



STANDARD TERMS

for the provision of Goods and Services to Customer

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1. INTRODUCTION

- 1.1 **Goods and Services.** Ascent Technology is in the business of enterprise database management.
- 1.2 **Appointment.** Customer wishes to appoint Ascent to supply Goods and render Services from time to time. The Parties, therefore, hereby enter into these Standard Terms to enable Ascent to provide Goods and/or Services (as the case maybe) to Customer in terms of Contract Documents to be concluded between the Parties subject to these Standard Terms, as provided for herein.
- 1.3 **No obligation.** Nothing in these Standard Terms obligates either Party to enter into any Contract Documents.

2. DEFINITIONS AND INTERPRETATION

- 2.1 **Definitions.** For purposes of the Agreement, the following terms shall have the following meanings—

- 2.1.1 **"Affiliate"** means, with regard to either Party, any legal entity which that Party Controls, which Controls that Party, or which is under common Control with that Party, and which concludes a Contract Document pursuant to these Standard Terms;
- 2.1.2 **"AFSA"** means the Arbitration Foundation of Southern Africa, or its successors in title;
- 2.1.3 **"Agreement"** means the agreement between the Parties, which consists of—
- 2.1.3.1 these Standard Terms; and
- 2.1.3.2 any Contract Documents concluded pursuant to these Standard Terms from time to time,
- and includes any schedules, annexures, exhibits and attachments thereto;
- 2.1.4 **"Ascent IP"** means any and all intellectual property that Ascent has created, acquired or otherwise has rights in and may, in connection with the performance of Ascent's obligations under the Agreement, employ, provide, modify, create or otherwise acquire rights in and includes concepts, ideas, methods, methodologies, procedures, processes, know-how, and techniques; models (including function, process, system and data models); templates; general-purpose consulting and software tools, utilities and routines; and logic, coherence and methods of operation of systems and provision of services;
- 2.1.5 **"Ascent"** means Ascent Technology (Proprietary) Limited, the vendor that has entered into these Standard Terms and, where specified in a Contract Document, its Affiliates;
- 2.1.6 **"Average CPI"** means the average year-on-year percentage change in the Consumer Price Index for all urban areas as published in the Statistical News Release compiled by Statistics South Africa (or its successor in title) for the preceding 12 (twelve) months;
- 2.1.7 **"Business Day"** means any day other than a Saturday, Sunday or gazetted public holiday in the Republic of South Africa;
- 2.1.8 **"Business Hours"** means the hours from 08h00 to 17h00 (South African time) on Business Days;
- 2.1.9 **"Change Control Procedure"** means the change control procedure referred to in clause 5;
- 2.1.10 **"Consumables"** means any and all consumable items used by Ascent in fulfilling its obligations under the Agreement including tapes, discs (both optical and magnetic), diskettes, cartridges, ribbons, cards, paper and other storage media;
- 2.1.11 **"Contract Document"** means a goods, licence, services or work order agreed to and signed by both the Parties pursuant to these Standard Terms describing the specific Goods or Services to be provided by Ascent to Customer, including any schedules or annexures thereto;
- 2.1.12 **"Contract Year"** means, in respect of a Contract Document, each successive 12 (twelve) calendar month period during the term of the Contract Document, as measured from the Effective Date of such Contract Document;
- 2.1.13 **"Control"** means owning more than 50% (fifty percent) of the issued share capital or having the legal power to direct or cause the direction of the general management and policies of the company in question;

- 2.1.14 **"Customer Data"** means Customer's data (including personal information relating to an identifiable, living, natural person, and where applicable, an identifiable, existing juristic person)—
- 2.1.14.1 provided to Ascent either by Customer or by any third party on Customer's behalf; or
- 2.1.14.2 data specific to the Services which Ascent generates, processes, or supplies to Customer in the performance of the Services,
- but excludes any aggregated or anonymised data that is created by Ascent for its own internal purposes or data specific to the Services which Ascent generates, processes, or supplies which is proprietary or confidential to Ascent or Ascent's Third-Party Contractors;
- 2.1.15 **"Customer Material"** means all materials provided or made available by or on behalf of Customer to Ascent for purposes of the Agreement and includes Customer Data;
- 2.1.16 **"Customer Policies"** means any of Customer's policies, practices, codes of conduct and procedures including any applicable security, information technology, health, safety and environmental policies (as amended from time to time) which may be of general application to Customer's Personnel;
- 2.1.17 **"Customer"** means the customer that has entered into these Standard Terms and, where specified in a Contract Document, its Affiliates;
- 2.1.18 **"Deliverable"** means any deliverable or work product delivered by Ascent relating to the Services;
- 2.1.19 **"Effective Date"** means, in respect of each Contract Document, the effective date stipulated in such Contract Document, in the absence of which it shall be the Signature Date of such Contract Document;
- 2.1.20 **"Fees"** means the fees and charges to be paid by Customer to Ascent in respect of Goods and Services provided by Ascent under Contract Documents;
- 2.1.21 **"Goods"** means any and all goods (including any and all equipment, hardware or third-party software) to be provided by Ascent to Customer under Contract Documents;
- 2.1.22 **"Parties"** means Ascent and Customer collectively and **"Party"** means either one of them individually, as the context requires;
- 2.1.23 **"Personnel"** means any director, employee, agent, consultant, contractor or other representative of the Parties;
- 2.1.24 **"Relationship Manager"** means either one of the persons appointed under clause 21;
- 2.1.25 **"Scope Change Document"** means the scope change document referred to in clause 5;
- 2.1.26 **"Service Hours"** means the hours during which the Services will be provided by Ascent;
- 2.1.27 **"Service Levels"** means the levels (if any) according to which each Service is to be provided, as set out in the corresponding Contract Document;
- 2.1.28 **"Services"** means any and all services to be provided by Ascent to Customer under Contract Documents;
- 2.1.29 **"Sign"** means the handwritten signature or advanced electronic signature of the duly authorised representative of a Party and **"Signed"**, **"Signing"** and **"Signature"** shall have a corresponding meaning;
- 2.1.30 **"Signature Date"** means the date of signature of any document by the Party signing last;
- 2.1.31 **"Site"** means the physical site referred to in a Contract Document to which Goods are to be delivered or at which Services are to be provided by Ascent for use by Customer under the Contract Document;
- 2.1.32 **"Software"** means any of the proprietary software applications developed and/or licensed by Ascent (as the case may be) and any successor software applications, as amended, updated and enhanced from time to time;
- 2.1.33 **"Standard Terms"** means these terms and conditions and includes any schedules, annexures, exhibits and attachments hereto;
- 2.1.34 **"Steering Committee"** means any steering committee referred to in clause 22;

