

# Terms and Conditions of Service for Aston I.T Solutions Australia

Aston I.T Solutions © Copyright Aston I.T Solutions 1998,

## 1. Standard Terms and Conditions

### 1.1 SERVICE PROVIDER

- 1.1.1** The service provider is Aston I.T Solutions Australia a Trust with registration number ABN 48611574119. Aston I.T Solutions provides Information Technology Computer Systems maintenance, support and consulting services. The Services provided to the client, are subject to the following terms and conditions. By confirming an ASTON appointment, request for service or an engagement, the Client accepts these Terms and Conditions.

### 1.2 DEFINITION OF TERMS

- 1.2.1** The following expressions shall have the following meanings unless the context clearly indicates otherwise or unless stipulated otherwise in an Agreement or in a corresponding Schedule:
- 1.2.1.1** “The Company” means Aston I.T Solutions Australia – ABN 48611574119;
  - 1.2.1.2** “The Client” means the party with whom the Company is engaging with in a business transaction;
  - 1.2.1.3** “The Parties” shall mean the Company and the Client combined and “Party” means any one of them;
  - 1.2.1.4** “The System” means both the Hardware and / or Software Information Technology Systems of the Client which is to be supported, developed and / or maintained by the Company, this includes but not limited to personal computer hardware and / or software, server hardware and / or software and / or the interconnected I.T communication equipment both physical and / or radio;
  - 1.2.1.5** “the Consultant” means the individual provided by the Company to supply Services to the Client;
  - 1.2.1.6** “Supported Sites” means the site(s) at which the Consultant is required to work;
  - 1.2.1.7** “Request for Service” means any form of service provided to the Client that has been agreed between the Parties to commence via a recognised duly authorised communication protocol, being a formal signed agreement and / or proposal and or/ Quotations and / or electronic mail and / or verbal instruction;
  - 1.2.1.8** “The Services” shall mean remote and / or on-site information technology computer and / or information technology infrastructure development, maintenance, support and consulting services. The services are initiated by the client through a Request for

Service; The Services are deliverables as documented in the proposal documentation to be provided to the Client in respect of the System at the Supported Sites;

- 1.2.1.9** "The Engagement" means any agreement and all its corresponding schedules and / or annexure which shall form part of the engagement between the Client and the Company for services to be rendered;
- 1.2.1.10** "The Agreement" means any form of service provided to the Client that has been agreed between the Parties to commence via a recognised duly authorised communication protocol, being a formal signed agreement and / or proposal and or/ Quotations and / or electronic mail and / or verbal instruction;
- 1.2.1.11** "The Quotation" means any document provided to the Client estimating the cost for the number of hours of service and / or cost of products to be supplied to fulfil a request for service.
- 1.2.1.12** "Contractual Period" means the duration of any Engagements between the Client and the Company;
- 1.2.1.13** "Client's Representative" means the authorised representative of the Client who from time to time is duly authorised to make executive decisions on behalf of the Client;
- 1.2.1.14** "the Consulting Rate" means the applicable fee that is payable for the Services rendered;
- 1.2.1.15** "Time Sheet" means the internal Company time record system that the Consultant is obliged to complete. The time sheet shall consist of a detailed description of the Consultant's time spent on the relevant project or service against activities conducted by the Consultant.
- 1.2.1.16** "Time Log Slip" means a Company time record slip that is to be completed at the end of a site visit by the Consultant detailing the record of the visit. This record is captured into the Company time record system.
- 1.2.1.17** "Terms and Conditions" means the standard terms and conditions of the Company recorded in this document and all schedules and/or annexure hereto;
- 1.2.1.18** "Proposal documentation" means the proposal documentation provided by the Company to the Client in respect of the Services to be performed by the Company. This can be in the form of but is not limited to electronic mail, verbal communication or physical documentation;
- 1.2.1.19** "*force majeure*" means any event outside of a Party's reasonable control, and includes but is not limited to floods, drought, fire, high winds, extreme heat or cold, heavy rain, hail, lightning, strike, civil disturbance, state action, terrorism and any other similar events;
- 1.2.1.20** "Intellectual Property" means all intellectual property embodied in or attaching to the Services including, without limitation, all copyrights, patents or trademarks, whether

registered or unregistered, as well as all trade secrets and know-how, Confidential and Proprietary Information.

