

## THUSA STANDARD TERMS AND CONDITIONS

These terms and conditions constitute and govern the basis for all engagements between THUSA and THE CLIENT.

### DEFINITIONS

1. "THE CLIENT" means any party (including its subsidiaries, divisions, business units, successors-in-title, employees, appointed representatives and its assigns) engaging with THUSA to provide consulting, services and/or licensing and/or equipment on a once off and/or recurring basis.
2. "THUSA" means Thusa Business Support (Pty) Ltd with registration number 2006/024453/07 and being based at 6 Nokwe Avenue, Umhlanga Ridge, Durban, 4319, South Africa.
3. "PARTIES" means THUSA and THE CLIENT.
4. "VAT" means Value-Added Tax in terms of the Value-Added Tax Act, no. 89 of 1991 with any applicable amendments as published.
5. "THE AGREEMENT" means any referring services agreement, annexure, email, approved quotation, and/or invoice along with and including these Standard Terms and Conditions.
6. "STATEMENT OF WORK" means the description and scope of THUSA's obligations as defined in THE AGREEMENT.
7. "DELIVERABLES" means any and all works of service, licensing, authorship, products and materials developed, written, prepared, assembled, integrated, modified, procured, supplied or otherwise provided by THUSA in relation to the STATEMENT OF WORK.
8. "Third Party Materials" means software, tools, methodologies, ideas, methods, processes, concepts and techniques owned by, or licensed to a third party and used by THUSA.
9. "Default" means any breach of the obligations of either party (including but not limited to fundamental breach or breach of a fundamental term) or any default, act, omission, negligence or statement of either party, its employees, agents or sub-service providers in connection with or in relation to the subject of THE AGREEMENT and in respect of which such party may be liable to the other.
10. "Intellectual Property" includes any patents or patent applications, trade and services marks whether registered or unregistered, registered design, design rights, copyright, rights in databases, domain names, trade or business names and any other similar protected rights in any country (together with the right to apply for any of the above, if applicable).
11. "Personnel" means the employees, agents, contractors and approved sub-service providers.

### INTERPRETATION

In relation to THE AGREEMENT, unless the context otherwise clearly indicates:

1. Reference to the singular includes the plural and vice versa, and reference to a single gender includes the other opposite gender, where applicable.
2. Persons will include juristic entities.
3. A reference to any statutory enactment will be construed as a reference to that enactment as at the

Effective Date or Commencement Date and as amended or substituted from time to time.

4. All headings are for ease of reference only and shall not have any bearing on interpretation.
5. "Days" will mean calendar days unless qualified by the word "business". A "business day" will be any day other than a Saturday, Sunday or official public holiday as gazetted or declared by the government of South Africa. "Business hours" will be the hours between 08H00 and 16H30 on any business day. Any reference to time will be based upon South African standard time being Greenwich Mean Time plus 2 (two) hours.
6. Unless specifically provided, any number of days prescribed will be determined by excluding the first and including the last day or, where the last day falls on a Saturday, Sunday or public holiday, the next business day.
7. Where figures are referred to in numerals and in words, and there is any conflict between the two, the words will prevail, unless the context clearly indicates a contrary intention.
8. All amounts in THE AGREEMENT are exclusive of value-added tax ("VAT"), unless specifically otherwise recorded.
9. In the event of any conflict between these terms and conditions with any other THUSA Document, the provisions hereof shall prevail.
10. If any covenant, clause, obligation or provision of THE AGREEMENT, or the application thereof to any person or circumstance, shall, to any extent, be invalid or unenforceable, the remainder of THE AGREEMENT (other than such covenant, clause, obligation or provision) and the application of such covenant, clause, obligation or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each remaining covenant, clause, obligation and provision of THE AGREEMENT shall be separately valid and enforceable to the fullest extent as permitted by law.

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### 1. ASSIGNMENT

1. Neither party may assign the benefit of THE AGREEMENT or any interest thereunder except with the prior written consent of the other party. Further, if THUSA wishes to assign or novate THE AGREEMENT to another third party, THE CLIENT agrees that it shall not unreasonably withhold or delay its consent to such assignment or notation.

