

## WHIZZOH SERVICE PROVIDER TERMS AND CONDITIONS

Updated 20 August 2024

### 1. TERMS

- 1.1. Whizzoh (Proprietary) Limited makes User Services available to registered Customers and Service Providers (“SP’s”) via the Customer App and SP Partner App respectively.
- 1.2. The User Services constitute a technology platform that enables the Customer of Whizzoh’s Customer App to register Calls for quotes to the SP Partner App for assistance and other services, select and appoint an independent third-party service provider from bids/offers received on the Customer App, schedule an appointment with the SP, and effect payment to the SP via Whizzoh.
- 1.3. Whizzoh also makes services available to SP’s in the form of a mobile application and Progressive Web Application, together with content, products and services (“SP Partner App”). The SP Partner App constitutes a technology platform that enables the SP registered on the SP Partner App to receive enquiries for assistance or other services from Customers, register a bid to provide the service / assistance, and if selected by the Customer, schedule an appointment and receive payment from Whizzoh subject to terms herein.
- 1.4. These Terms govern the SP’s use of the SP Partner App made available by Whizzoh.
- 1.5. By accessing and using the SP Partner App, the SP agrees to be bound by the Terms set out in this legal notice. If you do not wish to be bound by these Terms, you may not access, display, use, download, or otherwise copy or distribute the SP Partner App.
- 1.6. The SP Partner App is only available to persons over the age of 18 years. If you are under the age of 18, you must obtain your parents’ or legal guardians’ advance authorisation, permission and consent to be bound by these Terms before accessing the SP Partner App.
- 1.7. Whizzoh reserves the right, in its sole discretion, to amend and/or replace any of, or the whole of, the Terms. Such amendments shall supersede and replace any previous Terms and shall be made available on the SP Partner App. Each time an SP accesses the SP Partner App, the SP shall be deemed to have consented, by such access and/or use, to the Terms, as amended and/or replaced by Whizzoh from time to time. If you are not satisfied with the amended Terms, you should refrain from using the SP Partner App.
- 1.8. Whizzoh will however give the SP prior notice where Whizzoh has collected personal information from the SP and the purpose for which Whizzoh collected that information is affected by the intended amendment.
- 1.9. If there is anything in these Terms that you do not understand then please contact us as soon as possible – see clause 14 below for contact details. Please note that calls to us are charged at national rates and may be monitored for training, security and quality assurance purposes.

## 2. INTERPRETATION

2.1. The following terms shall have the meanings assigned to them below and cognate expressions have corresponding meanings –

- 2.1.1. “this Agreement” or “these Terms” – this agreement together with all of its schedules and annexures, as amended from time to time;
- 2.1.2. “Supply Chain” means Assist247 being - The Minga Trust (IT351/97) t/a SUPPLY CHAIN, an inter vivos trust registered in accordance with the laws of the Republic of South Africa with address at 1 Berg-en-Dal Road, Somerset West, Western Cape, 7130 and with website at [www.assist247.co.za](http://www.assist247.co.za), and Digicall being Digicall South Africa, registration 1994/005987/07 with address at 110 Conrad Drive, Craighall Park, Johannesburg and with website [www.digicallgroup.co.za](http://www.digicallgroup.co.za) and any other provider that may be added herein from time to time.
- 2.1.3. “Associated” means (a) each of the subsidiaries for the time being of the relevant company and each of their subsidiaries; and (b) every legal entity effectively controlled by the relevant company and/or its subsidiaries and/or their subsidiaries for the time being;
- 2.1.4. “Business Day” – any day other than a Saturday, Sunday, or official public holiday in the Republic of South Africa;
- 2.1.5. “Commencement Date” – the date of first acceptance by the SP of these Terms by accessing and using the SP Partner App;
- 2.1.6. “Confidential Information” – all technical, commercial, legal, financial, scientific, marketing or business information and know-how including (without limitation) improved products, developments, trade secrets, marketing strategies, processes, machinery, designs, drawings, technical specifications, data, documentation, software listings, source or object code whether written (including electronic format) or oral relating to any of the Parties (“Disclosing Party”) [or the Customers](#), their business practices or affairs or the promotion of their business policies or practices, that the other Party (“Receiving Party”) receives from the Disclosing Party, whether or not such information is marked confidential or not;
- 2.1.7. “Call” – a request for SP Services made by a Customer on the Whizzoh Customer App or via the Whizzoh Contact Centre;
- 2.1.8. “CPA” – the Consumer Protection Act 68 of 2008, as amended;
- 2.1.9. “ECTA” – the Electronic Communications and Transactions Act 25 of 2002, as amended;

- 2.1.10. “Customer” – registered users of the Customer App or interactive website to whom SP’s may provide SP Services, and any reference to “Customer” shall include the Customer’s authorised representatives and nominees and may include a Retail Client;
- 2.1.11. “Customer App” – Whizzoh’s mobile application provided as part of the User Services;
- 2.1.12. “Interactive website” – means the Progressive Web Application (PWA) website where access to the same functionality as the Service Provider and Customer App.
- 2.1.13. “Client Group Scheme” – any benefit scheme or retail offer in terms of which a company provides the Whizzoh Services to its members and/or its customers as part of a group benefit and/or a commercial offering;
- 2.1.14. “Customer Ratings” – all ratings made by Customers on the Customer App from time to time in respect of the SP to rate the SP Services provided by the SP;
- 2.1.15. “Group Rate” – the rate at which the relevant Client Group Scheme contribute to the call out and provision of SP Services, and which is variable at the instance of the Client Group Scheme;
- 2.1.16. “Nett Incident Fee” – the proceeds of the agreed SP Bid payable to the SP in accordance with clause 19 after the Standard Transaction Fee and Settlement Discount have been deducted and paid to Whizzoh;
- 2.1.17. “the Parties” – Whizzoh and the SP; and “Party” means any of them, as the context may require;
- 2.1.18. “Personal Information” – has the meaning ascribed to it in the Protection of Personal Information Act 4 of 2013 (“POPI”), and any applicable law in South Africa and/or in any other jurisdiction where the SP Partner App is provided and/or used;
- 2.1.19. “Related” – has the meaning ascribed to it in section 2(1) of the Companies Act 71 of 2008;
- 2.1.20. “Retail Client”- a Whizzoh approved retail Client using the Whizzoh Services to source SP Services to its customers through a commercial retail offering;
- 2.1.21. “Settlement Discount” – the fee, calculated as a percentage of the SP Bid, and charged by Whizzoh for the collection and disbursement of the payment, including the Lead Fee, as determined by Whizzoh from time to time and currently set at 20%;