- 2.1.35 "**Third-Party Contractor**" means, in respect of any goods and services, the contractor, supplier, vendor or licensor (as the case may be) of the goods or services which is not a party to the Agreement;
- 2.1.36 "**Third-Party Contracts**" means any and all contracts in force as at the Effective Date between Customer and Third-Party Contractors, referred to in the Contract Document;
- 2.1.37 "**Time and Materials**" means the method of billing based on actual time spent and materials used, charged at Ascent's standard time and materials fees and charges applicable from time to time; and
- 2.1.38 "**Writing**" means any mode of reproducing information or data in physical form and includes hard copy printouts, handwritten documents and fax transmissions, but excludes information or data in electronic form and "**Written**" and "**Write**" shall have a corresponding meaning.
- 2.2 **Headings.** Headings and sub-headings are inserted for information purposes only and shall not be used in the interpretation of the Agreement.
- 2.3 **Examples.** Whenever a term is followed by the word "including" or "include" or "excluding" or "exclude" and specific examples, the examples shall not limit the ambit of the term.
- 2.4 **Enactments.** References to any enactment shall be deemed to include references to the enactment as re-enacted, amended or extended from time to time.
- 2.5 **References to persons.** References to persons shall include natural and juristic persons and references to either Party shall include the Party's successors or permitted assigns.
- 2.6 **Calculation of days.** Unless otherwise stated in the Agreement, when any number of days is prescribed in the Agreement the first day will be excluded and the last day included, unless the last calendar day falls on a calendar day that is not a Business Day, in which event the last calendar day shall be the next Business Day.
- 2.7 **Definitions in these Standard Terms.** Expressions defined in these Standard Terms shall bear the same meanings in Contract Documents, unless otherwise stated therein. Where any term is defined within the context of any particular clause in the Agreement, the term so defined, unless it is clear from the clause in question that the term has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of the Agreement, notwithstanding the fact that the term has not been defined in clause 2.1 of these Standard Terms.
- 2.8 **Rule of construction excluded.** The rule of construction that an agreement shall be interpreted against the Party responsible for its drafting or preparation shall not apply.
3. **STATUS AND PRECEDENCE**
- 3.1 **Structure.** These Standard Terms are the general terms of the relationship between Ascent and Customer. If Customer receives Goods or Services from Ascent under these Standard Terms, the specific terms of those transactions or engagements will be contained in Contract Documents that will incorporate these Standard Terms (as may be amended by those Contract Documents).
- 3.2 **Contract Documents.** Except where specifically provided to the contrary in a Contract Document, and then only to the extent so specified, each Contract Document shall be subject to these Standard Terms. Subject to the foregoing, insofar as any term and condition in a Contract Document unintentionally conflicts with these Standard Terms in respect of—
- 3.2.1 the description of Goods or Services, the terms and conditions in the Contract Document shall prevail; or
- 3.2.2 any other matter, these Standard Terms shall prevail.
- 3.3 **Contract Documents independent.** Save where expressly provided to the contrary, the terms and conditions of one Contract Document shall not apply to any other Contract Document.
- 3.4 **Conflicts with body of Contract Documents.** Insofar as the meaning of any term or condition in a schedule or annexure to a Contract Document or any other document referred to in a Contract Document, excluding these Standard Terms, conflicts with the meaning of the body of the relevant Contract Document, the meaning of the terms and conditions in the body of the relevant Contract Document shall prevail unless expressly stated otherwise.
4. **DURATION OF CONTRACT DOCUMENTS**
- Each Contract Document will commence on its Effective Date and shall continue for the period provided therein, subject to earlier termination as provided for in these Standard Terms.
5. **CHANGE CONTROL**
- 5.1 **Changes to Goods and Services.** During the currency of a Contract Document, events may occur which require a change to the nature and scope of Goods and Services. No change shall be implemented unless the Parties comply with the terms of this clause 5.
- 5.2 **Change request.** A Party may propose a change to the nature and scope of Goods and Services by sending a Scope Change Document to the other Party detailing the desired changes.
- 5.3 **Scope Change Document.** Should a Scope Change Document be made by—
- 5.3.1 Customer, then Customer shall specify the reasons for that change and describe the change in sufficient detail to enable Ascent to formulate a response. Ascent shall investigate the likely impact of any proposed changes on the provision of Goods and Services and shall provide Customer with a scope change proposal; or
- 5.3.2 Ascent, then Ascent shall detail in a scope change proposal the reasons for and impact of the change, the services required to implement the change and the effect that the changes, if implemented, will have on the relevant Contract Document.
- 5.4 **Scope change proposal.** Ascent's scope change proposal shall describe with a reasonable degree of specificity—
- 5.4.1 the changes to the Services or Deliverables;
- 5.4.2 any new or changed responsibilities of either Party;
- 5.4.3 a new timetable for completion of Services or Deliverables, as applicable;
- 5.4.4 any new or changed testing and acceptance procedures;
- 5.4.5 changes to the Fees previously set forth in the affected Contract Document; and
- 5.4.6 any other items which may be agreed to by the Parties.
- 5.5 **Sign-off.** The Parties shall discuss the proposed changes and shall effect such amendments to Ascent's scope change proposal as may be agreed. The scope change proposal shall then be considered by Customer and approved or rejected in its discretion in writing within 3 (three) Business Days. If a scope change proposal—
- 5.5.1 is accepted by Customer, the scope change proposal shall be signed off by duly authorised representatives of the Parties and incorporated into the relevant Contract Document; or
- 5.5.2 is rejected by Customer, the Goods or Services shall continue to be provided by Ascent on the existing terms set out in the Contract Document.
- 5.6 **No change effective until sign-off.** Neither Ascent nor Customer shall be entitled to proceed with or require the implementation of any change to a Contract Document until the change and all matters relating to the change have been agreed in writing between the Parties. Pending sign-off, the Parties will continue to perform their obligations without taking account of the proposed changes. Neither Party shall be obliged to agree to any change proposed by the other Party but the Parties will not unreasonably delay or withhold their agreement to a proposed change.
- 5.7 **Exception.** It is expressly recorded that amendments to the content of the Agreement which do not directly impact the nature and scope of Goods or Services provided shall not be subject to the Change Control Procedure, but shall be executed in Writing.
6. **PERSONNEL**
- 6.1 **Access.** Customer shall allow Ascent and its Personnel such access (at all reasonable times) to the Sites as is necessary for the purposes of fulfilling its obligations under

Contract Documents.

6.2 **Compliance with Customer Policies.** Ascent shall take all reasonable steps to comply, and ensure that its Personnel comply, with Customer Policies. Customer shall notify Ascent of all Customer Policies applicable to a Contract Document prior to the Effective Date thereof and give Ascent and the relevant Personnel reasonable written notice of any change in existing Customer Policies or the implementation of new Customer Policies during the currency thereof.

6.3 **Allocation of resources.** Ascent shall be entitled, in its discretion, to allocate and reallocate any Ascent Personnel who provide Services under a Contract Document, provided that Ascent shall use all commercially reasonable efforts to ensure the continuity of the Services provided to Customer under the Contract Document. Each Party undertakes to provide the other with reasonable advance notice of any changes in their respective key Personnel.

6.4 **Direction and control of Personnel.** Unless otherwise specified in a Contract Document, Ascent's Personnel shall at all times be subject to, and work under, the direction and control of Ascent.

6.5 **Disciplinary action and incapacity counselling.** Ascent will be exclusively responsible for taking disciplinary action against and providing incapacity counselling for its Personnel in accordance with its own disciplinary codes and counselling procedures and shall do so when reasonably called upon by Customer in Writing.

7. ASCENT OBLIGATIONS

7.1 **Information security.** Ascent shall take all commercially reasonable steps to comply with Customer's information security policies, standards and guidelines while using Customer's systems, networks and applications.

7.2 **On-site Services.** For any Services performed at Customer's facilities, Ascent shall take all reasonable steps to ensure that its Personnel observe the physical and data access security requirements of Customer and that they perform their duties in a manner that does not unreasonably interfere with Customer's business and operations.

7.3 **Reporting and review.** With respect to any Services being performed by Ascent pursuant to a Contract Document, Ascent shall participate in such status review meetings (which may be telephonic) as may be set forth in such Contract Document or as may reasonably be requested by Customer. Ascent shall also supply Customer with any other reports specifically set forth in any Contract Document.

