

**BUSINESS TERMS AND CONDITIONS
AGREEMENT**

BETWEEN

MOMENT DESIGNS

(hereinafter referred to as "the Designer")

AND

THE CUSTOMER

(hereinafter referred to as "the Customer")

- **DEFINITIONS**

In this Agreement, unless otherwise required by the context, the following words and expressions shall have the meanings ascribed to them below:

Moment Designs Moment Designs is a company with **limited liability**, duly incorporated in terms of the Companies Act within the Jurisdiction of South Africa and registered as a Company in terms of the Companies Act;

Customer Means the customer for Services under an Engagement as specified in the quote

Agreement This Business Terms and Conditions Agreement may indicate, any Service Orders executed pursuant hereto, and any other documents expressly incorporated as specified in the quote to the Customer;

Business Day Means any hours between 09:00 and 17:00 on a business day or any day within the Republic of South Africa (RSA) which is not a Saturday, Sunday or a day on which banking institutions in the RSA are customarily closed;

Confidential Refer to clause 17 of the agreement;

Information

Intellectual Property

means and includes:

- i. rights in and in relation to any patent, design, trade mark, trade or business name (including all goodwill associated with any trade mark, or any trade or business name), rights including copyright and related rights (including rights to derivative works and designs), moral rights, database rights, business rights, trade names, trademarks, service marks, passing off rights and rights in designs, domain name, digital marketing strategy; digital competitor analysis; online performance reporting, app development; web design and development packages, Pay per click advertising, blogs and content creation; domain registration and hosting; and;
- ii. all other intellectual property rights and forms of protection of a similar nature or having equivalent or similar effect and which may subsist anywhere in the world, whether registrable or unregistrable, registered or unregistered.

Parties	the parties to this Agreement and “Party” means either one of them;
Personal Information	Regulated in terms of the Protection of Personal Information Act 4 of 2013;
RSA	Means the Republic of South Africa;
Services	Services” means the design services supplied by the Designer to the Customer under an Engagement, details of which are set out in the quote (or, to the extent that no such details are set out in the quote, details of which will be agreed between the parties acting reasonably from time to time);
Quote	means the quote of services document issued by the Designer to the Customer detailing the scope of the Services and other matters relating to an Engagement
Customer Materials	means all works and materials provided by or on behalf of the Customer to the Designer for use in the production of, or incorporation into, the Deliverables.
Deliverables	means the deliverables specified in the quote.
Effective Date	means the date specified as such in the quote, in relation to an Engagement with the Designer, the date when the Designer receives acceptance of the quote relating to that Engagement from the Customer (such quote having been previously sent to the Customer) providing the acceptance of the quote is received by the Designer within the period of 30 days following the issue date of the quote by the Designer;
Price	means the Designer’s price as specified in the quote notified by the Designer to the Customer
Engagement	means a contract between the Designer and the Customer for the supply of Services and the delivery of Deliverables incorporating these Terms and Conditions of Business and a quote, and any amendments to such a contract from time to time.

- **INTERPRETATION OF AGREEMENT**

- .1. Clause headings in this Agreement are used for convenience only and shall be ignored in its interpretation.
- .2. In this Agreement, unless a contract intention clearly appears –
 - 2.1. any reference to the singular includes the plural and *vice versa*;
 - 2.2. any reference to one gender includes the other gender;
 - 2.3. any reference to natural persons includes legal persons and vice versa;
 - 2.4. any reference to an enactment is to that enactment as at the Signature Date, as amended or re-enacted from time to time; and
 - 2.5. a reference to a Party includes that Party's successors-in-title and permitted assigns.
- .3. When any number of days is prescribed, same shall be reckoned exclusively of the first and inclusively of the last day, unless the last day falls on a day other than a Business Day, in which case the last day shall be the next succeeding Business Day.
- .4. If any provision in a definition or the recital is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of this Agreement.
- .5. Where words have been defined in the body of the Agreement, such words will, unless otherwise required by the context, have the meanings so assigned throughout the Agreement.