- 2.1.22. "Lead Fee" - the Lead Fee payable to a Retail Client where the Client Group Scheme includes Whizzoh Services provided by a retailer to its customers using the Customer App or Interactive website;"
- 2.1.23. "SP" – an independent third-party service provider listed on SUPPLY CHAIN and registered on the SP Partner App or Interactive website, or both and any reference to "SP" shall include the service provider's principals, employees, authorised representatives, agents and consultants;
- 2.1.24. "SP Areas" – the geographical areas within the Republic of South Africa for which the SP wishes to receive Calls, as nominated by the SP on the SUPPLY CHAIN website;
- 2.1.25. "SP Bid/Offer" – a response by an SP, via the SP Partner App, to a Call to provide SP Services within the SP Areas;
- 2.1.26. "SP Partner App" – services made available to SP's by Whizzoh in the form of a mobile application, together with content, products and services, any reference to the SP Partner App is inclusive of the Interactive Website;
- 2.1.27. "SP Services" – any services (such as emergency home assistance and roadside assistance) provided by the SP to a Customer as facilitated by the Customer App and/or the SP Partner App;
- 2.1.28. "Standard Transaction Fee" – the fee as determined by Whizzoh from time to time which is levied on every transaction processed by Whizzoh over and above the amount that is payable to the SP;
- 2.1.29. "Whizzoh" – Whizzoh (Proprietary) Limited (registration number 2014/144875/07), a private company incorporated in accordance with the laws of the Republic of South Africa with registered address at 110 Conrad Drive, Craighall Park, Johannesburg, Gauteng, 2196;
- 2.1.30. "Whizzoh Contact Centre" – Whizzoh's contact centre at 0861 944 996 or admin@whizzoh.co.za, that manages requests from Customers for SP Services;
- 2.1.31. "Whizzoh Services" – services made available by Whizzoh in the form of applications, website, content, products and services;
- 2.2. Any reference to an enactment is to that enactment as at the Commencement Date of this Agreement and as amended or re-enacted from time to time;
- 2.3. If any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party then, notwithstanding that it is contained only in a definition, effect shall be given to such provision as if it were a substantive provision in the body of this Agreement;

- 2.4. Where any term is defined within a particular clause other than this clause 2, that term shall bear the meaning ascribed to it in that clause wherever it is used in this Agreement;
- 2.5. When any number of days is prescribed in this Agreement, they shall be calculated exclusively of the first and inclusively of the last day unless the last day falls on a day which is not a Business Day, in which case the last day shall be the next succeeding business day;
- 2.6. Any reference to days (other than a reference to Business Days), months or years shall be a reference to calendar days, months or years, as the case may be;
- 2.7. In the event that the day for payment of any amount due in terms of this Agreement should fall on a day which is not a Business Day, then the relevant date for payment shall be the following Business Day;
- 2.8. The use of the word “including” followed by a specific example shall not be construed as limiting the meaning of the general wording preceding it and the eiusdem generis rule shall not be applied in the interpretation of such general wording or specific example;
- 2.9. The rule of construction that the contract shall be interpreted against the Party responsible for the drafting or preparation of the Agreement, shall not apply.

### **3. COMMENCEMENT AND DURATION**

The Terms commence on the Commencement Date and shall endure until terminated as follows or otherwise as permitted in this Agreement:

- 3.1. Either Party is entitled to terminate this Agreement by delivering written notice to the other Party by email.
- 3.2. The SP is entitled to terminate this Agreement by terminating its registration on the SP Partner App; and/or by deleting the SP Partner App from all of its device(s); and/or by deleting the SP's registration with SUPPLY CHAIN, each event of which shall terminate this Agreement. The Agreement is still binding for all jobs in the App or Interactive website prior to deletion of the App.
- 3.3. Whizzoh is entitled to terminate this Agreement without notice to the SP by restricting the SP's use of the SP Partner App and Interactive Website in the event that, in Whizzoh's sole discretion, the SP does not comply with the desired standards of an SP due to unresolved Customer complaints, poor Customer Ratings, breach of this Agreement, or any other event that, in the opinion of Whizzoh, warrants termination of this Agreement.

### **4. SUSPENSION AND TERMINATION**

- 4.1. Whizzoh is entitled without notice, in addition to any other remedy available to it at law or under these Terms, including obtaining an interdict, to cancel these Terms, limit or deny the

SP use of the SP Partner App, or to claim specific performance of any obligation whether or not the due date for performance has arrived, in either event without prejudice to Whizzoh's right to claim damages, should the SP:

- 4.1.1. breach any of these Terms;
  - 4.1.2. in the sole discretion of Whizzoh, use the SP Partner App in an unauthorised manner; or
  - 4.1.3. infringe any statute, regulation, ordinance or law.
- 4.2. Breach of these Terms entitles Whizzoh to take legal action without prior notice to the SP and the SP agrees to reimburse the costs associated with such legal action to Whizzoh, including legal costs on the attorney and own client scale.

## **5. NOTICES**

- 5.1. Except as explicitly stated otherwise, any notices shall be given by email to admin@whizzoh.co.za (where notice must be given to Whizzoh) or to the email address the SP has provided to SUPPLY CHAIN (where notice must be given to the SP), or such other address that has been duly nominated by such Party from time to time in writing.
- 5.2. Notice shall be deemed given 48 (FOURTY-EIGHT) hours after an email is sent, unless the sending party is notified that the email address is invalid or that the email is undeliverable.
- 5.3. Alternatively, Whizzoh may give the SP notice by registered mail, postage prepaid and return receipt requested, to the address which the SP has provided to Whizzoh. In such case, notice shall be deemed given 7 (SEVEN) days after the date of mailing.
- 5.4. The SP acknowledges that all agreements, notices or other communication required to be given in terms of the law or these Terms may be given via electronic means and that such communications shall be "in writing". Notwithstanding anything to the contrary, a written notice or communication actually received by a party shall be an adequate written notice or communication to it, notwithstanding that it was not sent to or delivered at its chosen address(es) for that purpose.

## **6. GENERAL**

- 6.1. These Terms shall be governed in all respects by the laws of the Republic of South Africa as such laws are applied to agreements entered into and to be performed within South Africa, including the ECTA, POPI and the CPA where such Acts find application.
- 6.2. The SP Partner App is controlled, operated and administered by Whizzoh from its offices within the Republic of South Africa. Whizzoh makes no representation that the SP Partner App is appropriate or available for use outside of South Africa. Access to the SP Partner App from territories or countries where the content of the SP Partner App is illegal is prohibited.

The SP may not use the SP Partner App in violation of South African export laws and regulations. If the SP accesses the SP Partner App from locations outside of South Africa, the SP is responsible for compliance with all local laws.