7.4 **Occupational health and safety.** Ascent shall at all times comply with all applicable (i) workers' compensation; (ii) compensation for occupational injuries and diseases; and (iii) occupational health and safety laws, statutes and regulations. Such requirement will include Ascent obtaining cover for all Personnel of Ascent suffering bodily injury (including death) by accident or disease, which arises out of or in connection with the performance of the Agreement by Ascent. The agreement between Customer (or employer, as defined in the Occupational Health and Safety Act ("**OHS Act**")) and Ascent (or mandatory, as defined in the **OHS Act**) in this clause and the applicable Customer Policies constitute the agreement in writing referred to in section 37(2) of the OHS Act.

8. CUSTOMER OBLIGATIONS

To enable Ascent to provide the Goods and Services, Customer agrees to provide ongoing assistance, liaison, input, support and full co-operation and shall, to the extent required by Ascent and at Customer's cost—

8.1 **licences and consents;** obtain and maintain any licences or consents necessary for Ascent to provide the Services to Customer;

8.2 **provision of office and working space;** provide Ascent and its Personnel with access to adequate working space, office furniture and parking;

8.3 **provision of Consumables;** provide the Consumables reasonably required by Ascent to fulfil its obligations under Contract Documents, unless any Consumables are agreed to be provided by Ascent under a Contract Document;

8.4 **availability of Personnel;** make its Personnel available for workshops, group discussions and specific task execution as

and when required according to any agreed project plans;

8.5 **decisions and approvals;** render all decisions and approvals required as soon as is reasonably possible;

8.6 **suitable infrastructure;** provide a suitable infrastructure for the components, software or Deliverables that are to be implemented, including main servers, operating systems, third-party software, databases, tools and related facilities, in accordance with any specification requirements;

8.7 **change management;** ensure that any infrastructure upon which the Services are dependent is not altered, upgraded (including routine updates or patches) or otherwise changed without giving reasonable advance notice to Ascent;

8.8 **access;** provide Ascent with reasonable access to Customer Material and Customer's computer systems. Such access includes logical and physical access to networks, information, documentation and data;

8.9 **notifications;** notify Ascent as soon as reasonably possible of any issues, concerns or disputes which may arise from time to time;

8.10 **Customer Material;** be responsible for the accuracy and completeness of all Customer Material;

8.11 **supply of infrastructure;** provide electricity services, telephone services and other connectivity (including access to computer networks and the Internet) at each Site;

8.12 **dependent functions;** make available sufficiently qualified and authorised Customer Personnel, with appropriate access rights and permissions;

8.13 **compliance with Ascent policies;** comply with all reasonable policies, procedures and instructions of Ascent in relation to the provision of Goods and Services; and

8.14 **no malicious software;** take commercially reasonable measures to ensure that no malicious software is introduced into Customer's or Ascent's systems by its Personnel or any third party.

9. CUSTOMER MATERIAL AND CUSTOMER DATA

9.1 **Ownership.** Ownership in all Customer Material whether under its control or not, shall continue to vest in Customer and Ascent shall not obtain any proprietary rights in Customer Material. Customer grants to Ascent (and Ascent's Third-Party Contractors as necessary) a perpetual, non-exclusive, royalty-free licence to use, reproduce and modify any Customer Material strictly for the purposes of providing the Goods and Services or as otherwise directed by Customer.

9.2 Privacy and protection of personal information.

9.2.1 General.

9.2.1.1 Ascent and Customer are each responsible for complying with their respective obligations under applicable privacy and protection of personal information laws governing Customer Data.

9.2.1.2 Customer remains solely responsible (i) for determining the purposes and means of Ascent's processing of Customer Data (including that processing will not place Customer or Ascent in breach of any applicable privacy and protection of personal information laws) and (ii) for ensuring that all information protection principles which establish minimum requirements for the processing of personal information under applicable privacy and protection of personal information laws and all the measures that give effect to such principles are complied with.

9.2.2 Trans-border Customer Data flows.

9.2.2.1 Customer hereby consents (and warrants that, where applicable, it has obtained the consent of the person(s) to whom the Customer Data relates) to Ascent transferring Customer Data across a country border to enable Ascent to comply with its obligations under the Agreement.

9.2.2.2 Customer is solely responsible for determining that any transfer of Customer Data across a country border complies with the applicable privacy and protection of personal information laws.

9.2.3 **Restricted use.** Customer Data in the possession of Ascent, or to which Ascent may have access during the currency of a Contract Document, may not be used,

accessed or processed by Ascent, its Personnel or Third-Party Contractors for any purposes whatsoever other than as may be specifically required to enable Ascent to comply with its obligations in terms of the Contract Document.

- 9.2.4 **Security measures.** Ascent undertakes that, to the extent that it processes personal information for Customer, it shall establish and maintain appropriate, reasonable technical and organisational measures to prevent—
- 9.2.4.1 loss of, damage to or unauthorised destruction of such personal information; and
- 9.2.4.2 unlawful access to or processing of such personal information.
- 9.2.5 In order to give effect to clause 9.2.4, Ascent agrees to take reasonable measures to—
- 9.2.5.1 identify all reasonably foreseeable internal and external risks to the personal information in its possession or under its control;
- 9.2.5.2 establish and maintain appropriate safeguards against the risks identified;
- 9.2.5.3 regularly verify that the safeguards are effectively implemented; and
- 9.2.5.4 ensure that the safeguards are continually updated in response to new risks or deficiencies in previously implemented safeguards.
- 9.2.6 **Indemnity.** Each Party hereby indemnifies and holds the other Party harmless from any claim, damages, penalty or fine as a result of such Party failing to comply with its obligations under this clause 9.2.
- 9.2.7 **Access.** On either Party's reasonable written request, the other Party will provide the requesting Party with the information that it has regarding Customer Data and its processing that is necessary to enable the requesting Party to comply with its obligations under this clause 9 and any applicable privacy, protection of personal information and access to information laws. The requesting Party will reimburse the other Party for its reasonable charges for such assistance.
- 9.3 **Preservation of integrity of Customer Data.** Both Parties shall take reasonable precautions (having regard to the nature of their obligations under the Agreement) to preserve the integrity of Customer Data and to prevent any unauthorised access, corruption or loss of Customer Data.
- 9.4 **Return of data.** On termination of any Contract Document, each Party shall return to the other Party in the form in which it was received all of the other Party's data or information provided to the Party for the purpose of the performance of the relevant Contract Document.

10. CUSTOMER THIRD-PARTY CONTRACTORS

- 10.1 **Applicable terms.** Where Ascent is required under Contract Documents to manage or liaise with Customer-appointed Third-Party Contractors pursuant to Third-Party Contracts, the following terms will apply—
- 10.1.1 Customer shall notify Ascent in writing of the applicable terms of the Third-Party Contracts insofar as they relate to or have an impact on Ascent's obligations;
- 10.1.2 Ascent shall not be required to ensure or be responsible for ensuring Customer's or the Third-Party Contractors' compliance with the terms of the Third-Party Contracts; and
- 10.1.3 Customer shall be responsible for obtaining and maintaining all necessary licences, consents or authorities under the Third-Party Contracts (including any consents or licences required to enable Ascent to fulfil its obligations under the Contract Document) and shall be liable for all fees and other charges payable to any Third-Party Contractors pursuant to the Third-Party Contracts.
- 10.2 **No liability.** Ascent shall not be liable for any act or omission of a Third-Party Contractor, except to the extent that Ascent has directly caused such act or omission to occur.

