

## **IMPORTANT LEGAL NOTICE, PLEASE READ CAREFULLY:**

BY CONTINUING, YOU, THE NATURAL PERSON ACTING ON BEHALF OF THE LEGAL ENTITY YOU REPRESENT (HEREINAFTER REFERRED TO AS "THE CLIENT"), CONFIRM AND WARRANT THAT:

1. YOU HAVE READ THESE TERMS & CONDITIONS AND UNDERSTAND THE RIGHTS AND OBLIGATIONS SET FORTH HEREIN;
2. YOU HAVE AUTHORITY TO ACT ON BEHALF OF THE CLIENT;
3. THE CLIENT AGREES BEING CONTRACTUALLY BOUND TO THESE TERMS & CONDITIONS; AND
4. THE CLIENT GRANTS TO L@W THE RIGHTS SET FORTH HEREIN.

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## **SALE OF HARDWARE TERMS & CONDITIONS:**

### **TABLE OF CONTENTS**

	<b><u>PAGE</u></b>
1	2
2	2
3	2
4	3
5	3
6	3
7	3
8	3
9	4
10	4
11	4
12	4
13	5
14	5
15	5
16	5
17	6
18	6
19	6
20	7
21	7

## 1 DEFINITIONS

In this Agreement, unless clearly inconsistent with or otherwise indicated by the context:

- 1.1 "Acceptance Certificate" means the certificate (a draft of which is attached to this Agreement as **Annexure 2**) supplied by L@W and signed or deemed to be signed by the Client in terms of clause 5.3, in terms whereof the Client certifies or is deemed to have certified that certain Hardware has been duly delivered and installed and is finally accepted by the Client on the Acceptance Date;
- 1.2 "Acceptance Date" means, in respect of each Agreement of Sale, the "date installation completed", as reflected on the relevant Acceptance Certificate, subject to the provisions of clause 5.4.2;
- 1.3 "the/this Agreement" means the contract between the Parties, as recorded by the terms and conditions set out in this document together with the annexures hereto and any agreed written amendments hereto, and shall include every individual Agreement of Sale;
- 1.4 "Agreement of Sale" means each separate Hardware Schedule read together with the terms and conditions set out in this document, constituting a separate agreement of sale in respect of the Hardware specified in each separate Hardware Schedule;
- 1.5 "Date of Signature" means the date on which this Agreement is signed by the Party doing so last in time;
- 1.6 "Documentation" means all drawings, designs, specifications, reports and testing procedures, instruction manuals and all other documentation relating to the Hardware;
- 1.7 "Effective Date" means the date set out in paragraph 3 of the Schedule, notwithstanding the Date of Signature;
- 1.8 "Hardware" means the hardware set out in the applicable Hardware Schedule, including the Documentation;
- 1.9 "Hardware Schedule" means each schedule attached to this Agreement as **Annexure 3** (a draft of which is attached to this Agreement as **Annexure 3**), or deemed to be included in this Agreement in terms of clause 4, detailing the specific Hardware sold by L@W to the Client, as well as other information required in terms of this Agreement;
- 1.10 "Installation" means the installation of the Hardware as set out in each Hardware Schedule;
- 1.11 "Intellectual Property" means all copyright, rights in business names, trade marks, trade names, service marks, patents, designs and/or inventions as well as all rights to source codes, trade secrets, confidential information, know-how and all other rights of a similar character (regardless of whether such rights are registered and/or capable of registration) and all applications and rights to apply for protection of any of the same;
- 1.12 "L@W" means Law Deed Solutions (Pty) Ltd, registration number 2004/004195/07;
- 1.13 "L@W Group" means L@W, its holding companies and subsidiary companies as well as subsidiaries of its holding companies from time to time (as such terms are defined in the Companies Act, 1973);
- 1.14 "Parties" means L@W and the Client, collectively; and "Party" means either one of the Parties;
- 1.15 "Premises" means the premises to which the Hardware is to be delivered, as set out in each Hardware Schedule;
- 1.16 "Prime Rate" means the interest rate (expressed as a % per annum, compounded monthly) from time to time published by The Standard Bank of South Africa Limited as being its minimum overdraft rate at which it lends to its most valued customers in the corporate sector, as certified by any manager of such bank, whose appointment or authority it shall not be necessary to prove, and which certificate shall, save manifest error of calculation, be *prima facie* proof of the contents thereof;
- 1.17 "Purchase Consideration" means the purchase consideration for the sale of the Hardware, as set out in each separate Hardware Schedule;
- 1.18 "Sale Date" means the date of sale set out in each Hardware Schedule, with regard to the Agreement of Sale to which such Hardware Schedule relates;
- 1.19 "Schedule" means the document (a draft of which is attached to this Agreement as **Annexure 1**), deemed attached as **Annexure 1**, hereto detailing the full name, address and other contact details of the Client;
- 1.20 "Specifications" means the Supplier's officially published specifications in respect of the Hardware;
- 1.21 "Supplier" means the supplier and/or manufacturer of the specific Hardware;
- 1.22 "Supplier Warranty" means the warranty with respect to particular Hardware given by the Supplier to L@W;
- 1.23 "VAT" means value added tax in terms of the Value Added Tax Act, 1991 or any similar tax on the supply or sale of goods and/or services; and
- 1.24 "Warranty Period" means the period for which specific Hardware is under warranty from the Supplier, as set out in each Hardware Schedule.

