

# Customer Agreement



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## INTRODUCTION

### 1. Parties

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The Parties to this Customer Agreement are:

- 1.1. KLR, as described in the COF; and
- 1.2. The Customer, as described in the COF.

### 2. Scope and Application

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- 2.1. This document serves as the master agreement between the Customer and KLR for all Services and Goods provided to the Customer in terms of a COF.
- 2.2. The following additional terms and conditions shall apply if and only to the extent that such Services form part of the purchased Services listed in the COF:

Type of Service	Additional Terms
IT Support services	Service Level Agreement
	Data Processing Agreement
Professional services	Professional Services Agreement
	Data Processing Agreement

## INTERPRETATION

### 3. Definitions

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In this Agreement, unless the context indicates a contrary intention, the following words and expressions bear the meanings assigned to them and cognate expressions bear corresponding meanings –

3.1.	<b>“this Agreement”</b>	this Customer Agreement which includes any COFs, addenda and any annexures hereto.
3.2.	<b>“Applicable Laws”</b>	all legislation, regulations, rules and guidelines applicable in South Africa and related to the Services and the Customer’s business.
3.3.	<b>“COF”</b>	the Customer Order Form, Quotation or Service Order in which the Customer sets out the details of the Services requested (such as quantities and subscription periods), and in which KLR indicates the charges that are payable and the service levels that will apply, which are accepted by the Customer and KLR both signing the COF.
3.4.	<b>“Confidential Information”</b>	any information or data of any nature, tangible or intangible, oral or in writing and in any format or medium, which (i) by its nature or content is, or ought reasonably to be identifiable as, confidential and/or proprietary to a Party or a third party associated to a Party, or (ii) is provided or disclosed in confidence by the disclosing party.
3.5.	<b>“Customer Data”</b>	any data received by KLR from, or maintained by KLR on behalf of, a Customer in connection with the resale or supply of the Services.
3.6.	<b>“Data Protection Laws”</b>	All data protection laws in South Africa that apply to the Party, including the Protection of Personal Information Act of 2013 (“ <b>POPIA</b> ”) and the Electronic Communications and Transactions Act of 2002 (“ <b>ECTA</b> ”).
3.7.	<b>“End Users”</b>	the Customer’s individual end users who use the Services.
3.8.	<b>“Goods”</b>	the products we sell or supply as described in the COF, including hardware, devices, UPS or cabling.
3.9.	<b>“High-Risk Activities”</b>	uses such as the operation of nuclear facilities, air traffic control or life support systems, where the failure of the Service could lead to death, personal injury or environmental damage.
3.10.	<b>“Intellectual Property”</b>	copyright, patents, know - how, Confidential Information, databases, business names, customer lists, and internet domain names, website addresses, trademarks and designs

		(whether registered or unregistered), branding material, recipes, formulas, applications for the registration of any of the foregoing and the right to apply for registration, the right to claim authorship thereof and all other intellectual property and equivalent technology or similar forms of protection existing anywhere in the world.								
3.11.	<b>“Normal Business Hours”</b>	means 08:00 – 17:00, Monday to Friday, excluding public holidays, Saturdays and Sundays;								
3.12.	<b>“Parties”</b>	means the Parties to this Agreement as set out in clause 1 and “Party” shall mean either one of them as the context indicates;								
3.13.	<b>“Services”</b>	The IT or subscription-based services supplied or resold to the Customer by KLR and specified in a COF (e.g., Support Services, software-as-a-service, provision of solutions such as connectivity, communication and hosted platforms, and provision of rental equipment, and any other service/s specified in the COF.								
3.14.	<b>“SLA”</b>	the service level agreement entered into between KLR and Customer in respect of any Support Services rendered by KLR.								
3.15.	<b>“Supplier”</b>	suppliers who directly or indirectly supply infrastructure, services, products, devices and solutions to or through KLR to the Customer. Current Suppliers include (without limitation) Microsoft Corporation Inc. (Microsoft™), and Tarsus On Demand (Pty) Ltd.								
3.16.	<b>“Supplier TOS”</b>	Supplier’s terms of service that govern the use of their Services (including, without limitation, product terms and service level terms) and are available on that Supplier’s website. <b>The Customer is solely responsible for ensuring they have accessed, read and understood the applicable terms, and must familiarise themselves with any updates</b> to these terms which may be available at a successor website not referenced below. The below list of Suppliers and links is non-exhaustive: <table border="1" data-bbox="523 927 1356 1070"> <tr> <td>Microsoft TOS</td> <td><a href="https://www.microsoft.com/en-za/servicesagreement">https://www.microsoft.com/en-za/servicesagreement</a></td> </tr> <tr> <td>Mimecast TOS</td> <td><a href="https://www.mimecast.com/contracts/">https://www.mimecast.com/contracts/</a></td> </tr> <tr> <td>Tarsus TOS</td> <td>As made available on request.</td> </tr> <tr> <td>Vox TOS</td> <td><a href="https://www.vox.co.za/terms-conditions;">https://www.vox.co.za/terms-conditions;</a></td> </tr> </table>	Microsoft TOS	<a href="https://www.microsoft.com/en-za/servicesagreement">https://www.microsoft.com/en-za/servicesagreement</a>	Mimecast TOS	<a href="https://www.mimecast.com/contracts/">https://www.mimecast.com/contracts/</a>	Tarsus TOS	As made available on request.	Vox TOS	<a href="https://www.vox.co.za/terms-conditions;">https://www.vox.co.za/terms-conditions;</a>
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Mimecast TOS	<a href="https://www.mimecast.com/contracts/">https://www.mimecast.com/contracts/</a>									
Tarsus TOS	As made available on request.									
Vox TOS	<a href="https://www.vox.co.za/terms-conditions;">https://www.vox.co.za/terms-conditions;</a>									
3.17.	<b>“Support Services”</b>	services provided by KLR to the Customer in the case of any software or hardware requests required by the Customer relating to the Customer’s server, network, desktop/notebook workstations and peripheral devices such as technical support , troubleshooting, technical queries or ancillary requests, or as otherwise described in a COF.								
3.18.	<b>“VAT”</b>	Value Added Tax in terms of the Value Added Tax Act 89 of 1981.								
3.19.	<b>“Operator”, “personal information”, “processing”, and “Responsible Party”</b>	have their corresponding meanings in terms of POPIA.								