### 2. INTELLECTUAL PROPERTY

1. All intellectual property originally owned by the parties, their clients, vendors and/or suppliers shall always remain the sole property of such parties, their client's vendors and/or suppliers.

### 3. VARIATION AND AMENDMENT

1. Any requirement for an amendment or change to THE AGREEMENT shall only be valid if it is reduced to writing and signed by both parties.
2. In the event the parties cannot agree upon changes, the parties shall in good faith seek to agree any proposed

changes using the dispute resolution procedures provided for herein.

3. No indulgence on the part of any party in exercising any right conferred upon such party shall constitute a waiver or novation of any such right, nor shall any single or partial exercise of any right preclude any other or future exercise thereof nor preclude the exercise of any other right.
4. Except to the extent of any misrepresentation or breach of warranty which constitutes fraud, THE AGREEMENT along with these terms and conditions, constitutes the entire agreement between the parties relating to the deliverables.

#### 4. THUSA PERSONNEL

1. The Personnel shall be always regarded as employees, agents or sub-service Providers of THUSA and no relationship of employer and employee shall arise between THE CLIENT and any Personnel under any circumstances regardless of the degree of supervision that may be exercised over the Personnel by THE CLIENT.
2. THUSA will ensure that its Personnel comply with all reasonable requirements made known by THE CLIENT concerning conduct at any THE CLIENT's premises, remotely or any other premises upon which services are to be performed. THUSA will always ensure that such Personnel act in a lawful and proper manner in accordance with these requirements.
3. THE CLIENT may not refuse to admit or order the removal from any premises occupied by or on behalf of it, any Personnel whose admission or presence would be required by THUSA for the performance of its obligations under THE AGREEMENT unless THE CLIENT has notified THUSA in advance of its intention to do so together with the reason/s justifying such a decision, which reason/s must be lawful.

#### 5. NON-SOLICITATION

1. During the course of THE AGREEMENT and for a period of 24 (twenty-four) months thereafter for whatsoever reason, THE CLIENT shall not employ, offer employment to or solicit, in any manner whatsoever, any employees of THUSA without the prior written consent of the other THUSA. Should THE CLIENT breach this clause, they will be liable to THUSA for 30% of such employee's annual remuneration package.
2. The Parties' obligations in respect of this clause will survive the termination of THE AGREEMENT.

#### 6. RESPONSIBILITY AND LIMITATION OF LIABILITY

1. THE CLIENT agrees to indemnify and hold THUSA free from liability in respect of all claims, made by THE CLIENT and/or Third Parties, in respect of, *inter alia*:
  - a. Data leak and/or loss of whatsoever nature;
  - b. Delays leading to loss, whether direct or consequential;
  - c. Loss of profits and funds of whatsoever cause;
  - d. Infiltration of and/or access to software systems by unauthorized Third Parties;
  - e. Loss of whatsoever nature caused by Third Party software, whether installed and/or used by THUSA or not; and

f. Loss of whatsoever nature caused by THE CLIENT and/or THIRD PARTIES adding to, deleting from, modifying, or otherwise interfering with the software and/or systems installed, provided and/or used by THUSA. unless in the instance where such loss or damage is caused by any willful misconduct or gross negligence on the part of THUSA.

2. THE CLIENT shall therefore, at its own cost, be obliged to insure against Data Loss, Business Interruption, Cyber Risk, IT Equipment Loss, and any other applicable insurances as recommended by its Insurance Broker and maintain those policies for the duration of THE AGREEMENT and thereafter as applicable.