## 2 SALE OF HARDWARE

- 2.1 In respect of each Agreement of Sale, L@W sells to the Client and the Client purchases from L@W the Hardware, with effect from the respective Sale Dates.
- 2.2 Notwithstanding that the Hardware Schedules are or will be attached to this Agreement, each Hardware Schedule read together with the terms and conditions set out in this document, shall constitute a separate Agreement of Sale in respect of the Hardware set out in that Hardware Schedule.
- 2.3 No terms and conditions contained on any order placed by the Client with L@W relating to any Hardware shall be of any force or effect, and such terms and conditions are replaced in their entirety by this Agreement, notwithstanding acceptance of such order by L@W.

## 3 DURATION

The Agreement shall commence on the Effective Date and shall, unless otherwise agreed by the Parties in writing, continue in force until all the Agreements of Sale have been cancelled in accordance with clause 16, terminated by written agreement

between the Parties, or expired in accordance with their respective terms, as set out in each Hardware Schedule, provided that the sale in respect of each Agreement of Sale shall take place on the relevant Sale Date.

#### **4 ADDITIONAL HARDWARE**

- 4.1 The Client may request L@W in writing to purchase further Hardware.
- 4.2 L@W shall inform the Client in writing of L@W's decision to sell such further hardware and the Parties shall sign an additional Hardware Schedule setting out all applicable information as required in terms hereof, which Hardware Schedule shall constitute a further Agreement of Sale and shall be deemed to form part of this Agreement.
- 4.3 L@W may in its absolute discretion accept or reject any request by the Client to purchase further Hardware, which discretion shall not be affected should the Client have pre-paid any monies in respect of such Hardware or have taken possession of such Hardware for any purpose.

#### **5 DELIVERY, INSTALLATION AND ACCEPTANCE**

- 5.1 L@W shall deliver the Hardware and the Documentation to the Client at the Premises.
- 5.2 The Client shall, in respect of each Agreement of Sale on or before the Sale Date and for the duration of each Agreement of Sale, at its own expense:
  - 5.2.1 make available a suitable place of Installation and operation for the Hardware in accordance with the Specifications so as to enable L@W to install the Hardware; and
  - 5.2.2 provide the required suitable electric current to operate the Hardware.
- 5.3 L@W's obligation in respect of installing the Hardware is set out in the Hardware Schedule and L@W shall notify the Client when the Installation is completed by providing the Client with an Acceptance Certificate to be signed by the Client and returned to L@W within 2 (two) Business Days of L@W providing same to the Client.
- 5.4 Should:
  - 5.4.1 the Client fail to sign and return the Acceptance Certificate to L@W within the period of 2 (two) Business Days; or
  - 5.4.2 the delivery and/or Installation of the Hardware be delayed due to an act or omission of the Client,the Acceptance Certificate shall be deemed to have been duly signed and returned to L@W by the Client.
- 5.5 An Acceptance Certificate shall, save manifest error, be *prima facie* proof of the delivery and Installation of the Hardware (or, in the case of clause 5.4.2, of the date on which L@W would have completed the Installation, had such act or omission by the Client not occurred), final acceptance of the Hardware by the Client on the Acceptance Date and all other facts stated therein, it being agreed that the relevant Purchase Consideration and all other payments by the Client to L@W shall become due and payable on the respective Acceptance Dates set out in the Acceptance Certificates.
- 5.6 The Client shall provide L@W with full and free access to the Hardware at all reasonable times in order to enable L@W to carry out its obligation in terms of this Agreement.