11. ASCENT WARRANTIES

- 11.1 **Service warranties.** Ascent warrants that in relation to the Services—
- 11.1.1 Ascent shall provide the Services with promptness and

diligence and in a workmanlike manner and in accordance with the practices and professional standards prevailing in Ascent's industry;

- 11.1.2 Ascent and its Personnel will possess and have the right to use—
- 11.1.2.1 knowledge and expertise sufficient to enable Ascent to provide the Services; and
- 11.1.2.2 all maintenance and other manuals, specifications, diagnostic aids and testing devices and specialised tools and equipment necessary to enable Ascent to provide the Services.
- 11.1.3 Ascent will employ a sufficient number of suitably trained Personnel to provide the Services and to achieve the Service Levels; and
- 11.1.4 Ascent will provide the Services in accordance with all applicable laws, enactments and regulations.
- 11.2 **General warranties.** Ascent warrants further that—
- 11.2.1 Ascent has the legal right and full power and authority to enter into the Agreement and to exercise Ascent's rights and perform its obligations under the Agreement; and
- 11.2.2 Ascent and its Personnel will not knowingly introduce any malicious software into Customer's computer, networking or communications systems by means of the Software or through any Deliverables.
- 11.3 **Disclaimer of warranties.** Ascent hereby excludes and disclaims all warranties, whether expressed or implied, statutory or otherwise, except those warranties expressly made in the Agreement, including—
- 11.3.1 any implied warranties of satisfactory quality, no latent defects, merchantability and fitness for a particular purpose; and
- 11.3.2 all warranties in respect of third-party software applications provided pursuant to the Agreement.
- 11.4 **Proposals and reports.** All surveys, forecasts and recommendations in any proposal, report or other document are made in good faith and on the basis of information available to Ascent at the time. No statement in any proposal, report or other document is to be deemed to be a representation, warranty, undertaking or contractual condition.

12. CUSTOMER WARRANTIES

- Customer warrants that—
- 12.1 it has not been induced to enter into the Agreement by any prior representations, warranties or guarantees (whether oral or in writing), except as expressly contained in the Agreement;
- 12.2 by entering into a Contract Document Customer is not acting in breach of any other agreement to which Customer is a party;
- 12.3 if Ascent Personnel are required to use software owned or operated by Customer, all necessary user licences have been obtained in advance; and
- 12.4 the use of Customer Material by Ascent does not and will not infringe the intellectual property rights of any other person, and Customer hereby indemnifies and holds Ascent harmless from any claim for damages by any third party as a result of the breach of these warranties.

13. FEES AND PAYMENT

- 13.1 **Fees.** In consideration for the Goods and Services, Customer shall be liable for and shall pay the Fees.
- 13.2 **Invoices.** All invoices, including those in respect of Goods and Services provided on a Time and Materials basis, shall be paid by Customer upon presentation.
- 13.3 **Tax.** Unless otherwise specified in a Contract Document, the Fees exclude all taxes (including value-added tax and other taxes levied in any jurisdiction, but excluding taxes based on the income of Ascent), duties (including stamp duties), tariffs, rates, levies and other governmental charges or expenses payable in respect of the Goods or Services, all of which shall be payable by Customer in addition to the Fees.
- 13.4 **Interest on outstanding amounts.** Where payment of any amount due is not made on the due date, Ascent shall be entitled to—

- 13.4.1 charge interest on the outstanding amount at the prime overdraft rate (percent, per annum) charged by Ascent's then-current bankers from time to time, as evidenced by any manager of the bank, whose authority it shall not be necessary to prove. Interest shall be calculated from the due date of payment to the date of actual payment, both days inclusive, compounded calendar monthly in arrears and Customer agrees and undertakes to pay on demand the penalty interest, which it hereby accepts as fair and reasonable; and
- 13.4.2 without prejudice to any other right or remedy it may have, remove any Goods supplied by Ascent or halt the provision of any Services as Ascent (in its sole discretion) chooses until all payments in arrears have been paid in full.
- 13.5 **Mode and method of payment.** All amounts due and payable by Customer shall be paid to Ascent in the currency specified in the relevant Contract Document, in the absence of which in South African Rands, without deduction or set-off for any reason at an address and in a manner specified by Ascent in writing from time to time. Customer shall not be entitled to withhold payment of any amounts payable to Ascent to satisfy any claim of Customer arising from the Agreement or any other agreement.
- 13.6 **Escalation.** Where a Contract Document provides for the annual escalation of the Fees payable thereunder, the Fees shall automatically be escalated by Average CPI effective as of the commencement of each Contract Year.
- 13.7 **Expenses.** Customer shall reimburse Ascent for all expenses incurred by Ascent or Ascent's Personnel in fulfilling Ascent's obligations under the Agreement, provided same are authorised by Customer in Writing. Expenses include travelling, subsistence, goods and services purchased on Customer's behalf, communications, stationery, report and presentation material. Travelling and subsistence expenses will be billed in accordance with Ascent's standard policies from time to time.
- 13.8 **Reimburse costs.** If Ascent suspends the provision of the Services or removes any Goods supplied by Ascent as provided for in clause 13.4.2 above, Customer shall pay to Ascent the costs incurred by Ascent (including redeployment, travel and associated expenses) in remobilising Ascent's Personnel affected by the Agreement and recommencing the provision of the Services or re-installing the removed Goods.
- 13.9 **Change in law.** If at any time the direct costs of performing Ascent's obligations under the Agreement are increased as a result of a change in any South African law applicable to the Services, then Ascent will notify Customer of such increase and the increase shall become effective within 30 (thirty) days of such notice.
14. **EXCUSABLE DELAYS**
- 14.1 **Definition.** Where—
- 14.1.1 Customer does not provide access to a person, place or thing timeously; changes a decision which Customer has previously communicated to Ascent; does not reply to a communication from Ascent within the required (or reasonable) period; unreasonably withholds an acceptance or consent; commits a breach of the Agreement which is not otherwise categorised as an Excusable Delay; any *bona fide* dispute arises between the parties; or
- 14.1.2 Ascent's performance is affected by an event of *force majeure*; or the failure of a third-party supplier or service provider,
- this shall constitute an "**Excusable Delay**".
- 14.2 **Notification.** Either Party shall notify the other of an event which has occurred or is anticipated and which—
- 14.2.1 the notifying Party believes is or may be an Excusable Delay; and
- 14.2.2 occurred no more than 14 (fourteen) calendar days previously.
- 14.3 **Extension of time for performance.** Ascent's performance shall be extended on a reasonable basis in proportion to the prejudice caused by the Excusable Delay, provided that the extension is at least the number of days of the Excusable Delay. Ascent may charge for any additional hours required to execute the Services on a Time and Materials Basis.
- 14.4 **Proposals for Excusable Delay.**
- 14.4.1 Should an Excusable Delay arise, Ascent may submit proposals for different ways of dealing with the Excusable Delay. Ascent shall submit proposals to Customer which may set out a variety of methods for dealing with the Excusable Delay which Ascent considers practical.
- 14.4.2 Proposals for addressing Excusable Delays shall include proposed changes to the scope of work, prices, loss of income due to the Excusable Delay and any delay to the date of performance assessed by Ascent.
- 14.4.3 Customer shall reply to Ascent within 5 (five) Business Days of the submission of Ascent's proposal—
- 14.4.3.1 accepting the proposal;
- 14.4.3.2 requiring a revised proposal, in which event, Customer shall provide Ascent with reasons for doing so. Ascent shall submit the revised proposal within 10 (ten) Business Days of being required to do so; or
- 14.4.3.3 notifying Ascent that the proposal shall not be accepted and that a revised proposal is not required. In such event, a dispute will be deemed to exist between the Parties to be resolved under clause 25.
- 14.5 **Assessing Excusable Delays.**
- 14.5.1 The changes to the prices must be assessed with regard to the effect of the Excusable Delay on—
- 14.5.1.1 the fee for the work already done, and
- 14.5.1.2 the forecast fee for the work not yet done.
- 14.5.2 A delay in performance is assessed as the length of time that, due to an Excusable Delay, planned performance is later than originally indicated.
- 14.5.3 Ascent shall include in Ascent's proposal for a change to the scope proposed rates for its Personnel.
- 14.6 **Implementation.** Ascent shall implement each accepted proposal in accordance with the proposal's terms.
- 14.7 **Milestones.** If an amount would have been payable to Ascent by Customer had it not been for an Excusable Delay as set out in clause 14.1.1, Customer shall pay Ascent the amount, notwithstanding the fact that any milestone has been adjusted.
15. **IDLE TIME**
- 15.1 **Idle Time.** Should Customer fail to provide any information or resources (including key Personnel) which it is required to provide under any Contract Document on the due date therefor and persists in such failure for a period in excess of 5 (five) Business Days (or such longer period as Ascent may agree to in writing) after such due date, such failure shall constitute a material breach of the Contract Document. In addition to any remedies which Ascent may have in terms of the Agreement—
- 15.1.1 Customer shall pay Ascent for all Idle Time occasioned by such failure. For these purposes, "**Idle Time**" shall be the aggregate time of all Ascent Personnel assigned to provide the Services in terms of the Contract Document, calculated on an eight-hour-a-day, five-day-a-week basis, between the date on which Customer fails to comply with its obligations and the date on which Customer finally complies with its obligations, or the date on which Ascent terminates the Contract Document in question in accordance with these Standard Terms (whichever is the sooner); and
- 15.1.2 without derogating from the provisions of clause 15.1.1, should Customer fail to comply with its obligations within the above 5 (five) Business Day period (or such longer period as Ascent may agree to in writing), Ascent may reassign its assigned Personnel to other projects, in which event, should Ascent elect not to terminate the Contract Document in question, Ascent will recommence the provision of the Services as soon as it is able to do so.
- 15.2 **Excusable Delay.** Customer acknowledges that its failure under this clause 15 will result in an Excusable Delay for purposes of clause 14 above.
16. **INTELLECTUAL PROPERTY**
- 16.1 **Existing material.** All right, title and ownership of any code, forms, algorithms, methodologies, frameworks or materials