- 6.3. Whizzoh does not guarantee continuous, uninterrupted or secure access to the SP Partner App or Whizzoh Services, as operation of the SP Partner App may be interfered with as a result of a number of factors which are outside of Whizzoh's control.
- 6.4. If any provision of these Terms is held to be illegal, invalid or unenforceable for any reason, such provision shall be deemed to be struck out from these Terms and the remaining provisions shall be enforced to the full extent of the law.
- 6.5. Whizzoh's failure to act with respect to a breach by the SP or others does not constitute a waiver of Whizzoh's right to act with respect to subsequent or similar breaches.
- 6.6. The SP shall not be entitled to cede its rights or assign its rights or delegate its obligations in terms of these Terms to any third party without the prior written consent of Whizzoh.
- 6.7. Whizzoh shall be entitled to cede its rights or assign its rights or delegate its obligations in terms of these Terms to any third party without the prior written consent of the SP.
- 6.8. No party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein, whether it induced the contract and/or whether it was negligent or not.
- 6.9. These Terms set forth the entire understanding and agreement between Whizzoh and the SP with respect to the subject matter hereof.

## **PART A: THE SP'S USE OF THE APP**

### **7. SP USER ACCOUNT**

- 7.1. Whizzoh makes services available to the SP through the use of the SP Partner App on the SP's mobile device or Interactive Website.
- 7.2. In order to have access to the SP Partner App:
  - 7.2.1. The SP must register and maintain a user account ("Account") on the SP Partner App;  
and
  - 7.2.2. The SP must register and maintain an account with either or all parties on the SUPPLY CHAIN ("SUPPLY CHAIN Account") and be provided with a SUPPLY CHAIN ID.
- 7.3. Registration of an Account will require the SP's SUPPLY CHAIN ID and a username, as well as at least one employee contact and one vehicle.

- 7.4. The SP undertakes to provide accurate registration information and to keep such information up to date. Whizzoh reserves the right to, immediately and without notice, close Accounts that have been opened with inaccurate, stolen or false information.
- 7.5. Registration will also require the SP to supply the SP Partner App with a password ("Password"). The SP undertakes to keep the Password confidential and to immediately notify Whizzoh if the SP is aware or suspects that an unauthorised person has obtained access to the Password or if there has been unauthorised use of the Password. The SP acknowledges and agrees that Whizzoh will not be liable in the event that any unauthorised person uses or transacts on the SP Partner App due to a failure by the SP to maintain the confidentiality of the Password.
- 7.6. The SP may not transfer the Account to any other person or entity.
- 7.7. The Account may not be used for unlawful purposes, and Whizzoh reserves the right, to immediately and without notice, close Accounts that have been opened for, have been used for, or are being used for unlawful purposes.
- 7.8. The SP consents to receipt of SMS messages to verify registration and for other administrative and promotional purposes. The SP is entitled to opt out of the promotional SMS messages.
- 7.9. The SP acknowledges that the SP Partner App will require notifications to be switched on, on the mobile device, to utilise the Whizzoh Services. The SP can elect to disable these notifications, but acknowledges and accepts that this will limit the SP's ability to use the SP Partner App.
- 7.10. The SP further acknowledges that the SP Partner App requires internet access through the SP's mobile device. It is the SP's responsibility to obtain the data network access necessary to facilitate communication of the mobile device with the Whizzoh server. The SP is responsible for all fees associated with mobile internet communications.

## **8. SUPPLY CHAIN ACCOUNT**

- 8.1. No SP shall have access to the SP Partner App unless it has registered its SUPPLY CHAIN Account and complied with all of SUPPLY CHAIN's requirements as updated from time to time. In the event that an SP's SUPPLY CHAIN Account is deregistered, the SP shall be automatically ineligible to use the SP Partner App.
- 8.2. Registration of its SUPPLY CHAIN Account requires information such as the SP's name, business name and registration number, business address, mobile number and bank account details. Suppliers will be required to meet the minimum requirements for registration on the SUPPLY CHAIN, which requirements vary per service type and which requirements may be amended from time to time.



- 8.3. The SP Partner App relies primarily on information provided by the SP to SUPPLY CHAIN and its relevant SUPPLY CHAIN Account. It is the sole responsibility of the SP to ensure that its information is kept up to date on its SUPPLY CHAIN Account, and the SP undertakes to immediately update its information upon any change.
- 8.4. The SP consents to Whizzoh accessing, receiving, using and processing its information as provided for purposes of its SUPPLY CHAIN Account, as well as any accreditation information, ratings and any other content (“SUPPLY CHAIN Information”) for the purpose of facilitating transactions via the SP Partner App.
- 8.5. Neither Whizzoh, its Related or Associated parties, affiliates, shareholders, agents, consultants or employees shall be liable for any damages whatsoever, including without limitation any direct, indirect, special, incidental, consequential or punitive damages, howsoever arising (whether in an action arising out of contract, statute, delict or otherwise) related to any failure of the SUPPLY CHAIN website or database or failure by the SP to provide correct or updated information and the SP utilises these services entirely at its own risk.
- 8.6. The SP acknowledges that Accreditation is a process conducted and maintained by SUPPLY CHAIN and that Whizzoh has no involvement whatsoever in such process.

## **9. SCOPE OF USE**

- 9.1. Whizzoh grants the SP a non-exclusive, non-transferable, limited and revocable (reversible) right to access, display, use and download the SP Partner App and any current and future content available through the SP Partner App (“the Content”), solely for the purposes of providing SP Services to Customers in accordance with this Agreement.
- 9.2. The SP hereby agrees that it shall not itself, nor through a third party:
  - 9.2.1. copy (other than for backup, archival or disaster recovery purposes), reproduce, translate, adapt, vary, modify, lease, licence, sub-licence, encumber or in any other way deal with any part of the SP Partner App or Content for any reason and in any manner, unless it is consistent with the intent and purpose of these Terms;
  - 9.2.2. decompile, disassemble or reverse engineer any portion of the SP Partner App;
  - 9.2.3. write and/or develop any derivative of the SP Partner App or any other software program based on the SP Partner App;
  - 9.2.4. modify or enhance the SP Partner App. In the event of an SP effecting any modifications or enhancements to the SP Partner App in breach of this clause, such modifications and enhancements shall be the property of Whizzoh;
  - 9.2.5. without Whizzoh’s prior written consent, provide, disclose, divulge or make available to or permit the use of or give access to the SP Partner App by persons other than the SP;

- 9.2.6. remove any identification, trademark, copyright or other notices from the SP Partner App;
  - 9.2.7. post or transmit, by means of reviews, comments, suggestions, ideas, questions or other information through the SP Partner App, any content which is unlawful, harmful, threatening, abusive, harassing, defamatory, vulgar, obscene, sexually-explicit, profane or hateful, or racially, ethnically or otherwise objectionable content of any kind; and/or
  - 9.2.8. notwithstanding anything contained to the contrary in these Terms, use the SP Partner App for any purpose other than for the purposes of providing SP Services to Customers in accordance with this Agreement. Save as explicitly set out in these Terms, the SP Partner App and the Content may not be reproduced or otherwise exploited for any commercial purpose without the express prior written consent of Whizzoh.
- 9.3. Any unauthorised use terminates this license.
- 9.4. Whizzoh reserves the right to refuse service, terminate Accounts, remove or edit Content, or cancel orders in its sole discretion.
- 9.5. Whizzoh does not offer products or services to minors. If you are under the age of 18, you may not act upon any offers on the SP Partner App.