INTRODUCTION

Moment Designs is a freelance Logo Design, Graphic Design and Website Design business that specialize in Logo Design, Graphic Design and Website Design. These terms and conditions are applicable to all Design projects that are undertaken by Moment Designs. The following terms and conditions to this agreement between Moment Designs and “customer” for the purposes of Design projects. These Terms and Conditions set forth are the provisions hereunder for the supply of the services as set out in this Agreement

NOW WHEREFORE the parties agree as follows:

3. SERVICES

3.1 The Designer will supply the Services to the Customer and deliver the Deliverables to the Customer in accordance with the terms of each Engagement.

3.2 Any stated or agreed time for delivery of the Deliverables will not be of the essence of the parties’ agreement.

3.3 The Designer may suspend the provision of the Services and/or withhold the Deliverables if the Customer fails to pay by the due date any amount due to the Designer in respect of an Engagement.

4. ACCEPTANCE OF SERVICE

4.1. Once the invoice has been generated and furnished to the “Customer” by Moment Designs and receipt of a deposit has been secured by the “customer” to Moment Designs, this transaction serves as the acceptance of Moment Designs Terms and Conditions by the Customer.

4.2. The availability of Moment Designs business terms and conditions can be located on our website for ease of reference and review.

4.3. The duty rests on the Customer to ensure the correctness of the details furnished on the face of the supplied quotations and invoices. Furthermore, the Customer must retain a copy for their records.

4.4. Should the period of 7 (seven) days lapse and no payment made to the Designer upon completion of the project, it is hereby agreed upon between the parties that the full and final payment will become due, owing and payable on the account outstanding.

4.5. Moment Designs reserves the right to withdraw from projects at any time prior to acceptance.

5. CUSTOMER OBLIGATIONS

5.1. The Customer will promptly provide to, or procure for, the Designer any:

- (a) co-operation, support and advice;
- (b) designs, drawings, files, information and documentation;
- (c) third party co-operation;

reasonably necessary to enable the Designer to discharge its obligations under any Engagement.

5.2 The Customer must provide feedback on preparatory design work promptly, and in any event in accordance with any timetable agreed between the parties.

5.3 The Customer grants to the Designer a worldwide, royalty-free, non-exclusive licence to use the Customer Materials during the term of an Engagement solely for the purposes of that Engagement.

5.4 The Customer warrants and represents that the Customer Materials, and their use by the Designer in accordance with these Terms of Business, will not infringe the Intellectual Property Rights or other rights of any person, will not be illegal or unlawful under any applicable law, and will not give rise to any cause of action against the Designer or any other person in any jurisdiction.

5.5 The Customer hereby indemnifies and undertakes to keep indemnified the Designer against any losses, damages, claims, obligations, liabilities, costs and expenses (including legal fees and costs and expenses incurred in investigating, preparing, defending or prosecuting any litigation, claim, proceeding or demand) arising out of or in connection with any breach by the Designer.

6. OUR CHARGES

Moment Designs Logo Design, Graphic Design and Website Design pricing are listed on our website under the pricing tab and Customers will be invoiced on the pricing set out for Designing services unless *Moment Designs* enters into any other agreement with “Customer” specifically and same will be reduced to writing.

7. QUOTATIONS AND INVOICES

7.1. Customers will be furnished with the necessary quotations and invoices by *Moment Designs* to the Customer by way of the Electronic Mail (Email), of which the address will be provided for by Customer.

7.2. Invoices are valid for a period of 7 (seven) days on the amount outstanding after the deposit made to the Designer. The outstanding amount to be paid after project have been completed.

8. PAYMENT AND NON-PAYMENT

8.1. Payments are to be received in two separate transactions or in full and final payment at the discretion of the Customer.

- a. 70% Upfront payment of deposits are to be paid on all design projects invoiced above the amount of R500 by Moment Designs before any project starts.
- b. The final payment of 30% to be paid once the design projects are completed and before handing over files to Customer.
- c. All projects invoiced below R500 will require full payment before any design project will start.

8.2. If the invoice has not been settled on completion of their services, then Moment Designs will consider the account to be in default.

8.3. Additional work requested by the Customer, which is not specified in the invoice, is subjected to a separate Design project and Moment Designs reserves the right whether to re-quote/re-invoice or accept additional work.