**1.2.1.21** “Confidential and Proprietary Information” shall mean any and all information, oral or written that is not generally known by persons not employed by or parties to contracts with the Company, including but not limited to:

- 1.2.1.21.1** Application, database, and other computer software developed or acquired by the Company, whether now or in the future, and all modifications, enhancements and versions thereof and all options available with respect thereto, and all future products developed or derived there from;
- 1.2.1.21.2** Source and object codes, flowcharts algorithms, coding sheets, routines, sub-routines, design concepts and related documentation and manuals;
- 1.2.1.21.3** Marketing techniques and arrangements, mailing lists, purchasing information, pricing policies, quoting procedures, financial information, Client and prospect names and requirements, employee, Client Company and distributor data and other materials and information relating to the Company’s business and activities and the manner in which the Company does business;
- 1.2.1.21.4** Discoveries, concepts and ideas including, without limitation, the nature and results of research and development activities, processes, formulas, inventions, computer-related equipment or technology, techniques “know-how”, designs, drawings and specifications;
- 1.2.1.21.5** Organizational charts, internal telephone lists and employee directories, salary information, benefits, and other personnel information that is not publicly available;
- 1.2.1.21.6** Pricing methodology and formulae;
- 1.2.1.21.7** Any other materials or information related to the business or activities of the Company that are not generally known to others engaged in similar businesses or activities;
- 1.2.1.21.8** All ideas which are derived from or relate to your access to or knowledge of any of the above enumerated materials and information;
- 1.2.1.21.9** Any materials or information related to the business or activities of the Third-Party Beneficiaries that are received by the Company or any associated company in confidence or subject to nondisclosure or similar covenants, including without limitation, confidential proprietary business records, financial information, trade secrets, strategies, methods and practices of licensees of the Company’s software;

**1.2.1.22** Clause headings are for convenience only and shall not be used in interpretation of these Terms and Conditions unless the context clearly otherwise indicates;

- 1.2.1.22.1** Reference to the singular includes the plural and *vice versa*;

- 1.2.1.22.2 Reference to any gender includes the other genders;
- 1.2.1.22.3 Reference to a natural person includes a legal person and *vice versa*.

### **1.3 RELATIONSHIP BETWEEN THE PARTIES**

- 1.3.1 The Parties enter into the Engagement as independent parties and nothing contained or implied in these Terms and Conditions and / or the Engagement shall constitute an agreement of employment or a partnership in any shape or form between the Parties.
- 1.3.2 Neither of the Parties shall be entitled to bind the credit of the other, save to the extent expressly provided to the contrary in these Terms and Conditions and/or the Engagement.

### **1.4 OBLIGATIONS OF THE CLIENT**

- 1.4.1 The Client will provide any and all reasonable access and cooperation to enable the Consultant to fulfil his obligations in terms of any agreement in respect of Services to be provided by the Company to the Client.
- 1.4.2 The Client will provide the Consultant with suitable office space in which to work while on the Client's premises and/or the Supported Sites, including desk space, I.T and Internet connectivity for work purposes, as well as providing refreshments and parking at no cost to the Company and/or the Consultant.
- 1.4.3 The Client's Representative shall sign time log slips acknowledging the work done by the Consultants in terms of the Services provided to the Client at each and every site visit.

### **1.5 TRAVEL AND SUBSISTENCE**

- 1.5.1 Unless explicitly specified, all pricing is exclusive of travelling, accommodation and subsistence allowances, which amounts shall be for the account of the Client, unless otherwise agreed by the Company in writing.
- 1.5.2 Unless otherwise quoted for, the Client will be responsible for: all travelling related costs, including but not limited to flight, car hire / kilometres travelled, accommodation, subsistence and parking costs.

### **1.6 GENERAL TERMS AND CONDITIONS OF TRADE**

- 1.6.1 The Client acknowledges that it does not rely on any representations made by the Company in regard to its products and services, or qualities thereof, leading up to this Agreement other than those contained in this Agreement. All specifications, price lists, performance figures, advertisements, brochures and other technical data furnished by the Company in respect of its products or services, whether orally or in writing will not form part of this Agreement in any way unless agreed to in writing by the Company.

