter, area and duration and are reasonably necessary in order to preserve and to protect the goodwill of the businesses of Supplier, its suppliers, its Customers, and its other business partners.

5.12 INTELLECTUAL PROPERTY RIGHTS

- 5.12.1 All existing and future Intellectual Property Rights (IPR) in relation to the Software, Documentation, Support and Maintenance and services related thereto, results from the use of the Software, including Pattern Data, related technologies and business methodology are either owned by the Supplier, alternatively by its licensors, who have licensed the use and right to sub-license thereof to the Supplier. The Customer acknowledges that it shall have no claim to the said IPR merely as a result of a Contract or utilise the IPR unless specifically authorised under these General Terms and Conditions ;
- 5.12.2 Certain information and materials supplied by Supplier with the Service such as, but not limited to, logic diagrams and manuals, schematics and drawings, are Supplier' confidential or proprietary trade secrets and Supplier furnishes them solely to assist Customer in the installation, operation and use of the Software. Supplier marks all such confidential and proprietary information and Customer must abide by the terms of those markings, and not reproduce, copy or disclose such information except as is reasonable and necessary to properly use the Software.
- 5.12.3 The Customer and Authorised User (where applicable) are only entitled to the limited use of the IPR granted to them in these Terms and Conditions and subsequent AUTC (where applicable). The Customer will not take any action or jeopardise, limit or interfere with the Supplier's or its licensor's IPR. Any unauthorised use of said IPR is a violation of these Terms and Conditions as well as a violation of intellectual property laws and other common law rights.
- 5.12.4 The Supplier shall have a royalty-free, worldwide, transferable, sublicensable, irrevocable, perpetual, unrestricted license to use and/or incorporate into its products, services and business any suggestions, enhancement requests, recommendations or other feedback provided by the Customer, Authorised User or End Users relating to the operation of the Services, unless agreed to in writing between the parties.
- 5.12.5 Third Party software supplied by Supplier under any Contract is licensed only for use in conjunction with the other Software components and shall not be used for any other purpose or with any other software, collectively referred to as the Software. On termination of the License, the right to use the aforesaid Third Party Software will also automatically and simultaneously terminate, unless the parties agree otherwise in writing;
- 5.12.6 The Customer shall notify Supplier immediately if it becomes aware of any unauthorised use of the whole or any part of the Supplier's IP.
- 5.12.7 The Customer shall not remove or deface any trademark or trade names or copyright notice placed upon the Software or Documentation.
- 5.12.8 The Customer shall at all times ensure that the copyright notice of the copyright holder and which is contained in the original Software is copied onto copies of the Software which the Customer makes in terms of the parties agreement.
- 5.12.9 The Customer hereby grants the Supplier the non-exclusive and revocable right to use the Customer's business mark (logo) on the Supplier's website under the heading "Clients". The Customer is entitled at any time to notify the Supplier in writing to amend, or remove the mark.