#### 7. CONFIDENTIALITY

1. Each Party undertakes to, during the operation and after termination of THE AGREEMENT, keep confidential all Confidential Information. The Receiving Party agrees to only use the Confidential Information in order to provide the DELIVERABLES and not to disclose or use any Confidential Information for its own or anyone else's benefit. The Receiving Party may only release Confidential Information to employees and or sub-contractors reasonably requiring such information in order to provide the DELIVERABLES (in respect of THE AGREEMENT) and who are bound by written confidentiality obligations no less stringent than those contained in THE AGREEMENT, prior to such release. The Receiving Party will not release or disclose Confidential Information to any other party unless so required by Law.
2. If either of the Parties is uncertain about whether any information is to be treated as Confidential Information, it will be obliged to treat such information as Confidential.
3. Neither Party will use the Confidential Information of the other Party, without having secured the prior written approval of the other Party.
4. The obligations of confidentiality placed on the Receiving Party in terms of this clause will cease to apply in respect of any information or data which the Receiving Party can show:
  - a. at the time of disclosure, is or has become generally lawfully available and lawfully known by the public and or any competitors of the Disclosing Party in a manner other than by the negligence or default of the Receiving Party or by breach of this Agreement by the Receiving Party; or
  - b. has lawfully become known by or come into the lawful possession of the Receiving Party, on a non-confidential basis from a source other than the Disclosing Party having the legal right to disclose same, provided that such knowledge or possession is evidenced by the written records of the Receiving Party; or
  - c. is disclosed pursuant to a requirement or request by operation of Law, regulation or court order, to the extent of compliance with such requirement or request only; or

- d. to have been developed for the Receiving Party at any time independently of any information disclosed by the Disclosing Party; or
  - e. is disclosed by the Receiving Party with the prior written approval of the authorised representative of the Disclosing Party, provided that:
    - i. the onus will always rest on the Receiving Party to establish that such information falls within the exclusions set out in clauses 7.4.a to 7.4.e and
    - ii. such information will not be deemed to be within the foregoing exclusions merely because the information is embraced by more general information in the public domain or in the Receiving Party's possession.
5. If the Receiving Party is required to disclose Confidential Information as contemplated in clause 7.4.c, the Receiving Party will:
- a. as soon as possible advise the Disclosing Party thereof in writing prior to making any disclosure, provided that there is no restriction on the Receiving Party to inform the Disclosing Party; and
  - b. take steps to limit any disclosure to the minimum extent required to satisfy such requirement to the extent that it lawfully and reasonably can; and
  - c. afford the Disclosing Party an opportunity to intervene in the proceeding, if possible; and
  - d. comply with the Disclosing Party's requests where possible as to the manner and extent of any such disclosure.
6. The Parties' obligations of confidentiality under THE AGREEMENT will survive beyond the termination of THE AGREEMENT.

## 8. PUBLICITY

- 1. THE CLIENT will not publish, use, or allow the publication or the use of such advertising, sales promotions, press releases or publicity material regarding the THUSA without securing the prior written approval of THUSA.

## 9. THUSA'S RESPONSIBILITIES

- 1. THUSA will perform its obligations under THE AGREEMENT with the highest standards of professional competence and integrity.
- 2. THUSA will perform its duties in line with THE CLIENT's established policies, processes and procedures as specified and guided by THE CLIENT where applicable noting that it is THE CLIENT's responsibility to bring these to THUSA's attention before entering into THE AGREEMENT.

## 10. THE CLIENT'S RESPONSIBILITIES

- 1. THE CLIENT warrants that it has full capacity and authority to enter into THE AGREEMENT with THUSA.
- 2. THE CLIENT warrants that it will pay its accounts with THUSA in accordance with its payment terms as stipulated by THUSA.

- 3. THE CLIENT undertakes to promptly comply with any reasonable request by THUSA for information, including information concerning THE CLIENT's operations and activities that relates to THE AGREEMENT as may be necessary for THUSA to perform its obligations relating to THE AGREEMENT.
- 4. THUSA shall give THE CLIENT reasonable notice of any information it requires in accordance with the provisions relating to THE AGREEMENT.
- 5. THE CLIENT agrees to provide THUSA or its representatives such access to and use of its facilities as is necessary to allow THUSA to perform its obligations under THE AGREEMENT.
- 6. THE CLIENT warrants that any instruction or direction issued to THUSA in relation to the accessing of THE CLIENT's information, which may amount to a violation or a breach of privacy for one of THE CLIENT's employees or users, would be in accordance with its internal conditions of employment and policy of use and therefore permissible. THUSA will in all instances in carrying out a request of this nature act as THE CLIENT's agent in reliance on the express warranty recorded herein and shall not be liable in any manner to any person for infringement of privacy.
- 7. THE CLIENT will ensure that its facilities and equipment which THUSA requires to fulfil the duties of THE AGREEMENT are available and functional. Should this not be the case THE CLIENT will not hold THUSA responsible for degradation of services or a lack of service delivery.
- 8. THE CLIENT will ensure that its software and technology is legally obtained and correctly licensed.
- 9. THE CLIENT will provide THUSA with all relevant established policies, processes, and procedures where applicable which are relevant to the services THUSA will need to perform in terms of THE AGREEMENT.
- 10. THE CLIENT will ensure that their facilities, at which place THUSA would perform works relating to THE AGREEMENT, meet all legislative health and safety requirements.