- 1.6.2** The Client agrees that neither the Company nor any of its employees will be liable for any negligent or innocent misrepresentations made to the Client.
- 1.6.3** All quotations will remain valid for a period of 5 working days from the date of the quotation.
- 1.6.4** Delivery and performance times quoted are estimates and are not binding on the Company.
- 1.6.5** All quotations are subject to the availability of input goods or services and subject to correction of good faith errors by the Company, and the prices quoted are subject to any increase in the cost price, including currency fluctuations, to the Company before acceptance of the order.
- 1.6.6** In the event of the Client disputing the amount of the cost increase in Clause 1.4.5 above, the said amount may be certified by an independent auditor and such certificate shall be final and binding on the Client.
- 1.6.7** It is the responsibility of the Client to determine that the products or services ordered by it are suitable for the purposes of intended use. The Company gives no warranty, express or implied, concerning the suitability of the products supplied for any purpose whatsoever.
- 1.6.8** The Company reserves the right, at its sole discretion, to provide alternative products at the prevailing prices to those ordered by the Client, should those products have been superseded, replaced or otherwise become unavailable.
- 1.6.9** Products are sold voetstoets with no warranty against latent defects. All other guarantees, including common law guarantees, are hereby specifically excluded.
- 1.6.10** Liability under clause 1.6.17 is restricted to the repair or replacement of faulty products or services, or granting of a discount, at the sole discretion of the Company.
- 1.6.11** The Company shall not be required to work to tolerances closer than those applicable to the materials obtained by it in the ordinary course of trade, or supplied to it by the Client. The Company shall not be held liable for any variations in the standard, quality and performance of such materials.
- 1.6.12** The Company shall not be liable for any defects resulting from it being required to expedite delivery ahead of the time needed for the proper production of the order.
- 1.6.13** The Company shall not be held responsible for imperfections in the work due to defects in or the unsuitability of material or equipment not supplied by the Company. Extra costs incurred through the use of defective materials or equipment supplied shall be for the Client's account.
- 1.6.14** Client's property and property supplied to the Company will be retained at the Client's risk.
- 1.6.15** The Company shall not be liable for any damage arising from any misuse, abuse or neglect of products or services under any circumstances whatsoever.

- 1.6.16** The completed product will be dispatched or must be collected by the Client when ready and the Client shall not refuse or delay to take delivery.
- 1.6.17** The Company shall be entitled to invoice each delivery or performance separately when executed.
- 1.6.18** The Client agrees to establish, immediately upon delivery, that the products and services appearing on the Company's delivery note, Tax Invoice or other documentation, correctly represents the products, or services, and prices agreed to and are free of defects.
- 1.6.19** Where products or services are delivered prior to the issue of a Tax Invoice, the Client agrees to immediately upon receipt of the Tax Invoice establish that it correctly represents the delivered products or services and prices agreed to.
- 1.6.20** The Client hereby confirms that the goods or services detailed on the Tax Invoice issued duly represents the goods or services ordered by the Client at the prices agreed to by the Client and, where delivery / performance has already taken place that the goods or services were inspected and that the Client is satisfied that these conform in all respects to the quality and quantity ordered and are free from any defects.
- 1.6.21** Any delivery note, invoice or waybill (copy or original) signed by the Client or a third party engaged to transport the products, and held by the Company shall be conclusive proof that delivery was made to the Client.
- 1.6.22** The Client shall return any defective moveable products to the premises of the Company at the Clients cost and packed in the original or suitable packaging.
- 1.6.23** Claims under this agreement shall only be valid if the Client has within 3 days of the alleged breach or defect occurring, given the Company 30 days written notice by prepaid registered post to rectify any defect or breach of Agreement.
- 1.6.24** To be valid, claims must be supported by the original Tax Invoice.
- 1.6.25** If the Company agrees to engage a third party to transport products on the Client's behalf, it does so on terms deemed fit by the Company. The Client indemnifies the Company against any claims arising from such agreement.
- 1.6.26** The risk of damage to, or destruction or theft of its products shall pass to the Client on delivery of any order placed in terms of this Agreement and the Client undertakes to comprehensively insure the products until paid for in full. The Company may recover insurance premiums from the Client for products insured on the Client's behalf.
- 1.6.27** Any printout of computer evidence tendered by any party shall be admissible evidence and the parties shall not object to the admissibility of such evidence purely on grounds that such evidence is computer evidence or that the requirements of the Computer Evidence Act have not been met.

## **1.7 ON-SITE SERVICES**

- 1.7.1** Unless otherwise quoted for, the Client will be responsible for:
  - 1.7.1.1** Supplying the necessary equipment (PC's / Printers) as per the Company's minimum requirement specification sheet,
  - 1.7.1.2** Supplying software and server authorisations (login),
- 1.7.2** Deviations - Restricted access to Client systems, supply of a non-functional technology system and not adhering to and/or compromising stipulated prerequisites could prevent on-time delivery of the Services by the Company. In this instance, and where it directly affects project progress, changes to scope and costing will be applicable.
- 1.7.3** Aston must be notified of any Request for Support appointment cancellations, no later than 2 hours, prior to the appointment. Aston reserves the right to invoice the Client if an appointment is cancelled, less than two hours prior to the appointment.
- 1.7.4** If an Aston Consultant offers a solution that the client does not wish to use, the client will be charged for the time spent on site up to this point.
- 1.7.5** If the Consultant is prevented from resolving an issue because the customer does not possess the appropriate software disks, drivers or product serial numbers, the customer will be charged for the time spent on site up to that point.
- 1.7.6** If the Consultant diagnoses a fault with a Client's Internet Service Provider, even though the Internet Service Provider denies such fault, the customer will be charged the standard rates for the time spent on site.