5.13 INTELLECTUAL PROPERTY INDEMNITY

- 5.13.1 The Supplier undertakes at its own expense to defend the Customer or, at its option, settle any claim or action brought against the Customer alleging that the possession or use of the Software (or any part thereof) in accordance with the terms of this licence infringes the Republic of South Africa Intellectual Property Rights of a third party (Claim) and shall be responsible for any reasonable losses, damages, costs (including legal fees) and expenses incurred by or awarded against the Customer as a result of or in connection with any such Claim. For the avoidance of doubt, this clause 6.13 shall not apply where the Claim in question is attributable to possession or use of the Software (or any part thereof) by the Customer other than in accordance with the terms of this licence, use of the Software in combination with any hardware or software not supplied or specified by the Supplier if the infringement would have been avoided by the use of the Software not so combined, or use of a non-current release of the Software.
- 5.13.2 If any third party makes a Claim, or notifies an intention to make a Claim against the Customer, the Supplier's obligations under clause 6.13.1 are conditional on the Customer:
- 5.13.2.1 as soon as reasonably practicable, giving written notice of the Claim to the Supplier, specifying the nature of the Claim in reasonable detail;
- 5.13.2.2 not making any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of the Supplier (such consent not to be unreasonably conditioned, withheld or delayed);
- 5.13.2.3 giving the Supplier and its professional advisers access at reasonable times (on reasonable prior notice) to its premises and its officers, directors, employees, agents, representatives or advisers, and to any relevant assets, accounts, documents and records within the power or control of the Customer, so as to enable the Supplier and its professional advisers to examine them and to take copies (at the Supplier's expense) for the purpose of assessing the Claim; and
- 5.13.2.4 subject to the Supplier providing security to the Customer to the Customer's reasonable satisfaction against any claim, liability, costs, expenses, damages or losses which may be incurred, taking such action as the Supplier may reasonably request to avoid, dispute, compromise or defend the Claim.
- 5.13.3 If any Claim is made, or in the Supplier's reasonable opinion is likely to be made, against the Customer, the Supplier may at its sole option and expense:
- 5.13.3.1 procure for the Customer the right to continue to use the Software (or any part thereof) in accordance with the terms of this licence;
- 5.13.3.2 modify the Software so that it ceases to be infringing;
- 5.13.3.3 replace the Software with non-infringing software; or
- 5.13.3.4 terminate this licence immediately by notice in writing to the Customer and refund any of the Fee paid by the Customer as at the date of termination (less a reasonable sum in respect of the Customer's use of the Software to the date of termination) on return of the Software and all copies thereof, provided that if the Supplier modifies or replaces the Software, the modified or replacement Software must comply with the warranties contained in these Terms and Conditions and the Customer shall have the same rights in respect thereof as it would have had under those clauses had the references to the date of this licence been references to the date on which such modification or replacement was made.
- 5.13.4 Notwithstanding any other provision in these Terms and Conditions, clause 6.13.1 shall not apply to the extent that any claim or action referred to in that clause arises directly or indirectly through the possession or use of any Third-Party Software or through the breach of any Third-Party Additional Terms by the Customer.
- 5.13.5 This 6.13 constitutes the Customer's exclusive remedy and the Supplier's only liability in respect of Claims.

5.14 CUSTOMER DATA

- 5.14.1 The Customer owns and retains ownership of all Customer Data and shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Customer Data;
- 5.14.2 In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy shall be for the Supplier to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by the Customer in accordance with the Customer archiving procedures, unless such back-up services form part of the Supplier's Services (as confirmed in a Transaction Document, then by the Supplier in accordance with the Supplier's archiving procedures. The Supplier shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (except those third parties sub-contracted by the Supplier to perform services related to Customer Data maintenance and back-up).
- 5.14.3 The Customer hereby grants the Supplier a worldwide, royalty-free, and non-exclusive license during the term of a Contract to Process Customer Data in order to provide the Software Services, including storing (where required), hosting (where required) and management of such content ("Content License").
- 5.14.4 The Customer understands that the Supplier, in performing the required technical steps to provide the Software Services, may:-