## 11. CLIENT REPRESENTATION

- 1. For the purposes of THE AGREEMENT, THE CLIENT is required to appoint a representative to represent their interest.
- 2. Any change of THE CLIENT's representative is required to be communicated in writing to THUSA within 5 (five) working days of this change occurring.

## 12. CLIENT FAILURE

- 1. Should THE CLIENT fail to comply with any of their obligations in terms of THE AGREEMENT in any shape or form for a period of more than five days after receiving a written request from THUSA to do so, the failure will constitute a material breach of THE AGREEMENT. Under no circumstances may THE CLIENT resign from THE AGREEMENT, withhold, or defer payment, be entitled to a reduction in any charge or have any other right for remedy against THUSA if THUSA interrupts SERVICES to THE CLIENT as it would be entitled to do so if THE CLIENT is in breach.

## 13. OWNERSHIP AND RISK

1. Any DELIVERABLES remain the property of THUSA until paid for in full.
2. Risk in any equipment, licenses, infrastructure, software or other items supplied will transfer to THE CLIENT on delivery of these to THE CLIENT's Premises. THE CLIENT is therefore obliged to have the appropriate measures in place to protect and insure the delivered items against loss and/or damage.

#### **14. ENGAGEMENT**

1. THE CLIENT agrees to engage THUSA and THUSA agrees to provide the DELIVERABLES detailed within THE AGREEMENT.
2. All DELIVERABLES to be provided by THUSA pursuant to THE AGREEMENT will be as defined in the STATEMENT OF WORK.
3. On receipt of a duly authorised STATEMENT OF WORK, THUSA shall render services based on the terms of THE AGREEMENT.
4. THUSA is not authorised to undertake any work for THE CLIENT which is not the subject of or within contemplation of a STATEMENT OF WORK authorised and agreed upon by THE CLIENT.
5. THUSA will perform its obligations under THE AGREEMENT in accordance with the time schedule(s) as and where set out in the relevant STATEMENT OF WORK, save that THUSA will not be liable under this clause if it is unable to meet such obligation within the time required as a direct result of any act or omission by THE CLIENT and THUSA has used its best endeavors to advise THE CLIENT of such act or omission. In the event of such delay, any time deadlines detailed in the relevant STATEMENT OF WORK shall be extended by a period equal to the period of that delay or on such terms otherwise agreed upon.
6. The Parties acknowledge and agree that their engagement and THE AGREEMENT shall not constitute, create, or give effect to a joint venture, pooling arrangement, principal/agency relationship, partnership or formal business organization of any kind and neither THUSA nor THE CLIENT shall have the right to bind the other to any Third Party without the other's express prior written consent.
7. Any written consent required to be given by either party in terms of the provisions herein, must be given by a Director in the case of THUSA, or by a Manager, Partner, Member or Director, where applicable and duly authorised on the part of THE CLIENT.

#### **15. UNFORSEEN COMPLICATIONS**

1. Should THUSA encounter any unforeseen complications which are critical in nature and as such prevent the continuation of THE AGREEMENT, THUSA reserves the right to halt all works and reschedule for a future time period once the unforeseen complication has been resolved to a satisfactory level where any risk is reasonably mitigated.

#### **16. DELIVERY AND ACCEPTANCE**

1. Acceptance of any of the DELIVERABLES will be regarded as complete, when such Deliverable or such part of the Deliverables would have successfully satisfied any relevant acceptance criteria as set out in the

STATEMENT OF WORK and in the absence of such acceptance criteria, on agreement between the parties.

2. Invoices or deliveries not objected to in writing by THE CLIENT within 10 (ten) Business Days of delivery shall be presumed to be correct. The said presumption shall shift the onus of demonstrating the manner in which it is incorrect or defective to THE CLIENT.