## **10. INTELLECTUAL PROPERTY**

- 10.1. For the purpose of this clause 10, “Intellectual Property Rights” means all and any of the rights in and to intellectual property of any nature whatsoever owned and/or controlled directly or under licence by Whizzoh, now or in the future, including without limitation, Whizzoh’s rights, title and interest in and to all technology, source code/s, trade secrets, logos, systems, methods, trademarks, trade names, styles, insignia, designs, patents and copyright, and all similar proprietary rights which may subsist in any part of the world, whether registered or not.
- 10.2. All copyright and other Intellectual Property rights in all content, trademarks, software, data, material, including logos, databases, text, graphics, icons, hyperlinks, confidential information, designs, agreements, and multimedia works, published on or via the SP Partner App, including the Content (“Proprietary Material”), are the property of, or are licensed to Whizzoh and as such are protected from infringement by local and international legislation and treaties.
- 10.3. By submitting reviews, comments and/or any other content (other than personal information) to Whizzoh for posting on the SP Partner App, the SP automatically grants Whizzoh and its affiliates a non-exclusive, royalty-free, perpetual, irrevocable right and licence to use, reproduce, publish, translate, sub-license, copy and distribute such content

in whole or in part worldwide, and to incorporate it in other works in any form, media, or technology now known or hereinafter developed, for the full term of any copyright that may exist in such content. Subject to this licence, the SP retains any and all rights that may exist in such content.

- 10.4. Any photographs, videos, or other media ("Media") depicting any installation works created By the SP or its contractors are the exclusive property of Whizzoh and may not be used, reproduced or distributed by the SP for any purpose. The SP irrevocably assigns all rights, including intellectual property rights, to Whizzoh for any Media created during and after installation.
- 10.5. All rights not expressly granted are reserved and no right, title or interest in any proprietary material or information contained in the SP Partner App is granted to the SP.
- 10.6. Irrespective of the existence of copyright, the SP acknowledges that Whizzoh is the proprietor of all material on the SP Partner App (except where a third party is indicated as the proprietor), whether it constitutes confidential information or not, and that the SP has no right, title or interest in any such material.

## **11. LIMITATION OF LIABILITY**

- 11.1. The SP's use of the SP Partner App, the Content and any other information contained on the SP Partner App is entirely at the SP's own risk and the SP assumes full responsibility and risk of loss resulting from the use thereof.
- 11.2. Whizzoh makes no representations or warranties, whether express or implied, as to the accuracy, completeness or reliability of any information, data and/or content on the Whizzoh Customer or SP Partner Apps, including without limitation:
  - 11.2.1. Whizzoh does not warrant that the SP Partner App or information or downloads or Whizzoh Services provided in terms thereof shall be error free or that they shall meet any particular criteria of performance or quality. Whizzoh expressly disclaims all implied warranties, including without limitation, warranties of merchantability, fitness for a particular purpose, non-infringement, compatibility, security and accuracy;
  - 11.2.2. Whilst Whizzoh has taken reasonable measures to ensure the integrity of the SP Partner App and its contents, no warranty, whether express or implied, is given that any files, downloads or applications available via the SP Partner App are free of viruses, or any other data or code which has the ability to corrupt, damage or affect the operation of the SP's system; and
  - 11.2.3. Whizzoh disclaims any responsibility for the verification of any claims. Information published on the SP Partner App may be done so in the format in which Whizzoh receives it and statements from third parties are accepted as fact.

- 11.3. Whizzoh will make every effort to facilitate the SP Services by the SP to the Customer through the SP Partner App, however Whizzoh does not provide any guarantee or undertaking whatsoever as to the availability or acceptance of Calls and Bids/Offer by Customers. Whizzoh does not guarantee payment where the Customer payment is not received for any reason or where the service is rated less than three (3) out of five (5) by the Customer.
- 11.4. The SP Partner App and Whizzoh Services rely on the GPS of both the SP's as well as the Customer's mobile devices to assist in locating the SP's location and the Customer's address. Whizzoh cannot be held responsible for the failure of the GPS on any of these devices and can provide no guarantees with regard to the accuracy of GPS as provided by the respective mobile device.
- 11.5. The transmission of information via the internet, including without limitation email and via the SP Partner App, is susceptible to monitoring and interception. The SP bears all risk of transmitting information in this manner. Under no circumstances shall Whizzoh be liable for any loss, harm, or damage suffered by the SP as a result thereof. Whizzoh reserves the right to request independent verification of any information transmitted via email or via the SP Partner App and the SP consents to such verification should Whizzoh deem it necessary.
- 11.6. To the extent permissible by law:
- 11.6.1. Neither Whizzoh, its Related or Associated parties, affiliates, shareholders, agents, consultants or employees shall be liable for any damages whatsoever, including without limitation any direct, indirect, special, incidental, consequential or punitive damages, howsoever arising (whether in an action arising out of contract, statute, delict or otherwise) related to the use of, or the inability to access or use the content of the SP Partner App or any functionality thereof, or the information contained on the SP Partner App, even if Whizzoh knows or should reasonably have known or is expressly advised thereof.
- 11.6.2. The liability of Whizzoh for faulty execution of the SP Partner App as well as all damages suffered by the SP, whether direct or indirect, as a result of the malfunctioning of the SP Partner App or Interactive Website shall be limited to Whizzoh rectifying the malfunction, within a reasonable time and free of charge, provided that Whizzoh is notified immediately of the damage or faulty execution of the SP Partner App. This liability shall fall away and be expressly excluded if the SP attempts to correct or allows third parties to correct or attempt to correct the SP Partner App without the prior written approval of Whizzoh. In no event shall Whizzoh be liable to the SP for loss of profits or for special, incidental, consequential or punitive losses or damages arising out of or in connection with the SP Partner App or its use or the delivery, installation, servicing, performance or use of it in combination with any other service.
- 11.6.3. The SP hereby unconditionally and irrevocably indemnifies Whizzoh and agrees to hold Whizzoh free from all loss, damages, claims and/or costs, of whatsoever nature

suffered or incurred by Whizzoh or instituted against Whizzoh as a direct or indirect result of:

- 11.6.3.1. use of the SP Partner App by the SP;
- 11.6.3.2. modification of the SP Partner App without the consent or knowledge of Whizzoh;
- 11.6.3.3. failure by the SP to comply with any of the terms or any other requirements which Whizzoh may impose from time to time;
- 11.6.3.4. the actions or requirements of any telecommunications authority or a supplier of telecommunications services or software; and
- 11.6.3.5. any unavailability of, or interruption in, the service which is beyond the control of Whizzoh.

11.7. In respect of any SP Services:

11.7.1. Whizzoh shall not be liable for, and the SP hereby indemnifies and holds Whizzoh harmless against any damages or loss suffered as a result of, any negligent or wilful acts or omissions by, or damage caused by, or poor workmanship of, the SP or its contractors.