- 5.14.4.1 transmit or distribute Customer Data over various public or private networks and in various media; and
- 5.14.4.2 make such changes to Customer Data as are necessary to conform and adapt that Customer Data to the technical requirements of connecting networks, devices, Services or media.
- 5.14.5 The Customer hereby grants the Supplier a right, during the term of a Contract, to create Pattern Data in order to enhance and improve the Services.
- 5.14.6 If the Supplier processes any **Personal Information** on the Customer's behalf when performing its obligations under a Contract then see clause 7 below.
- 5.15 FORCE MAJEURE**
- 5.15.1 Neither Party ("the Affected Party") shall be liable for any failure or delay in the performance of its obligations under this Agreement (excluding payment obligations) where such failure or delay is caused by events beyond its reasonable control, including but not limited to acts of God, war, strikes or labour disputes, acts of government (including pandemics), fire, flood, legislation, failure of utilities, telecommunications or internet services, unavailability of data centres, cloud or hosting infrastructure, cyber incidents not caused by the Affected Party's negligence, or any other similar cause ("Force Majeure Event").
- 5.15.2 The obligations affected by the Force Majeure Event, and the corresponding counter-obligations of the other Party, shall be suspended for the duration of the Force Majeure Event, and no claim for damages, service credits or other compensation shall arise as a result thereof.
- 5.15.3 The non-affected Party shall not be entitled to terminate this Agreement as a result of a Force Majeure Event unless such event continues for a period of thirty (30) consecutive days or sixty (60) days in aggregate in any twelve (12) month period, in which case either Party may terminate the Agreement on written notice, witho
- 5.16 DISPUTE RESOLUTION**
- Any dispute arising from any Contract shall be subject to the following dispute resolution procedures -
- 5.16.1 **Informal dispute resolution:** Prior to referring any dispute to arbitration, the Parties shall first attempt to resolve their dispute informally by referring a dispute to its senior management. Senior management of both Parties shall discuss the problem and attempt to resolve the dispute, without the necessity of any formal proceeding, within 14 (fourteen) days of the dispute having been referred.
- 5.16.2 **Institution of Formal Proceedings:** Subject to the provisions of clause 6.16.1, the Parties agree that either Party may elect to refer any dispute which may arise to either the High Court of South Africa or to arbitration proceedings as contemplated in clause 6.16.3. Upon election by a Party initiating the relevant dispute proceedings, the other Party will be bound by such election for the purposes of the dispute in question.
- 5.16.3 **Arbitration:** If the Parties are unable to resolve any dispute informally and either Party has elected to commence arbitration proceedings to resolve the dispute, then such dispute shall on written demand by the electing Party be submitted to arbitration at Arbitration Foundation of Southern Africa as per the Expedited Rules and arbitration shall be held in Cape Town.
- 5.16.4 **Status of arbitration ruling:** The decision of the arbitrator shall be binding on the Parties to the arbitration after the expiry of the period of 20 (twenty) days from the date of the arbitrator's ruling if no appeal has been lodged by any Party or upon the issue of determination by the appeal panel, as the case may be. A decision, which becomes final and binding in terms of this clause 6.16.4 may be made an order of court at the instance of any Party to the arbitration. The parties agree to keep the arbitration confidential and not to disclose it to anyone except for purposes of obtaining an order as contemplated herein.
- 5.16.5 **Rapid resolution of disputes:** The Parties shall use commercially reasonable efforts to resolve disputes arising as rapidly as possible.
- 5.16.6 **Confidentiality:** All disputes will be dealt with in confidentiality to protect the reputation of the parties;
- 5.16.7 **Excluded relief:** This clause 6.16 shall not preclude either Party from seeking urgent or interim relief (avoid the expiration of any applicable limitations period) from the High Court of South Africa or any other competent organs of state created for the specific purpose of regulating the business or industry activities in which the Parties are engaged.