8.4. If Moment Designs accept, additional work may affect timescale and overall delivery time of the project. Once an Invoice is sent to the Customer, payment by bank transfer (EFT) and sent with proof of payment to Moment Designs email.

8.5. Moment Designs reserves the right to decline further work on a project if there are Invoices outstanding with the Customer. Customers may cancel a project in writing via email to Moment Designs, and the project will be cancelled.

8.6. If Moment Designs has begun or completed the work and the Customer no longer requires or cancel the project but have agreed to the work, deposits will not be refunded or transferred to another project of the same Customer. All Invoices are submitted by email except where required otherwise by regulations or agreed at Moment Designs discretion.

8.7. REFUNDS:

Moment Designs will not refund deposits for work already performed on “Customer” design projects. We guarantee to honour our obligations of service as we expect our Customers to honour theirs.

9. CONTENT CONTROL

91. Customer agrees to provide any needed information and content required by Moment Designs in good time to enable Moment Designs to complete a Logo Design, Graphic Design or Website Design project, as part of an agreed project.

92. Moment Designs endeavours to create pages that are search engine friendly, however, Moment Designs gives no guarantee that the site will become listed with search engines or of certain search results.

93. In no event shall Moment Designs be held liable for any changes in search engine rankings. If an error or issue with the design arises from search engine analysis, then Moment Designs is not held liable.

94. After Logo Design, Graphic Design or Website Design projects completion and full payment is received, a “Customer” or a third party of their choosing may wish to edit their Logo Design, Graphic Design or Website Design project. However, the Customer agrees that in doing so they assume full responsibility for any issues which occur.

95. If “Customers” or a third party of their choosing edits on Logo Design, Graphic Design or Website Design project and these results in functionality errors or the page displaying incorrectly, then Moment Designs reserves the right to re-quote/invoice for work to repair the Logo Design, Graphic Design or Website project, however Moment Designs will not be held liable.

96. Moment Designs reserves the right to assign subcontractors in whole or as part of a project if needed.

97. Moment Designs is not responsible for any printing work. Printing work can be done through Moment Designs on request, as Moment Designs outsource their printing work if needed, as part of Moment Designs terms and conditions.

98. Customer agrees that it is their responsibility to have regular backups. All communications between Moment Designs and Customer shall be by way of telephone or email communications.

10. ASSIGNMENT/LICENCE OF RIGHTS

10.1. Upon the later of:

(a) The payment by the Customer to the Designer in full in cleared funds of all amounts due in respect of an Engagement, the Designer will (and hereby does) grant to the Customer a worldwide, non-exclusive licence for the full term of copyright to use the design work produced and supplied to the Customer to be published either in print, the internet or any other media as the Customer requires.

(b) The Customer may not tamper with or change the final artwork produced and supplied and must not resell or sub-licence any artwork to any third party.

10.2 The licence granted in Clause [5.1] does not include the rights to any artwork, designs, preliminary concepts, rejected concepts or ideas either discussed or presented to the Customer during the development process and these remain the full copyright / intellectual property of the designer to use without restriction.

10.3. The Customer also grants the designer full simultaneous copyright to use any design work created during the engagement for the purpose of promoting the designer's services to future prospective Customers as the designer wishes, including use on any of the designers own promotional materials and published online on the designer's website.

11. WEB BROWSERS

Moment Designs shall make every effort to ensure sites are designed to be viewed by most visitors. Customer agrees that Moment Designs cannot guarantee correct functionality with all browser software across different operating systems. Customers agree that after handover of files any updated software versions of the main browsers, Domain Name setup changes or hosting setup changes thereafter may affect the functionality and display of their web site. As such, Moment Designs reserves the right to re-quote for any work involved in changing the website design or website code for it to work with updated browser software and cannot be held liable.

12. POST PROJECT ALTERATIONS

Moment Designs cannot accept responsibility for any alterations caused by the Customer or a third party occurring to the Customer's design projects. Such alterations include, but are not limited to additions, modifications, or deletions. Moment Designs will be required to quote or invoice for Logo Design, Graphic Design or Website Design project before resolving any issues that may arise.