#### **6 RESPONSIBILITY FOR CHOOSING HARDWARE**

- 6.1 The Client is solely responsible for selecting the Hardware to purchase under each Agreement of Sale and determining the fitness of such Hardware for the Client's needs and L@W gives no warranties to the Client in this regard.
- 6.2 In addition, the Client assumes full responsibility for the overall efficacy of the operating environment in which the Hardware is to function.

#### **7 SOFTWARE**

- 7.1 Where applicable, L@W grants to the Client a non-transferrable, personal, non-exclusive sub-license to use any software provided with the Hardware ("the Software") solely on and in conjunction with the Hardware on the terms and conditions as provided by the Supplier to L@W. The applicable terms and conditions are available from L@W on written request.
- 7.2 The Client shall not:
  - 7.2.1 copy, translate, modify, adapt, decompile, disassemble or reverse engineer the Software;
  - 7.2.2 convert the whole or any part of the Software from object code into source code.

#### **8 RESPONSIBILITIES OF THE CLIENT**

- 8.1 Until ownership passes to the Client in accordance with clause 9 or the end of the relevant Warranty Period, whichever is the latest, the Client shall use the Hardware in accordance with the Specifications and not use the Hardware for any purpose other than that for which it is intended, designed and/or reasonably suitable, and shall, in respect of each Agreement of Sale, at its own expense:
  - 8.1.1 prepare and maintain the environment in which the Hardware is located in accordance with the Specifications;
  - 8.1.2 keep the Hardware in good working order and condition in accordance with the Specifications and make all necessary repairs and replacements in this regard (subject to the provisions of clause (b));
  - 8.1.3 immediately notify L@W in writing of any default or malfunction in, damage to or loss of the Hardware arising from any cause whatsoever, such notice to set out the relevant details relating to default, malfunction, damage or loss as well as the apparent cause thereof;
  - 8.1.4 provide L@W with full access to the Hardware to enable L@W to inspect the Hardware from time to time;
  - 8.1.5 ensure that only authorised employees, contractors and/or agents of the Client has access to and/or makes use of the Hardware, and that all such persons are properly managed and supervised;
  - 8.1.6 if the site at which the Hardware is installed is rented:
    - (a) advise L@W in writing of the name and address of the landlord as well as any changes thereto; and
    - (b) provide L@W with written confirmation from the landlord that he is aware that the Hardware belongs to L@W until ownership thereof passes to the Client in terms of this Agreement, and that the Hardware can therefore not, until such

time, be subject to a lien or hypothec, it being agreed that L@W may notify the landlord of this fact should the Client fail to do so; and

- 8.1.7 not, without the prior written consent of L@W:
- (a) move the Hardware; or
  - (b) make any alterations or add any attachments to the Hardware.

## 9 OWNERSHIP

- 9.1 The Hardware and the Documentation shall remain the property of L@W until receipt by L@W of the full Purchase Consideration for that specific Hardware, inclusive of any price variations and applicable taxes.
- 9.2 The Client warrants that, until ownership passes to it in terms of this Agreement, it shall keep the relevant Hardware free and clear of all liens and encumbrances and shall not in any way sell, transfer, sub-lease, charge, assign by way of security or otherwise deal in or encumber the Hardware and shall exercise the utmost good faith in its care of the Hardware.
- 9.3 If any Agreement of Sale is cancelled or terminated prior to the date of payment of the final Purchase Consideration, the Client shall, at its own expense, return the Hardware and the Documentation relating to that Agreement of Sale to L@W, within 7 (seven) calendar days from such cancellation or termination, failing which L@W shall be entitled to take possession of the Hardware and Documentation to which such cancelled or terminated Agreement of Sale relates, *mutatis mutandis* on the basis set out in clause 16.5.