#### 4. Interpretation

- 4.1. Any substantive provision, conferring rights or imposing obligations on a Party and appearing in any of the definitions in this clause, or elsewhere in this Agreement, will be given effect to as if it were a substantive provision in the body of this Agreement.
- 4.2. Words and expressions defined in any clause will, unless the application of any such word or expression is specifically limited to that clause, bear the meaning assigned to such word or expression throughout this Agreement.
- 4.3. Defined terms appearing in this Agreement in title case will be given their meaning as defined, while the same terms appearing in lower case will be interpreted by their plain English meaning.
- 4.4. A reference to any statutory enactment will be construed as a reference to that enactment as at the Signature Date and as amended or substituted from time to time.
- 4.5. Reference to "**days**" will be construed as calendar days unless qualified by the word "**business**", in which instance a "business day" will be any day other than a Saturday, Sunday or public holiday

as Gazetted by the government of the Republic of South Africa from time to time. Any reference to time will be based upon South African Standard Time.

- 4.6. Unless specifically otherwise provided, any number of days prescribed will be determined by excluding the first day and including the last day or, where the last day falls on a day that is not a business day, the next succeeding business day.
- 4.7. 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 indicates otherwise or a contrary intention.
- 4.8. No provision herein will be construed against or interpreted to the disadvantage of a Party by reason of such Party having or being deemed to have structured, drafted or introduced such provision.
- 4.9. The words "**include**" and "**including**" mean "**include without limitation**" and "**including without limitation**". The use of the words "**include**" and "**including**" followed by a specific example or examples will not be construed as limiting the meaning of the general wording preceding it. The application of the *eiusdem generis* rule is therefore excluded.
- 4.10. In the event of any ambiguity or conflict between any of the constituent parts of the Agreement, the order or precedence in the interpretation of the Agreement shall be:
  - (a) Client Order Form or Scope of Work as described in the Client Order Form;
  - (b) Addendum or agreement specific to that service (e.g. SLA);
  - (c) This Agreement.

## ENGAGEMENT TERMS

### 5. Quotations and Orders

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- 5.1. The Customer hereby appoints KLR to provide the Services described in the COF to the Customer on the terms and conditions set out in this Agreement, and KLR accepts the appointment.
- 5.2. All terms, conditions, proposals or quotations exchanged between the Customer and KLR will be subject to these terms and conditions.
- 5.3. All our quotations are valid for 7 (seven) days and may be withdrawn or amended without penalty prior to acceptance.
- 5.4. All quotations are supplied errors and omissions excepted (E & OE).
- 5.5. All prices quoted:
  - (a) exclude VAT, charges for installation of the Goods or Services, surcharge and delivery, unless otherwise stated in the Agreement.
  - (b) are subject to exchange rate fluctuations. All quotations are accordingly subject to the ruling exchange rate on the date of order and the quotation may vary accordingly.
- 5.6. If the Customer wishes to accept a quotation, the Customer must confirm by way of email before it expires or is withdrawn or amended.
- 5.7. Any quotation not accepted by the Customer and communicated to KLR timeously will lapse and be considered null and void.

- 5.8. KLR may cancel any orders placed by the Customer or correct any errors in an accepted quotation, in whole or in part, before the delivery of Goods or commencement of Services for any reason whatsoever.
- 5.9. The Customer's official client order number must accompany any Goods or Services ordered, which orders must be made in writing.
- 5.10. Orders cannot be cancelled or shipments deferred or Goods returned except with the consent of KLR and upon terms that will indemnify KLR against all loss, including the profit on any part of the order that is cancelled.

## 6. Relationship between the parties.

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- 6.1. KLR, Suppliers, and the Customer are all independent contractors concerning the provision, resale and purchase of the Services.
- 6.2. KLR is not an agent or partner of any Supplier, and KLR is not in any joint venture with any Supplier.
- 6.3. All obligations under any agreement entered between the Customer and any of its own clients or suppliers are obligations directly between the Customer and that relevant client/supplier and do not legally bind KLR in any manner whatsoever.
- 6.4. Neither KLR nor the Supplier's liability extends to the internal management or administration of the Services for the Customer.

## SERVICES

### 7. Provision of Services

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- 7.1. This Agreement establishes the terms under which KLR, acting as an authorised reseller and service provider, will provide the Customer with access to the Services described in the COF.
- 7.2. The Customer acknowledges and agrees that this Agreement, along with the applicable Supplier TOS for the Services, governs the Customer's use of the Services.
- 7.3. This Agreement and the Supplier TOS **do not govern any implementation or deployment services** performed by KLR for the Customer. Such services may be provided under a separate professional services agreement between KLR and the Customer.

### 8. Support Services

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- 8.1. For the avoidance of doubt, KLR will not provide Support Services and / or maintenance services unless the Customer has entered into a separate COF in respect of those Services.
- 8.2. If accepted in the COF, KLR will provide front-line technical support, in accordance with KLR's SLA, directly to the Customer's technology administrators for any questions, complaints and other support issues that the Customer cannot resolve.
- 8.3. The Customer hereby authorises KLR to submit support issues to the Supplier on behalf of the Customer.
- 8.4. The Customer may also escalate support requests to the Supplier in accordance with the Supplier's applicable technical support guidelines (the "TSSG") for the Service(s). Suppliers will only provide customer support to Customers as per the Supplier TOS.
- 8.5. Any support services provided by the Supplier are governed by the Supplier's relevant service level agreement ("Supplier SLA") described in the Supplier TOS. If the Supplier fails to comply with its Supplier SLA, the Customer will be only eligible to receive the remedies set out in the

Supplier TOS (being its sole and exclusive remedies), and the Customer must request those remedies from the Supplier through KLR.

