



Kapa Biosystems (Pty) Ltd Terms and Conditions for the purchase of Goods and Services

1. Interpretation

1.1 Definitions. In these Conditions, the following definitions apply:

Affiliate: (a) an organization, which directly or indirectly controls a party to a Contract; (b) an organization, which is directly or indirectly controlled by a party to a Contract; (c) an organization, which is controlled, directly or indirectly, by the ultimate parent company of a party to a Contract. Control as per (a) to (c) is defined as owning more than fifty percent of the voting stock or rights of a company or having otherwise the power to govern the financial and the operating policies or to appoint the management of an organization. With respect to Customer the term "Affiliate" shall not include Chugai Pharmaceutical Co. Ltd., 1-1, Nihonbashi-Muromachi 2-chome, Chuo-ku Tokyo, 103-8324, Japan ("Chugai") and Foundation Medicine, Inc., 150 Second Street, Cambridge, MA 02141, USA ("FMI") and their respective subsidiaries, unless Customer opts for such inclusion of Chugai and/or FMI and their respective subsidiaries by giving written notice to Supplier.

Business Day: a day other than a Saturday, Sunday or public holiday in South Africa when banks in Cape Town are open for business.

Change of Control Transaction: (a) a transaction or a series of transactions in which a party or an entity having control over a party (i) is merged into, acquired, consolidated with an acquirer, (ii) sells all or substantially all of its assets or the business that produces or procures the Goods and/or renders the Services, or the assets associated with such business, or (b) a transaction or a series of transaction in which the stockholders or shareholders of a party or of the entity that controls such party immediately prior to the entrance into such transaction or series of transactions would, as a result of that transaction, hold less than 50% or such party's or such controlling entity's voting stock or rights after the consummation of such transaction or series of transactions.

Charges: the charges payable by the Customer for the supply of the Goods and/or Services in accordance with clause 7.

Commencement Date: has the meaning set out in clause 2.1.

Conditions: these terms and conditions as amended from time to time in accordance with clause 18.7.

Contract: the contract between the Customer and the Supplier for the supply of Goods and/or Services in accordance with these Conditions and an Order accepted as envisaged in clause 2.

Customer: Kapa Biosystems (Pty) Ltd registered in South Africa with VAT number 4950226961

Customer Materials: has the meaning set out in clause 3.3 k).

Deliverables: all documents, products and materials developed by the Supplier or its agents, contractors and employees as part of or in relation to the Services in any form or media, including without limitation presentations, scripts, drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts).

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Order: in the Customer's purchase order form, or in the Customer's written acceptance of the Supplier's quotation, as the case may be.

Goods: the goods to be provided by the Supplier under the Contract as described in the Contract as specified – if any – in the Specification.

Services: the services, including without limitation any Deliverables, to be provided by the Supplier under the Contract as set out in the Specification.

Software: has the meaning set out in clause 3.4.

Specification: the description or specification for the Goods and/or Services agreed in writing by the Customer and the Supplier.

Supplier: the person or firm from whom the Customer purchases the Goods and/or Services.

Trade Marks: the registered trade marks and trade mark applications, and all unregistered trade marks and logos, belonging to the Customer or its Affiliates.

1.2 **Construction.** In these Conditions, the following rules apply:

- a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- a reference to a party includes its personal representatives, successors or permitted assigns;
- a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- a reference to **writing** or **written** includes faxes and e-mails.

2. Basis of contract

- 2.1 The Order constitutes an offer by the Customer to purchase Goods and/or Services in accordance with these Terms and Conditions.
- 2.2 The Order shall be deemed to be accepted, on receipt by the Supplier or any act by the Supplier consistent with fulfilling the Order, at which point and on which date the Contract shall come into existence (**Commencement Date**).
- 2.3 These Conditions apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