13. DOMAIN NAMES AND HOSTING

Moment Designs have partnered with a hosting business (Sherlock-IT). All Moment Designs "Customers" that have hosting through Moment Designs is outsourced to our partner.

14. WARRANTIES

14.1. The Customer warrants to the Designer that it has the legal right and authority to enter and perform its obligations required by each Engagement.

14.2. The Designer warrants to the Customer that:

(a) it has the legal right and authority to enter and perform its obligations required by each Engagement; and

(b) the Services will be performed with reasonable care and skill.[1]

14.3. All parties' warranties and representations in respect of the subject matter of the Engagement are expressly set out under these terms and conditions, together with the Quote.

14. LIABILITY AND WARRANTY DISCLAIMER

- a. Moment Designs provides their web site and the contents thereof on an "as is" basis and makes no warranties regarding the site and its contents, or fitness of services offered for a particular purpose.
- b. Moment Designs cannot guarantee the functionality or operations of their web site or that it will be uninterrupted or error free, nor does it warrant that the contents are current, accurate or complete.
- c. The Client agrees Moment Designs is not liable for absence of service because of illness or holiday. The Client agrees Moment Designs is not liable for any failure to carry out services for reasons beyond its control including but not limited to: telecommunication problems, software failure, hardware failure and third party interference, emergency on major scale or any social disturbance of extreme nature such as industrial strike, riot or omission of any third party services.
- d. Moment Designs is not liable for any consequences or financial losses such as, but not limited to, loss of business, profit, revenue, contract, data or potential savings, relating to services provided.
- e. On handover of files from Moment Designs to Client, the Client shall assume entire responsibility in ensuring that all files are functioning correctly before use. Whilst every effort is made to make sure files are error free, Moment Designs cannot guarantee that the display or functionality of the web design or the web site will be uninterrupted or error free. If after handover of files errors are found in code the developer has created, domain name setup and hosting setup are the same as when work began, then Moment Designs can correct these errors for the Client at it is own discretion, but will not be held liable for these errors.
- f. Moment Designs may from time to time recommend to the Client that updates are needed to their site to comply with, including but not limited to. Moment Designs reserves the right to quote for any updates as separate work. Client agrees Moment Designs is not liable for any failure to inform or implement these updates to their site. Client agrees that it shall defend, indemnify, save, and hold Moment Designs harmless from any demands, liabilities, costs, losses and claims arising from omission to inform or implement these updates.

15. NON-DISCLOSURE

Moment Designs and any third-party associates agrees that, except if directed by the Client, it will not at any time during or after the term of this agreement disclose any confidential information. Likewise, the Client agrees that it will not convey any confidential information about Moment Designs to another party.

16. LIMITATIONS AND EXCLUSIONS OF LIABILITY

16.1 Nothing under these terms and conditions contained in this agreement will:

- (a) limit or exclude the liability of a party for death or personal injury resulting from negligence;
- (b) limit or exclude the liability of a party for fraud or fraudulent misrepresentation by that party;
- (c) limit any liability of a party in any way that is not permitted under applicable law; or
- (d) exclude any liability of a party that may not be excluded under applicable law.

16.2 The limitations and exclusions of liability set out in this Clause [16 above]:

- (a) are subject to Clause [16.1 above]; and
- (b) govern all liabilities arising under the agreement or in relation to the subject matter of the Agreement, including liabilities arising in contract, in tort (including negligence) and for breach of statutory duty; and
- [(c) will [not limit or exclude / limit and exclude] the liability of the parties under the express indemnities set out the Engagement.]

16.3 The Designer will not be liable in respect of any loss of profits, income, revenue, use, production or anticipated savings.

16.4 The Designer will not be liable for any loss of business, contracts or commercial opportunities.

16.5 The Designer will not be liable for any loss of or damage to goodwill or reputation.

16.6 The Designer will not be liable in respect of any loss or corruption of any data, database or software.

16.7 The Designer will not be liable in respect of any special, indirect, or consequential loss or damage.

16.8 The Designer will not be liable for any losses arising out of a Force Majeure Event.

17. CONFIDENTIALITY

17.1 Each party will keep confidential the Confidential Information of the other party, and will not disclose that Confidential Information.