## 10 RISK OF LOSS

- 10.1 In respect of each Agreement of Sale, all risks of damage or loss to or destruction of the Hardware shall pass to the Client upon delivery of the relevant Hardware to the Client in terms of clause 5.1.
- 10.2 Until ownership of the specific Hardware passes to the Client in terms of clause 9, the Client shall at its expense:
- 10.2.1 keep the Hardware insured, by carrying fire and extended coverage insurance for the full replacement value of the Hardware (with such insurer as L@W consents to in writing);
  - 10.2.2 ensure that L@W is noted as co-insured and loss payee on all such insurance policies and furnish L@W with an endorsement providing that the proceeds from any loss shall be payable by the insurance carrier to L@W;
  - 10.2.3 ensure that its public liability insurance shall name L@W as additional insured party; and
  - 10.2.4 furnish L@W with a copy of each such insurance policy by no later than the Sale Date of each Agreement of Sale.
- 10.3 If the Client fails to pay any premiums or other payments in respect of any insurance policy in terms of this clause, L@W shall be entitled to make such payments on the Client's behalf, and the Client shall reimburse L@W on demand for any costs so incurred by L@W.

## 11 PURCHASE CONSIDERATION AND PAYMENT TERMS

- 11.1 In respect of each Agreement of Sale, the Client shall pay to L@W the Purchase Consideration (exclusive of VAT), calculated on the basis set out in each Hardware Schedule, within 7 (seven) calendar days of date of L@W's invoice therefore, by direct transfer into the bank account advised by L@W in writing from time to time.
- 11.2 The Client shall in addition to the Purchase Consideration be liable for VAT, all other taxes, rates, or governmental levies imposed in respect of the sale of the Hardware.
- 11.3 L@W reserves the right to vary the Purchase Consideration, in accordance with a change in the applicable exchange rate if, on the date of delivery of the Hardware to the Client or the date of order of the Hardware by L@W from the Supplier (as applicable in accordance with L@W's standard arrangement with the Supplier), the exchange rate for the base currency is different from the relevant exchange rate for the base currency reflected in the applicable Hardware Schedule.
- 11.4 All payments in terms of or arising out of the Agreement shall be made in cash, in South African Rands, free of conditions, set-off, bank exchange, commission or any other deduction to the other Party hereto and neither Party shall have the right to defer, adjust or withhold any payment due to the other.

## 12 WARRANTIES

- 12.1 In respect of each Agreement of Sale, L@W provides the Client with the Supplier Warranty for the Warranty Period.
- 12.2 Each Supplier Warranty shall be limited by the conditions in terms whereof the Supplier limits its warranty to L@W. The applicable warranties are available from L@W on written request.
- 12.3 L@W shall investigate any alleged breach of warranty and, in the case of a breach of warranty under clause 12.1, shall remedy the same, at its cost, by:
- 12.3.1 carrying out such repairs, modifications or alterations to the Hardware; and/or
  - 12.3.2 replacing the Hardware or such component parts,
- as it shall in its discretion think fit.
- 12.4 The Client shall be responsible to deliver and collect the defective Hardware to and from L@W at the Client's expense and risk (including the risk while the Hardware is in possession of L@W during repairs).
- 12.5 If the defective Hardware, in the discretion of L@W, does not fall within the warranty to be remedied set out in clause 12.1, the Client shall be liable for all costs incurred by L@W with regard to the Hardware.
- 12.6 Any Hardware or parts thereof replaced by L@W pursuant to clause 12.3.2 shall upon replacement become the property of L@W. The Client warrants that L@W's right to such replaced Hardware shall be free and unencumbered.
- 12.7 The Client acknowledges that the remedies referred to in this clause are the Client's sole remedies in respect of any breach of the warranty in terms of clause 12.1.

### 13 INTELLECTUAL PROPERTY

All right, title and interest in and to all Intellectual Property relating to any Hardware owned by the Parties, their vendors and/or Suppliers and the software used to implement such Hardware shall at all times remain the sole property of such Parties, their vendors or Suppliers.