11.7.2. should the liability be as a result of –

- 11.7.2.1. the SP Services not having been carried out correctly or to the satisfaction of Whizzoh and/or the Customer; or
- 11.7.2.2. any negligent or wilful act or omission of the SP; or
- 11.7.2.3. any negligent or wilful act or omission of the SP,

the SP shall be solely responsible and liable for attending to and rectifying such installation and/or such aforementioned negligent or wilful act or omission, and the SP shall indemnify and hold Whizzoh harmless against any damage or losses suffered by Whizzoh as a result of the negligence and/or wilful act or omission of the SP and/or any of its contractors.

## **12. SP PRIVACY**

12.1. Compliance with POPI: Each Party undertakes to comply with the Protection of Personal Information Act, Act 4 of 2013 ("POPIA"), and any other applicable data protection legislation, ensuring that any Personal Information processed in connection with this Agreement is handled in accordance with the principles and requirements set out in the applicable laws.

12.2. Whizzoh takes the SP's privacy seriously and is committed to protecting the SP's personal information. Whizzoh uses the Personal Information collected from the SP in accordance with this clause 12.

12.3. Personal Information when used in this clause 12 means information that can identify the SP as an individual or is capable of identifying the SP. By Personal Information, Whizzoh does not mean general, statistical, aggregated or anonymised information.

- 12.4. The SP's use of the Services and the SP Partner App signifies the SP's consent to Whizzoh collecting and using the SP's Personal Information as specified below.
- 12.5. Personal Information is collected through the registration of an Account and as a result of communications between the SP and Whizzoh.
- 12.6. Personal Information is used to match the SP with a potential SP Service; to communicate the SP Bid/Offer to the Customer; to confirm that the SP Services have been delivered; to invite the Customer to provide a rating and comments on the SP; to effect payment to the SP when the SP Services have been completed; to validate the SP as a customer when using the SP Partner App; when providing help desk support to the SP; to prevent and detect criminal activity, fraud and misuse of or damage to the Whizzoh SP App, Whizzoh Services or networks and to prosecute those responsible; and to contact the SP for marketing purposes. The SP is entitled to opt-out of marketing communication.
- 12.7. The time periods for which Whizzoh keeps the SP's Personal Information may vary according to the use or purpose attached to the information. Unless there is a specific legal requirement requiring Whizzoh to keep the Personal Information, Whizzoh will not keep it for longer than necessary for the purpose for which the information was collected or for which it is to be processed.
- 12.8. Whizzoh will provide certain of the SP's personal information, such as the SP's name, contact telephone number and physical address to the Customer so that the SP may provide the SP Service, and the SP consents to the dissemination of its personal information for these purposes.

### **13. SECURITY**

- 13.1. In order to ensure the security and reliable operation of the SP Partner App to all Whizzoh's users, Whizzoh hereby reserves the right to take whatever action it may deem necessary to preserve the security, integrity and reliability of its network and back office applications.
- 13.2. The SP may not utilise the SP Partner App in any manner which may compromise the security of Whizzoh's networks or tamper with the SP Partner App in any manner whatsoever, which shall include without limitation, gaining or attempting to gain unauthorised access to the SP Partner App, or delivering or attempting to deliver any unauthorised, damaging or malicious code to the SP Partner App, all of which is expressly prohibited. Any person or entity which does so, or attempts to do so, shall be held criminally liable. Further, should Whizzoh suffer any damage or loss, civil damages shall be claimed by Whizzoh against the SP.
- 13.3. Any SP who commits any of the offences detailed in Chapter 13 of the Electronic Communications and Transactions Act 25 of 2002 ("ECTA") (specifically sections 85 to 88 (inclusive)) shall, notwithstanding criminal prosecution, be liable for all resulting liability, loss or damages suffered and/or incurred by Whizzoh and its affiliates, agents and/or partners.

#### **14. COMPLIANCE WITH SECTION 43(1) OF ECTA**

In compliance with section 43(1) of the Electronic Communications and Transactions Act 25 of 2002, the following is noted:

14.1. Full name: Whizzoh (Proprietary) Limited

14.2. Registration number: 2014/144875/07

14.3. Physical address: 110 Conrad Drive, Craighall Park, Johannesburg, 2196

14.4. Email: info@whizzoh.co.za

14.5. Telephone number: 0861 944 996

14.6. Website address: www.whizzoh.co.za

14.7. Email address: admin@whizzoh.co.za

14.8. Registered at: The Companies and Intellectual Property Commission.

#### **PART B: THE PROVISION OF SP SERVICES**

##### **15. RELATIONSHIP BETWEEN THE PARTIES**

15.1. The SP acknowledges that Whizzoh is not the agent of the Customer. Whizzoh makes the Customer Services available to the Customer to facilitate the appointment by the Customer of an SP of its own choice.

15.2. The SP acknowledges that Whizzoh is not the agent or partner of the SP, and the SP is not the agent or partner of Whizzoh. The SP Services are provided by the SP to the Customer as an independent third party to Whizzoh, and the SP is not employed by Whizzoh.

##### **16. SP'S DUTIES**

16.1. In providing the SP Services to the Customer, the SP undertakes to and warrants that it shall:

16.1.1. comply with all relevant legislation in its dealings with the Customer, including the CPA, POPI and the ECTA;

16.1.2. provide the SP Services in a prompt, professional, efficient, sober, courteous and workmanlike manner to the Customer while putting customer relations at the forefront of its service delivery;

16.1.3. provide the SP Services at the place where and at the time when communicated by the SP through the SP Partner App or as otherwise instructed by the Customer;

- 16.1.4. provide the SP Services only in accordance with the instructions issued to the SP;
- 16.1.5. promptly respond to Calls;
- 16.1.6. never accept a Call from or provide an SP Bid/Offer to a Customer if the SP is unable to perform the SP Services at the place where and at the time when instructed by the Customer, promptly and in a professional manner;
- 16.1.7. provide the Customer with an SP Bid/Offer via the SP Partner App for any future or additional repairs requested by the Customer;
- 16.1.8. hold and maintain all licenses and registrations necessary as may apply to its contracted trade or occupation, and to comply at all times with the relevant statutory requirements;
- 16.1.9. ensure that all employees, authorised representatives, agents and consultants engaged by it to provide the SP Services, have and maintain the necessary skills and expertise to provide the SP Services;
- 16.1.10. obtain and at all times maintain for the duration of this Agreement, comprehensive insurance with a registered insurer for an amount of minimum of R3 000 000 (THREE MILLION RAND), to insure against all insurable risks, all loss and damage relating to or arising from this Agreement and/or the performance of the SP Services by the SP and all employees, authorised representatives, agents and consultants engaged by it to provide the SP Services. The SP agrees to furnish Whizzoh with proof of insurance immediately upon request thereof by Whizzoh;
- 16.1.11. not do, permit or omit to do anything which will have the effect of prejudicing or infringing Whizzoh's or the Customer's reputation, interests or goodwill;
- 16.1.12. only advertise and promote Whizzoh's trade marks (including its logos) with Whizzoh's written consent;
- 16.1.13. immediately inform Whizzoh of any complaint made by a Customer, ensure every effort is made to resolve such a complaint without undue delay, and fully cooperate with Whizzoh and the Customer in the investigation and resolution of any dispute;
- 16.1.14. attend to any complaint received from a Customer whether verbally or by email in accordance with the Dispute Resolution Policy and inform Whizzoh in writing with an outcome and solution within 48 (FOURTY-EIGHT) hours from becoming aware of the complaint.
- 16.1.15. charge rates per hour as agreed with the SUPPLY CHAIN and ensure all bids are provided at a reasonable rate and as agreed with the SUPPLY CHAIN.