## **1.8 PAYMENT AND PAYMENT TERMS**

- 1.8.1** The Client agrees to pay the Company the amounts as detailed in the Proposal documentation and / or Quotations pursuant to the delivery of the Services and / or products supplied by the Company and according to the payment schedule set out in the Proposal documentation and / or Quotations.
- 1.8.2** Unless explicitly stated to the contrary, all prices quoted are for the Services and exclude all hardware and software licensing costs.
- 1.8.3** The Client agrees to the Standard Rates of the Company for any products supplied and / or services rendered, which rates may be obtained on request.
- 1.8.4** If the provision of the Services is delayed for reasons other than through the fault of the Company and/or the Consultants, the Company will be entitled to continue receiving payment in terms of the Engagement from the Client due to idle time as a result of any delay and/or wasted time incurred due to the default by the Client or by the provision by the Client of incorrect or insufficient information. In addition to a foregoing, any scheduled date for the completion of any part of the Services will be deferred by a reasonable period which shall be not less than the period of such delay.
- 1.8.5.** Payment Terms are strictly Payment on the date of invoice.

- 1.8.6** The Client shall pay all sums due to the Company in terms of any Engagement without any set-off, deduction, counterclaim and/or any other withholding of monies.
- 1.8.7** If any amount due by the Client to the Company is not paid on due date, then without prejudice to any other remedy to which the Company may be entitled, all such overdue amounts shall bear interest at 2% (two percent) above the Company's bank's published minimum lending rate of interest per annum, compounded monthly in arrears, charged by the said bank on the unsecured overdrawn current accounts of its most favoured corporate clients in the private sector from time to time, reckoned from the due date to the date of payment. In the case of a dispute as to the rate so payable, the rate shall be certified by any manager or assistant manager of any branch of the said bank, whose appointment need not be proved and whose decision shall (in the absence of manifest error) be final and binding on the Parties.
- 1.8.8** Notwithstanding anything to the contrary contained or implied in these Terms and Conditions and without derogating from its rights in terms of these Terms and Conditions and/or the Engagement and/or in law, the Company shall be entitled to suspend the performance of any of its duties, functions and obligations hereunder or in terms of the Engagement should the Client be in breach of a material aspect of the performance of any of its duties, functions and obligations hereunder and/or in terms of the Engagement, including, but not limited to, the withholding of any payment due by the Client to the Company hereunder and/or in terms of the Engagement.
- 1.8.9** All products supplied by the Company remain the property of the Company until such products have been fully paid for whether such products are attached to other property or not.
- 1.8.10** The Client agrees that the amount contained in a Tax Invoice issued by the Company shall be due unconditionally (a) cash on order, or (b) if the Client is a Credit Approved Client, then within the granted credit period as specified on the Credit Application, or not later than the end of the month in which a Tax Invoice has been issued by the Company.
- 1.8.11** The Client agrees to pay the full amount on the Tax Invoice at the Business Address of the Company or at such other place that the Company may designate in writing.
- 1.8.12** The risk of payment by cheque through the post or by electronic funds transfer rests with the Client.
- 1.8.13** The Client has no right to withhold payment for any reason whatsoever and agrees that any extension of time given for payment shall be valid only if reduced to writing and signed by the Client and a duly authorized representative of the Company.
- 1.8.14** The Client is not entitled to set off any amounts due to the Client by the Company against its indebtedness to the Company.
- 1.8.15** All discounts shall be forfeited if payment in full is not made on the due date.