17.2 Each party will protect the confidentiality of the Confidential Information of the other party using at least reasonable security measures.

17.3 The Confidential Information of a party may be disclosed by the other party to its employees, sub-contractors, insurers, and professional advisers, provided that each recipient is legally bound to protect the confidentiality of the Confidential Information.

17.4 These obligations of confidentiality will not apply to Confidential Information that:

(a) has been published or is known to the public (other than because of a breach of these Terms of Business).

(b) is known to the receiving party, and can be shown by the receiving party to have been known to it, before disclosure by the other party; or

(c) is required to be disclosed by law, or by an order (binding upon the relevant party) of a governmental authority, a regulatory body, or a stock exchange.

18. GOOD FAITH

The Parties shall at all times during the continuance of this Agreement observe the principles of good faith towards one another in the performance of their obligations in terms of this Agreement.

19. "FORCE MAJEURE"

Save for a failure to pay money under the provisions of this Agreement, neither of the Parties shall be liable for loss or damage sustained by reason of its failure to perform its obligations under this Agreement if the failure results from any one or more of the following, namely *vis major*, *casus fortuitous*, Act of God, any law, decree, regulation, order or governmental authority, epidemic, flood, earthquake or like natural disaster, strikes, lock outs or other labour disputes, embargo or anything beyond the Party's reasonable control whether foreseeable or not, provided however that the Party whose performance shall have been prevented shall give written notice within a reasonable time to the other Party of the nature thereof and the date such condition commenced and shall further give written notice within a reasonable time after the condition shall have ended.

20. TERMINATION OF AGREEMENT

20.1. Summary Termination

If either Party-

is liquidated, dissolved, deregistered, or placed under curatorship, whether voluntary or compulsory, or passes a resolution providing for any such event;

- 20.1.1. commits an act which, if committed by a natural person, would be an act of insolvency under the Insolvency Act 24 of 1936;
- 20.1.2. attempts to compromise with its creditors; or
- 20.1.3. ceases to carry on its business;
- 20.1.4. begins business rescue proceedings or has business rescue proceedings commenced against it;

then the other Party shall, in addition to all other remedies at law, and without prejudice to its right to claim damages or payment for services already rendered and disbursements paid, be entitled to cancel this Agreement summarily.

21. TERMINATION FOR BREACH

21.1.1. If either party (“the Defaulting Party”) commits a breach of any material provision of this Agreement and fails to remedy such breach within 7 Business Days following receipt by the Defaulting Party of a notice to that effect by the other party (“the Non-Defaulting Party”), the Non-Defaulting Party shall be entitled, without prejudice to any other rights which it may have in terms of this Agreement or in law:

- 21.1.1.1. to claim specific performance on all the Defaulting Party’s obligations whether or not such obligations would otherwise have fallen due for performance;
- 21.1.1.2. cancel this Agreement and institute a claim for damages against the Defaulting Party.

22. MUTUAL TERMINATION

22.1.1. Notwithstanding anything to the contrary in this Agreement, either Party shall be entitled at any time to terminate this Agreement by 30 (thirty) days written notice to the other Party.

23. EFFECT OF TERMINATION

23.1.1. Upon cancellation or termination of this Agreement, the Service Provider shall continue to render the Services for the duration of the cancellation period (if any) in accordance with and in compliance with its obligations in terms of this Agreement.

24. DISPUTE RESOLUTION

24.1. Disputes shall be determined in accordance with the Dispute Resolution Terms and Procedures as more fully set out in **Schedule B**.

25. GENERAL

25.1. ENTIRE AGREEMENT, VARIATION, CANCELLATION AND WAIVER

25.1.1. No contract varying, adding to, deleting from or cancelling this Agreement, and no waiver of any right under this Agreement, shall be effective unless reduced to writing and signed by or on behalf of the Parties.

25.1.2. This Agreement embodies the entire Agreement relating to the subject matter between the Parties hereto and supersedes any previous agreements in this regard entered into between the Parties.

