

STANDARD CONTRACT

Between the

<<CONTRATCTING PARTY NAME>>

(hereinafter referred to as the "**Client**")

and

<<<CONTRACTOR NAME>>

(hereinafter referred to as the "**Contractor**")

WHEREBY THE PARTIES AGREE AS FOLLOWS:

1. Interpretation

In this agreement:-

- 1.1 clause headings are for convenience and are not to be used in its interpretation;
- 1.2 unless the context indicates a contrary intention:-
 - 1.2.1 an expression which denotes:-
 - 1.2.1.1 any gender includes the other genders;
 - 1.2.1.2 a natural person includes a juristic person and vice versa;
 - 1.2.1.3 the singular includes the plural and vice versa;
 - 1.2 the following expressions bear the meanings assigned to them below and cognate expressions bear corresponding meanings:-
 - 1.3.1 "**Client**" mean <<Name of Contracting Party and Identification>>
 - 1.3.2 "**Change Control Process**" means the formal process whereby any changes to the solution and project as defined in the Scope Document, Project Plan or associated Solution and Work Definitions are recorded, scope, costed and approved by both parties;
 - 1.3.3 "**Contractor**" means <<Name of Contractor and Identification>>;
 - 1.3.4 "**Contract Price**" shall mean the price payable by the Client for the products and the services, as detailed in pricing schedule attached hereto as annexure "A";
 - 1.3.5 "**Currency**" shall mean South African Rand;
 - 1.3.6 "**Delivery Date/s**" shall mean the date or dates by which the products are to be delivered to the location/s or the services are to have been rendered, as set out and referenced in the "Project Plan".
 - 1.3.7 "**Effective date**" means the date of signature of this agreement by the party last signing;

- 1.3.8 “**Hardware**” shall mean the computer hardware;
- 1.3.9 “**Installation Specification**” shall mean the infrastructure, network, and other specifications required for the installation and operation of the **products**.
- 1.3.10 “**Location**” or “**Locality**” shall mean the **Site** or sites to which or at which the products are to be delivered and/or installed and the services are to be rendered.
- 1.3.11 “**Notice**” shall mean a written document;
- 1.3.12 “**Personnel**” means any employee, agent, consultant, sub-contractor or other representative of the parties;
- 1.3.13 “**Parties**” shall mean both the **Client** and the **Contractor**;
- 1.3.14 “**Products**” shall mean the products – comprising hardware, software, software licenses, technical manuals and the like;
- 1.3.15 the “**Project**” means the work undertaken by the **Contractor** in order to define the requirements and design, construct, test and implement the **Solution**.
- 1.3.16 “**Project Scope**” means the document which defines the scope of the solution and associated work agreed to between the parties in writing and as amended from time to time according to the **Change Control Process**;
- 1.3.17 “**Services**” shall mean the services to be provided by the Contractor in terms of this agreement and as described in the **Project Plan**;
- 1.3.18 “**Software**” shall mean any computer program of whatever nature required for the **Solution**;
- 1.3.19 the “**Site**” means the physical location at which the **Solution** will be installed and at which the Solution will be implemented on completion of the **Project**;
- 1.3.20 the “**Solution**” or the **Systems**” means the software, data and processes as selected, to facilitate the management of the client’s business processes as defined in the Project Plan;
- 1.3.21 “**Technical documentation**” means the technical and functional documentation of the **Solution or Systems**, as set out in the standard documentation delivered with the **Systems**;

- 1.3.22 **“Work Authorisation”** refers to a detailed definition of a work package to be signed by the parties as the specific work is activated;
- 1.3.23 Words and expressions defined in any clause shall, for the purposes of that clause, bear the meaning assigned to such words and expressions in such clause.
- 1.3.24 In this agreement and the annexures the word **“agreement”** refers to this agreement and the words **“clause”** or **“clauses”** and **“annexure”** or **“annexures”** refer to clauses of and annexures to this agreement.

2. PROJECT SCOPE

- 2.1 The parties record that the proposed solution and the scope of work <<Scope of work to be performed>>

3. PROJECT DURATION AND TERM OF AGREEMENT

- 3.1 The parties agree that the full scale activation of this agreement will be subject to approval of the revised **Project Plan** and associated baseline documentation.
- 3.2 The **Project** will commence immediately after the signing of this agreement unless the parties agree otherwise in writing,
- 3.3 This **agreement** shall come into operation on the effective date project commencement date and shall continue until completion of the project, subject to the right of either party to terminate this agreement, in terms of the termination clause.