## **9. Supplier TOS**

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- 9.1. The Services provided under this Agreement may involve services provided KLR and/or by the applicable Supplier(s) as described in the COF (For example, online services such as Microsoft 365 are provided by Microsoft).
- 9.2. For services provided by the applicable Suppliers through KLR, the Customer acknowledges and agrees that the Supplier TOS will govern the Customer's access to and use of the Services alongside this Agreement.
- 9.3. The Customer must, before the Customer's first log in to the Service,:
  - (a) accept the Supplier TOS without alteration or amendment directly with the Supplier either (i) via acceptance by the Customer when presented by the Supplier online, or (ii) via written agreement between the Customer and Supplier offline; or
  - (b) provide KLR with written authorisation to accept the Supplier TOS on the Customer's behalf.
- 9.4. The Supplier TOS is a contract between the Customer and the Supplier. KLR will have no liability for performance of the Services, and any claims or issues arising from the Supplier's failure to perform shall be addressed directly with the Supplier(s) as per the Supplier TOS. However, KLR will take reasonable efforts to assist the Customer in communicating any issues to the Supplier to resolve such issues.
- 9.5. The Customer must familiarise itself with any and all updates of the Supplier TOS published on the Supplier's website from time to time, and the Customer acknowledges that it will be bound by any such updates to the Supplier TOS upon their publication.
- 9.6. If a Supplier fails to comply with its own agreement, the Customer will only be eligible to receive those remedies set out in the Supplier TOS, and may request that KLR communicate with the Supplier to facilitate the Customer exercising its rights under such Supplier TOS.
- 9.7. Where applicable, Suppliers may provide technical support directly to the Customer as set out in their respective Supplier TOS.
- 9.8. If the Customer purchases any Microsoft Services (including Microsoft 365), by signing this Agreement, the Customer agrees to be bound by the terms that are specific to each Microsoft Service as described in the Microsoft Product Terms at [www.microsoft.com/licensing/terms/](http://www.microsoft.com/licensing/terms/) and the Microsoft Customer Agreement at [www.microsoft.com/licensing/docs/customeragreement](http://www.microsoft.com/licensing/docs/customeragreement). For purposes of these terms, the term "Reseller" in the Microsoft Product Terms means "the Supplier" as defined in this Agreement. These terms are hereby incorporated by reference into this Agreement.

## **10. Services changes and availability**

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- 10.1. The Customer acknowledges that the Supplier may, in its sole discretion, without notice:
  - (a) discontinue the sale or availability of any Services provided through KLR; and/or
  - (b) change the features of Services provided through KLR.
- 10.2. KLR and the Supplier shall not be liable whatsoever for any such changes or discontinued availability of the Services.

## 11. Customer representations and warranties

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- 11.1. The Customer will comply with all laws, rules and regulations applicable to its use of the Service(s), including procurement laws, export control laws, anti-bribery and corruption laws, and Data Protection Laws. The Customer acknowledges and agrees that the Customer is responsible for ensuring that it and its End Users use the Service in accordance with the Supplier TOS, including the acceptable usage policies of that Supplier.
- 11.2. The Customer is responsible for: (a) maintaining the confidentiality of the password and administrative account(s) provided to the Customer by KLR or a Supplier to administer End User accounts; (b) designating the Customer's employees and KLR's employees who are authorised to access the administrative account; and (c) ensuring that all activities that occur in connection with Customer's administrative account comply with the Supplier TOS.
- 11.3. The Customer will not use the Services in connection with the use of any high-risk activities (such as the operation of nuclear facilities, air traffic control or life support systems), where the failure of the Services could lead to death, personal injury or environmental damage.
- 11.4. The Customer does not and will not engage in any illegal or deceptive trade practices or any other behaviour prohibited by this Agreement or the Supplier TOS or any acceptable usage policies published by the Supplier from time to time;
- 11.5. The Customer shall not (i) resell, distribute, supply, lease, or allow another third party to use the Services; or (ii) adapt, alter, modify, decompile, translate, disassemble, or reverse engineer any Service or any part thereof, including the source code and any underlying ideas or algorithms of the software forming part of the Service(s).

## GOODS

### 12. Delivery and risk

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- 12.1. The Customer's requested delivery schedules will be met to the best of KLR's ability. Delivery dates are not firm, and you agree time is not of the essence.
- 12.2. Notwithstanding the above, KLR will not be liable for delays in performance, including delivery, or for failures to perform, including failure to deliver, due to:
  - (a) any causes beyond KLR's reasonable control, including KLR's inability to obtain necessary materials, components, services or facilities, and transport and delivery delays experienced by Suppliers or their agents; or
  - (b) any Force Majeure Events as defined in clause 26.2.
- 12.3. In the event of a delay, the relevant Service will not be terminated and the date of performance will be extended for a period of time equal to the period of the delay.
- 12.4. Subject to KLR agreeing in writing to the contrary, risk in and to the Goods will pass to you as follows:
  - (a) Where you have ordered new or used equipment from or through us, risk will pass to you upon delivery. We assume no liability for any loss, damage, or destruction of Goods after delivery is made to you.
  - (b) Where you have engaged us to inspect or repair any Goods, risk in and to these Goods will remain with you irrespective of whether the Goods are at your premises, in transit or at our premises. We assume no liability for any loss, damage, or destruction of Goods.
- 12.5. You will immediately upon receipt of the Goods be allowed to inspect the Goods and you must inform us of any errors by way of written notice, to be received by us within 5 (five) days of receipt

of the Goods by you. Should you fail to notify us timeously of any claim you may have in terms hereof, such failure will constitute a complete waiver of any such claim.

- 12.6. Any Goods delivered to you in error will only be considered for return by us provided that such Goods are undamaged, have not been tampered with in any way and are not defaced in any way.

### **13. Installation**

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KLR is under no obligation to effect installation of the Goods at the Customer's premises. However, if KLR agrees in writing to effect installation of the Goods, the following terms and conditions will apply, unless otherwise agreed in writing:

- 13.1. KLR may use any contractor or sub-contractor of their choice to effect installation;
- 13.2. any deposit in respect of the installation, which may be requested by KLR will, in addition to any other rights which KLR may have in law, be forfeited by the Customer as liquidated damages in the event of a breach by the Customer of any of the terms of the Agreement;
- 13.3. the Customer will, free of charge, provide such on-site assistance to the contractors or sub-contractors appointed by KLR as may reasonably be required for the performance and execution of the installation;
- 13.4. KLR will use its best endeavours to ensure that installation is completed as soon as is reasonably possible after the date on which installation commences, but time for the completion of installation will only be of the essence if a completion date is agreed in writing by KLR. Notwithstanding this, no responsibility will be accepted by KLR for delays due to forces beyond its reasonable control;
- 13.5. the Customer shall indemnify and hold KLR harmless against any and all liability which may arise in the event of death or injury to, or pecuniary loss suffered by, any of KLR's contractors, sub-contractors or employees in the course and scope of their employment in connection with the installation, as a result of the Customer's negligence or wilful misconduct or that of the Customer's officers, employees or agents.