3. Supply of Goods and/or Services

- 3.1 The Supplier shall from the Commencement Date and for the duration of this Contract provide the Goods and/or Services to the Customer in accordance with the terms of the Contract.
- 3.2 The Supplier shall meet any performance dates for the Services and/or delivery dates for the Goods specified in the Order or Specification or notified to the Supplier by the Customer.
- 3.3 In providing the Goods and/or Services, the Supplier shall:
 - a) co-operate with the Customer in all matters relating to the Goods and/or Services, and comply with all instructions of the Customer;
 - b) co-operate with any third parties as the Customer may from time to time nominate for the purposes of performing the Services and/or delivery of the Goods, and shall work with the Customer's nominated suppliers efficiently and in good faith;
 - c) perform the Services and/or deliver the Goods with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;
 - d) use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with this Contract. The Supplier shall have a retention plan in place in order to maintain consistency in the management and delivery of the Goods and/or Services;
 - e) ensure that the Goods, Services and Deliverables will conform with all descriptions and specifications set out in the Specification, and that the Deliverables shall be fit for any purpose expressly or impliedly made known to the Supplier by the Customer;
 - f) provide all equipment, tools and vehicles and such other items as are required to provide the Goods and/or Services;
 - g) use the best quality goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and used in the Services or transferred to the Customer as well as the Goods delivered, will be free from defects in workmanship, installation



and design;

- h) obtain and at all times maintain all necessary licences and consents (including but not limited to all licences, performance and recording rights and permissions for material that is protected) and comply with all applicable laws and regulations;
 - i) comply with all applicable laws, statutes, regulations and codes from time to time in force;
 - j) observe all health and safety rules and regulations and any other security requirements that apply at any of the Customer's premises, and/or the site where the Services are to be performed, as the case may be;
 - k) hold all materials, equipment and tools, drawings, specifications and data supplied by the Customer to the Supplier (**Customer Materials**) in safe custody at its own risk, maintain the Customer Materials in good condition until returned to the Customer, and not dispose or use the Customer Materials other than in accordance with the Customer's written instructions or authorisation; and
 - l) not do or omit to do anything which may cause the Customer to lose any licence, authority, consent or permission on which it relies for the purposes of conducting its business, and the Supplier acknowledges that the Customer may rely or act on the Services and/or the Goods.
- 3.4 To the extent Goods and/or Deliverables (also) comprise software and/or computer programs (including applications and software-as-a-service, collectively "**Software**"), Supplier grants to Customer- in lack of a specific statement in the Contract - free of further charge the fully paid-up, non-exclusive, perpetual and geographically unrestricted right to make use of the Software in the object code and for the contractual and agreed purpose. The aforesaid also applies to any modification to Software by Customer and shall extend to any substituted or remedial Software modifications or deliveries provided by the Supplier.

4. Delivery of Goods and Deliverables; Inspection; Defects

- 4.1 Deliveries of Goods and Deliverables will be on an Incoterm (Incoterms 2010) basis as stated in the Contract. In case of lack of such statement deliveries shall be DDP (Incoterms 2010) Cape Town, South Africa.
- 4.2 Customer will perform a physical examine on Goods within five (5) Business Days following receipt and inform Supplier about apparent shortages or defects of delivered Goods at the latest within five (5) further Business Days, this excludes any further testing performed by Quality Control, which may extend to 30 days after delivery. Defects and/or shortages which, despite thorough examination, were not apparent to the Customer, shall be notified to the Supplier within 5 (five) working-days after detection of the defect/shortage.

5. Customer remedies

- 5.1 If the Supplier fails to perform Services and/or deliver the Goods by the applicable dates, the Customer shall, without limiting its other rights or remedies, have one or more of the following rights:
 - a) to terminate the Contract with immediate effect by giving written notice to the Supplier;
 - b) to refuse to accept any subsequent performance of the Services and/or delivery of the Goods which the Supplier attempts to make;
 - c) to recover from the Supplier any costs incurred by the Customer in obtaining substitute services and/or goods from a third party;
 - d) where the Customer has paid in advance for Goods and/or Services that have not been provided by the Supplier, to have such sums refunded by the Supplier; or
 - e) to claim damages for any additional costs, loss or expenses incurred by the Customer which are in any way attributable to the Supplier's failure to meet such dates.
- 5.2 These Conditions shall extend to any substituted or remedial services and/or goods provided by the Supplier.
- 5.3 The Customer's rights under this Contract are in addition to its rights and remedies implied by statute and common law or in equity.

6. Customer's obligations

The Customer shall provide such information to the Supplier as the Supplier may reasonably request and the Customer considers reasonably necessary for the purpose of providing the Service.