4. CHANGE CONTROL

- 4.1 The parties are aware that the scope of the work may be changed or modified in such a way as to alter the **Project** cost and completion date.
- 4.2 Any such change or modification will be made in accordance with the agreed **Change Control Process**, and may result in change of completion dates and fees payable to the **Contractor**.
- 4.3 Due to the time criticality of key facets of the project, the parties undertake to co-operate to process any change requirement up to the finalisation of time scale and cost changes within 3 (three weeks) after identification of the change by any of the parties.

5. SOLUTION ACCEPTANCE AND

- 5.1 After the **Contractor** has completed development / Configuration testing of the **Solution**, the **Client** will commence acceptance testing immediately, according to a test plan created by the **Contractor** and agreed to by the **Client** in writing in order to verify the presence and operation of the functionality as set forth in the **Project Scope**.
- 5.2 The relevant acceptance certificates will be signed off by duly appointed client staff on successful completion of such tests.
- 5.3 Actual operational implementation will be agreed upon by both parties, after the completion of the project plan.
- 5.4 The operational hand over sign-off will be done between the Contractor and the appointed client (acceptance test) staff on a function by function basis.

6. SYSTEM MAINTENANCE AND SUPPORT

<<Indicate Terms that may apply>>

7. PAYMENT TERMS

- 7.1 The **Project** will be executed by the **Contractor** at the price as set out in Annexure 1.
- 7.2 Interim and final payments for services will be structured as follows:
<<Indicate Payment Milestones>>
- 7.3 In the event of delays caused by the Client, the Contractor reserves the right to claim for work completed to the time of the occurrence plus the cost of idle time

caused by such delay. Such claim by the Contractor in this manner, in no way removes or alters any obligation he may have with respect to the final deliverable(s).

- 7.4 In the event that any of the actions of the Client and or Suppliers alters any of the stated price assumption within this proposal, such that the Contractor is placed in a detrimental position and/ or is prevented from successfully completing any of the work described in this proposal, the Contractor reserves the right to claim the associated additional costs from the Client.

8. PROPRIETARY RIGHTS

- 8.1.1 The Client shall be the sole owner of all data collected, relevant working papers and reports emanating from the project and reserves all rights including copyrights and intellectual property therein.

9. CONFIDENTIAL INFORMATION

- 9.1 The **Contractor** shall treat and hold as secret and confidential all information which it may receive from the Client or which becomes known to it during the course of performing its obligations pursuant to this agreement if formally indicated as confidential by the **Client**.
- 9.2 All information will be deemed to be confidential unless otherwise stated by The Client at the time of making it available to the **Contractor**.
- 9.3 The **Contractor** undertakes and agrees that in order to protect the proprietary interests of the **Client** in and to maintain its confidential information:-
- 9.3.1 all written instructions, drawings, notes, memoranda and records of whatever nature relating to the confidential information of the **Client** which have or will come into the possession of the **Contractor** and members of its staff, will be and will at all times remain the sole and absolute property of the **Client** and shall be promptly surrendered to the **Client** upon the expiry of the contract.
- 9.4 The foregoing obligations shall not apply to any information which:-
- 9.4.1 is lawfully in the public domain at the time of disclosure to the **Contractor**;
- 9.4.2 subsequently becomes lawfully part of the public domain or otherwise;
- 9.4.3 subsequently becomes available to the **Contractor** from a source other than **The Client** which is lawfully entitled without any restriction on disclosure to disclose such confidential information to the **Contractor**; or

9.4.4 is disclosed pursuant to a requirement or request by operation of law, regulation or court order.

9.5 This clause is severable from the rest of this agreement and shall remain valid and binding on the parties notwithstanding any termination of this agreement.

10. DISPUTE RESOLUTION

10.1 The parties accept that dispute may arise between the parties during the course of this agreement.

10.2 Any dispute which is agreed by the parties to be technical or operational in nature, shall be referred to the eSoftware Solutions PTY (LTD), which will use its best endeavors to resolve the dispute within 14 (fourteen) days.

10.3 Any dispute not resolved in accordance with the foregoing, will be submitted to and decided by arbitration process.

11. ARBITRATION

11.1 Any matter or dispute remaining unresolved after having been dealt with in accordance with the Dispute Resolution clause, shall be submitted to and decided by arbitration.

11.2 Subject to the provisions of Dispute Resolution, either party to this agreement may demand that a dispute be referred to arbitration by giving written notice to that effect to the other party.

11.3 This clause shall not preclude either party from obtaining interim relief on an urgent basis from a court of competent jurisdiction pending the decision of the arbitrator.