#### **17. CHARGES, RATES AND PAYMENT**

1. THUSA shall invoice THE CLIENT and the invoice will be payable in accordance with THE CLIENT's payment terms as stipulated by THUSA.
2. THE CLIENT will pay to THUSA the charges at the rates as detailed within THE AGREEMENT.
3. Where rates are not detailed within THE AGREEMENT, charges will be payable at THUSA's then currently prevailing rates.
4. Unless otherwise agreed in a STATEMENT OF WORK, THE CLIENT will reimburse to THUSA all reasonable and proper expenses incurred directly and solely in connection with THE AGREEMENT, provided that all such expenses:
  - a. are agreed by THE CLIENT in advance; and
  - b. are supported by relevant receipts.
5. THUSA shall increase its rates and fees annually in line with the rate of inflation.
6. Where the payment of any invoice or part thereof is not made in accordance with the payment terms, THUSA shall be entitled to charge cumulative interest, calculated daily on the outstanding amount at the prevailing prime rate of its bankers from the date the amount has become due until the date it has been settled in full. THUSA reserves the right to suspend services and collect any equipment supplied the moment payment for any invoice in relation to THE AGREEMENT is in arrears.
7. Unless specified, all fees and other sums detailed within THE AGREEMENT and STATEMENT OF WORK are exclusive of VAT.
8. VAT will be payable at the applicable rate and will be shown separately on each invoice.
9. THE CLIENT will not be entitled to withhold payment of any amount payable to THUSA to satisfy any claim of THE CLIENT arising from this or any other agreement between THE CLIENT and THUSA, nor will THE CLIENT be entitled to set off such an amount against the amount payable to THUSA in terms of this or any other agreement.
10. THUSA reserves the right to suspend all services and withhold information on unpaid accounts at its discretion.
11. Payment shall be made by means of Electronic Funds Transfer to THUSA's bank account.

#### **18. SET OFF**

1. THE CLIENT shall not be entitled to claim set-off or deduction in respect of any payment due by THE CLIENT to THUSA in respect of THE AGREEMENT and/or DELIVERABLES supplied.

#### **19. INTEREST**

1. If a payment is not made on the due date, THUSA may recover from THE CLIENT and/or surety on the amount

outstanding for the period of the default at the compound rate of 3% above the annual prime overdraft rate of THUSA's bankers per month.

2. All prices quoted are based on current costs and should these costs increase, THUSA shall have the right to amend its prices forthwith and THE CLIENT and/or surety acknowledges and agrees that the actual price to be paid will be the price as determined by THUSA at the time.

## 20. TERM AND TERMINATION

1. THE AGREEMENT shall commence on the date specified and shall remain in effect until termination or otherwise for as long as is needed to complete the STATEMENT OF WORK.
2. Termination in accordance with the provisions herein shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to either party and all provisions which are to survive THE AGREEMENT or impliedly do so shall remain in force and in effect.
3. On termination of THE AGREEMENT the ownership of all DELIVERABLES will vest in THUSA until fully paid for. To that extent THUSA shall be entitled to remove same from the possession, or from under the control, of THE CLIENT.
4. In the event that any of the deliverables and property referred to above are in electronic form and contained on non-detachable storage devices, THE CLIENT, at their costs, will provide THUSA with unencrypted copies of same on appropriate media and will irretrievably destroy and delete the copies so held.
5. If THE AGREEMENT is terminated by THE CLIENT, THE CLIENT will pay to THUSA all outstanding fees (duly apportioned if applicable) relating to the work undertaken by THUSA up until the date of such termination. THE CLIENT will also pay the costs of any goods and materials ordered by THUSA in relation to work for which THUSA has paid or is legally obliged to pay for on behalf of THE CLIENT. In this case, on receipt of such goods or materials, THUSA will promptly deliver such goods and materials to THE CLIENT or otherwise as THE CLIENT may direct.
6. Should THE AGREEMENT be cancelled or terminated by THE CLIENT after any work has been completed, cancellation fees may be applicable and will be determined by the amount of work and resources used up to the date of cancellation.
7. THE CLIENT is liable for any obligation accrued at the date of termination or suspension of services, including the payment of any costs or charges that may arise in connection with such termination or suspension, and the payment of all outstanding fees, damages, set up costs and monthly fees for use of services prior to the said termination or suspension. These fees will be calculated and given to THE CLIENT within 14 (fourteen) days of cancellation for immediate payment.