- 1.8.16** The Client agrees that the amount due and payable to the Company may be determined and proven by a certificate issued and signed by an independent auditor. Such certificate shall be binding and shall be prima facie proof of the indebtedness of the Client.
- 1.8.17** The Client agrees that if an account is not settled in full (a) against order; or (b) within the period agreed in clause 1.8.10 above in the case of a Credit Approved Client, the Company is entitled to (i) forward a letter of demand using a third party demanding full and final payment.
- 1.8.18** The Client hereby gives his/ her consent for a credit check.
- 1.8.19** Outstanding accounts are subject to default listing on a national credit bureau database.
- 1.8.20** On payment of the outstanding debt the default listing will be adjusted to read "Paid Default" until legislation demands complete removal
- 1.8.21** The Company reserves the right to provide a national credit bureau with updated personal information.
- 1.8.22** The Client also consents that the Company may use a national credit bureau database for tracing, should the Client abscond.
- 1.8.23** The Company hereby agrees that should they default on payment; the Company can make this information available to the industry and affiliated businesses.
- 1.8.24** A Credit approved Client will forthwith lose this approval when payment is not made in accordance with the conditions of clause 1.8.10 and all amounts then outstanding shall immediately become due and payable.
- 1.8.25** The Client agrees that interest shall be payable to the Company at the maximum legal interest rate prescribed in terms of the Usury Act on any amounts in arrears, and that interest shall be calculated daily and compounded monthly from the date of acceptance of the order.
- 1.8.26** The Client shall be liable to the Company for all legal expenses incurred by the Company on the attorney-and-own client scale in the event of (a) any default by the Client or (b) any litigation in regard to the breach, validity or enforceability of this agreement. The Client shall also be liable for any tracing, collection or valuation fees incurred as well as for any costs including stamp duties, for any form of security that the Company may demand.
- 1.8.27** The Client shall pay five thousand Rand into court or furnish sufficient security in lieu of costs in any action instituted by or against the Client.
- 1.8.28** The Client agrees that the Company will not be required to furnish security in terms of Rule 62 of the Rules of Court of the Magistrate's Court or in terms of Rule 47 of the Supreme Court Act 59 of 1959 as amended.

- 1.8.29** The Client expressly agrees that any debt owed to the Company by the Client shall become prescribed only after the passing of a period of ten years from the date the debt falls due.
- 1.8.30** The Client irrevocably authorizes the Company to enter its premises to repossess any products delivered, without court order, and indemnifies the Company completely against any damage whatsoever, relating to the removal of repossessed products.
- 1.8.31** The Client is not entitled to sell or dispose of any products unpaid for without the prior written consent of the Company. The Client shall not allow the products to become encumbered in any manner prior to the full payment thereof and shall advise third parties of the rights of the Company in the products.
- 1.8.32** Any item delivered to the Company shall serve as a pledge in favour of the Company for present and past debts and the Company shall be entitled to retain or realize such pledges as it deems expedient at the value as determined in clause 1.19.3. The sworn or realized value of pledged products will be offset against the Client's debts and any excess balance will be paid to the Client.
- 1.8.33** The Company is entitled to exercise a lien over any of the Client's property in its possession until all outstanding debts have been paid.
- 1.8.34** The Client hereby cedes and assigns unto and in favour of the Company all its rights, title, and interest in and to all debts which are now, or which may in the future, become owing to it by any third party or parties as security for the payment by it of all amounts which are now or may from time to time in the future, become owing by it to the Company from any cause of indebtedness however arising. The Client agrees that on request by the Company, it shall be obliged to hand over to the Company all books of accounts, contracts, invoices and documents, and the like, which it may require for the purpose of ascertaining the amounts due to it and for the purposes of the recovery of payment.

## **1.9 COPYRIGHT**

- 1.9.1** All and any reference materials, specifications, proposals and general documentation and/or training manuals of the Company may not be copied or duplicated under any circumstances.
- 1.9.2** All material of the Company provided to the Client including but not limited to any Proposal documents, are subject to copyright laws and as such may under no circumstances be copied or distributed without the express written permission of a duly authorised representative of the Company.
- 1.9.3** The Company owns and shall retain all right, title and interest in and to the Intellectual Property.

- 1.9.4** The Company shall have the right, at its own expense, and solely in its own name, to apply for, prosecute and defend the Intellectual Property.
- 1.9.5** Nothing done pursuant to these Terms and Conditions and/or the Engagement shall transfer to the Client title or any other rights not expressly granted hereunder to any of the Intellectual Property.

**1.10 NON SOLICITATION**

- 1.10.1** Client and Company staffs members may not in any form whatsoever entice encourage or approach each other's employees with the view of offering them employment or enticing them to leave the employ of their respective companies.
- 1.10.2** The Client shall not make any offer of employment to, nor accept any offer of service from, any member of the Company's staff, any Consultant and/or any individual introduced by the Company to the Client at any time before, during or for a period of 24 (twenty four) months after the termination of any Engagement should the Client want to retain the services of any of the Company's Consultants in a direct capacity or through a third party, for any means of consulting or Terms and Conditions

**1.11 ANNUAL PRICE REVIEW**

- 1.11.1** The Company reviews its pricing annually during September of every year and hereby reserves the right to implement new price lists effective from the 1<sup>st</sup> October each year. Ad hoc price increases due to exchange rate fluctuation and Service Provider cost changes shall be passed on to the Client as and when applicable.