### 14 MAINTENANCE AND SUPPORT AND PROJECT MANAGEMENT

Nothing set out in this Agreement places any obligation on L@W with regard to the maintenance and/or support of the Hardware and any such services shall only be rendered by L@W after the conclusion by L@W of a separate Maintenance Agreement with the Client.

### 15 CONFIDENTIALITY

- 15.1 Each Party hereby undertakes to the other Party, for the continuance of this Agreement and for a period of 2 (two) years from the expiry or termination thereof, as the case may be:
- 15.1.1 to keep confidential all information whether written (including information contained in electronic format) or oral concerning the business and affairs of the other Party that it obtains or receives from the other Party or any third party (“the Information”);
- 15.1.2 not without the other Party’s written consent to disclose the Information in whole or in part to any person save its employees, agents and/or consultants involved in the implementation of this Agreement, and who have a need to know the Information;
- 15.1.3 to use the Information solely in connection with the implementation of this Agreement and not for its own benefit or that of any third party; and
- 15.1.4 to keep confidential the terms and conditions of this Agreement.
- 15.2 The provisions of clause 15.1 shall not apply to the whole or any part of the Information which is:
- 15.2.1 already known to the recipient without obligation of confidence;
- 15.2.2 independently developed by the recipient;
- 15.2.3 publicly available without breach of this Agreement;
- 15.2.4 lawfully received from a third party;
- 15.2.5 released for disclosure by the disclosing Party with its written consent; or
- 15.2.6 required to be disclosed in response to a valid order of court or other governmental agency or if disclosure thereof is otherwise required by law.
- 15.3 If a Party is obliged to divulge Information in terms of clause 15.2.6 it shall, provided that circumstances permit the time to do so, forthwith and before releasing the Information, inform the other Party of the obligation.
- 15.4 Each Party undertakes to the other to make all its relevant employees, agents and consultants aware of the confidentiality of the Information and the provisions of this clause and to take all such steps as shall from time to time be necessary to ensure compliance by its employees, agents and consultants with the provisions of this clause.
- 15.5 Upon the expiry or termination of this Agreement for any reason, each Party shall promptly return to the other Party all documents, diskettes, drawings and any other mediums containing the Information of the other Party (as well as all copies, notes or reproductions thereof).
- 15.6 Save for compliance by a Party with the requirements of the JSE Securities Exchange and the Securities Regulation Panel, no Party may publish any announcement of this transaction without the prior written consent of the other Party, which approval shall not be unreasonably withheld.
- 15.7 Notwithstanding clause 15.1, L@W may use the other Party’s name as a reference for the purpose of marketing, advertising and other related matters.

### 16 BREACH

- 16.1 If either Party:
- 16.1.1 commits any breach of this Agreement other than a breach of a payment obligation and fails to remedy the breach within 30 (thirty) calendar days after receipt from the other Party of written notice calling upon it to do so;
- 16.1.2 commits a breach of any payment obligation in terms of this Agreement and fails to make payment within 7 (seven) calendar days after receipt from the other Party of written notice calling upon it to do so;
- 16.1.3 commits an act of insolvency within the ambit of Section 8 of the Insolvency Act, No 24 of 1936, is deemed unable to pay its debts within the ambit of Section 345 of the Companies Act, alternatively Section 69 of the Close Corporations Act, as the case may be, finds itself in circumstances capable of being wound up in terms of Section 344 of the Companies Act, alternatively Section 68 of the Close Corporations Act, as the case may be, is deregistered or applies for deregistration in terms of Section 73 of the Companies Act, alternatively Section 26 of the Close Corporations Act, as the case may be, or is subject to application by a person other than a Party for the provisional winding up or judicial management of such Party, or a special resolution is passed for the winding up of such Party;
- 16.1.4 has judgment taken against it and fails to satisfy or apply to have same set aside within 7 (seven) calendar days of becoming aware thereof; or
- 16.1.5 without the prior written consent of the other Party, undergoes a change in its shareholding or members’ interest so that a new person owns the majority of its voting share capital or members’ interest,
- then the other Party shall be entitled, in addition to and without prejudice to any other right it may have in law or in terms of this Agreement, to:
- (a) enforce specific performance of the terms of this Agreement; or
- (b) subject to clause 16.2, cancel this Agreement; and