### **14. Ownership**

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Notwithstanding prior delivery and the passing of risk, KLR will retain ownership of and title to the Goods until the purchase price, and any other amounts owing to KLR in respect of the Goods or the installation thereof (if applicable), have been paid in full and without setoff.

### **15. Warranties**

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- 15.1. We give only the following warranties in respect of the Goods –
- (a) We have title to the Goods and have the unencumbered right to sell and install the Goods; and
  - (b) unless otherwise agreed in writing, we will at our sole discretion and at our expense replace or repair any Goods manufactured and installed by us, on a carry in basis only, within a reasonable time, if you notify us in writing of any defects in respect of the Goods within 9 (nine) months from the date of installation and such Goods are determined by us on a good faith inspection thereof, to be defective in respect of materials and/or workmanship. We will not be liable to compensate you for any damages sustained by you whilst the Goods are being repaired, nor will we be liable for any other damages, including consequential damages, relating to the replacement or repair of the Goods.
  - (c) In addition and concurrent to the warranty given in (b) above, the Goods are supplied with a six month warranty of quality against defects, within the meaning of the CPA.



- 15.2. Notwithstanding the provisions of clause 15 above:
- (a) unless you have specifically informed us of the intended use of the Goods, we do not warrant that the Goods purchased by you will be fit for the purpose that you intend using the Goods for;
  - (b) if any defect in the Goods, or the components of the Goods, relates to alterations contrary to the instructions or after leaving our control, we will not be liable for those defects, including in respect of any possible liability in terms of the implied warranty of quality contained in the CPA;
  - (c) any warranty provided by us will cease to apply if any material information provided by you, specifically insofar as the intended use of the Goods is concerned, is incomplete or incorrect or if there is any material change in operating conditions or any misuse, abuse or material neglect of the Goods by you;
  - (d) all warranties on hardware not manufactured by us are given by the hardware vendor/s or manufacturer/s concerned and not by us. We are happy to assist you with a hardware warranty claim against a vendor or manufacturer and will charge at our usual rates for our services in liaising with the vendor or manufacturer, collecting and delivering hardware, reinstalling software, and performing backups and data restoration.

## 16. Returns and refunds

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- 16.1. If the provisions of the CPA are applicable to this Agreement, the Goods are warranted in respect of quality, suitability and durability for a period of 6 (six) months of delivery. Provided you are not in breach of the Agreement, you may within this period return the Goods to us without penalty if the Goods fail to satisfy the requirements and standards contemplated and we will repair or replace the failed, unsafe or defective Goods.
- 16.2. If you elect to enforce the provisions of clause 16 and, within 3 (three) months of any repair undertaken by us, the failure, defect or unsafe feature has not been remedied, or a further failure, defect or unsafe feature is discovered by you, we will, in our sole and absolute discretion:
- (a) replace the Goods; or
  - (b) refund you for the cost of the Goods (excluding delivery and other charges).

## INVOICING AND PAYMENT

### 17. Invoicing

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- 17.1. KLR are registered VAT vendors. Accordingly, VAT Invoices will be raised for all Goods and Services sold to you.
- 17.2. All invoices will be subject to these terms and conditions unless specifically stated otherwise.
- 17.3. In the event of a conflict between the terms of any invoice and these terms and conditions, these terms and conditions will prevail.
- 17.4. The Customer agrees to receive electronic invoices sent by email to the address on the COF.
- 17.5. If the Customer purchases Services, unless otherwise agreed in a COF in respect of a particular Service, KLR will invoice the Customer as follows: —
- (a) For subscription-based or prepaid Services | Monthly in advance.
  - (b) For consumption Services | Monthly in arrears.

- 17.6. Any Support Services provided by KLR under an SLA will also be subject to fees and charges described in the COF and the Support Services SLA.
- 17.7. Any billing disputes must be lodged in writing within 7 (Seven) days from date of invoice and before the invoice due date. Billing disputes not resolved within 7 days must be resolved following clause 25 (Dispute Resolution). Pending the resolution of the dispute, the Customer agrees to make payment of the full invoice amount. If the dispute is resolved in favour of the Customer, any overpaid amount shall be promptly refunded by KLR with interest calculated at the rate gazetted in accordance with the Prescribed Rate of Interest Act.

## 18. Payment

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- 18.1. The Customer's use of the Services is subject to payment of the fee(s) described in the COF(s).
- 18.2. The Customer is responsible for paying all invoices which are payable immediately on presentation. All fees are non-refundable except as otherwise provided in the Supplier TOS.
- 18.3. The Customer will pay the purchase price of the Goods and the subscription/service fee of the Services to KLR in full and without set-off upon presentation of a VAT invoice relating thereto.
- 18.4. If KLR identifies the Customer as a trade debtor with an active account with KLR, the Customer must pay for all purchases of the Goods and Services as stipulated in the quotation on the date of the VAT invoice, unless otherwise agreed by KLR in writing. KLR may offer a settlement discount at its sole discretion for early settlement of a VAT invoice.
- 18.5. Should the Customer fail to make any payment on due date, all amounts owing by the Customer to KLR from whatsoever cause, whether or not the due date for payment has arrived, will immediately become due and payable by the Customer and the Customer will immediately forfeit all discounts which may have been granted to the Customer.
- 18.6. If any amount is not paid on due date (except for reasonably disputed invoices), we will be entitled to charge interest from the due date until the date of payment (both days included), whether before or after judgment, at the prime rate plus 5% per annum above the prime rate; the "**prime rate**" being the nominal annual compounded monthly rate of interest from time to time publicly quoted by KLR's bank, as certified by any manager of that bank, whose appointment as such it shall not be necessary to prove.
- 18.7. The Customer is responsible for payment of any and all taxes, and will pay KLR without any reduction or deduction of such taxes.
- 18.8. The Customer is responsible for all reasonable expenses (including legal fees) incurred by KLR and its Suppliers in collecting unpaid or overdue amounts, except where these unpaid or overdue amounts are due to billing inaccuracies attributable to KLR or Supplier.