**1.12 EXCHANGE RATE FLUCTUATIONS**

- 1.12.1** The Company reserves the right to change its pricing caused by exchange rate fluctuations where these materially affect the price of the Services, hardware and software.

**1.13 General Sales Tax**

- 1.13.1** All fees exclude GST and any other taxes, which will be for the Client's account, calculated in accordance with Australian law.

**1.14 FORCE MAJEURE**

- 1.14.1** If the performance of a material part of any Engagement is suspended due to *force majeure*, the one Party shall give the other Party written notice of the condition of *force majeure*.

- 1.14.2** The Parties shall employ their best endeavours to ensure the provision of the Services during the course of the *force majeure*
- 1.14.3** The Party first affected by *force majeure* shall do its utmost to reinstate the performance due in terms of the Engagement in the shortest possible time.
- 1.14.4** Relevant delivery dates or times allowed for performance shall be adjusted to allow for the effects of such *force majeure*, as may be agreed between the Parties by written notice.
- 1.14.5** If the notice referred to in clause 1.13.1 is not given by the Party first affected by such *force majeure*, the other Party may, in its sole discretion, refuse to allow such adjustment of the relevant delivery dates or time allowed for performance, with regard to the delivery and performance due in terms of the Engagement, of the Party first affected by *force majeure*.
- 1.14.6** Notwithstanding anything contained in clause 1.14 performance of other material parts of the Engagement still due and possible of performance by the Party first affected by *force majeure*, shall continue to be performed.
- 1.14.7** If a period of 4 (four) weeks has elapsed, and if the condition of *force majeure* persists beyond such period, either Party shall be entitled to cancel the Engagement by written notice to the other Party, with immediate effect and without prejudice to either Party's rights obtained in terms of the Engagement.

**1.15 WARRANTY OF AUTHORITY**

- 1.15.1** Each Party warrants to the other Party that it has the requisite power, authority and legal right to sign and enter into the Engagement and to bind the Parties to the Engagement and that the Engagement has been duly authorised by all necessary actions of its directors and constitutes valid and binding obligations on it in accordance with the terms of the Engagement.

**1.16 APPLICABLE LAW**

- 1.16.1** The laws of Australia shall apply to the Engagement and any dispute that may arise between the Parties in regard thereto shall be settled in the State of New South Wales Australia.

**1.17 BREACH**

- 1.17.1** Should either of the Parties commit a breach of the Engagement or fail to carry out any of the obligations imposed on it in terms thereof and should the defaulting Party fail to remedy such breach within 14 (fourteen) days after receipt of written notice from the aggrieved Party requiring such breach to be remedied, then and in such event the aggrieved Party shall, at its option and notwithstanding anything to the contrary

contained herein be entitled to cancel the Engagement and claim such damages as it shall have suffered as a result of such breach.

**1.17.2** Notwithstanding the provisions of clause 1.16.1. Above, the Engagement may be terminated without notice by either Party should either Party at any time be placed in liquidation, whether provisional or final liquidation, or if it goes into voluntary liquidation, other than solely for amalgamation or reconstruction or if it compromises with its creditors.

## **1.18 DISPUTE RESOLUTION**

**1.18.1** The Parties shall, considering the nature of the business relationship to be entered into, jointly decide on appropriate mechanisms to resolve any disputes, which may arise during the duration of the Engagement. The mechanism shall, as far as possible, endeavour to be as informal as possible and to avoid any formal dispute resolution and to expedite the process as far as possible.

**1.18.2** In the event of any disagreement arising and the Parties being unable to reach agreement at the Account Manager level, the dispute will be referred to the next appropriate level of management of the Parties applicable in order to endeavour to settle the dispute through *bona fide* negotiations.

**1.18.3** As a last resort and in the event where the Parties are unable to reach agreement, the matter will be further discussed between the respective corporate executive officers or their appointed nominees of the Parties.

**1.18.4** If the dispute has not been resolved by such negotiation, the Parties shall submit the dispute to The Institute of Arbitrators & Mediators Australia (IAMA) for administered mediation, upon the terms set by the IAMA of Australia. Failing such a resolution, the dispute, if arbitral in law, shall be finally resolved in accordance with the Rules of the IAMA of Australia by an arbitrator or arbitrators appointed by the IAMA.