25.2. WARRANTY OF AUTHORITY

25.3. Indulgence

25.3.1. No indulgence granted by either Party shall constitute a waiver or abandonment of any of that Party's rights under this Agreement and accordingly, that Party shall not be precluded, as a consequence of having granted that indulgence, from exercising any rights against the other Party which may have arisen in the past or which may arise in the future.

25.4. Successor

25.4.1. This Agreement shall be binding on the successors of each Party.

25.5. Applicable law

25.5.1. This Agreement shall be governed by and construed and interpreted in accordance with the laws of the RSA, and all disputes, actions and other matters relating thereto will be determined in accordance with such law.

25.6. Severability

25.6.1. Each undertaking, covenant and agreement in each clause and sub-clause of this Agreement is separate and severable and in the event that any undertaking, covenant, agreement or other provision contained herein shall be determined to be void or unenforceable or illegal in whole or in part for any reason whatsoever, such invalidity, unenforceability or illegality shall not affect the remaining undertakings, covenants, agreements and provisions hereof which shall remain of full force and effect and binding on all parties hereto.

SCHEDULE A

DATA PRIVACY AND SECURITY

1 DEFINITIONS

1.1 In this document, the following terms shall bear the following meanings:

1.1.1 "**Agreement**" means this Agreement together with annexures thereto and replacements to the annexures as may be provided for in the Agreement;

1.1.2 "**Applicable Law**" means (i) any statute, directive, order, enactment, regulation, by-law, ordinance or subordinate legislation in force from time to time; (ii) the common law and the law of delict; (iii) any binding court order, judgement or decree; (iv) any applicable industry code, guidance, policy, or standard enforceable by law; and (v) any applicable direction, statement of practice, guidance, policy, rule or order that is set out by a regulator (including the Regulator) that is binding on the Parties, in any jurisdiction applicable to this Agreement;

1.1.3 "**Data Subject**" means any natural or juristic persons in respect of whom Personal Information relates and/or in respect of whom Personal Information is Processed;

1.1.4 "**Monitoring Device**" means any electronic, mechanical or other instrument, device, equipment or apparatus which is used or can be used, whether by itself or in combination with any other instrument, device, equipment or apparatus, to listen to or record any communication;

1.1.5 "**Personal Information**" shall have the meaning ascribed thereto in Chapter 1 of POPI;

1.1.6 "**Personnel**" means any employee, independent contractor, agent, consultant, sub-contractor or other representative of the Service Provider;

1.1.7 "**Processing**" shall have the meaning ascribed to it in Chapter 1 of POPI;

1.1.8 "**POPI**" means the Protection of Personal Information Act 4 of 2013;

1.1.9 "**Regulator**" means the appropriate Information Regulator as defined under POPI; and

2 OBLIGATIONS OF THE SERVICE PROVIDER WITH RESPECT TO PROCESSING OF PERSONAL INFORMATION

2.1 The Service Provider acknowledges that in providing the Services, it may have access to Personal Information relating to Customer's Data Subjects. Accordingly, the Service Provider warrants and undertakes to and in favour of the Customer that it shall

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- 2.1.1 treat the Personal Information as strictly confidential in accordance with the provisions of this Agreement;
- 2.1.2 only Process Personal Information in accordance with Applicable Laws, in terms of this Agreement and in accordance with any instructions, requirements or specific directions of Moment Designs;
- 2.1.3 not disclose or otherwise make available the Personal Information to any third party (including Personnel) other than authorised Personnel who require access to such Personal Information strictly in order for the Service Provider to carry out its obligations under this Agreement;
- 2.1.4 ensure that all Personnel and any other persons having access to the Personal Information are bound by appropriate and legally binding confidentiality and non-use obligations in relation to the Personal Information on substantially the same terms and conditions as set forth in this Agreement;
- 2.1.5 take appropriate, reasonable technical and organisational measures to ensure that the integrity of the Personal Information in its possession or under its control is secure and that such Personal Information is protected against unauthorised or unlawful processing, accidental loss, destruction or damage, alteration, disclosure or access by having regard to:
 - 2.1.5.1.1 any requirement set forth in Applicable Law; stipulated in industry rules or in codes of conduct or by a professional body; and/or
 - 2.1.5.1.2 generally accepted information security practices and procedures which apply to (i) the Service Provider's business; and (ii) to the Customer, as may be appropriate to discharge its obligations in terms of this Agreement;
- 2.1.6 take appropriate, reasonable, technical and organisational measures to ensure that the Personal Information in its possession or under its control remains immediately available to the Customer as and when it may be required.

