MCi's TERMS AND CONDITIONS OF ENGAGEMENT

1.   DEFINITIONS

1.1.   **MCi Consultants (Pty) Ltd,** will be referred to as **MCi.**

1.2.   **"The Client"** "means the organization that has entered into this **Agreement** with **MCi**

1.3.   **"Parties"** means the **User** and **MCi**, and **Party** means any one of them as the context requires.

1.4.   **The Software** refers to **the Software** as detailed in the **Client Proposal**.

1.5.   A **Change Request** means any additional work requested by **the Client** as may be agreed upon and signed by the duly authorised representatives of **the Parties** from time to time, in the form of a signed **Proposal/Quotation** and attached to, or making reference to, this **Agreement**, and which sets out the **Services** to be provided by **MCi** to **the Client** as stipulated therein, (in addition to this **Agreement**) and such other relevant information.

2.   TERM AND TERMINATION OF AGREEMENT

2.1.   The initial term of this **Agreemen**t will commence from the **Date of Signature** of the **Client Proposal.**

2.2.   The initial term of this **Agreement** will be for **12 months** and shall then renew automatically for successive 12 (twelve) month terms.

2.3.   **Either Party** may terminate the **Agreement** as at the end of each term by giving the other party 60 (sixty) days written notice.

2.4.   Should **the Client** cancel the **Agreement** prior to the end of any term, the costs incurred by **MCi**, plus the fees payable by **the Client** until the date of termination of that term, will be due and payable within **7 days from date of cancellation**.

3.   TRAVEL AND SUBSISTENCE EXPENSES

3.1.   Local travel will be charged at the standard AA rate based on km's between **MCi**'s offices and **the Client's** offices.

3.2.   **The Client** is responsible for all long-distance travel and accommodation costs where required.

3.3.   A per diem subsistence allowance of USD 80 per consultant will be charged to cover food and incidental expenses when traveling outside of South Africa.

3.4.   **MCi** reserves the right to update these expenses as deemed appropriate.

4.   SERVICES

4.1.   **MCi** undertakes to carry out **the Services** as detailed in our **Client Proposal**.

4.2.   **MCi** undertakes to attend to all calls logged within the required **Response Times** and **Service Levels** taking into consideration the priority matrix as per the **Service Level Agreement** incorporated herewith, if **the Client** has entered into such **Service Level Agreement**.

4.3.   **Services** will be provided on a **Best Effort Basis** to **the Client**, should a **Service Level Agreement** not be in place.

4.4.   For **SAAS**, **MCi** undertakes to host **the Software,** and **the Client Data** associated with it in a secure third party hosted data centre on behalf of **the Client**.

5.   CHANGE REQUESTS

5.1.   Should **the Client** request additional **Services** and/or **Software** that exceeds or deviates from the project scope defined in the initial **Proposal**, or any subsequent **Quotation/Change Request**, such an undertaking will be at the sole discretion of **MCi** and be subject to our hourly rates.

5.2.   **The Client** may change **the Services** to be performed by **MCi** at any time through a **Change Request.**

5.3.   If **the Client** requires **MCi** to update a **Change Request**, or to investigate a proposed Change, or a Change is necessary to a **Change Request**, to enable **Either Party** to comply with any law, then **MCi** will prepare a **Change Request** in the form of a **Proposal** or **Quotation**.

5.4.   **The Client** will consider in good faith the proposed **Proposal** or **Quotation** and revert to **MCi** by either accepting or rejecting it or requesting further amendments.

5.5.   **MCi** will not commence work or demand payment for any additional **Services** to any **Change Request unless the Client** has agreed to and signed **MCi**'s **Proposal/Quotation** or any portion thereof.

6.   TERMS OF PAYMENT

6.1.   Payment for the purchase of any **Third-Party Software** is due on presentation of invoice via EFT prior to installation.

6.2.   Payment for the monthly subscription of **the Software (SAAS)** is due monthly in advance, via Debit Order or EFT within 30 (thirty) days from Date of Statement.

6.3.   Fees for **Services and Travel** will be billed monthly in arrears and payment will be due via EFT within 30 (thirty) days from Date of Statement.

6.4.   Should payment not be made within 30 (thirty) days from date of statement, then **MCi** shall be entitled to claim interest at prime overdraft rate plus 2%, from due date thereof to date of payment, and reserves the right to suspend all services, without notice, until payment is received.