16.1.16. agree that any service provided which are rated one (1) or two (2) out of five (5) by the Customer will be investigated by Whizzoh. Whizzoh may at its sole discretion declare that the services were not provided at the required standard and may withhold payment of fees. Whizzoh may at its sole discretion allow the Service Provider to provide the service to the satisfaction of the Customer, alternatively Whizzoh may appoint an alternative Service Provider. In the event that an alternative provider is appointed, the Service provider whose service was rated one (1) or two (2) out of five (5) will forfeit their fee. In the event that a User does not rate the service, Whizzoh reserves the right to investigate before making payment to the SP, the payment remains at the sole discretion of Whizzoh.

16.1.17. bids/offers will be provided at reasonable rates and are not in excess of rates agreed with SUPPLY CHAIN, which rates may be amended from time to time.

## **17. SP AREAS**

17.1. The SP Areas are the areas nominated by the SP on its SUPPLY CHAIN Account as the areas where the SP is willing to provide services and receive Calls.

17.2. The SP is entitled to change and update the SP Areas at any time by logging on to its SUPPLY CHAIN Account.

17.3. The SP agrees not to charge any costs for travelling within the SP Areas unless such costs were specifically indicated by the SP on the SP Bid as accepted by the Customer.

17.4. The SP will not receive any Calls via the SP Partner App for work outside the SP Areas.

17.5. The SP agrees not to charge any costs for travelling in the event that the SP is directed to an area outside the SP Areas due to a failure of the GPS on the device of the SP and/or the Customer.

## **18. ACCREDITATION AND RATINGS**

18.1. "Accreditation" means that the SP appears to SUPPLY CHAIN, after an inspection of the SP's premises and qualifications, to comply with the minimum regulations and qualifications necessary to provide the relevant SP Service competently and professionally. Whizzoh has no input in the Accreditation (or not) of an SP.

18.2. Notwithstanding Accreditation, access to the SP by the Customer via the SP Partner App and Customer App is for convenience purposes only and Whizzoh does not endorse the SP or its practices and operations.

18.3. While Whizzoh endeavours to provide access only to reputable service providers, Whizzoh will not accept responsibility or liability for the SP Services to be provided by the SP.

- 18.4. The “SP Rating” is the Customer Rating at the completion of the service / assistance.
- 18.5. Customers are required to rate the SP according to a scale of One (1) to Five (5) upon completion of the SP Services.
- 18.6. The SP Rating is displayed to Customers on the Customer App to help the Customer select an SP.
- 18.7. The Customer Ratings and Comments are provided by Customers and Whizzoh has no control over such Content. The SP hereby expressly consents to publication of the Customer Ratings and Comments, and Whizzoh shall not be liable for any losses or damages to the SP that may arise due to publication of the Customer Ratings and Customer comments, including where such content is or may be harmful to the SP’s reputation or goodwill.

## **19. RATES AND PAYMENT**

### **19.1. Bidding Process**

- 19.1.1. Except where rates are agreed and fixed for a Client Group Scheme or a Retail Client, in which case those rates need to be used by the SP, the SP is entitled to provide an SP Bid at any rate and in its own discretion, save that the SP Bid may not be less than the Standard Transaction Fee. That fee being 10% of the agreed rate per service type as well as 10% of all additional charges to the Customer including materials and labour. Minimum R50 (Fifty Rand) per transaction.
- 19.1.2. Any costs which are anticipated by the SP when responding to a Call and for which the SP wishes to charge (such as a premium for after-hours labour, required equipment, spare parts and additional travelling) must be clearly specified in the SP Bid when responding to a Customer’s Call.
- 19.1.3. If it transpires that the work required exceeds the scope initially quoted for or initially set out in the Call, the SP shall not conduct the work unless a further quote is provided to and accepted and paid by the Customer via the SP Partner App and the Customer App.

### **19.2. Invoice Process: No Group Benefit**

- 19.2.1. Whizzoh shall issue an invoice to the Customer for the total costs as agreed to by the Customer in the accepted SP Bid.
- 19.2.2. Whizzoh shall issue an invoice to Whizzoh on behalf of the SP for the Net Incident Fee.

### **19.3. Invoice Process: Group Benefit**

- 19.3.1. Whizzoh shall issue an invoice to the Customer for the total costs as agreed to by the Customer in the accepted SP Bid, less the Group Rate.
- 19.3.2. Whizzoh shall issue an invoice to the Customer Group Scheme for the Group Rate.
- 19.3.3. Whizzoh shall issue an invoice to Whizzoh on behalf of the SP for the Net Incident Fee.

#### 19.4. Payment Process

- 19.4.1. Payment is processed and facilitated via the Customer App and SP Partner App, or via an approved Retail Client where applicable.
- 19.4.2. Payment by the Customer and/or the Client Group Scheme and/or Retail Client will be processed by Whizzoh upon completion of the SP Services by the SP, as noted by the Customer on the Whizzoh Customer App and by the SP on the SP Partner App. Whizzoh will process payment from the Customer and/or the Client Group Scheme of the full amount of the SP Bid or Group Benefit, as the case may be.
- 19.4.3. Payment will be made by the Customer via the Customer App only, online by credit card, debit card or Instant EFT. The SP may not accept any payment from the Customer. Acceptance by the SP of payment by a Customer by any other means than the SP Partner App shall constitute a material breach of this Agreement, and in addition to any rights of Whizzoh in terms of this Agreement or otherwise in law, the SP shall be liable for a penalty of R 500.00 for every such incidence of circumvention, which penalty shall be payable to Whizzoh upon demand. In addition, the Supplier may be removed from the SUPPLY CHAIN panel at the sole discretion of the SUPPLY CHAIN.
- 19.4.4. Payment will be made to the SP via the SP Partner App only. The SP will receive the Net Incident Fee only, after the Standard Transaction Fee has been deducted and paid to Whizzoh. If the SP Bid does not cover the Standard Transaction Fee, or if a payment is reversed due to a dispute by the Customer, the SP will be liable to pay the Standard Transaction Fee to Whizzoh on demand.
- 19.4.5. Subject to 19.4.6 and provided the SP Services, including any installation, has been completed successfully as certified by the Customer, Whizzoh shall process payment of the Nett Incident Fee into the bank account nominated by the SP in its Account to the extent reasonably possible within 3 (THREE) Business Days after payment has been received from the Customer via the Customer App and/or the Client Group Scheme, less the Settlement Discount less transaction fee payable to Whizzoh.
- 19.4.6. Payment to the SP will be suspended pending resolution of any complaint or dispute lodged by the Customer with Whizzoh before the expiry of 3 (THREE)

Business Days from the date of payment by the Customer and completion of the job.