developed by or for Ascent or Customer independently and outside of the Agreement and provided during the course of the Agreement ("**Existing Material**") shall remain the sole property of the Party providing the Existing Material.

- 16.2 **Deliverables.** All right, title and interest, including all rights under all copyright, patent and other intellectual property laws, in and to any Deliverables shall, unless agreed to the contrary in any Contract Document, vest in Customer.
- 16.3 **Retention of rights.** Ascent has created, acquired or otherwise obtained rights in the Ascent IP and, notwithstanding anything contained in the Agreement, as between the Parties Ascent will own all right, title and interest, including all rights under all copyright, patent and other intellectual property laws, in and to the Ascent IP.
- 16.4 **Use of Ascent IP.** To the extent that Ascent utilises any Ascent IP in connection with Ascent's performance under a Contract Document, the Ascent IP shall remain the property of Ascent and Customer shall acquire no right or interest therein, provided that, to the extent that any Ascent IP is contained in any Deliverable, Ascent grants to Customer a personal, non-exclusive licence to use such Ascent IP strictly in connection with such Deliverable.
- 16.5 **Derivative Works.** Unless otherwise agreed to in Writing, with respect to any development, adaptation, enhancement, modification, adjustment or other change to any Ascent IP which may be developed by Ascent ("**Derivative Works**"), Ascent shall be the owner of all such Derivative Works.

17. CONFIDENTIAL INFORMATION

- 17.1 **Confidentiality obligation.** Each Party ("**Receiving Party**") must treat and hold as confidential all information which it may receive from the other Party ("**Disclosing Party**") or which becomes known to it during the currency of the Agreement.
- 17.2 **Nature.** The confidential information of the Disclosing Party shall include—
- 17.2.1 all software and associated material and documentation, including the information contained therein;
- 17.2.2 Customer Data;
- 17.2.3 all information relating to—
- 17.2.3.1 the Disclosing Party's past, present and future research and development; and
- 17.2.3.2 the Disclosing Party's business activities, pricing, products, services, customers, as well as the Disclosing Party's technical knowledge and trade secrets; and
- 17.2.4 the terms of the Agreement.
- 17.3 **The Receiving Party's obligations.** The Receiving Party agrees that in order to protect the proprietary interests of the Disclosing Party in the Disclosing Party's confidential information—
- 17.3.1 it shall only use the confidential information for the purposes of complying with its obligations under the Agreement;
- 17.3.2 it shall only make the confidential information available to those of the Receiving Party's Personnel who are actively involved in the execution of the Receiving Party's obligations under the Agreement and then only on a "need to know" basis;
- 17.3.3 it shall initiate internal security procedures reasonably acceptable to the Disclosing Party to prevent unauthorised disclosure and will take all practical steps to impress upon those Personnel who need to be given access to confidential information, its secret and confidential nature;
- 17.3.4 subject to the right to make the confidential information available to its Personnel under clause 17.3.1, it shall not at any time use any confidential information of the Disclosing Party or directly or indirectly disclose any confidential information of the Disclosing Party to third parties; and
- 17.3.5 all written instructions, drawings, notes, memoranda and records of whatever nature relating to the confidential information of the Disclosing Party which have or shall come into the possession of the Receiving Party and its Personnel, shall be and shall at all times remain the sole and absolute property of the Disclosing Party and shall promptly be handed over to the Disclosing Party when no

longer required for the purposes of a Contract Document.