## 21. DATA PROTECTION

1. For the purposes of Data Protection Law, THE CLIENT is the data controller and THUSA is the data processor in respect of any Personal Data.
2. THUSA will:

- a. process the Personal Data only in accordance with THE CLIENT's instructions and POPI compliance;
- b. not process that Personal Data for any purposes other than to provide the SERVICES to THE CLIENT;
- c. ensure that appropriate technical and organizational measures are taken to avoid unauthorized or unlawful processing of that Personal Data and against loss or destruction of, or damage to, that Personal Data;
- d. take reasonable steps to ensure the reliability of all of THUSA Personnel who have and/or will have, access to that Personal Data;
- e. inform THE CLIENT immediately of any suspected or confirmed data protection breaches or unauthorized or unlawful processing, loss, or destruction of, or damage to, that Personal Data; and
- f. not sub-contract to any third party any of THUSA's obligations to process that Personal Data on behalf of THE CLIENT without THE CLIENT's prior written consent.

## 22. FORCE MAJEURE

1. Neither party shall be liable to the other for any delay in performance or failure to perform its obligations in accordance with THE AGREEMENT where such delay or failure is due to circumstances beyond its reasonable control, such circumstances including but not restricted to fire, flood, government act, act of God and legislative constraints ("force majeure event").
2. Notwithstanding THUSA's obligations in terms of THE AGREEMENT, the death, disability, long term sickness and or resignation of a member of THUSA's personnel related to the provision of niche or exceptionally specialized services will be regarded as a force majeure event.
3. The affected party shall not be relieved of its obligations hereunder in accordance with clause 22.1 or 22.2 unless, as soon as reasonably possible after the start of the force majeure event, the affected party notifies the other party of the force majeure event, the date on which it started, its anticipated duration and the effect of the force majeure event on the affected party's ability to perform its obligations under THE AGREEMENT.
4. If a force majeure event continues for a period of more than sixty (60) days, either party may terminate THE AGREEMENT by giving not less than seven (7) days written notice to the other.

## 23. LAW, JURISDICTION AND COSTS

1. THE AGREEMENT shall be governed by and construed in accordance with South African law and each party agrees to submit to the exclusive jurisdiction of the relevant Magistrate's Court.
2. The parties consent and submit to the jurisdiction of the Magistrate's Court as required by Section 45 of Act 32 of 1944, as amended, with reference to any dispute arising from or in connection with THE AGREEMENT, notwithstanding the nature thereof or the amount involved thereby, provided that any party may, at its

own election, institute proceedings in another Court having jurisdiction.

3. In the event that THUSA institutes legal proceedings against THE CLIENT for the recovery of damages, the payment of any amounts outstanding or for any other reason associated with THE AGREEMENT, THE CLIENT agrees to pay THUSA's legal costs on an attorney and client scale, to include all collection charges.

#### **24. DISPUTE RESOLUTION**

1. Should any dispute arise between the parties in connection with the interpretation or application of the provisions of THE AGREEMENT or its breach or termination or the validity of any documents furnished by the parties pursuant to the provisions of THE AGREEMENT, that dispute will, unless resolved amongst the parties, be referred to and be determined by arbitration in terms of this clause.
2. Any party to THE AGREEMENT may demand that a dispute be determined in terms of this clause by written notice given to the other party.
3. This clause will not preclude any party from obtaining interim relief on an urgent basis from a court of competent jurisdiction pending the decision of the arbitrator.
4. The arbitration will be held:
  - a. In Durban, South Africa; and
  - b. With only the legal and other representatives of the parties to the dispute present; and
  - c. In accordance with the formalities and procedures set out by the arbitrator, it being the intention that the arbitration will be held and completed as soon as possible; and
  - d. On the basis that the arbitrator will be entitled to decide the dispute in accordance with what he considers to be just and equitable in the circumstances.
5. The arbitrator will be acceptable to both parties and, if the matter in dispute is principally:
  - a. A legal matter, a practicing attorney or advocate of Durban of at least twenty (20) years standing; or
  - b. An accounting matter, a practicing-chartered accountant of Durban of at least twenty (20) years standing; or
  - c. Any other matter, an independent person.
6. Should the parties to the dispute fail to agree whether the dispute is principally a legal, accounting or other matter within seven (7) days after the arbitration was demanded, the matter will be deemed to be a legal matter.
7. Should the parties fail to agree on an arbitrator within fourteen (14) days after the giving of notice in terms of clause 23.2, the arbitrator will be appointed at the request of any party to the dispute by the Chairman for the time being of the Durban Bar Council according to the provisions of clauses 23.5 and 23.6.
8. The decision of the arbitrator will be final and binding on the parties to the dispute and may be made an order of any court to whose jurisdiction the parties are subject at the instance of any of the parties to the dispute.
9. The arbitrator will be entitled to make such award, including an award for specific performance, an