3 TRANSFER OF PERSONAL INFORMATION

- 3.1 The Service Provider shall not transfer Personal Information provided to it by the Customer outside of the Republic of South Africa unless expressly authorised by the Customer in writing to do so.

4 INDEMNITY

- 4.1 The Customer hereby fully indemnifies and holds Moment Designs Digital harmless from any and all losses, liabilities, costs, expenses, fines, penalties, damage and damages arising from or attributable to the Service Provider's breach of its obligations set out in this Agreement.

SCHEDULE B

DISPUTE RESOLUTION TERMS & PROCEDURES

Determination of Disputes

Unless otherwise expressly provided for in the Agreement or otherwise agreed by the Parties (as defined in the Agreement) in writing, any dispute and differences that may arise between the Parties during the course of this Agreement shall be submitted for resolution and determined in accordance with terms and procedures set out below, which shall apply to and govern all such disputes.

Referral of a Dispute

If a dispute arises between the Parties then such dispute shall be submitted, in accordance with these Dispute Resolution Terms & Procedures:

in the first instance the dispute shall be referred to a meeting of the respective Parties' representatives;

thereafter to the Parties' respective Business Executives to settle same if possible, by amicable negotiation;

if the matter is not resolved within 30 (thirty) Business Days or such longer period as may be agreed by the Parties in writing it shall be referred to arbitration.

Arbitration

If the dispute is not resolved within the foregoing period, then either Party (hereinafter "the Referring Party") shall be entitled to refer that dispute to arbitration, by a single arbitrator, in terms of this clause 0 by notifying the other Party in writing of its intention to refer such dispute to arbitration (hereinafter "the Arbitration Notice"). The Arbitration Notice shall state that it is given in terms of this clause 0.

Should the Parties fail to agree on the arbitrator within 5 (five) business days of the Arbitration Notice, the arbitrator shall be appointed, at the written request of either Party (which request shall be copied to the other Party and which shall emphasise the agreed expedited nature of such request), by the Chairman for the time being of Association of Arbitrators (Southern Africa) (or its successor) or its nominee.

Unless otherwise expressly agreed by the Parties in writing:

the arbitration proceedings shall be held at Sandton, Republic of South Africa and shall be conducted under the Standard Procedure Rules of the Association of Arbitrators ("the Rules");

the arbitration proceedings shall be conducted as expeditiously as possible but the time periods provided for in Section 23(a) of the Arbitration Act 42 of 1965 (as amended) ("the Arbitration

Act”) shall not apply thereto; and

the award of the arbitrator shall be final and binding and not subject to appeal, and such award may be made an order of any court of competent jurisdiction.

The provisions of this clause 0 shall prevail to the extent of there being any conflict between the Rules and this clause 0.

Subject to the other provisions of this clause 0, the arbitration proceedings contemplated herein shall be held in accordance with the provisions of the Arbitration Act.

General Provisions

These Dispute Resolution Terms & Procedures:

constitute an irrevocable consent by the Parties to the arbitration and other proceedings contemplated in terms hereof and neither of the Parties shall be entitled to withdraw from the provisions of these Dispute Resolution Terms & Procedures or claim at any arbitration or other proceedings contemplated herein that it is not bound by these Dispute Resolution Terms & Procedures or such proceedings;

are severable from the rest of the Agreement and shall remain in effect despite the termination, cancellation, invalidity or alleged invalidity of the Agreement for any reason whatsoever; and

shall be governed by the laws of the Republic of South Africa (in respect of both substantive and procedural law).

Jurisdiction of Competent Courts

Nothing in these Dispute Resolution Terms & Procedures shall preclude either Party from seeking urgent interim relief or enforcement of any liquidate sum, not otherwise provided for herein, from a Court of competent jurisdiction.