- 17.4 **Effect of termination.** On termination or expiry of a Contract Document, the Parties will deliver to each other or, at the other Party's option, destroy all originals and copies of confidential information in their possession.
- 17.5 **Exceptions.** These obligations shall not apply to any information which—
- 17.5.1 is lawfully in the public domain at the time of disclosure;
- 17.5.2 subsequently and lawfully becomes part of the public domain by publication or otherwise;
- 17.5.3 subsequently becomes available to the Receiving Party from a source other than the Disclosing Party, which source is lawfully entitled without any restriction on disclosure to disclose the confidential information; or
- 17.5.4 is disclosed pursuant to a requirement or request by operation of law, regulation or court order.
- 17.6 **Indemnity.** The Receiving Party hereby indemnifies the Disclosing Party against any loss or damage which the Disclosing Party may suffer as a result of a breach of this clause by the Receiving Party or the Receiving Party's Personnel.
- 17.7 **Survival.** This clause is severable from the remainder of the Agreement and shall remain valid and binding on the Parties, notwithstanding any termination, for a period of 5 (five) years after the effective date of termination.
- ## 18. NON-SOLICITATION
- 18.1 **No solicitation of Personnel.** Customer shall not, during the currency of any Contract Document, or for a period of 12 (twelve) calendar months following termination thereof, directly or indirectly (including through an intermediary or other third party) solicit, offer employment to, employ or contract in any manner (including as employee, consultant, or contractor) with any Personnel of Ascent unless otherwise agreed by Ascent in Writing.
- 18.2 **Recruitment fee.** In the event that Customer breaches clause 18.1 above, Customer shall pay Ascent a recruitment fee equal to the gross annual package (annualised if necessary and including any quantifiable bonuses or incentives) paid by Ascent to the Personnel concerned. Such amount shall be payable within 30 (thirty) days of commencement of such person's appointment with Customer and shall be without prejudice to any claim which Ascent may have in terms of the Agreement or in law.
- ## 19. INTELLECTUAL PROPERTY INFRINGEMENT
- 19.1 **Defence.** Ascent will defend Customer against any claims made by an unaffiliated third party that any Goods or Services infringe its patent, design, copyright or trade mark and will pay the amount of any resulting adverse final judgment (or settlement to which Ascent consents). Ascent will reimburse Customer with all costs reasonably incurred by Customer in connection with assisting Ascent with the defence of the action. Customer shall promptly notify Ascent of the claim in writing and Ascent shall have sole control over its defence or settlement.
- 19.2 **Consequences of successful claim by third parties.** Should any third party succeed in its claim for the infringement of any intellectual property rights, Ascent shall, at Ascent's discretion and within 30 (thirty) calendar days of the infringing item having been found to so infringe—
- 19.2.1 obtain for Customer the right to continue using the infringing item or the parts which constitute the infringement;
- 19.2.2 replace the infringing item or the parts which constitute the infringement with another product which does not infringe and which in all respects operates substantially in accordance with its specifications;
- 19.2.3 alter the infringing item in such a way as to render it non-infringing while still in all respects operating substantially in accordance with its specifications; or, failing all of the above,
- 19.2.4 withdraw the infringing item and refund to Customer all Fees paid by Customer to Ascent under the relevant Contract Document with regard to the infringing item in the preceding 12 (twelve) calendar month period.
- 19.3 **Exclusion.** Ascent shall not be liable for any claim which

arises out of goods or services selected by Customer and which are procured by Customer from third parties.

19.4 **Survival.** This clause 19 shall survive termination of the Agreement.

20. LIMITATION OF LIABILITY

20.1 **Direct damages limited.** To the extent permitted by applicable law, regardless of the form (whether in contract, delict or any other legal theory) in which any legal action may be brought, unless otherwise agreed in a Contract Document, each Party's maximum liability for direct damages for anything giving rise to any legal action shall be an amount equal to the total Fees payable by Customer to Ascent in respect of the Contract Document. This maximum amount shall be an aggregate amount for all claims arising out of the Contract Document during its currency.

20.2 **Indirect damages excluded.** To the extent permitted by applicable law, in no event shall either Party or its Personnel be liable for any indirect, incidental, special or consequential damages or losses (whether foreseeable or unforeseeable) of any kind (including loss of profits, loss of goodwill, damages relating to lost or damaged data or software, loss of use, damages relating to downtime or costs of substitute products) arising from the Agreement.

20.3 **Exclusions.** The limitations contained in this clause 20 shall not apply to (i) any breach by a Party of the other Party's proprietary or confidential information or intellectual property; (ii) a party's indemnification obligations under the Agreement; (iii) any loss of or damage to any property or injury to or death of any person which arises from a Party's negligence; or (iv) damages arising from a Party's wilful misconduct (including theft, fraud or other criminal act).

20.4 **Parties not liable for each other's default.** Neither Party shall be liable to the other for any loss or damage of whatsoever nature suffered by the defaulting Party arising out of or in connection with any breach of the Agreement by the defaulting Party or any act, misrepresentation, error or omission made by or on behalf of the defaulting Party or its Personnel.

20.5 **Exclusion.** Ascent shall not be liable for any claim which arises out of goods or services selected by Customer and which are procured by Customer from third parties.

20.6 **Survival.** This clause 20 shall survive termination of the Agreement.

21. RELATIONSHIP MANAGERS

21.1 **Appointment.** In order to facilitate the smooth and effective provision of the Goods and Services, the Parties shall each appoint a suitably qualified and responsible person to act as their Relationship Manager.

21.2 **Function.** The Relationship Managers will operate as the main interface between Ascent and Customer and will be responsible for all project performance, reporting, pricing negotiation and resolution of all related issues. The Relationship Managers' responsibilities include the management and coordination of the Goods and Services and the discussion and management of any changes.

21.3 **Replacement.** Either Party may, on 7 (seven) calendar days' written notice to the other, appoint an alternative Relationship Manager who is suitably qualified and responsible.

22. STEERING COMMITTEE

22.1 **Steering Committee.** The Parties may elect to establish a Steering Committee if the undertaking in terms of a Contract Document so warrants, in which case the Steering Committee will be constituted in accordance with the terms of clause 22.3, within 30 (thirty) calendar days of the Effective Date of such Contract Document, or such longer period as the Parties may agree to in writing.

22.2 **Functions.** The functions of the Steering Committee shall be—

22.2.1 to provide a means for a high-level joint review of issues relating to all aspects of the Agreement;

22.2.2 to provide a forum for joint strategic discussion;

22.2.3 to provide a means of agreeing Contract Documents; and

22.2.4 in certain circumstances, pursuant to the dispute resolution procedure set out in clause 25, to provide a means of

resolving disputes or disagreements between the Parties, but the Steering Committee shall not concern itself with the day-to-day management of the provision of Goods and Services under Contract Documents.

22.3 **Constitution of Steering Committee.** The Steering Committee shall be constituted and shall function as follows—

22.3.1 the Steering Committee shall comprise the representatives of the Parties as agreed by the Parties from time to time in writing. The representatives shall be authorised to make decisions at Steering Committee meetings on behalf of the respective Parties;

22.3.2 the initial chairperson of the Steering Committee shall be agreed by the Parties in writing;

22.3.3 any appointment, removal or replacement of representatives by a Party shall be by written notice to the other Party and shall be effective as soon as notice is received by the other Party;

22.3.4 the Steering Committee may from time to time co-opt additional persons to sit on the Steering Committee, whether in a voting or monitoring capacity;

22.3.5 subject to the terms of the Agreement, the members of the Steering Committee may adopt procedures and practices for the conduct of the activities of the Steering Committee as they consider appropriate from time to time;

22.3.6 the Steering Committee shall meet on at least a quarterly basis during the currency of any Contract Documents (which meeting may be conducted by remote Web- or teleconference, as agreed) and, in addition, the Steering Committee shall meet (on reasonable notice) on the request of any Party or to conduct any other ad hoc function contemplated in the Agreement. The time and place for meetings shall be determined by the Steering Committee;

22.3.7 duly appointed alternate representatives shall be entitled to attend meetings of the Steering Committee and shall have the right to speak but no alternate shall be entitled to vote if his principal is present at that meeting;

22.3.8 a quorum for a meeting of the Steering Committee shall be one representative of each of the Parties;

22.3.9 each member of the Steering Committee shall be entitled to one vote;

22.3.10 all matters will be decided by consensus; and

22.3.11 where the Steering Committee decides it is appropriate, meetings may also be held by telephone or another form of telecommunication, by which each participant can hear and speak to all other participants at the same time.

22.4 **Minutes of meetings.** All business transacted at meetings of the Steering Committee shall be recorded and Signed by a member of the committee representing each of the Parties and these minutes shall be circulated to the members within 14 (fourteen) calendar days of each meeting. The minute book shall at all times be available for inspection by the members of the committee or their duly authorised agents who shall be entitled to make copies or to take extracts.