7. Charges and payment

- 7.1 The Charges for the Goods and/or Services shall be set out in the Order, and shall be the full and exclusive remuneration of the Supplier in respect of the performance of the Services and/or delivery of the Goods. Unless otherwise agreed in writing by the Customer, the Charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services and/or delivery of the Goods.
- 7.2 Any third-party fees and expenses shall be charged to the Customer by the Supplier at cost. The Supplier shall not be entitled to charge to the Customer any uplift on sums paid by the Supplier to third parties that are charged to the Customer as third-party fees or expenses. The Supplier shall pass on to the Customer the benefits of all commissions, discounts and rebates received by the Supplier from third parties in carrying out the Services and/or procuring the Goods on behalf of the Customer.
- 7.3 The Supplier shall invoice the Customer on completion of the Services and/or receipt of the Goods by the Customer. Each invoice shall comply with the requirements of the Value-Added Tax Act, 1991, of South Africa and include such supporting information required by the Customer to verify the accuracy of the invoice, including but not limited to the relevant purchase order number.
- 7.4 In consideration of the supply of the Goods and/or Services by the Supplier, the Customer shall pay the invoiced amounts within 60 days of the date of a correctly rendered invoice to a bank account nominated in writing by the Supplier.
- 7.5 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods and/or Services at the same time as payment is due for the supply of the Goods and/or Services.
- 7.6 If a party fails to make any payment due to the other party under the Contract by the due date for payment, then the defaulting party shall pay interest on the overdue amount at the rate of 4% per annum above the then current base lending rate of the South African Reserve Bank. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The defaulting party shall pay the interest together with the overdue amount. This clause shall not apply to payments that the defaulting party disputes in good faith.
- 7.7 The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Services, and shall allow the Customer to inspect such records at all reasonable times on request.
- 7.8 The Customer may at any time, without limiting any of its other rights or remedies, set off any liability of the Supplier to the Customer against any liability of the Customer to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Contract.

8. Intellectual Property Rights

- 8.1 In respect of any Goods and/or Deliverables that are transferred to the Customer under this Contract, the Supplier warrants that it has full clear and unencumbered title to all such items, and that at the date of delivery of such items to the Customer, it will have full and unrestricted rights to transfer all such items to the Customer.
- 8.2 The Supplier assigns to the Customer, with full title guarantee and free from all third party rights, all Intellectual Property Rights in the products of the Services, including for the avoidance of doubt the Deliverables.
- 8.3 Payment of the price for Goods shall cover the use of any Intellectual Property Rights by the Customer, its Affiliates or the customers of such Affiliates.
- 8.4 The Supplier shall obtain waivers of all moral rights in the products, including for the avoidance of doubt the Deliverables, of the Services to which any individual is now or may be at any future time entitled under the South African Copyright Act of 1978 or any similar provisions of law in any jurisdiction.
- 8.5 The Supplier shall, promptly at the Customer's request, do (or procure to be done) all such further acts and things and the execution of all such other documents as the Customer may from time to time



require for the purpose of securing for the Customer the full benefit of the Contract, including all right, title and interest in and to the Intellectual Property Rights assigned to the Customer in accordance with clause 8.2.

- 8.6 All Customer Materials are the exclusive property of the Customer.
- 8.7 The Customer grants the Supplier a non-exclusive, non-transferable, royalty-free licence for the duration of the Contract to use the Trade Marks in the creation of the Deliverables and performance of the Services in accordance with this Contract.
- 8.8 The Supplier shall only use the Trade Marks in accordance with the Customer's brand guidelines. No Deliverables incorporating the Trade Marks shall be supplied to any person other than the Customer or disposed of in any way other than as specified by the Customer.
- 8.9 The Supplier acknowledges that it will not gain any right, title or interest in any Trade Marks or associated goodwill, which shall vest automatically in the Customer and the Supplier shall not make any use of them except in accordance with the terms of this Contract.

9. Indemnity

- 9.1 The Supplier shall keep the Customer indemnified against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the Customer as a result of or in connection with:
 - (a) any claim brought against the Customer for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the receipt, use or supply of the Goods and/or Services, to the extent that the claim is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors; and
 - (b) any claim made against the Customer by a third party arising out of, or in connection with, the supply of the Goods and/or Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or subcontractors.
- 9.2 This clause 9 shall survive termination of the Contract.