11.4 The arbitration process shall be held in terms of the provisions of the Arbitration Act No 42 of 1965 of the Republic of South Africa (as amended from time to time).

11.5 The arbitrator shall be, if the matter in issue is:-

- 11.5.1 primarily an accounting matter, an independent accountant agreed upon by the parties and failing agreement, nominated by the President for the time being of the Gauteng Society of Chartered Accountants;
- 11.5.2 primarily a technical matter, a person(s) appointed by the **CSIR**;
- 11.5.3 any other matter, a practicing attorney or advocate of at least 10 (ten) years' standing agreed upon by the parties and failing agreement, nominated by the Chairman for the time being of the Bar Council.
- 11.6 This clause is exempt from the rest of this agreement and therefore shall remain between the parties even if this agreement is terminated

12. TERMINATION

- 12.1 Save as otherwise provided in terms of this agreement, this agreement may be terminated:-
- 12.1.1 by either party if the other party at any time effects or attempts to effect a compromise or composition with its creditors, or passes a resolution for voluntary winding-up (except with the written consent of the other party, such consent not to be unreasonably withheld for the purposes of amalgamation or reconstruction without insolvency), or is provisionally or finally liquidated or placed in judicial management, whether provisionally or finally, or defaults or threatens to default in the payment of its liabilities generally, or commits any act or omission which would, in the case of an individual, be an act of insolvency in terms of the insolvency Act, 1936 (as amended);
- 12.1.2 In an event where either of the parties ("the defaulting party") commit a material breach in terms of this Agreement and fails to remedy such breach within a period of 30 (thirty) days after receipt of a written notice from the other party ("the aggrieved party") calling upon the defaulting party so to remedy, then the aggrieved party shall be entitled, at its sole discretion and without prejudice to any of its other rights in law, either to claim specific performance of the terms of this Agreement or to cancel this Agreement forthwith and without further notice, claim and recover damages from the defaulting party.
- 12.1.3 The Client can terminate or cancel any part of the project related to this agreement by giving not less than three calendar months advance notice of the termination date. In such an event the Contractor will be entitled to be reimbursed for costs incurred to the termination date as well as the reasonably attributable wind-down costs plus a 20% penalty calculated on the price of the terminated or cancelled part.

13. NOTICES AND DOMICILIUM

13.1 The parties hereto select as their respective domicilia citandi et executandi the following physical addresses, and for the purposes of giving or sending any notice provided for or required hereunder, the following:-

Party/Physical Address Postal Address Tel/Fax No.

Client

XX

Contractor:

XX

14. ASSIGNMENT

14.1 Neither party shall be entitled to transfer or assign, partially or entirely, any of its rights or obligations under this agreement to a third party without the prior written consent of the other party which shall not be unreasonably withheld.

15. SEVERABILITY

Should any of the terms or conditions of this agreement be held to be invalid, unlawful or unenforceable, such terms or conditions shall be severable from the rest of the terms and conditions which shall continue to be valid and enforceable. If any term or condition held to be invalid is capable of amendment to render it valid, the parties agree to negotiate any amendment to remove the invalidity.

16. ADVERTISING AND MARKETING

Neither party shall make or issue any formal or informal announcement, advertisement or statement to the press in connection with this agreement or disclose the content of this agreement or the subject matter thereof to any other person without the prior written consent of the other party, which consent shall not unreasonably be withheld.

17. APPLICABLE LAW

This agreement will be governed by and construed in accordance with the law of the Republic of South Africa and all disputes, actions and other matters relating thereto will be determined in accordance with such law.

18. WHOLE AGREEMENT

18.1 This agreement constitutes the whole of the agreement between the parties hereto relating to the subject matter hereof and save as otherwise provided herein no amendment, alteration, addition, variation or consensual cancellation will be of any force or effect unless reduced to writing and signed by the parties hereto or their duly authorised representatives.

18.2 The parties agree that no other terms or conditions, whether oral or written, and whether express or implied will apply hereto.

19. SIGNATORIES

Each party shall bear and pay its own costs or incidental to the drafting, preparation and execution of this agreement.

SIGNED at on

NAME:

CAPACITY:

duly authorised for and on behalf of the Client

AS WITNESSES:-

1. 2

SIGNED at on

NAME OF CONTRACTOR:

AS WITNESSES:-

1 2

ANNEXURE A: CONTRACT VALUE

This section presents the value of the contract based on the scope of work that was originally proposed.

ANNEXURE B: PROJECT SCOPE AND EXCLUSIONS

This section presents the scope of work for the work to be performed.