## 19. Escalation in fees and currency fluctuations

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- 19.1. Fees for the Services and goods are subject to increases by Suppliers and fluctuation of local currency against the foreign currency applied by Suppliers. In such cases, KLR will not be required to give written notice of any increases due to such increases or fluctuations.
- 19.2. All amounts invoiced (unless the contrary is evident in terms of the COF) shall be the South African Rands equivalent of United States Dollars (or other currency applied on the COF), converted by applying the bank selling rate determined in accordance with the currency table of First National Bank Limited (South Africa) or another provider selected by KLR.

## TERM, RENEWALS, TERMINATION AND BREACH

### 20. Duration of this Agreement

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This Agreement shall begin on the date of signature of this Agreement by the Party signing last in time, and will continue until the termination of the last Service in effect, unless terminated earlier as set out in clause 22 (Termination) of this Agreement.

### 21. Service periods (Subscription periods)

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21.1. The Parties shall agree on specific service period for each Service when placing a COF under this Agreement (the "**Initial Subscription Period**").

21.2. The Subscription Period for each Service shall run independently but concurrently (i.e. each with its own contract lifecycle) under this Agreement.

21.3. At the end of the Initial Subscription Period, the Subscription Period for each Service will automatically renew for consecutive renewal terms of 12 months (each, a "**Renewal Period**"), unless terminated by either Party by providing the other party written notice of non-renewal at least 90 days prior to the end of the then-current Subscription Period or any Renewal Period.

21.4. All terms and conditions of this Agreement shall apply during each Renewal Period, except for the fees charged. The fee for each Renewal Period will be the rates then in effect as described in clause 18 (**Payment**) read with clause 19 (Escalation in fees and currency).

### 22. Termination

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#### 22.1. Termination by Customer

- (a) The Customer may only terminate this Agreement, or part of the Services under this Agreement, at the end of the contract period stated in the COF by giving KLR no less than 90-days written notice of such termination prior to the end of the then-current term.
- (b) If the Customer has committed to a fixed term contract (e.g. 6 or 12 months) and wishes to terminate this Agreement or a particular Service before the end of the term, a cancellation fee applies - being the monthly fee for the Services, multiplied by the number of months remaining in the contract term.

#### 22.2. Termination by KLR

- (a) This Agreement, and any Service supplied under this Agreement, is subject to early termination if the Supplier terminates the Service(s) in accordance with the Supplier TOS.
- (b) Each Service is and shall always be subject to termination, removal or variation by KLR in the event that the right, capacity or ability of KLR to render, provide or facilitate that Service is terminated or varied for any reason.
- (c) The Customer shall not hold KLR or the Supplier liable for any risk, damage or obligation arising as a result of any such termination, removal or variation. The Customer hereby absolves KLR and the Supplier(s) from any such liability and indemnifies and holds them harmless from any and all liability arising therefrom.

#### 22.3. Termination for Cause.

Either Party may terminate this Agreement for cause in accordance with clause 24 (Breach).

#### 22.4. Termination for regulatory reasons.

The Customer acknowledges that KLR and/or the Supplier may unilaterally terminate, disable or suspend any Service(s) for legal, regulatory or any other reason on reasonable notice by KLR or the Supplier to the Customer. KLR and the Supplier shall not be liable whatsoever to the Customer following any termination or suspension of the Services for legal, regulatory or any other reason reasons by KLR or the Supplier. If a Service is cancelled by the Supplier or KLR before its term expires and during the Customer's billing cycle, (i) KLR will provide a prorated credit for the un-used pre-paid portion of the cancelled Service in the Customer's subsequent invoice, provided that such cancellation is not due to any violation of the terms of this Agreement or Supplier's TOS.

### **23. Effect of Termination.**

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- 23.1. Except as otherwise provided in this Agreement, termination of this Agreement shall not release either Party from any obligation accrued prior to the date of termination.
- 23.2. If this Agreement terminates, then the rights granted hereunder by any party to the other will cease immediately and the Customer's access to the Service(s) will cease. The Customer's access to Customer Data following termination will be as described in the Supplier TOS but is usually permanently destroyed after 30 days from termination date. The Customer agrees and understands that KLR shall not be responsible for exporting or migrating any data before the expiration of the applicable destruction period.
- 23.3. Termination of this Agreement shall not affect any agreement entered directly between the Customer and any Supplier. In addition to the terms of this Agreement, any sale or use of any supplier, reseller or manufacturer's software or products (whether supplied by KLR or otherwise) is always further subject to their respective license terms.
- 23.4. If the Customer is deemed to be a "consumer" in terms of the Consumer Protection Act ("CPA"), and if section 14 of CPA applies to this Agreement, and the Customer cancels this Agreement or part of the Services before the scheduled contract end date, the Customer will be liable for settlement of 80% of the contract value for the cancelled Services for the remaining contract period as damages for its early termination, which damages shall immediately become due and payable in full to KLR.

### **24. Breach**

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- 24.1. If either Party (the Defaulting Party):
  - (a) commits a breach of any provision of this Agreement and fails to remedy such breach within 5 (Five) business days after receiving written notice from the other Party (the aggrieved party) requiring the Defaulting Party to do so;
  - (b) commits any act of insolvency;
  - (c) endeavours to compromise generally with its creditors or do or cause anything to be done which may prejudice the other Party's rights hereunder;
  - (d) allow any judgement against itself, in excess of R200 000,00 (Two Hundred Thousand Rand), to remain unsettled for more than 10 (Ten) days without taking immediate steps to have it rescinded and successfully prosecuting the application for rescission to its final end;
  - (e) is placed in liquidation or becomes subject to business rescue proceedings (in either case, whether provisionally or finally) or, being an individual, the Customer's estate is sequestrated or voluntarily surrendered;
  - (f) allows any amount due to the other to be overdue for more than 30 (thirty) days;then such defaulting party shall be in material breach of this Agreement.