**1.18.4.1** The arbitration shall be held:

**1.18.4.1.1** at Sydney in the State of New South Wales, Australia

**1.18.4.1.2** On the basis that the proper law of the agreement contained in this clause 1.17 and of the Terms and Conditions in which this clause 1.17 is contained shall be the law of Australia;

**1.18.4.1.3** With only the legal and other representatives of the Parties to the dispute present thereat, it being the intention that the arbitration shall be held and completed as soon as possible.

**1.18.5** The arbitrator's award may be made an order of any court of competent jurisdiction including, for the avoidance of doubt, any court which is authorised to make such an order by virtue of any treaty or legislation relating to the reciprocal enforcement of foreign arbitral awards or judgements.

- 1.18.6** The Parties hereby consent to the non-exclusive jurisdiction of the High Court of Australia (NSW Legislator), as presently constituted, in respect of the proceedings referred to in 1.18.5 to 1.18.7.
- 1.18.7** The Parties agree to keep the arbitration including the subject matter of the arbitration and the evidence heard during the arbitration confidential and not to disclose the same to anyone except for the purposes of the arbitration proceedings in terms of this clause, any review thereof and obtaining an order in terms of 1.18.5.
- 1.18.8** The provisions of this clause 1.18:
- 1.18.8.1** Constitute an irrevocable consent by the Parties to any proceedings in terms hereof and no Party shall be entitled to withdraw there from or claim at any such proceedings that such provisions do not bind it;
  - 1.18.8.2** Constitute a separate agreement, severable from the rest of the Engagement and shall remain in effect despite determination of / or invalidity for any reason of the Engagement.
- 1.18.9** It is an explicit term of the Engagement that unless a Party makes itself guilty of a material breach of the Engagement, the Parties shall proceed with the Engagement in its normal way whilst the dispute is being dealt with in terms of this clause.
- 1.18.10** Any document shall be deemed duly represented to and accepted by the Client (i) within 3 days of prepaid registered mail to any of the Client's business or postal addresses or to the personal address of any director, member or owner of the Client; or (ii) within 24 hours of being faxed to any of the Client's fax numbers, or any director, member's or owner's fax numbers; or (iii) within 24 hours of being e-mailed to any of the Client's e-mail addresses, or any director, member's or owner's e-mail addresses; or (iv) on being delivered by hand to the Client or any director, member or owner of the Client; or (v) within 48 hours if sent by overnight courier, and (vi) within 7 days of being sent by surface mail.
- 1.18.11** The Client chooses its address for legal execution as its physical or business address or the physical address of any Director (in the case of a company), Member (in the case of a close corporation) or of the Owner(s) or Partner(s).

## **1.19 CANCELLATION**

- 1.19.1** Any Engagement is subject to cancellation by the Company if the Client breaches any term of this Agreement or makes any attempt of compromise, liquidation, sequestration, termination or if judgment is recorded against the Client or any of its principals.
- 1.19.2** In the event of the Client being in arrears with any payment or in breach of any term of this agreement, the Company is entitled to cancel all contracts with immediate effect.

**1.19.3** In the event of cancellation, the Client shall be liable to pay (a) the difference between the selling price and the value of the products at the time of repossession and (b) all other costs incurred in the repossession of the products. The value of repossessed or retained pledged products shall be deemed to be the value placed on them by any sworn valuator after such repossession, and such valuation shall be conclusive proof of the value. If the products are not recovered for any reason whatsoever, the value shall be deemed to be nil.

**1.19.4** If any products supplied to the Client are of a generic nature and have become the property of the Client by operation of law (confusion or commixtio), the Client shall be obliged on notice of cancellation of the agreement to transfer the same quantity of products in ownership to the Company.

## **1.20 WAIVER**

**1.20.1** Failure or neglect by either Party to, at any time, enforce any of the provisions of the Engagement shall not, in any manner, be construed to be a waiver of any of that Party's rights in that regard and in terms of the Engagement.

**1.20.2** Such failure or neglect shall not, in any manner, affect the continued, unaltered validity of the Engagement, or prejudice the right of that Party to institute subsequent action.

## **1.21 CESSION**

**1.21.1** Neither Party is, entitled to cede, delegate, assign, or in any other manner dispose of any of its rights or obligations in terms of the Engagement, without the prior, written consent of the other Party.

**1.21.2** The Client undertakes to inform the Company in writing, within 7 days of any change of Director, Member, Shareholder, Owner or Partner or address, or 14 days prior to selling or alienating the Client's business. Failure to do so will constitute a material breach of this agreement. Upon receipt of such written notification, the Company reserves the right, at its sole discretion, to withdraw any credit facility advanced to the Client.