10. Insurance

For the duration of the Contract and for a period of one year thereafter, the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance and public liability insurance to cover the liabilities that may arise under or in connection with the Contract and shall, on the Customer's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

11. Foreign Trade

- 11.1 It is understood between the Customer and the Supplier that all Goods and Deliverables, including Software, technology and data, delivered under the Contract may be subject to foreign trade controls. Supplier shall strictly comply with all applicable national laws and regulations for the control of import, export/ re-export, transfer, brokering and transit. Prior to any transfer of Goods, Supplier shall in particular guarantee that all necessary import and/or export licenses are obtained as may be required throughout the duration of the Contract.
- 11.2 In any case, Supplier shall inform Customer about the respective number of the Goods and/or Deliverables according to the EU Dual-Use Regulation, the Commerce Control List (CCL) of the U. S. Department of Commerce and/ or the U. S. Munitions List (USML) of the U. S. Department of State. Additionally, Supplier shall provide technical specifications of the Goods and/or Deliverables to enable Customer to classify the Goods and/or Deliverables according to the relevant foreign trade control and customs regulations.
- 11.3 Supplier shall be obliged to declare the origin of goods under customs law pursuant to the export and customs regulations applicable in each case, e. g. on the invoice, by means of a certificate of origin or a long-term declaration (IHK). Supplier shall promptly notify Customer unrequested in writing of any change of origin. Where the Goods and/or Deliverables fall within the scope of a convention for the granting of tariff preferences, Supplier shall be obliged to issue a written declaration pursuant to the

relevant free trade agreement, e. g. a long-term supplier declaration or, in individual cases, a declaration of origin on the invoice.

- 11.4 In the event that for the import or export of goods additional official documents are required for the designated use of the products, Supplier shall be obliged to promptly procure or, respectively, to provide these documents to Customer. Customer shall inform Supplier of the applicable requirements.
- 11.5 Any costs incurred from the obligations in this clause 11 shall be borne by Supplier.
- 11.6 Supplier declarations of all kind and specifications for a classification of the products are to be sent to the following address:

Kapa Biosystems (Pty) Ltd
Ground Floor, Salt Works
271 Victoria Road
Salt River
Cape Town
7925
South Africa

- 11.7 Supplier hereby declares as follows:
 - (a) all Goods and/or Deliverables which are produced for Customer under a Contract are produced, stored, prepared and loaded in secure business premises and secure loading and shipping areas;
 - (b) all such Goods and/or Deliverables are protected against unauthorized interference during production, storage, preparation, loading and transport;
 - (c) reliable staff is employed for the production, storage, preparation, loading and transport of Goods and/or Deliverables; and
 - (d) business partners acting on Supplier's behalf in the performance of obligations under the Contract are informed that they also need to ensure supply chain security as mentioned above.
- 11.8 Supplier shall be liable for any damage and/or expenses (in particular punitive tariffs, legal costs, etc.), which Customer incurs from incomplete and/or inaccurate information in connection with the obligations of Supplier under this clause 11 and shall fully indemnify Customer from and against such damage/expenses.

12. Confidentiality

- 12.1 A party (**receiving party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party (**disclosing party**), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract.
- 12.2 The above obligations of confidentiality shall not apply to that part of such confidential information which the receiving party is clearly able to demonstrate
 - (a) was fully in its possession prior to receipt from the other; or has been independently developed as shown by respective documents; or
 - (b) was in the public domain at the time of receipt from the disclosing party; or
 - (c) became part of the public domain through no default of the receiving party, its Affiliates, directors, officers or employees; or
 - (d) was lawfully received from some third party having a right of further disclosure; or
 - (e) is required to be disclosed by law or applicable government regulations.
- 12.3 Upon expiration or earlier termination of the Contract, the receiving party shall promptly deliver to the disclosing party all confidential information of the disclosing party, together with all copies thereof, in the possession, custody or control of the receiving party or, alternatively, with the written consent of the disclosing party, destroy all such confidential information and certify such destruction in writing to



the disclosing party; provided, however, that the receiving party may retain a list for reference purposes that contains general descriptions of the information it has returned or destroyed to facilitate the resolution of any controversies after the disclosing party's confidential information is returned.