- 24.2. Should the Defaulting Party be in breach of this Agreement, the aggrieved party shall be entitled, without prejudice to its other rights in law:
- (a) to suspend, remove or terminate one or more Service(s) (including a Service provided by or derived from a Supplier); and/or
  - (b) in the case of KLR, to treat as immediately due and payable all outstanding amounts which would otherwise have become due and payable over the unexpired period of this Agreement or part of the Services, and to claim such amounts including interest and to cease performance of KLR's obligations herein as well as under any other contract with the Customer until the breach is remedied; and/or
  - (c) to claim specific performance of all of the Defaulting Party's obligations whether or not due for performance or cancel this Agreement, without prejudice to the aggrieved party's right to claim damages.
- 24.3. The Defaulting Party will be liable for all costs incurred by the aggrieved party in the recovery of any amounts or the enforcement of any rights which it has hereunder, including suspension/re-activation fees, collection charges and costs on an attorney and own client scale whether incurred prior to or during the institution of legal proceedings or if judgment has been granted, in connection with the satisfaction or enforcement of such judgment.
- 24.4. The Customer acknowledges that Suppliers, by virtue of their Supplier TOS, may have the right to claim directly against the Customer for any outstanding amounts owed to KLR by the Customer.
- 24.5. If the Customer breaches this Agreement and causes KLR to suffer damages of any nature whatsoever, KLR will:
- (a) not be required to attach in execution any of the devices or hardware leased or provisioned to the Customer by KLR, and
  - (b) be entitled to retain a lien over such devices and hardware in reduction of any debt due by the Customer to KLR.

## DISPUTE RESOLUTION

### 25. Dispute resolution

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- 25.1. In the event of any dispute arising as to the amount or calculation of any fee or charge to which we are entitled, the dispute will be referred for determination to our auditors. They will act as experts and their decision will be final and binding on you and us. The cost of the determination will be paid on demand by the party against whom the determination is made, or as determined by the said auditors.
- 25.2. All other disputes arising out of our supply of Goods or Services will, unless resolved amongst us within ten (10) days, be referred to arbitration.
- 25.3. The arbitrator will be a person agreed to by both Parties, and failing agreement, be a person nominated by the President of the Association of Arbitrators (Southern Africa) ("**AASA**").
- 25.4. It is the intention of both parties that the arbitration:
- (a) Will be held in Durban; and
  - (b) Will be held in a summary manner in accordance with the restricted representation arbitration (summary procedure) rules of the AASA and completed within 21 (twenty one) days of the appointment of the arbitrator.
- 25.5. The decision of the arbitrator will be final and binding on both parties.

## LIMITATION OF LIABILITY AND INDEMNITY

### 26. Force Majeure

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- 26.1. If a Party (the “**affected Party**”) is unable to perform any obligation under this Agreement due to the occurrence of a Force Majeure event, the affected Party will be absolved from performing that obligation for as long as the circumstances prevail or, if performance of the obligation is or becomes impossible, the affected Party will be entitled to terminate this Agreement on reasonable written notice to the other Party.
- 26.2. A “**Force Majeure event**” means any event or circumstances beyond the control of the affected Party provided such circumstances are not caused by fault, of any degree, on the part of the affected Party and shall include fire, explosion, power blackout, total power grid collapse or failure (but excluding scheduled load shedding), earthquake, flood, severe storms, strike, embargo, labour disputes, acts of civil or military authority, war, terrorism, cyber attacks, acts of God, acts or omissions of Internet traffic carriers, actions or omissions of regulatory or governmental bodies (including the passage of or material change in the law applicable) that materially affect the affected Party’s performance under this Agreement, but which shall exclude include theft or accidental loss,
- 26.3. Any delay or failure in the performance by either Party hereunder shall be excused if and to the extent caused by the occurrence of a Force Majeure.
- 26.4. Should the Force Majeure event continue for a period of more than 2 (two) months, either Party will be entitled forthwith to terminate this Agreement on written notice to the other Party.

### 27. Limitation of Liability

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- 27.1. Nothing in this Agreement shall limit the Parties’ liability for damages for death or personal bodily injury arising from negligence or wilful misconduct.
- 27.2. Reliance on advice and recommendations
- (a) KLR makes every effort to ensure that the advice and recommendations KLR provides are accurate and appropriate for the Customer’s purposes. All such advice and recommendations are given based on the information the Customer provides to KLR at the time the advice or recommendation is given.
  - (b) It is the Customer’s responsibility to apply its mind to the Services and Goods recommended and to make an informed decision as to which Services and Goods are suitable to the Customer’s particular circumstances.
  - (c) KLR and the Supplier accept no responsibility for any loss or damage, whether direct or consequential, which may arise from reliance on any advice or recommendations given by KLR.
  - (d) In the event that we provide advice regarding the application of the Goods or Services at your request, our liability in respect of the non-suitability of the Goods for the purpose for which they are used will be limited to the selling price of those Goods.
- 27.3. Exclusions of liability
- (a) Under no circumstances, including any infringement of intellectual property claims, will KLR or the Supplier be liable to the Customer or to any other party, for any special, incidental or consequential damages (including without limitation, re-procurement costs, lost revenue or profits) howsoever arising or caused and regardless of the form or cause of action, even if KLR has been informed of such potential loss or damage.
  - (b) Except where KLR has acted with gross negligence or fraud, to the fullest extent possible KLR disclaims and shall have no liability (direct or indirect) to the Customer for:

- (i) any defective products or Services, and the Customer's sole remedy in respect thereof shall be against the original equipment manufacturer or Supplier as provided in the product warranty provided by the original equipment manufacturer or Supplier;
- (ii) any defects or any claims arising out of any failure to meet any service level or inability to provide any Services for any reason whatsoever, the Parties agree that the only remedy to the Customer shall be the repayment of any amount already paid for the specific Service or a remission of payment of the Services for any period that they were not available;
- (iii) the loss or corruption of Customer Data or programs howsoever caused or arising;
- (iv) any unauthorized access to, or use of, the Customer's IT systems, credentials or accounts linked to or managed as part of the Services, regardless of the cause or reason, including but not limited to cyberattacks, hacking, or internal breaches; or
- (v) the event that the Customer Data or programs are unable, for any reason, to be restored or used, whether in part or at all.

27.4. Exclusion of liability for defects and hazards

- (a) In addition to any other specific exclusions of liability contained herein and unless otherwise expressly stated herein, the Customer agrees that they will have no claim against KLR for any loss or damage, of any nature, occasioned by any defect in any Goods or Services, or any failure to provide adequate instructions in respect of any hazards that might arise from the use or incorrect use of the Goods or Services save to the extent that such loss or damage is contemplated in section 61 of the Consumer Protection Act, and provided that nothing in these terms and conditions must be construed as in any way limiting our rights to raise such defences as may be available to us at common law or in terms of any statute.