- 5.16.8 **Agreed Jurisdiction:** the Parties hereby consent to the jurisdiction of the Western Cape High Court, Cape Town, South Africa, in respect of proceedings referred to in clause 6.16.
- 5.17 GENERAL**
- 5.17.1 **Remedies Cumulative.** The remedies provided in these Terms and Conditions shall be cumulative, and the assertion by any party of any right or remedy shall not preclude the assertion by such party of any other rights or the seeking of any other remedies;
- 5.17.2 **Relationship between parties.** A Contract shall not be construed as creating an employer/employee relationship or an agency, partnership, joint venture or any other form of legal association in any shape or form between the parties nor authorise either of the parties to incur any liability on behalf of the other of them, save to the extent expressly provided for herein.
- 5.17.3 **Notices.** The parties elect their respective addresses as per the Transaction Document as their *domicilium citandi et executandi* for the purpose of serving any notice and for any other purpose arising from a Contract. Either Party shall be entitled from time to time, by written notice to the other, to vary its address to any other address which is not a post office box or poste restante.
- 5.17.3.1 Any notice to either party which is -
- 5.17.3.1.1 sent by prepaid registered post in a correctly addressed envelope to the address specified under the existing domicilium, shall be deemed to have been received, unless the contrary is proved, within 14 (fourteen) days from the date on which it was posted; or
- 5.17.3.1.2 delivered to the party by hand, shall be deemed to have been received on the day of delivery, provided that it has been delivered to a responsible person during ordinary business hours; or
- 5.17.3.1.3 sent by Data messages (as defined in the Electronic Communications and Transactions Act 25 of 2002) -- see clause 2;
- 5.17.3.2 Notwithstanding anything to the contrary contained in this clause, a written notice or other communication actually received by either party and for which written receipt has been obtained, shall be adequate written notice or communication to it notwithstanding that the notice was not sent to or delivered at its chosen address.
- 5.17.4 **Governing Law.** Each Contract shall be deemed to have been made in, and shall be construed pursuant to the laws and jurisdiction of The Republic of South Africa without regard to conflicts of laws provisions thereof.
- 5.17.5 **Assignment.** The Customer shall not be entitled to assign, cede, sub-license, transfer any rights or obligation in terms of any Contract in whole or in part to any other party or person without the prior written consent of the Supplier. The Supplier shall be entitled to assign, cede, sub-license, transfer any of its rights or obligations or any part thereof.
- 5.17.6 **Entire Agreement.** These Terms and Conditions read with the Transaction Document, and such addendums as may be agreed to from time to time between the parties in writing, represents the entire agreement between the parties in terms of the subject matter, and expressly replaces, supersedes and cancels any prior oral or written agreements or communications on the subjects herein. Each party acknowledges that it is not entering into any Contract on the basis of any representations not expressly contained herein or a Transaction Document or addendum thereto. Other than as specified herein, the Supplier reserves the right to amend the General Terms and Conditions and/or Transaction Document, subject to:-
- 5.17.6.1 prior written notification ("**Amendment Notice**") to the Customer of such amendment with clear indication to said amendments/variation;
- 5.17.6.2 the amendment/variation does not adversely affect the rights of the Customer.
- 5.17.6.3 The amendment is as a result of law or court order.
- 5.17.7 The amended Terms and Conditions or Transaction Document shall apply as from receipt of the Customer written acceptance of said amendment/variation or 30 (thirty) days from receipt of the Amendment Notice by the Customer, whichever is the earliest. Where not all of the conditions under clauses 6.17.6.1, 6.17.6.2, 6.17.6.3 above can be adhered to, the Terms and Conditions and/or Transaction Document can only be supplemented or modified by an amendment in a writing executed by duly authorized representatives of the parties and expressly referring to these Terms and Conditions and/or Transaction Document.