23. BREACH AND TERMINATION

23.1 **Breach.** Should either Party ("**Defaulting Party**")—

23.1.1 commit a material breach of a Contract Document and fail to remedy the breach within 14 (fourteen) calendar days of having been called on in Writing by the other Party to do so;

23.1.2 fail to pay any invoice that is more than 60 (sixty) calendar days outstanding and is not the subject of a *bona fide* dispute between the Parties;

23.1.3 effect or attempt to effect a compromise or composition with its creditors;

23.1.4 be provisionally or finally liquidated, be placed under judicial management or receivership, commence business rescue proceedings or the equivalent of any of the foregoing; or

23.1.5 cease to carry on its business in the ordinary course, then the other Party who signed the relevant Contract Document ("**Innocent Party**") may, in its discretion and without prejudice to its rights in the Agreement or in law, terminate the specific Contract Document to which the event

relates on written notice to the Defaulting Party.

- 23.2 **Change of Control.** Should the Defaulting Party undergo a change of Control without the prior written consent of the Innocent Party, then the Innocent Party may terminate the Agreement and/or any Contract Document by giving at least 30 (thirty) calendar days' prior Written notice to the Defaulting Party specifying the date as of which such termination will be effective. The Innocent Party's rights to terminate under this clause 23.2 shall only be exercisable for the period of 90 (ninety) calendar days immediately following the date on which it becomes aware of the actual change in Control of the Defaulting Party, provided that such 90 (ninety) calendar day period shall not apply (and there will, accordingly, be no time limit on the Innocent Party's right to terminate as aforesaid) should a change of Control result in the Control of the Defaulting Party vesting (directly or indirectly) in a competitor of the Innocent Party.
- 23.3 **Licences and consents.** Should any licence, permit, certificate, consent, exemption or other legal requirement of a material nature without which Ascent is unable effectively to provide Services under a Contract Document expire, terminate, not be renewed or be withdrawn or refused for any reason whatsoever, then Ascent may terminate such Contract Document upon 14 (fourteen) calendar days' Written notice to Customer.
- 23.4 **Prior breach.** Any termination pursuant to this clause 23 shall be without prejudice to any claim which either Party may have in respect of any prior breach of the Agreement by the other Party.
24. **EFFECT OF TERMINATION**
- 24.1 **Amounts due to Ascent become due and payable.** On termination of any Contract Document for any reason, all amounts due to Ascent for Services rendered or Goods ordered prior to termination shall become due and payable even if they have not yet been invoiced. The amounts may not be withheld for any reason, unless the arbitrator directs otherwise.
- 24.2 **Duties on termination.** On termination, cancellation or expiry of any Contract Document—
- 24.2.1 the provision of all Services under the Contract Document shall forthwith cease and Ascent shall vacate the Site, unless Ascent is required to render additional services on-Site under a separate Contract Document; and
- 24.2.2 each Party will deliver to the other Party, or at the other Party's option destroy (and procure the delivery or destruction by Third-Party Contractors of) all originals and copies of confidential information and proprietary materials in its or their possession or under its or their control.
- 24.3 **Survival.** The expiry or termination of a Contract Document shall not affect the enforceability of the terms which are intended to operate after such expiry or termination.
25. **DISPUTE RESOLUTION**
- 25.1 **Good faith resolution.** The Parties shall try, in good faith, to solve amicably, and by mutual agreement, any dispute which may arise between them with respect to the Agreement in any way they deem appropriate.
- 25.2 **Steering Committee.** Any dispute which arises between the Parties which cannot be resolved as contemplated in clause 25.1 above shall, in the first instance, be referred to the Steering Committee (or if no Steering Committee exists then to the Relationship Managers of the Parties, or alternates appointed by the Relationship Managers), which will use its best endeavours in good faith to resolve the dispute amicably within 2 (two) Business Days of the dispute having been referred.
- 25.3 **Disputes relating to the calculation or quantum of any payments.** Any dispute between the Parties about the calculation or quantum of any payment shall be referred to a mutually agreed practising chartered accountant ("**Accountant**").
- 25.4 **Technical disputes.** Any dispute between the Parties of a technical nature (which includes a dispute relating to acceptance testing or commissioning of any Deliverable, concerning the interpretation of any specifications or requirements or relating to the functions or capabilities of the Services) shall be referred to an independent technical

expert having appropriate expertise with respect to the dispute ("**Technical Expert**").

- 25.5 **Accountant and the Technical Expert.** The Accountant and the Technical Expert shall be appointed by agreement or, failing agreement, within 3 (three) Business Days by Ascent. The Accountant and Technical Expert shall act as experts and not as arbitrators. The Accountant and Technical Expert will be requested to give their decision as soon as practicable but no later than 5 (five) Business Days after the dispute is referred. The decision of the Accountant and the Technical Expert shall (in the absence of clerical or manifest error) be final and binding on the Parties. The outstanding payment, as determined by the Accountant, shall be paid by the Party as determined by the Accountant, on demand by the other Party. The fees and all associated costs of the Accountant and the Technical Expert shall be borne by the unsuccessful Party.
- 25.6 **Failure to resolve.** Should the Parties be unable to agree on whether a dispute is technical or not within 5 (five) Business Days, or if they are unable to resolve a dispute despite their good faith efforts, then the dispute will be finally resolved in accordance with the Rules of AFSA, by an arbitrator or arbitrators appointed by it.
- 25.7 **Demand for arbitration.** Either Party may demand that a dispute be referred to arbitration by giving Written notice to that effect to the other Party.
- 25.8 **Urgent interim relief.** Nothing in the Agreement shall preclude either Party from obtaining interim relief on an urgent basis from a court of competent jurisdiction.
- 25.9 **Arbitration terms.** The arbitration referred to in clause 25.6 shall be held—
- 25.9.1 at Johannesburg in the English language; and
- 25.9.2 immediately and with a view to its being completed within 21 (twenty-one) calendar days after it is demanded.
- 25.10 **Right of appeal.** The Parties irrevocably agree that the submission of any dispute to arbitration is subject to the Parties' rights of appeal. Either Party may appeal the arbitration ruling by giving Written notice to the other Party to the arbitration within 20 (twenty) calendar days of the ruling being handed down. The appeal shall be dealt with in accordance with the rules of AFSA by a panel of 3 (three) arbitrators appointed by AFSA.
- 25.11 **Parties to be bound.** The Parties irrevocably agree that on expiry of the 20 (twenty) calendar day period for appeal or the handing down of the ruling of the appeal panel, as the case may be, as contemplated in clause 25.10, the decision in arbitration proceedings—
- 25.11.1 shall be final and binding on the Parties;
- 25.11.2 shall be carried into effect; and
- 25.11.3 may be made an order of any court of competent jurisdiction.
- 25.12 **Costs.** The costs of any reference to arbitration will be borne by the unsuccessful Party, unless otherwise determined by the Parties or the arbitrator, irrespective of which Party referred the dispute to arbitration.
- 25.13 **Severability.** This clause 25 is severable from the rest of the Agreement and shall remain valid and binding on the Parties notwithstanding any termination of any Contract Document.
- 25.14 **Collection proceedings.** Ascent retains the right to institute collection proceedings in a court of law of competent jurisdiction for matters involving outstanding payment.
26. **NOTICES AND DOMICILE**
- 26.1 **Notices.** All notices, authorisations and requests given or made in connection with a Contract Document must be sent by hand, pre-paid registered post or facsimile to the addresses and numbers set out in the relevant Contract Document, with an advance copy via e-mail as a courtesy. By providing such contact information, each Party consents to its use for purposes of administering the relevant Contract Document by the other Party.
- 26.2 **Use of e-mail.** The Parties record that, whilst they may correspond via e-mail during the currency of the Agreement for operational reasons, no formal notice required in terms of the Agreement, nor any amendment or variation to the Agreement may be given or concluded via e-mail.