- 19.5. Subject to the provisions of the CPA where applicable, if the Customer, through no fault of the SP, cancels the booking made via the Customer App and the SP Partner App:
  - 19.5.1. before the SP's representative has been dispatched, no cancellation fee will be processed by Whizzoh;
  - 19.5.2. after the SP has dispatched a representative and such representative is indicated on the SP Partner App as being on route, the cancellation shall be subject to a cancellation penalty of either a % of the accepted SP Bid as agreed with a Retail Client, or R300.00 (Three Hundred Rand) where none such cancellation penalty applies, which charge shall be levied automatically upon cancellation by the Customer.
  - 19.5.3. once the SP representative has arrived on site the cancellation fee shall be equal to either a % of the accepted SP Bid as agreed with a Retail Client, or the full amount invoiced by the SP and accepted by the Customer where none such cancellation fee applies, which charge shall be levied automatically upon cancellation by the Customer.
- 19.6. Save where Whizzoh has entered into an agreement to the contrary with a Client Group Scheme or Retail Client, all transactions processed by Whizzoh, whether for completed work, cancellations, or otherwise, shall also be subject to the Standard Transaction Fee which shall be deducted from the charge levied on the Customer prior to payment of the balance to the SP.
- 19.7. If the Customer holds a valid membership of a Client Group Scheme, and the Customer has duly registered his membership with the Client Group Scheme using the Whizzoh Customer App:
  - 19.7.1. Whizzoh will facilitate payment by the Client Group Scheme of the charges incurred by the SP Services at the Group Rates to the value of the minimum benefits available to the Customer in terms of the Client Group Scheme ("the Minimum Benefits") or any additional amount approved in writing by the Client Group Scheme;
  - 19.7.2. Whizzoh will clearly indicate to the SP on the SP Partner App or via the Whizzoh Contact Centre at the time of each call what Minimum Benefits are available to the Customer;
  - 19.7.3. The SP shall only be entitled to charge for the SP Services at the Group Rate and subject to the Minimum Benefits and any accepted Bid, unless the Customer agrees to pay the balance where a higher rate is proposed.

19.7.4. The SP shall not perform any further work outside of the work covered by the Minimum Benefits, unless a quote is provided to and accepted by the Customer via the SP Partner App and Customer App. The Customer is personally liable for any additional or co-payments in excess of the Minimum Benefits.

## **20. LIMITATION OF LIABILITY**

In addition to the provisions of Clause 11.7:

- 20.1. The SP hereby confirms and agrees neither of Whizzoh, its Related or Associated parties, affiliates, shareholders, agents, consultants or employees shall be liable for any damages whatsoever, including without limitation any direct, indirect, special, incidental, consequential or punitive damages, howsoever arising (whether in an action arising out of contract, statute, delict or otherwise) related to the SP Services, and that the SP will be solely responsible and liable for all and any claims from the Customer arising from or in connection with the SP Services.
- 20.2. The SP hereby unconditionally and irrevocably indemnifies Whizzoh and agrees to hold Whizzoh free from all loss, damages, claims and/or costs of whatsoever nature suffered by or brought against or incurred by Whizzoh arising from or in connection with the SP Services. This includes any reversal of payments due to a dispute by the Customer.
- 20.3. The SP agrees that Whizzoh shall not be held liable, directly or indirectly, in any way for any loss or damage of any kind incurred by the Customer as a result of any dealings with, instructions to, or presence of the SP, nor any loss or damage of any kind incurred by the SP as a result of any dealings with, instructions from, or presence of the Customer. Any dealings that the SP may have with the Customer, are at their own risk and solely as between the Customer and the SP.
- 20.4. Whizzoh may display or use information of third parties on the SP Partner App. Whizzoh has no control over this information and makes no representations or warranties of any nature as to its accuracy, appropriateness or correctness. The SP agrees that such information is provided "as is" and that Whizzoh shall not be liable for any losses or damages that may arise from the SP's reliance on it, howsoever these may arise.

## **21. COMPLAINTS AND DISPUTES**

- 21.1. By accepting these Terms, the SP agrees and subscribes to the current version of the Whizzoh Dispute Resolution Policy clause 25.
- 21.2. If the Customer is not satisfied with the delivery of the SP Service, the Customer has the right to lodge a complaint through the Customer App, by placing a call to the Whizzoh Contact Center or by email to [admin@whizzoh.co.za](mailto:admin@whizzoh.co.za).

- 21.3. If the SP is not satisfied with the conduct of the Customer, the SP has the right to lodge a complaint through the SP Partner App, by placing a call to the Whizzoh Contact Center, or by email to admin@whizzoh.co.za.
- 21.4. In the event a complaint is lodged by the Customer before the expiry of 3 (THREE) Business Days after payment by the Customer and completion of the job, and within Whizzoh's sole discretion, payment to the SP will be suspended pending resolution of any complaint.
- 21.5. The Whizzoh Dispute Resolution Policy does not exclude or restrict any rights of the Customer or SP exercisable against the other in terms of the CPA and ECTA.

## **22. CUSTOMER PRIVACY**

- 22.1. Whizzoh takes the Customer's privacy, including the Client's customers where applicable, seriously and is committed to protecting the Customer's Personal Information.
- 22.2. Personal Information when used in this clause 22 means information that can identify the Customer, or any of its Client's customers making use of the SP Services, as an individual or is capable of identifying the Customer. By Personal Information, Whizzoh does not mean general, statistical, aggregated or anonymised information.
- 22.3. Personal Information of the Customer is collected through the Whizzoh Customer App and as a result of communications between the Customer and Whizzoh and is thereafter provided to the SP for the purpose of rendering the SP Services.
- 22.4. The SP undertakes to use the Personal Information only for the purposes as required, namely to provide the SP Services to the Customer.
- 22.5. The SP agrees to implement appropriate technical and organizational measures to protect Personal Information against accidental or unlawful destruction, loss, alteration, unauthorized disclosure, or access, and to regularly review these measures to ensure their effectiveness.
- 22.6. Sub-Processing: The SP shall not engage any third party (sub-processor) to process Customer Personal Information without prior written consent from Whizzoh. The SP shall ensure that any approved sub-processor complies with equivalent obligations regarding the protection of Personal Information as those set out in this Agreement.
- 22.7. Data Subject Rights: Each Party shall cooperate in good faith to enable the other Party to respond to any requests from Data Subjects exercising their rights under POPI, including but not limited to access, correction, deletion, and objection to processing.
- 22.8. Breach Notification: In the event of a security breach leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, customer Personal Information, the affected Party shall notify the other Party without undue delay and in

compliance with POPI, and both Parties shall cooperate to mitigate the effects of the breach and prevent future incidents.