12.4 This clause 12 shall survive termination of the Contract.

13. Data protection

13.1 In this clause 13, Responsible Party, Data Subject, Personal Information, Special Personal Information shall have the meanings given to them in the Act No. 4 of 2013 (Protection of Personal Information Act 2013 – the “**Act**”) of the Republic of South Africa (together with all other applicable laws of the Republic of South Africa the **Data Protection Laws**) and process and processed shall be construed accordingly. If the Supplier processes for the Customer or any of its Affiliates any Personal Information relating to: (i) any of the personnel of the Customer and/or its Affiliates; or (ii) any other natural person (including but not limited to patients) (**Customer Personal Data**) the Supplier shall at all times comply with the Data Protection Laws as if it was the Responsible Party and shall:

- (a) only process the Customer Personal Information in accordance with the instructions of the Customer and in accordance with the Customer's data protection policy;
- (b) not otherwise modify, amend or alter the contents of the Customer Personal Information or disclose or permit the disclosure of any of the Customer Personal Information to any third party unless specifically authorised in writing by the Customer;
- (c) take appropriate technical and organisational measures against unauthorised or unlawful processing of the Customer Personal Information and against accidental loss or destruction of, or damage to, the Customer Personal Information, having regard to the level of harm that may be suffered by a Data Subject whose Personal Information is affected by unauthorised or unlawful processing or by its loss, damage or destruction, and put in place such security programmes and procedures which specifically address the nature of any Special Personal Information;
- (d) not transfer any Customer Personal Information to any country outside the Republic of South Africa except with the Customer's prior written consent and provided (Customer consent notwithstanding) that such transfer is in compliance with the provisions of the Act pertaining to transborder information flows (including without limitation section 72 of the Act); and
- (e) provide reasonable evidence of the Supplier's compliance with its obligations under this clause 13 to the Customer on reasonable notice and request.

13.2 The Supplier shall notify the Customer within three Business Days if it receives a request from a Data Subject for access to any Customer Personal Information. If the Supplier receives any complaint, notice or communication that relates directly or indirectly to the processing of any Customer Personal Information or to either party's compliance with the Data Protection Laws, it shall immediately notify the Customer and provide the Customer with full co-operation and assistance in relation to that complaint, notice or communication. The Supplier shall not disclose any Customer Personal Information in response to any data subject requests or privacy law regulator correspondence without first consulting with, and obtaining the consent of, the Customer.

13.3 The Supplier shall promptly, and in any event within twenty-four (24) hours, notify the Customer about any actual or suspected breach of sub-clauses 13.1(a) and 13.1(c) and shall:

- (a) implement any measures necessary to restore the security of compromised Customer Personal Information; and
- (b) support the Customer to make any required notifications to the relevant privacy regulatory and affected Data Subjects.

13.4 At the Customer's request, the Supplier shall provide the Customer with a copy of all Customer Personal Information held by it in the format and on the media reasonably specified by the Customer.

14. Compliance, Sustainability

14.1 Supplier shall render the Services and manufacture the Goods in conformity to those laws and regulations related to Safety, Health and Environment that are applicable to the manufacture of the Goods at the manufacturing site of Supplier. In addition Supplier must respect those human rights that are within its sphere of influence and must abide by the ROCHE Supplier Code of Conduct which is available at http://www.roche.com/roche_supplier_code_of_conduct.pdf and which outlines the PSCI

Principles.

14.2 Supplier shall also demand its own suppliers to commit to the principles as outlined in the ROCHE Supplier Code of Conduct and to comply with these Principles.

14.3 Customer reserves the right to audit Supplier at any time with regard to compliance with the terms of the Contracts and all applicable laws and regulations including the ROCHE Supplier Code of Conduct.

14.4 Breach of this clause 14 shall be deemed a material breach under clause 15.5(a).

15. Termination

15.1 Termination shall occur on (a) completion of the Services and/or receipt of the Goods, respectively, or (b) in accordance with this clause 15, whichever is the earlier.

15.2 Without limiting its other rights or remedies, the Customer may terminate the Contract on or before 14 days prior to the event start date by giving the Supplier written notice.