27.5. Limitations on aggregate liability

- (a) Except for any service fees, subscription fees or any purchase price due to KLR under this Agreement, which shall remain due and owing until paid, and subject to clause 27, each Party's maximum liability to the other party for all liabilities arising from this Agreement, whether in contract, delict (including negligence), statutory or otherwise, shall not exceed the aggregate amount of the total fees actually paid to KLR by the other party for the applicable Good or Service in the twelve (12) months preceding the event giving rise to the claim, or R 20,000 (Twenty Thousand Rand) (whichever is higher).

**28. Indemnity**

28.1. The Customer agrees to indemnify and hold KLR and the Suppliers (including their respective directors, employees, agents and affiliates) harmless from any and all claims, demands, losses, liabilities, and expenses (including attorney own client fees) from any third party or End User, arising out of or in connection with any actual or alleged:

- (a) breach of this Agreement or Supplier TOS by the Customer;
- (b) negligence, gross negligence or wilful misconduct by the Customer; or
- (c) violation of the rights of any director, employee, agent, Supplier, shareholder or third party by the Customer.

## PROTECTION OF PERSONAL INFORMATION

### 29. Data privacy and protection

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- 29.1. The Customer shall always remain the sole and exclusive owner of all Customer Data.
- 29.2. The Customer authorises KLR to:
- (a) process Customer Data and the Customer's administrative access credentials where it is strictly necessary for KLR to perform its obligations under this Agreement, including the provision of any Services and executing the Customer's instructions; and
  - (b) disclose Customer Data to contracted Suppliers for use by them in accordance with that Supplier's TOS applicable at the time, including applicable confidentiality, data processing and security terms.
- 29.3. Customer Data may be also disclosed to contracted Suppliers to (without limitation):
- (a) inform the Customer about new or additional Supplier products related to the Service(s) the Customer is using;
  - (b) to provide technical support in accordance with their technical support guidelines applicable to each Service;
  - (c) to migrate the Customer if it wishes to purchase Services directly from the Supplier or another authorised reseller for that Service;
- 29.4. The Customer is responsible for providing the necessary notices to and obtaining the necessary consent from its End Users to allow KLR and the Supplier to perform their respective contractual obligations in respect of the Customer.
- 29.5. KLR will only change or reset Customer or End-User credentials as instructed by the Customer.
- 29.6. The Supplier TOS will govern the exchange of Confidential Information between the Customer and a Supplier.
- 29.7. All Customer's Data pertaining to the Customer that is available on any server, storage device, equipment or cloud platforms which may be read, accessed, moved or backed-up by KLR will be treated as confidential by KLR and will not be disclosed to any other party except as permitted under this Agreement or authorised in writing by the Customer.
- 29.8. The Customer hereby agrees that KLR shall have the general authority to engage any (sub)operators it deems necessary to perform the Services; provided that KLR will ensure that similar terms, appropriate to the sub-processing, are imposed on its (sub)operators to ensure the confidentiality and security of Customer Data.
- 29.9. KLR will endeavour to employ reasonable measures to safeguard Customer Data and administrative access credentials against unauthorised access through its own infrastructure and systems.
- 29.10. For any processing of Customer Data that is necessary for KLR to perform the Services to the Customer under this Agreement, the parties acknowledge that such processing may also be subject to a separate Data Processing Agreement ("**DPA**"). The DPA will govern the rights and obligations of the parties concerning the processing of Customer Data and security measures employed, and once signed by the Parties, will be incorporated by reference into this Agreement. The DPA shall prevail over any conflicting provisions in this Agreement to the extent of any inconsistency.
- 29.11. The Customer acknowledges that it is solely responsible for taking steps to maintain appropriate security, protection and regular independent backups of all Customer Data. KLR's security



obligations with respect to Customer Data are limited to those obligations described in this Agreement and, where applicable, the DPA.

- 29.12. The Customer agrees to implement Multi-Factor Authentication on all accounts and systems that are used in connection with the Services.
- 29.13. KLR's privacy notices available on request or at [www.klr.co.za](http://www.klr.co.za). apply when processing the Customer's Data in connection with the Services. The Customer acknowledges that we may use their personal information according to such privacy notices which are incorporated into this Agreement by this reference.
- 29.14. The Supplier's privacy notices apply when they process any Customer Data in connection with any Services, and are available at the relevant Supplier's website.

## GENERAL

### 30. Credit Checks

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- 30.1. The Customer hereby consents to, and agrees to provide the necessary assistance for, KLR to obtain a credit report from a recognised credit reporting agency containing personal information for KLR's business purposes, including the assessment of an order for Goods or Services or the collection of overdue accounts.
- 30.2. The Customer also agrees that KLR may provide information to a credit reporting agency in relation to any account not operated in accordance with this Agreement and that direct costs associated with any such collections may be added to the Customer's account.

### 31. Domicilium and addresses / notices

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- 31.1. The physical address given by the Customer in your order, the address to which Goods are delivered and/or the address reflecting on the Customer's email signature will be the address the Customer has chosen where summonses, legal documents and notices can be served on the Customer ("*domicilium*").
- 31.2. KLR may also serve notices on the Customer by email and KLR will use the email address given by the Customer in their order and/or the email address used by the Customer in correspondence with KLR ("*email domicilium*").
- 31.3. KLR chooses as its domicilium at Suite 10, Imperial Office Park, 9-11 University Road, Westville, 3629, and email [support@klr.co.za](mailto:support@klr.co.za).
- 31.4. Either Party will be entitled from time to time to vary their *domicilium* or *email domicilium* on ten (10) days written notice to the other.
- 31.5. Any notice which:
  - (a) is posted by prepaid registered post or hand delivered to the other party's domicilium and will be presumed, unless the contrary is proved by the party to whom it is addressed, to have been received by that party on the 7th (seventh) day after the date of posting or on the day of delivery as the case may be; or
  - (b) is transmitted by email to the other party's email domicilium will be deemed to have been received by the party to whom it is addressed on the date of transmission or, if the transmission is made out of normal business hours, on the first business day following after the date of transmission.