- (c) in either event, subject to clause 17.4, recover such damages as it may have sustained,
- 16.2 An aggrieved Party may only cancel this Agreement in terms of clause 16.1.1 if the breach is material and is not capable of being remedied by payment of money or, if it is capable of remedy by payment of money, if the other Party fails to make payment within 14 (fourteen) calendar days after final determination of the amount.
- 16.3 No claim may be instituted against L@W arising from the terms of this Agreement or performance by the Parties in terms thereof unless dispute resolution proceedings are instituted in terms of this Agreement by the Client within 1 (one) year of such purported cause of action arising.
- 16.4 Any amount due by any Party which is not paid on its due date shall attract interest at Prime Rate, plus 2 (two) percentage points.
- 16.5 In the event of a default by the Client in terms of clause 16.1, L@W shall in addition be entitled, without prejudice to any other remedies it may have, to:
- 16.5.1 require the Client to return to L@W, at the Client's cost, any Hardware of which ownership had not yet passed to the Client, and/or to:
- 16.5.2 enter upon the Premises and/or any other premises under the control of the Client where the Hardware and/or Documentation (or any part thereof) is located and take possession and remove such Hardware, and Documentation without having to approach a court for an order.

#### 17 FORCE MAJEURE AND LIMITATION

- 17.1 Neither Party shall have any claim against the other Party ("the Affected Party") for any delay or failure of the Affected Party to carry out any of its obligations under this Agreement arising from or attributable to acts of God, war, terrorism, government, labour action or unrest, failure of suppliers or contractors or any other cause whatsoever beyond the control of the Affected Party ("*force majeure*").
- 17.2 The performance of the obligations of the Affected Party shall, subject to clause 17.3, be suspended for the duration of the *force majeure*, which shall be deemed to commence only upon the date of written notice by the Affected Party to the other Party. Upon cessation of the *force majeure*, this Agreement shall again become fully operative and the Affected Party shall immediately resume its performance.
- 17.3 If the suspension of performance continues for more than 60 (sixty) consecutive calendar days, then either Party may summarily terminate this Agreement by written notice to the other Party, prior to the cessation of the *force majeure*.
- 17.4 Any claim by the Client against L@W howsoever arising shall in the aggregate be limited to 60% (sixty percent) of the Purchase Consideration paid by the Client to L@W in respect of the Hardware to which the claim relates. In any event, L@W will not be liable to the Client for: (a) indirect or special damages and/or (b) loss of income or profit, howsoever arising [whether or not caused by its employees, agents and/or contractors, and regardless of form or cause of action. The provisions of this clause are also stipulated for the benefit of the employees, agents and/or contractors of L@W.

#### 18 ARBITRATION AND DISPUTE RESOLUTION

- 18.1 If any dispute arises out of or in connection with this Agreement the Parties to the dispute shall in the first instance, by agreement, appoint a third Party to act as a mediator (and not as an arbitrator) to mediate in the resolution of the dispute. If the Parties to the dispute are not able to agree on the mediator within 5 (five) Business Days from the date on which a Party demanded mediation in writing, the mediator shall be selected by the Secretariat of the Arbitration Foundation of Southern Africa ("AFSA"), or any successor body thereto.
- 18.2 If the mediation referred to in clause 18.1 fails to resolve the dispute within 5 (five) Business Days after the appointment of the mediator, the dispute shall be finally resolved in Cape Town in accordance with the then current rules of AFSA ("the Rules") by 1 (one) arbitrator appointed by agreement between the Parties to the dispute. If the Parties to the dispute cannot agree on the arbitrator within a period of 10 (ten) Business Days after expiry of the 5 (five) Business Day mediation period, the arbitrator shall be appointed by the Secretariat of AFSA.
- 18.3 Each Party:
- 18.3.1 expressly consents to any arbitration in terms hereof being conducted as a matter of urgency; and
- 18.3.2 irrevocably authorises the other Party(ies) to the dispute to apply, on behalf of all Parties to the dispute, in writing, to the Secretariat of AFSA, in terms of article 23(1) of the Rules, for the arbitration to be conducted on an urgent basis.
- 18.4 The decision or award resulting from the arbitration shall be final and binding on the Parties, and may be made an order of court at the instance of any Party to the dispute. The Parties hereby irrevocably submit to the jurisdiction of the Witwatersrand Local Division of the High Court of the Republic of South Africa should either Party wish to make the arbitrator's award an order of court.
- 18.5 There shall be no right of appeal as provided for in article 22 of the Rules.
- 18.6 The arbitration will be held *in camera*, in the English language and will be kept confidential by the Parties.
- 18.7 The provisions of this clause 18 shall not preclude any Party from access to an appropriate court of law for interim relief in the form of an interdict, *mandamus* or order for specific performance pending the outcome of the mediation or arbitration in terms of this clause 18 or in respect of such mediation or arbitration, for which purpose the Parties irrevocably submit to the jurisdiction of the Witwatersrand Local Division of the High Court of the Republic of South Africa.