15.3 On termination under clause 15.2:

- (a) the Supplier shall immediately cease performing all Services; and
- (b) the Supplier shall be entitled to invoice the Customer for any properly incurred fees and expenses at cost which shall be payable by the Customer in accordance with the provisions of clause 7.

15.4 In the event that the Customer gives notice to terminate the Contract after 14 days prior to the event start date the Supplier shall be entitled to invoice the Customer for 100% of the Charges payable under the Contract.

15.5 Without limiting its other rights or remedies, the Customer may terminate the Contract with immediate effect by giving written notice to the Supplier if:

- (a) the Supplier commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 3 days of receipt of notice in writing to do so;
- (b) the Supplier commits a breach of clause 3.3(i);
- (c) the Supplier repeatedly breaches any of the terms of the Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Contract;
- (d) the Supplier suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of the Act No. 24 of 1936 of the Republic of South Africa (**Insolvency Act**) or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of the Insolvency Act or (being a partnership) has any partner to whom any of the foregoing apply;
- (e) the Supplier commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
- (f) a petition or application is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the business rescue or winding up of the Supplier (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier;
- (g) the Supplier (being an individual) is the subject of a bankruptcy petition or sequestration order;
- (h) a creditor or encumbrancer of the Supplier attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- (i) an application is made to court, or an order is made, for the appointment of an administrator, liquidator or business rescue practitioner or if a notice of intention to appoint an administrator, liquidator or business rescue practitioner is given or if an administrator, liquidator or business rescue practitioner is appointed over the Supplier (being a company);
- (j) a floating charge holder or mortgagor over the assets of the Supplier (being a company) has become entitled to appoint or has appointed an administrative receiver or has perfected its security over the assets of the Supplier;
- (k) a person becomes entitled to appoint a receiver over the assets of the Supplier or a receiver is appointed over the assets of the Supplier;
- (l) any event occurs, or proceeding is taken, with respect to the Supplier in any jurisdiction to which



it is subject that has an effect equivalent or similar to any of the events mentioned in subclauses (d) to subclause (k) (inclusive);

- (m) the Supplier suspends or threatens to suspend, or ceases or threatens to cease to carry on, all or a substantial part of its business;
 - (n) the Supplier consummates a Change of Control Transaction with an acquirer; or
 - (o) the Supplier (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.
- 15.6 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination.
- 15.7 Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

16. Consequences of termination

On termination of the Contract for any reason, the Supplier shall immediately deliver to the Customer all Deliverables and/or Goods whether or not then complete, and return all Customer Materials. If the Supplier fails to do so, then the Customer may enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.

17. Force majeure

- 17.1 Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under it if such delay or failure result from events, circumstances or causes beyond its reasonable control, including without limitation fire, flood, earthquake, explosion, riot, strike, lock-out, war (any of such events a "**Force Majeure Event**").
- 17.2 The Supplier shall use all reasonable endeavours to mitigate the effect of a Force Majeure Event on the performance of its obligations.
- 17.3 If a Force Majeure Event prevents, hinders or delays the Supplier's performance of its obligations for a continuous period of more than five (5) Business Days, the Customer may terminate this Contract immediately by giving written notice to the Supplier.

18. General

18.1 **Assignment and other dealings.** The Customer and the Supplier shall not assign, cede, delegate, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the other.

18.2 Notices.

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, or sent by pre-paid first class post or other next working day delivery service, commercial courier, fax or e-mail.
- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in subclause (a); if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail, one Business Day after transmission.

The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

18.3 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall

not affect the validity and enforceability of the rest of the Contract.

- 18.4 **Waiver.** A waiver of any right or remedy under the Contract or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 18.5 **No partnership or agency.** Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.
- 18.6 **Third parties.** A person who is not a party to the Contract shall not have any rights to enforce its terms.
- 18.7 **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the Customer.
- 18.8 **Governing law.** The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of the Republic of South Africa.
- 18.9 **Jurisdiction.**
- (a) Each party irrevocably agrees that the courts of the Republic of South Africa shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims). Customer reserves the right to bring suit against the Supplier in the court responsible for Supplier's headquarters.
 - (b) Notwithstanding anything in this clause 18.9, each party shall have the right to seek injunctive or other equitable relief from a court of competent jurisdiction that may be necessary to avoid irreparable harm, maintain the status quo or preserve the subject matter of litigation.