- 26.3 **Domicile.** Each Party chooses as *domicilium citandi et executandi* (its domicile for the purpose of being served summons and execution levied) for all purposes under a Contract Document the physical address specified for the Party as set out in the relevant Contract Document.
- 26.4 **Change of addresses and numbers.** Each Party may by giving written notice to the other Party, change the addresses and numbers set out in the relevant Contract Document to any addresses and numbers in the Republic of South Africa, provided that the change shall only take effect 14 (fourteen) calendar days after delivery of the written notice.
- 26.5 **Deemed delivery.** Notice shall be deemed to have been given—
- 26.5.1 if delivered by hand to a responsible person during Business Hours to the designated physical address, on the date of delivery;
- 26.5.2 if sent by pre-paid registered post in a correctly addressed envelope to the designated postal address, on the 7th (seventh) Business Day after the date of posting; or
- 26.5.3 if sent by fax to the designated fax number, on the 1st (first) Business Day following the date of successful transmission.
- 26.6 **Notice actually received.** If a notice or communication is actually received by a Party, adequate notice or communication shall have been given.
27. **FORCE MAJEURE**
- 27.1 **Parties not liable for force majeure.** Neither Party shall be liable for any failure to fulfil its obligations under the Agreement if and to the extent such failure is caused by any circumstances beyond its reasonable control, including flood, fire, earthquake, war, tempest, hurricane, industrial action, government restrictions or acts of God.
- 27.2 **Party affected to notify other Party.** Should any event of *force majeure* arise, the affected Party shall notify the other Party without delay and the Parties shall meet within 7 (seven) calendar days of the notice to negotiate in good faith alternative methods of fulfilling its obligations under a Contract Document, if any. In addition Ascent shall continue to provide and Customer shall continue to pay for those Goods and Services not affected by the event of *force majeure*.
- 27.3 **Right to terminate.** Should either Party be unable to fulfil a material part of its obligations under a Contract Document for a period in excess of 60 (sixty) calendar days due to circumstances or *force majeure*, the other Party may at its sole discretion cancel the relevant Contract Document forthwith by Written notice.
28. **ASSIGNMENT AND SUBCONTRACTING**
- 28.1 **No assignment.** Neither Party shall be entitled to cede, assign, delegate or otherwise transfer the benefit or burden of all or any part of the Agreement without the prior Written consent of the other Party, which consent shall not be unreasonably withheld or delayed.
- 28.2 **Affiliate exception.** Notwithstanding the terms of clause 28.1, it is expressly recorded that Ascent shall be entitled to cede and assign all rights and obligations under the Agreement to an Affiliate without the prior written consent of Customer, provided that Ascent shall notify Customer within a reasonable time of the event occurring.
- 28.3 **Ascent's Third-Party Contractors.** Ascent may sub-contract or delegate its obligations under the Agreement to Third-Party Contractors, provided that Ascent shall remain liable for performance of such Third-Party Contractors. Ascent shall not be required to disclose the terms (including payment terms) of any sub-contract entered into with respect to Ascent's obligations under the Agreement.
29. **RELATIONSHIP AND DUTY OF GOOD FAITH**
- 29.1 **No employment relationship.** Notwithstanding anything to the contrary contained in the Agreement, whether express or implied, each Party enters into the Agreement as an independent contractor. The Agreement does not create any other relationship, including employment, partnership, agency, trust or joint venture relationship. The relationship between Customer and Ascent and its Personnel shall not be deemed to be one of employer/employee.
- 29.2 **No temporary employment service.** Unless otherwise

agreed in Writing, nothing in the Agreement shall be construed as constituting a temporary employment service as contemplated in section 198 of the Labour Relations Act, 1995. Ascent acknowledges, and waives any claims in relation thereto, that Ascent and its Personnel are not entitled to any benefits offered by Customer to its employees and that Customer is not responsible to Ascent or any of its Personnel in respect of remuneration, superannuation, annual leave, sick leave, long service leave, public holidays, redundancy payments or any other similar benefits under any law or industrial instrument. Ascent indemnifies the Customer against any claims brought against Customer by any third party, including any of Ascent's Personnel, to the extent that such claims directly arise out of a breach of the Agreement or any applicable labour legislation by Ascent.

- 29.3 **No partnership.** Nothing in the Agreement shall be construed as creating a partnership between the Parties and neither Party shall have any authority to incur any liability on behalf of the other or to pledge the credit of the other Party. Without limiting the generality of the foregoing, when any Ascent Personnel is required to act in an executive capacity on behalf of Customer, Ascent cannot accept responsibility for his omissions or acts and Customer shall, therefore, indemnify Ascent against all costs, claims, damages and expenses which may arise in connection with such act.

- 29.4 **Good faith.** The Parties shall at all times owe each other a duty of good faith and shall, in all dealings with each other and in respect of the Services act according to such standard.

30. NON-EXCLUSIVITY

Nothing in the Agreement shall be construed as precluding or limiting in any way the right of Ascent to provide goods or services of any kind or nature whatsoever to any person or entity as Ascent in its sole discretion deems appropriate. Ascent may employ, modify, disclose, and otherwise exploit Ascent's intellectual property (including providing services or creating programming or materials for other customers or itself, providing services which are competitive with any Deliverables), irrespective of their similarity to the Deliverables, subject to the Parties' confidentiality obligations.

31. GENERAL

- 31.1 **Entire agreement.** The Agreement constitutes the entire agreement between the Parties in respect of the subject matter of the Agreement.
- 31.2 **Variation.** No amendment or modification to the Agreement shall be effective unless in Writing and Signed by authorised signatories of both Customer and Ascent.
- 31.3 **Waiver.** No granting of time or forbearance shall be, or be deemed to be, a waiver of any term of the Agreement and no waiver of any breach shall operate as a waiver of any continuing or subsequent breach.
- 31.4 **Severability.** If the whole or any part of a term of the Agreement is void or voidable by either Party or unenforceable or illegal, the whole or that part (as the case may be) of that term, shall be severed, and the remainder of the Agreement shall have full force and effect, provided the severance does not alter the nature of the Agreement between the Parties.
- 31.5 **Governing law and jurisdiction.** The Agreement shall be governed and construed according to the laws of the Republic of South Africa and Customer agrees to submit to the exclusive jurisdiction of the South African courts.
- 31.6 **Costs.** Each Party shall be responsible for its own legal and other costs relating to the drafting and negotiation of the Agreement.
- 31.7 **Publicity.** Neither Party will make or issue any formal or informal announcement or statement to the press in connection with the Agreement, without the prior written consent of the other Party.
- 31.8 **Right to reference.** Customer hereby consents to the use by Ascent of Customer's name and a general description of the Goods or Services provided by Ascent under the Contract Documents in any proposals, marketing material or other similar documents which Ascent may issue or submit from time to time.

31.9 **Counterparts.** The Agreement may be executed in any number of counterparts, each of which will be an original, and such counterparts together will constitute one and the same

instrument. Execution may be effected by delivery of facsimiles of Signature pages (and the Parties will follow such delivery by prompt delivery of originals of such pages).