- 5.17.8 **Successors and Assigns.** The provisions of a Contract shall be binding upon and inure to the benefit of the parties, their successors and permitted assigns.
- 5.17.9 **Waiver. No indulgence, extension of time, relaxation or latitude** which any party ("the grantor") may show grant or allow to the other ("the grantee") shall constitute a waiver by the grantor of any of the grantor's rights and the grantor shall not thereby be prejudiced or estopped from exercising any of its rights against the grantee which may have arisen in the past or which might arise in the future;
- 5.17.10 **Survival of obligations.** The provisions of this clause, together with any others which by their own nature are continuing, will survive any termination of a Contract;
- 5.17.11 **Severability.** In the event that any provision of these Terms and Conditions is found invalid or unenforceable pursuant to a final judicial decree, order or decision, or the binding order of any other authority of competent jurisdiction, the remainder of these Terms and Conditions will remain valid and enforceable according to its terms and the parties will attempt in good faith to agree upon substitute provision for the invalid or unenforceable provision;
- 5.17.12 **Costs.** Each party shall bear and pay the costs incurred by it in respect of the negotiation, drafting, preparation and execution of any Contract.
- 5.18 **DEFINITIONS**
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- 5.18.1 **"Activation Date"** means the date on which the Customer commences utilisation of the Software in a live environment;
- 5.18.2 **"API"** means application programme interface;
- 5.18.3 **"Authorised Persons/Users"** means the persons or categories of persons that the Customer authorises to submit instructions to the Supplier for the processing of Personal information or who is authorised by the Customer to use the Services and the Documentation;
- 5.18.4 **"Confidential Information"** means all proprietary and confidential information belonging to the parties, including, without limitation, trade secrets, technical information, business information, sales information, product sales plans, sub-license agreements, inventions, developments, discoveries, software, know-how, methods, techniques, formulae, data, processes and other trade secrets and proprietary ideas, whether or not patentable or copyrightable, which may be delivered or communicated by Supplier to the Customer, or visa versa, prior, during and after any Contract and either party being the rightful owner of such confidential information;
- 5.18.5 **"Contract"** see clause 1.4;
- 5.18.6 **"Copyright"** means all rights of copyright whether existing now or in the future in and to the Software including, without limitation, initial drawings, sketches, flow charts and designs and Documentation relating thereto;
- 5.18.7 **"CPI"** means the Consumer Price Index as published from time to time by Statistics South Africa;
- 5.18.8 **"Customer Data"** means the data inputted/uploaded by the Customer, authorised users of the Customer, or the Supplier on the Customer's behalf or received from third parties as instructed by the Customer (i.e. via APIs) for the purpose of using the Software and associated services or facilitating the Customer's use of the Services, including Personal information about the authorised users and the Customer's customers;
- 5.18.9 **"Designated Equipment"** means the Customer's computer and operating system in respect of which the License is granted, as defined and numbered in the proposal, quote, IPS or Project Plan;
- 5.18.10 **"Documentation"** means, collectively, the operation instructions, user manuals and all technical information and materials, in whatever form, provided by Supplier to Customer which describe the use of, or are used in connection with the Software, and which either accompany the Software or are provided to Customer at any time thereafter;
- 5.18.11 **"Effective Date"** means the Signature Date of the IPS Certificate or the date on which the Supplier accepts the Customer's first offer to acquire Supplier Products/Service (see clause 1.4 above) or the date as confirmed in the Transaction Document, which date upon these terms and conditions will commence and take effect;
- 5.18.12 **"AUTC"** means the Authorised User Terms and Conditions as made available to the Authorised User prior to utilisation of the Services;
- 5.18.13 **"Fees"** means License Fees and/or Maintenance Fees and/or any other fees agreed to between the parties in a Transaction Document. Where any charges or fees are incorporated into the Transaction Document by reference (i.e. hyperlink to a specific URL as supplied by the Supplier), said fees and charges will apply where the Customer utilises said Services during the agreed Initial Period and/or Subsequent Period;
- 5.18.14 **"Group Members"** means Customer and its Subsidiaries and Customer Group;
- 5.18.15 **"Group Member"** means the specific entity (being either Customer or its Subsidiary or Customer Group) that Appoints the Provider;
- 5.18.16 **"Holding company"** and **"subsidiary"** means a "holding company" and "subsidiary" as defined in the Companies Act 2008;
- 5.18.17 **"Intellectual Property" / "IP"** means all intellectual property of any nature whatsoever owned and/or controlled directly or under license by Supplier, including, without limiting the generality of the foregoing, the trademarks, trade secrets, logos, systems, methods, marks, trade names, styles, insignia, designs, patents and copyright relating to the Software, whether registered or not and
- 5.18.18 **"Intellectual Property Rights"/"IPR"** shall mean all existing and future rights of whatever nature therein and thereto;
- 5.18.19 **"IPS"** means Implementation Planning Study that Supplier may execute subject to the signing of an IPS Agreement to assess the Customer's business processes and requirements for purposes of utilising the Software or Services;
- 5.18.20 **"IPS Certificate"** means the certificate to be signed by the Customer, subsequent to the IPS, to confirm acceptance of the findings and identification of customer requirements and confirmation that Supplier may continue with the implementation of the Software or activation of the Services;
- 5.18.21 **"License Fee"** means the fee payable by the Customer to Supplier in consideration for the usage of the Software as agreed to from time to time;
- 5.18.22 **"Licensed Rights"** means the following rights in the Software:
- 5.18.22.1 **TriMED Software:** non-exclusive, non-transferable and revocable right to:
- 5.18.22.1.1 Install the software at end-user facilities, limited to the Customer internal operations;
- 5.18.22.1.2 Deploy and use the Software and interact Software together with Third-party Software;
- 5.18.22.1.3 Use, modify, copy and distribute as per license terms
- 5.18.23 the abovementioned rights shall apply equally to the Software Documentation, upgrades and/or updates thereof, where practically applicable;
- 5.18.24 **"Licensed Specific Territory"** means the territory as set out in the Transaction Document or as agreed to from time to time between the parties in writing;
- 5.18.25 **"Maintenance Fee / Charge"** the support and maintenance fee as agreed to between the parties in a Transaction Document;
- 5.18.26 **"Modifications"** shall mean changes, improvements or customisation of or to the Software which may be required to adapt the Software to the particular requirements of the Customer;
- 5.18.27 **"Operator"** means a person as defined in the POPI Act;
- 5.18.28 **"Order Date"** means the date on which the official order in writing is received from the Customer. The payment of such order shall ratify the order and Supplier shall not commence with any work until such payment has been confirmed received by Supplier;
- 5.18.29 **"Pattern Data"** means non-personally identifiable information, data and reports derived from or compiled through the Software, including but not limited to demographics data, mobility patterns, location data and trend data such as aggregated data and statistics indicating frequency of use and popularity of the Software and Software Services. For greater certainty, Pattern Data is data that does not identify a specific authorised user or data subject and is data which does not relate to a specific Customer's business (including data relating to a specific Customer's locations that receive the Services);
- 5.18.30 **"Personal Information"** means information as defined under the POPI Act;
- 5.18.31 **"POPI Act"** means the Protection of Personal Information Act of 2013;
- 5.18.32 **"Processing"** as defined in the POPI Act;
- 5.18.33 **"Product"** means the products/deliverables made available by the Supplier from time to time and as presented on its website (www.trifour-health.com), including but not limited to Software;