#### 19 DOMICILIUM AND NOTICES

- 19.1 The Parties choose as their respective *domicilium citandi et executandi* for all purposes hereunder as follows:
- 19.1.1 The Client: the physical address set out in the Schedule;
- 19.1.2 L@W: Unit B4 Arden Grove Business Park, Race course Road, Montague Gardens, Cape Town; Telefax: +27 21 555 3127; marked for the attention of the Managing Director.

- 19.2 Any Party shall be entitled from time to time, by written notice to the other(s), to vary its *domicilium* address to any other address within the Republic of South Africa which is not a post office box or poste restante.
- 19.3 All notices given in terms of this Agreement shall be in writing and any notice given by any Party to another ("the addressee") which:
- 19.3.1 is delivered by hand or transmitted by telefacsimile, shall be deemed to have been received by the addressee on the first Business Day after the date of delivery or transmission, as the case may be;
- 19.3.2 is posted by pre-paid registered post from an address within the Republic of South Africa to the addressee at its domicilium address for the time being shall be deemed to have been received by the addressee on the 10<sup>th</sup> (tenth) Business Day after the date of such posting;
- 19.3.3 is delivered by email shall be deemed to have been received on the next Business Day after despatch, provided that it shall not be permissible to give any notice relating to a dispute, demand, renewal, cancellation or termination by email.