6.5.   **Annual Software Licenses** and **Maintenance Fees** for **Third Party Software** are due annually in advance prior to the end of each term. **MCi** will invoice **the Client** annually in advance and payment for the **Annual License Fees** is due 7 (seven) days from date of invoice.

7.   TELEPHONE SUPPORT

7.1.   Calls outside of support contracts are billed in 15-minute increments at our current rates with a minimum charge of 15 minutes per call.

8.   OVERTIME

8.1.   Any services provided outside **MCi's** standard working hours (Monday to Friday, 08h30 to 17h00) and on Public Holidays will be billed at 1½ times our current rates.

9.   ESCALATIONS

9.1.   Our Fees are subject to increase without notice each year.

9.2.   Increases will not exceed the average CPI% for the prior year.

10.   RESTRAINTS

10.1.   **The Client** may not directly contract the services of any **MCi** personnel during the contract period and for a period of 48 (forty-eight) months after termination of the **Agreement.**

10.2.   **MCi** may not directly contract the services of any **Client** personnel during the contract period and for a period of 48 (forty-eight) months after termination of the **Agreement.**

11.   CONSENT TO OBTAIN BUSINESS CREDIT PROFILE

11.1.   **The Client** consents to **MCi** carrying out whatever credit checking routines it may deem necessary.

12.   CONSENT TO USE CLIENT'S NAME AND LOGO

12.1.   **The Client** agrees to allow its name and logo to be used as a user of **MCi** software in promotional materials for the duration of the **Agreement.**

13.   CLIENT RESPONSIBILITIES

13.1.   **The Client** must appoint a Project Liaison who will be required to liaise with **MCi** on a regular basis.

13.2.   **The Client** must assist **MCi** 's personnel by allowing **MCi** 's personnel access to **the Client's** infrastructure and the like necessary to allow **MCi** to fulfil its obligations in terms hereof.

13.3.   **The Client** will not for the duration of this agreement, modify, enhance, upgrade, alter, remove or tamper with the **Software** without **MCi** 's prior written consent, which will not be unreasonably withheld.

13.4. **The Client** shall be responsible for taking out insurance for any Cyberattacks on their environments and will ensure that the **MCi** software is included in its insurance policy. **MCi** will not be liable for any damages to **the Client** in the event of a Cyberattack.

13.5. **The Client** shall not be entitled to cede its rights or to assign its obligations under the **Agreement** to any third party.

14. **MCi** RESPONSIBILITIES

14.1. **MCi** will appoint a Project Manager to co-ordinate all activities in conjunction with **the Client** Project Liaison.

14.2. **MCi** will use adequate numbers of appropriately skilled, qualified and experienced personnel.

14.3. **MCi** will ensure that its personnel have the requisite skills, expertise and knowledge to provide **the Services** and that the personnel render **the Services** in a professional manner.

14.4. **MCi** undertakes to manage and ensure continuity of system knowledge of its personnel.

14.5. **MCi** will provide **the Services** as specified in our **Proposal/Quotation** and each **Change Request**.

14.6. **MCi** undertakes to attend to all calls logged within the required **Response Times** and **Service Levels** taking into consideration the priority matrix as per the **Service Level Agreement** attached herewith where **the Client** has entered into a **Monthly Support Agreement** with **MCi.**

14.7. **MCi** will ensure that **the Client** is provided with the latest version of **the Software,** and that **the Software** is regularly updated and modified to ensure the same.

14.8. **MCi** undertakes to carry out configuration/development of **the Software** as detailed in our **Proposal/Quotation** and any **Change Request**.

14.9. Should **the Client** request additional configuration and/or development of **the Software** that exceeds or deviates from the project scope defined in our **Proposal/Quotation** or any **Change Request**, such an undertaking will be at the sole discretion of **MCi** and be subject to our hourly rates.

14.10. **MCi** will provide timesheet records with each monthly invoice.

14.11. **MCi** will keep record of the hours utilised during the month and will include the no charge details on the timesheet reports.

14.12. **MCi** hereby acknowledges that **the Client data**, excluding **the Software**, including **the Client's logos**, **branding**, **notices,** is the property of **the Client**.