## **1.22 SEVERABILITY**

**1.22.1** If any term, condition, provision, performance and/or any part thereof in the Engagement is determined to be invalid, illegal, unlawful or unenforceable to any extent, that term, condition, provision or performance or the relevant part thereof shall be severed from the remaining terms, conditions, provisions and performance of the Engagement, and the Engagement so altered shall remain of force and effect, provided that the severing of the relevant portions does not affect the essence of the Engagement.

**1.22.2** The Client agrees that any indulgence whatsoever by the Company will not affect the terms of this agreement or any of the rights of the Company and any such indulgence shall not constitute a waiver by the Company in respect of any of its rights herein. The Company will not be stopped from exercising its rights in terms of this Agreement under any circumstances whatsoever.

## **1.23 LIMITATION OF LIABILITY**

**1.23.1** Although the Company undertakes to perform its duties and obligations in terms of the Engagement in a professional and proper manner, strictly in accordance with the Engagement, the Company and/or any of its employees, directors, associates of sub-contractors shall, not be liable or responsible to the Client for any loss of data and/or any indirect and/or consequential damages such as, but not limited to loss of profit or loss of production arising either directly or indirectly as a result of the performance of the Engagement and / or product failure.

**1.23.2** Each Party hereby indemnifies and holds free and harmless the other Party from any and all claims for loss of data and/or any indirect and/or consequential damages, provided that:

**1.23.2.1** Such damages or claims are not the direct result of the wilful acts or omissions and/or gross negligence on the part of the Party, its agents, assigns and personnel;

**1.23.2.2** The Parties shall be solely responsible for and hereby indemnify each other and hold each other free and harmless from any and all costs, damages and claims from or in connection with illness, injuries, or the death of any of their respective personnel, agents, and the personnel of their respective contractors and sub-contractors;

**1.23.2.3** The Parties hereby indemnify each other and hold each other free and harmless against any damages to the property of or such persons in any manner sustained or allegedly sustained in connection with the performance of the Engagement;

**1.23.2.4** The Parties shall ensure that they do not in any manner infringe or allow any infringement of a third party's intellectual property rights (copyright, patent rights and the like) in the performance of the Engagement and each Party hereby indemnifies the other Party against any claims arising against such other Party as a result of any such infringement.

**1.23.3** Save that the Company warrants and undertakes in favour of the Client that it shall perform the Services diligently and with reasonable care and skill, the Company gives the Client no warranties or undertakings and has made no representations to the Client in connection with the Services.



1.23.4 The Company hereby chooses as domicile citadel ET executants for all purposes of the Engagement, where all notices and processes may be served: - Aston I.T Solutions P.O Box 990139 Kibler Park 2053 South Africa

#### **1.24 WHOLE AGREEMENT / AMENDMENTS**

**1.24.1** No agreement purporting to vary the terms and conditions hereof shall be of any force and effect unless reduced to writing and signed by the Parties.

**1.24.2** These Terms and Conditions and the Engagement contains the entire agreement between the Parties relating to the subject matter hereof and no parties shall be bound by any undertakings, representations, warranties, promises or the like not recorded herein. These Terms and Conditions shall take precedence over any terms and conditions of the Client and shall be carried into effect, notwithstanding receipt or acknowledgement of the Clients own order form or conditions.

**1.24.3** This Agreement applies to all Consultants, employees and subcontractors of the Company

**1.24.4** This Agreement is applicable to all existing debts between the parties.

#### **1.25 DISCLAIMER**

**1.25.1** All Services provided by the Company to the Client are provided subject to these Terms and Conditions of the Company. These Terms and Conditions specifically exclude liability for any and all loss of or damage (including but not limited to direct, indirect and/or consequential loss) to any person(s) and /or property, whether or not such loss and/or damage has been caused by any negligence of the Company and/or its employees and/or its agents and/or its partners.

#### **1.26 CHANGES TO TERMS AND CONDITIONS**

**1.26.1** The Company may, in its sole discretion, change its Terms and Conditions or any part thereof at any time without notice.

### **2. Acceptance of Terms & Conditions**

**2.1** Upon agreement and acceptance by means of a duly authorised communication protocol, all Proposal documents become binding contracts and the Client agrees to be bound by these Terms and Conditions which are incorporated in and form part of the Engagement.

**2.2** The signatory hereby binds himself in his personal capacity as Shareholder (in the case of a company), Member (in the case of a close corporation) or Owner, Partner, or Proprietor, as co-principal debtor jointly and severally for the full amount due to the Company and agrees that this Agreement will apply in the same way to him.