### **32. Applicable law and jurisdiction**

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This Agreement will be governed by and construed in accordance with the laws of the Republic of South Africa and all disputes, actions and other matters relating thereto will be determined in accordance with South African law by a South African court having jurisdiction.

### **33. Entire Agreement**

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These standard terms and conditions form the entire agreement between the Parties regarding the subject matter hereof, save insofar as any incidental documentation (such as credit application forms, quotations) may be required for reference purposes to establish variables (such as prices and quantities) which are specific to a contract and are not recorded herein.

### **34. Variation**

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- 34.1. No variation, amendment or consensual cancellation of this Agreement or any provision or term thereof or of any agreement or other document issued or executed pursuant to or in terms of this Agreement will be binding unless recorded in a written document signed by a duly authorized representative from both the Customer and KLR.
- 34.2. KLR may, however, unilaterally vary these terms and conditions (including pricing and any other terms) at any time on 30 days prior written notice of the change to the Customer, and all Services provided after this notice period will be subject to these variations.
- 34.3. If the Customer is materially worse off by any variations made after the Customer has been given notice of that change (unless any change is required by law, required by a Supplier, necessary to prevent fraud, or for security or technical reasons).

### **35. No waiver**

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No extension of time or waiver or relaxation of any of the provisions or terms of this Agreement or other document issued or executed pursuant to or in terms of this Agreement, will operate as an estoppel against either Party in respect of their rights under this Agreement, nor will it operate so as to preclude either Party thereafter from exercising their rights strictly in accordance with this Agreement. No relaxation which KLR may have permitted on any occasion in regard to the carrying out of the Customer's obligations will prejudice or be regarded as a waiver of KLR's rights to enforce those obligations on any subsequent occasion.

### **36. No representations**

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The Customer acknowledges having read and understood this Agreement and confirm that they are not entering into this Agreement on the basis of any representations not expressly set forth in it. Neither Party will be bound by any express or implied term, representation, warranty, promise or the like not recorded herein, whether it induced the Agreement between the Customer and KLR or not.

### **37. Severability**

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All clauses in this Agreement are separate and severable from each other and will each be capable of standing on their own. Any provision or clause of this Agreement which is or becomes unenforceable or illegal or void may be removed or severed from this Agreement as if it never formed part of this Agreement, while the remaining provisions or clauses will continue to operate and be of full force and effect. In the event of any expiration, termination or cancellation of this Agreement, provisions hereof which are intended to continue and survive will so continue and survive.

### **38. Cession, assignment and substitution**

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- 38.1. The Customer shall not cede, assign, or otherwise transfer this Agreement nor any part, share, Service or interest therein, nor any rights or obligations in terms hereof unless KLR gives its prior written consent thereto.
- 38.2. KLR may cede and/or assign this Agreement, including any part, share, Service, claim or interest therein, or any rights or obligations, without the Customer's consent to any person(s), including but not limited to any:
- (a) acquirer of KLR's equity, business or assets;
  - (b) a successor by merger;
  - (c) another reseller of the Services authorised by a Supplier; or
  - (d) any Supplier.
- 38.3. If KLR transfers your account to a third party, KLR will notify the Customer in writing, and transfer any confidential data in a secure manner to the third party, and also take reasonable efforts to ensure that the third party holds that data in a secure manner, to ensure its ongoing protection.

### **39. Confidentiality**

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This document is confidential and issued for the Customer's information only. It is subject to copyright and may not be reproduced in whole or in part without KLR's written permission.

### **40. Counterparts**

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The parties may execute this Agreement in counterparts, including facsimile, PDF, and other electronic copies, which taken together will constitute one instrument.

### **41. Consumer Protection**

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- 41.1. Should the Consumer Protection Act ("CPA") be applicable to this Agreement, nothing in this Agreement is intended to or must be understood to unlawfully restrict, limit or avoid your rights or our obligations under sections 54, 55, and 56 of the CPA, which are admitted only to the minimum possible extent. Unless the contrary is stated elsewhere in this agreement, you will have no rights in respect of quality of service, safe & good quality goods or implied warranty of quality beyond those explicitly stated in the aforementioned sections.
- 41.2. A transaction (as defined in the CPA) between us and you may or may not fall under the provisions of the CPA depending upon whether certain values applicable to you ("Threshold Values") are below a certain value at the time the transaction is entered into.
- 41.3. The Threshold Values are your asset value or annual turnover (or such other measurement as may be dictated by the CPA as amended from time to time), and the value against which they are measured is as determined by the Minister of Trade and Industry by publication in the Government Gazette from time to time.
- 41.4. Our duties under a particular Service Order may vary depending upon whether the transaction in question is subject to the CPA, and we will act upon the information you give to us in this regard. Consequently:
- (a) you warrant that any statement made to us in respect of your Threshold Values is accurate.
  - (b) If you claim that all the Threshold Values are below the relevant value, or otherwise that the CPA applies to the transaction in question, we may at our instance require you to provide us with financial statements as proof thereof.

41.5. If you misstate the Threshold Values in such a way that we consider for a period that the transaction is subject the CPA when it is not, all provisions of this agreement that do not apply to transactions subject to the CPA will retroactively apply to the transaction in question, and you will be liable for any damage we sustain resulting from such misstatement.

41.6. This Agreement contains terms and conditions which appear in similar text style to this clause and which:

- (a) may limit the risk or liability of us or a third party; and/or
- (b) may create risk or liability for you; and/or
- (c) may compel you to indemnify us or a third party; and/or
- (d) serves as an acknowledgement, by you, of a fact.

41.7. The Customer's attention is drawn to these terms and conditions because they are important and should be carefully noted.

Signed by the Parties in acknowledgement that they have read the Terms and Conditions of this Agreement, that they understand all such Terms and Conditions and that they agree to be bound thereby, the signatories warranting, by their signature hereto, that they are duly authorised by the Party concerned to sign and conclude this Agreement.

## SIGNATURES

<b>Kelly Management Services CC (“KLR”)</b>	
<b>Signature</b>	
<b>Representative Name</b>	
<b>Position</b>	
<b>Date</b>	
<b>Place of signature</b>	
	Who warrants his authority.

<b>The Customer</b>	
<b>Signature</b>	
<b>Representative Name</b>	
<b>Position</b>	
<b>Date</b>	
<b>Place of signature</b>	
	Who warrants their authority.