14.13. Should **the Client** terminate the **Agreement** in accordance with **the Term and Termination** clause herein and provided all outstanding amounts due to **MCi** have been settled in full, **MCi** undertakes to furnish **the Client** with an extract of their data, at **the Client's** cost.

15. CONFIDENTIALITY AND OWNERSHIP OF THE SOFTWARE

15.1. **The Client** hereby acknowledges that any, and all, of the trademarks, trade names, copyrights, patents, and other intellectual property rights used or embodied in or in connection with **the Software** and other parts thereof, in which **MCi** or the respective manufacturer, developer or third party has an interest, is and shall remain the sole property of **MCi** or such manufacturer, developer or third party.

15.2. All material and proprietary information regarding **the Software** will be treated as confidential and owned by **MCi** or the respective manufacturer.

15.3. **The Client** is specifically prohibited from disclosing any information regarding **the Software** to parties that may be considered as competitors to **MCi** or the respective manufacturer, or who may wish to develop any part of **the Software.**

15.4. In particular, **the Client** shall not permit third parties to have access to **the Software** without the prior written consent of **MCi**, who may require that such third parties execute a written confidentiality agreement before being given access to **the Software**.

15.5. **The Client** will not be involved in any endeavour or relationship to attempt to replicate any part of **the Software** functionality, or reengineer, dissemble or decompile **the Software.**

15.6. Any modification and/or developments to **the Software** requested by **the Client** shall be the property of **MCi** or the respective manufacturer, unless agreed to in writing by both parties.

15.7. This clause is severable from this **Agreement** and will remain in effect after the termination of this **Agreement**.

16. INTELLECTUAL PROPERTY RIGHTS

16.1. All title, copyright and other **Intellectual Property Rights** related to **the Software** and its documentation shall remain vested in **MCi** or the respective manufacturer of **Third-Party Software**.

16.2. The **Intellectual Property** provided by **MCi** will not infringe or misappropriate any **Intellectual Property Right**, **confidential information, trade secret, privacy** or other **proprietary right** of any third party or **the Client**.

16.3. **The Client's** use of **the Software** does not infringe **MCi's** **Intellectual Property Rights** or any third-party Intellectual Property Rights.

16.4. The **copyright** and other **Intellectual Property Rights** of whatever nature in **the Software** and the documentation, as well as all modifications, extensions, customizations, scripts or other derivative works of **the Software** and **the Services**, are, and shall remain, the sole property of **MCi** or the respective manufacturer, and **the Client** acquires no rights in or to **the Software** or documentation other than those expressly granted by this **Agreement.**

16.5. **The Client** shall use reasonable endeavours to prevent any violation of **MCi's** or the respective manufacturer's, proprietary rights in **the Software** and shall promptly report to **MCi** any such violation that comes to its attention.

16.6. All title, copyright and other **Intellectual Property Rights** related to **the Client's Intellectual Property** including artwork, logos, brand names, designs, and its documentation shall remain vested in **the Client.**

16.7. **The Client** hereby grants **MCi** a non-exclusive, non-transferrable, right to use **the Client's Intellectual Property** only for the purpose of rendering the **Services** as per **the Agreement.**

17. RESTRICTIONS

17.1. Subject to **the Client** paying **the Fees** in accordance with this **Agreement** and the other terms and conditions of this Agreement, **MCi** hereby grants to **the Client** a non-exclusive, non-transferable right to permit the Users to use **the Software** and the Documentation during the Term solely for **the Client's** internal business operations.

17.2. In relation to the Users, **the Client** undertakes that:

(a) from time-to-time **MCi** may audit **the Software** in order to establish the number of Users.

(b) if, as a result of an audit or otherwise it is revealed that **the Client** has underpaid Fees to **MCi** then without prejudice to **MCi's** other rights, **the Client** shall pay to **MCi** an amount equal to such underpayment as calculated in accordance with the Fees within 7 (seven) Business Days of the relevant date.

17.3. Both **MCi** and the **the Client** shall not access, store, distribute or transmit any Viruses, or any material, during the course of its use of **the Software** and **Services** that:

(a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive.

(b) facilitates illegal activity.

(c) depicts sexually explicit images.

(d) promotes unlawful violence.

(e) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability. or

(f) in a manner that is otherwise illegal or causes damage or injury to any person or property.