- 5.18.34 **"Project Plan"** a document that sets out the timetable and milestones for performance of Supplier' obligations to deliver any of the Software, Documentation and other ancillary aspects of the Project, including without limitation, User Acceptance Tests and training for each of the phases of development as stated in the IPS report or under a separate document;
- 5.18.35 **"Responsible Party"** defined in the POPI Act;
- 5.18.36 **"Services"** means the service made available by the Supplier from time to time and as presented on its website (www.trifour-health.com);
- 5.18.37 **"Software"** means **TriMED Software** and **Third Party Software**: as, per the quotation / proposal, in object code format, including updates, modifications, or new releases of such software programs and APIs that will be provided by Supplier to Customer from time to time;
- 5.18.38 **"Subscription Fees"** means fees where Customer has selected to pay for the use of the Software per user;
- 5.18.39 **"Subscription Term"** means the Initial Subscription Term together with any subsequent Renewal Periods;
- 5.18.40 **"Subsidiary"** refers to an entity in which the Customer has greater than 50% (fifty percent) ownership of the voting securities;
- 5.18.41 **"Support Policy/ Support Services Policy"** means the Supplier's standard support and maintenance policy as available on: the website , dealing with the support and maintenance of the Software;
- 5.18.42 **"Third-party Software"** means third-party software programs delivered to Customer by Supplier as specified on the quote or proposal or as referred to by reference by the Supplier;
- 5.18.42.1 **Third-party Software**: means software as licensed by a third party to the Supplier with right to sub-license same to the Customer; as confirmed under a proposal, quote or order.
- 5.18.43 **"Transaction Document"** means the document that confirms the Services and/or Products ordered, the applicable Fees and term of the Contract and any other Services and/or product specific information and/or terms and conditions that may apply;
- 5.18.44 **"Updates"** / **"Maintenance Release"** as defined under the Support Policy.

6 PRIVACY AND SECURITY.

6.1 Security.

The Supplier implements reasonable security measures and procedures to assist in protecting your Customer Data. The Customer can learn more on our security measures and procedures on our Data Protection Statement, as updated from time to time.

6.2 Data Processing Agreement ("DPA").

The Processing of any Personal Information by the Supplier in pursuant to the Terms and Conditions or any subsequent Contract shall be done in accordance with the Supplier's Data Processing Agreement.

6.3 Anonymous Information.

Notwithstanding any other provision of these Terms and Conditions, we may collect, use and publish Anonymous Information (defined below) relating to the Customer's use of the Service and/or Sites, and disclose it for the purpose of providing, improving and publicising our products and services, including the Sites and Service, and for other business purposes. **"Anonymous Information"** means information which does not enable identification of a Data Subject, such as aggregated and analytics information. The Supplier owns all Anonymous Information collected or obtained by the Supplier.

END OF DOCUMENT