## 20 GENERAL

- 20.1 This Agreement constitutes the entire Agreement between the Parties with regard to the subject matter hereof.
- 20.2 The terms and conditions contained on either Party's purchase order, order acceptance forms and/or invoices shall not apply to, supplement or supersede any provisions of this Agreement.
- 20.3 No alteration or variation to, or consensual cancellation of this Agreement, including this clause 20.3, shall be of any force or effect, unless it is recorded in writing and signed (by means of handwritten signatures) by the Parties.
- 20.4 The provisions of clauses 9, 12, 13 and 15 to 21 shall survive the expiry, cancellation or termination of this Agreement for any reason.
- 20.5 Nothing in this Agreement constitutes either Party as the agent, principal, representative or partner of the other, and no Party shall be entitled to hold out to any third party that the relationship between the Parties is that of a partnership, joint venture or the like.
- 20.6 No failure or delay by a Party to enforce any provision of this Agreement shall constitute a waiver or suspension of such provision or affect in any way a Party's right to require performance of any such provision at any time in the future, nor shall the waiver of any right arising from any subsequent breach nullify the effectiveness of the provision itself.
- 20.7 No Party may cede its rights and/or delegate its obligations under this Agreement without the prior written consent of the other Party, provided that L@W shall be entitled to cede its rights and/or delegate its obligations under this Agreement to any company in the L@W Group without the consent of the other Party.
- 20.8 In the event that any of the terms of this Agreement are found to be invalid, unlawful or unenforceable, such terms will be severable from the remaining provisions, which shall remain of full force and effect. If any invalid term is capable of amendment to render it valid, the Parties agree to negotiate in good faith an amendment to remove the invalidity.
- 20.9 If any conflict arises in respect of the provisions contained in this Agreement and any annexure attached hereto, the provisions contained in this Agreement shall take precedence.
- 20.10 Unless otherwise agreed in writing between the Parties, no Party shall for the duration of this Agreement and for a period of 12 (twelve) months after expiry or termination thereof for its own benefit or as a representative of or agent for any third party, persuade, induce, encourage, procure or solicit (or procure such persuasion, inducement, encouragement, procurement or solicitation of) the personnel of the other Party or of the L@W Group:
- 20.10.1 to become employed, or interested, directly or indirectly in any manner whatsoever, by it or in any business which is in competition with the business carried on by the other Party or by the L@W Group; or
- 20.10.2 to terminate his/her employment with the other Party or with the L@W Group; or
- 20.10.3 to disclose any Intellectual Property of the other Party or the L@W Group to any person not authorised by the owner of the Intellectual Property to receive it.
- 20.11 This Agreement may be signed in two or more counterparts, one or more of which may be delivered via telefax, and the signed counterparts, taken together, shall constitute a binding agreement between the Parties.
- 20.12 Each Party acknowledges that it does not enter into this Agreement on the basis of and does not rely on any representation, warranty or other provision, whether express or implied, except as expressly provided in this Agreement. All conditions, warranties or other terms implied by statute or common law are excluded to the fullest extent permitted by the law of the Republic of South Africa.
- 20.13 Each Party warrants that it is acting as principal and not as agent for any other person, whether disclosed or otherwise.
- 20.14 This Agreement shall be governed by, construed and interpreted in accordance with the laws of the Republic of South Africa.
- 20.15 The Parties shall each pay their own costs of negotiating, drafting, preparing and implementing this Agreement and any annexure to it. If any Party is awarded costs by an arbitrator or court, he shall be entitled to be reimbursed by the other Party on the basis of Attorney and own client charges.
- 20.16 If the Client fails to pay any undisputed amount due and payable to L@W in terms of this Agreement for the rendering of any services or the delivery of products, then L@W may, without prejudice to any other rights it may have, suspend the rendering of further services or provision of products until payment thereof.

## 21 INTERPRETATION

- 21.1 In this Agreement, unless the context requires otherwise:
- 21.1.1 words importing any one gender shall include the other two genders;
- 21.1.2 the singular shall include the plural and *vice versa*;
- 21.1.3 a reference to natural persons shall include created entities (incorporated or unincorporated) and *vice versa*;

- 21.1.4 “Business Day” means any day other than a Saturday, Sunday or any official public holiday within the Republic of South Africa;
- 21.1.5 any reference to an enactment is to that enactment as at the Date of Signature, as amended or re-enacted from time to time;
- 21.1.6 if any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, effect shall be given to it as if it were a substantive provision in the body of this Agreement, notwithstanding that it is only in the definition clause;
- 21.1.7 when any number of days (whether Business Days or calendar days) is prescribed in this Agreement, that number of days shall be reckoned exclusively of the first and inclusively of the last day, unless the last day (in the case of calendar days) falls on a Saturday, Sunday or official public holiday in the Republic of South Africa, in which event the last day shall be the next succeeding Business Day;
- 21.1.8 when any number of days is prescribed and it is not specified whether those days are Business Days or calendar days, they shall be deemed to be calendar days; and
- 21.1.9 expressions or words defined in this Agreement shall bear the same meaning in the annexures to this Agreement which do not themselves contain definitions for such expressions or words.
- 21.2 Words and expressions defined in any sub-clause shall, for the purposes of the clause of which that sub-clause forms part, bear the meaning assigned to such words and expressions in that sub-clause.
- 21.3 If reference is made in this Agreement to any other document for the purpose of defining words and/or phrases used in this Agreement, the applicable definition or description in such document shall be read and interpreted in terms of this Agreement as if specifically incorporated herein.

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**ANNEXURE 1**

**DRAFT SCHEDULE**

**(PLEASE NOTE: the Schedule applicable to you with your details included will accompany the hardware delivered to you)**

1.	Name of Client	
2.	Registration Number of Client	
3.	Effective Date (referred to in clause 1.7)	
4.	Physical Address of Client (referred to in clause 19)	