17.4. **MCi** reserves the right, without liability or prejudice to its other rights to **the Client**, to disable **the Client's** access to any material that breaches the provisions of this clause.

18. THIRD PARTY SOFTWARE AND DATA

18.1. **MCi** is not responsible for the continuing availability or operation of any **Software**, applications or data, licensed, developed or provided by any party other than **MCi** nor for **the Software** when embedded in any system developed by any party other than **MCi**.

18.2. **MCi** cannot warrant the continuing availability or compatibility of any third-party integrations with **the Software** and disclaims same.

19. CUSTOMER DATA

19.1. As between **MCi** and **the Client**, all **Client Data** is owned exclusively by **the Client**.

19.2. **MCi** may access **the Client's User accounts**, including **the Client's Data**, solely to respond to service or technical problems, at **the Client's** request, or for training purposes.

19.3. **MCi** reserves the right to electronically collect aggregated, anonymized data regarding **the Client's** and **Users** of **the Software** and share same with the respective manufacturer. Such data shall not constitute **the Client Data.**

20. WARRANTIES

MCi warrants that:

20.1. It has all the necessary rights, powers and authority to enter into and perform the **Agreement**, and the execution, delivery and performance of the **Agreement** by **MCi** has been duly authorised by all necessary corporate actions.

20.2. It will ensure that its personnel at **the Client** premises will at all times comply with **the Client's** policies and procedures, copies of which will be made available on request, and that the rendering of **the Services** is in accordance with such policies and procedures.

20.3. Its personnel have the requisite level of skills and expertise and qualifications to render **the Services** in accordance with industry Best Practices and in the appropriate technologies to maintain the systems.

20.4. Its personnel have the requisite business knowledge of **the Software** to provide functional analysis for system needs.

20.5. Sufficient technical knowledge is retained by its personnel with regards to all **Software**, technologies and frameworks used.

20.6. It is an expert in providing **the Services** and can provide **the Services** as required by this **Agreement**, and all related **Change Requests**.

21. LIABILITY AND INDEMNITY

Notwithstanding anything to the contrary contained in this **Agreement**:

21.1. **The Client** shall not have any claim of any nature whatsoever against **MCi** for any failure by **MCi** to carry out any of its obligations in terms of the agreement as a result of *Vis Major*.

21.2. For the purposes hereof *Vis Major* shall include, without being limited to, strikes, lockouts, accidents, shortages or unavailability of supplies or other stock from normal sources, riots, political or other disturbances, the elements, any act of any State or Government or any other authority, or any cause whatsoever (without being limited by the aforegoing) beyond **MCi** 's control.

21.3. **The Client** shall have no claim of any nature whatsoever whether for damages, special damages, a remission of any amounts due in terms of the **Agreement**, cancellation or otherwise, against **MCi**, its directors, employees, and agents, in respect of any loss or damage sustained by **the Client** of any nature whatsoever, arising out of or connected with the **Agreement**, the implementation of the **Agreement**, **the Software** to be installed in terms of the **Agreement**, the use of **the Software** or otherwise.

21.4. In the case of losses arising from fraud, negligence, or wilful misconduct by **Either Party**, neither **MCi** nor **the Client** limits or excludes its liability:

(a) in respect of any theft, fraud or fraudulent misrepresentation by it or its employees, and in the case of **MCi**, by **MCi** personnel.

(b) for wilful misconduct and for gross negligence.

(c) for breach of Confidentiality, Intellectual Property, Data Protection, or any information security obligations under this Agreement.

(d) abandonment of the Agreement either by **MCi** or **the Client**; and

to the extent such limitation or exclusion is not permitted by applicable Law, the maximum aggregate liability of **Each Party** for damages or alleged damages arising out of fraud, negligence or wilful misconduct, breach of contract or otherwise, shall not exceed, for **Each Party**, the greater of 100% of the Fees paid or payable under the **Agreement**, or, if the **Agreement** is terminated in its initial term, 100% of the annualised amount of Fees for the time **the Software** and / or **Services** were actually provided.

22. BREACH

22.1. Should **a Party** allege that the **Other Party** is in default of performance of any of its obligations in terms of the Agreement, the **Aggrieved Party** shall notify the **Defaulting Party** in writing of such default specifying the nature thereof.