interdict, damages or a penalty or otherwise as he in his sole discretion may deem fit and appropriate and to deal as he deems fit with the question of costs, including if applicable, costs on the attorney and THE CLIENT scale, and his own fees.

10. The provisions of this clause:
  - a. Constitute an irrevocable consent by the parties to any proceedings in terms hereof and no party will be entitled to withdraw therefrom or claim at any such proceedings that such provisions do not bind it; and
  - b. Are severable from the rest of THE AGREEMENT and will remain in effect despite the termination of or invalidity for any reason of THE AGREEMENT.

#### **25. BREACH**

1. In the event of any of the parties committing any breach of the terms and conditions of THE AGREEMENT, and failing to remedy such breach within fourteen (14) days of receiving notice to rectify the breach complained of from the other party, then the aggrieved party shall have the right, notwithstanding anything to the contrary contained hereinbefore and without prejudice to any other rights as to damages or otherwise which may pertain in law, either:
  - a. to enforce performance of the defaulting party's obligations in full in terms of THE AGREEMENT; or
  - b. to cancel THE AGREEMENT; and
  - c. in either case, recover from the defaulting party any damages which the aggrieved party may have sustained by reason of the said breach.

#### **26. NO WARRANTIES**

1. THUSA gives no warranties, whether express or implied, regarding the DELIVERABLES, and specifically excludes the warranty that the DELIVERABLES purchased by THE CLIENT will be suitable for the purpose for which they are intended, and any implied warranty or conditions (statutory or otherwise) are hereby excluded unless otherwise expressly stipulated in THE AGREEMENT.

#### **27. ENTIRE AGREEMENT**

1. Each respective agreement (THE AGREEMENT), along with these Standard Terms and Conditions, is the entire agreement between the parties for the respective subject matter of THE AGREEMENT. No alteration or variation of these terms and conditions shall be of any force or effect unless reduced to writing and signed by a duly authorized representative of both parties.

#### **28. NO EXTENSION OF TIME OR WAIVER**

1. No extension of time or waiver or relaxation of any of these terms and conditions shall operate as an estoppel against THUSA in respect of its rights hereunder, nor shall it operate to preclude THUSA thereafter from exercising its rights strictly in accordance with such terms and conditions.

#### **29. DOMICILE CLAUSE**

2. Each of the parties chooses its registered domicilium citandi et executandi ("domicilium") for the purposes of the giving of any notice, the serving of any process and for any other purposes arising from THE AGREEMENT at the addresses set out in THE AGREEMENT.
  3. Each of the parties shall be entitled from time to time, by written notice sent to the other by prepaid registered post, hand delivery, or confirmed delivery email, to vary its domicilium to any other address within South Africa which is not a post office box.
  4. Any notice given by any party to the other which:
    - a. is delivered by hand during the normal business hours at the domicilium for the time being shall be presumed, until the contrary is proved, to have been received at the time of delivery; or
    - b. is posted by prepaid registered post from an address within South Africa to the domicilium for the time being shall be presumed, until the contrary is proved, to have been received by the fourth day after the date of posting; or
    - c. is transmitted by email shall, unless the contrary is proved, be deemed to have been received, only if the party transmitting the message is able to produce an electronic receipt confirmation.
-