22.2. Should the **Other Party** be in breach after notice as above and remain in breach for 14 days after written notice to rectify the breach has been delivered, the aggrieved party shall be entitled forthwith to cancel this **Agreement,** and claim subject to the terms of **agreement**, for any loss or damage the aggrieved party may sustain.

22.3. Notwithstanding the aforegoing, or any other provision contained herein, a **Party** shall be entitled to terminate this **Agreement** immediately, and without notice, on one or more of the following events:

(a) the **Other Party** being declared insolvent or suffering a judgement to be granted or entered against him in or by any court of law.

(b) the **Other Party** being convicted of an offence involving dishonesty.

(c) the **Other Party** committing a material breach.

23. ANTI-BRIBERY

23.1. **MCi** is committed to maintaining the highest standards of honesty, integrity and ethical conduct.

23.2. This and other **MCi** policies uphold our commitment to the fight against bribery and corruption, in both private and public sector transactions, including facilitation payments.

23.3. The **MCi Code of Conduct** is communicated to all employees.

23.4. **MCi**'s **Policy** clearly states that: "In dealing with public officials, other corporations and private citizens, we will not seek to influence others, either directly or indirectly, by paying or receiving bribes or kickbacks, including but not limited to payments to local officials by **MCi** employees or agents for the completion of routine governmental administrative actions (so-called facilitation payments), or by any other measure that is unethical or that will tarnish our reputation for honesty and integrity. Even the appearance of such conduct must be avoided."

23.5. **The Client** shall not, and shall procure that its employees, agents, and sub-contractors, shall not offer, solicit, or accept an inducement/advantage in connection with **the Services** under the **Agreement**.

23.6. **The Parties** shall not engage in any activity, practice, or conduct which would constitute an offence under the Act or policies.

23.7. Unethical conduct may or may not constitute illegal or corrupt behaviour.

23.8. Breach of this clause shall be deemed a material breach of this **Agreement** entitling **Either Party** to terminate it immediately.

24. WHOLE AGREEMENT AND NON-WAIVER

24.1. No indulgence of whatever nature or any relaxation of any of the terms or conditions of this **Agreement** granted by any one party to the other shall in any way constitute a waiver or a novation of the grantor's rights to strictly enforce the terms hereof, not operate as any estoppel.

24.2. No warranty, representation or statement made by any one party to the other which is not contained in this Agreement shall be of any force or effect or binding upon the parties.

24.3. This **Agreement**, together with **MCi's Confidentiality Agreement, Data Privacy and Protection Agreement, and Service Level Agreement,** and all its **Proposals, Quotations, Client Order Forms**, and **Change Orders** constitutes the sole and exclusive record of the **Agreement** between the parties relating to the subject matters hereof and no variation, modification or waiver of any provision thereof, or consent to any departure there from by any party, shall be of any force or effect unless the same shall be confirmed in writing and signed by or on behalf of that party and any other party affected thereby, and in any event the same shall be effective only in the specific instance and for the purpose, and to the extent for which made or given.

25. NOTICES

25.1. Any notice, consent, approval or other communication in connection with this **Agreement** will be in writing in English.

25.2. **Each Party** chooses the physical address and/or email address corresponding to its name as recorded on the **Client Order Form** to which any notice and all documents in legal proceedings or otherwise must be sent or served.

25.3. **Either Party** may by written notice to the **Other Party** change its address and/or details recorded above.

25.4. Any notice takes effect when received by **the Recipient** (or on any later date specified in the notice) and, unless the contrary is proved, is deemed to be received:

(a) on the day of delivery, if delivered by hand.

(b) on the first Business Day after the date of transmission, if sent by email.

25.5. Despite anything to the contrary in this **Agreement**, a Notice received by a **Party** is effective even though it was not sent, or delivered, or sent and delivered to its chosen address.

26. JURISDICTION

26.1. The parties hereby consent to the jurisdiction of the **South African Magistrate's Court** in terms of Section 45 of Act 32 of 1944, as amended, for all purposes in terms of this agreement. Both parties shall nevertheless be entitled to institute action in any other court having competent jurisdiction.

27. UPDATES TO THE AGREEMENT

27.1. **MCi** is entitled to make changes to this **Agreement** at any time, and such changes will be binding upon **the Client.**