- 22.9. The SP undertakes that it will not keep the Personal Information for longer than necessary for the purpose for which the information was collected or for which it is to be processed.

### **23. COMPLIANCE WITH THE CPA**

- 23.1. The SP undertakes to comply fully with the CPA where such Act finds application between the SP and the Customer.
- 23.2. In particular, and only where such section of the CPA finds application between the SP and the Customer.
- 23.3. Right to cancel an advance booking (Section 17 CPA): The SP will honour the Customer's right to cancel any booking made for the provision of SP Services and shall be entitled to charge the Customer a reasonable cancellation penalty subject to the provisions of section 17 and clause 19.5.
- 23.4. Duty to perform SP Services at the agreed time and place (Section 19 CPA): The SP undertakes to perform the SP Services on the date and time, and at the place nominated by and agreed with the Customer. The SP acknowledges that upon its failure to perform the SP Services at the agreed time and place, the Customer may (a) accept the performance of the SP Services at the location, date and time tendered by the SP; (b) require the performance of the SP Services at the agreed location, date and time, if that date and time have not yet passed; or (c) cancel the agreement without penalty, treating any performed services as unsolicited goods or services in accordance with section 21 of the CPA.
- 23.5. Duty to charge advertised price (Section 23): The SP may not require the Customer to pay a price for the SP Services higher than the advertised price.
- 23.6. Duty to provide a sales record (Section 26): The SP must provide the Customer with a written record of the transaction in terms of which the SP Services are supplied.
- 23.7. Prohibition of overbooking or overselling (Section 47): If the SP commits to providing SP Services but fails to provide the Services because of insufficient capacity, the SP is liable for the damages suffered by the Customer due to the SP's breach of the contract, unless (a) the SP secured (at its own risk) an appropriate alternative person to provide the Services or (b) the shortage of capacity is due to circumstances beyond the SP's control as contemplated in Section 47.
- 23.8. Right to demand quality service (Section 54): The Customer has a right to (a) the timely performance and completion of the SP Services, and timely notice of any unavoidable delay in the performance of the SP Services; (b) the performance of the SP Services in a manner and quality that persons are generally entitled to expect; (c) the use, delivery or installation of goods that are free of defects and of a quality that persons are generally entitled to

expect, if any such goods are required for performance of the SP Services; and (d) the return of any property or control over any property of the Customer in at least as good a condition as it was when the Customer made it available to the SP for the purpose of performing the SP Services, having regard to the circumstances of the supply, and any specific criteria or conditions agreed between the SP and the Customer before or during the performance of the services. If the SP fails to perform a SP Services to the required standards, the Customer may require the SP to either (a) remedy any defect in the quality of the SP Services performed or goods supplied; or (b) refund to the Customer a reasonable portion of the price paid for the SP Services performed and goods supplied, having regard to the extent of the failure.

23.9. Warranty on repaired parts (Section 57): The SP warrants every new or reconditioned part installed during the SP Services, and the labour required to install it, for a minimum period of three months after the date of installation or such longer period as the SP may specify in writing.

23.10. Return of parts removed (Section 67): The SP must (a) retain any parts or components removed from the Customer's property in the course of the SP Services; (b) keep those parts or components separate from parts removed from other goods or property; and (c) return those parts or components to the Customer in a reasonably clean container, unless the Customer declined the return of any such parts or materials.

23.11. Quotes (Section 15): The SP may not charge for the SP Services unless (a) the SP has provided the Customer with a quote specifying the total amount that will be charged and how it has been calculated, the nature and extent of the work, and the time period for which the quote is valid; and the Customer has accepted the quote; or (b) the Customer declined a quote; or (c) the Customer pre-authorized work up to a specified maximum and the work does not exceed the maximum. The SP may not charge the Customer for preparing the quote unless the Customer agreed to such charge upfront. The SP may not charge a price that exceeds the quote, unless the SP informed the Customer of additional estimated charges and the Customer authorised and paid the work to continue.

## **24. COMPLIANCE WITH THE ECTA**

24.1. The SP undertakes to comply fully with the ECTA where such Act finds application between the SP and the Customer.

24.2. In particular, the SP undertakes to provide and make available, on platforms wherever applicable, all up to date information as may be required in terms of Section 43 (1) of the ECTA.

## **25. DISPUTE RESOLUTION**

25.1. Any dispute, difference and/or question which may arise at any time during the term of this Agreement or thereafter between the Parties from or in connection with the construction, interpretation and/or termination of this Agreement and/or the rights,



obligations and liabilities of the Parties hereto must first be referred to the Parties for negotiation. Should the dispute remain unresolved for a period of 14 (fourteen) days from the dispute being referred for negotiation, then the parties may refer the dispute to arbitration in accordance with the Rules of the Arbitration Foundation of South Africa or its successor in title.

- 25.2. There will be one arbitrator who will be practising Counsel at the Johannesburg Bar Council of at least 10 (ten) years standing as such.
- 25.3. The appointment of the arbitrator will be agreed upon between the Parties to the dispute, but failing such agreement between them, any of the Parties to the dispute may after 14 (fourteen) days of the demand for arbitration, request the chairman at the relevant time of the Johannesburg Bar Council to appoint an arbitrator and, in making his appointment, to have regard to the nature of the dispute.
- 25.4. The arbitration will be held at a venue in Johannesburg, South Africa in English.
- 25.5. The parties will provide their best endeavours to ensure that the arbitration is concluded within 60 (sixty) days of the appointment of the arbitrator.
- 25.6. The decision of the arbitrator will be final and binding on the Parties, will be carried into effect and may be made an order of any court of competent jurisdiction. Each of the Parties hereby submits itself to the jurisdiction of the South Gauteng Division of the High Court of South Africa should the other Party wish to make the arbitrator's decision an order of that court. The terms and conditions recorded in this clause:
  - 25.6.1. will remain in effect despite the termination or invalidity or alleged invalidity for any reason of this Agreement or any part thereof; and
  - 25.6.2. Will not preclude any Party from applying for, and if successful, be granted, an interdict from any competent court having jurisdiction.
- 25.7. In matters of litigation:
  - 25.7.1. each Party hereby consents and submits to the jurisdiction of the Magistrate's Court having jurisdiction over its person in respect of all proceedings connected with this Agreement, notwithstanding that the amount claimed or the value of the matter in dispute exceeds such jurisdiction.
  - 25.7.2. either Party shall be entitled to institute all or any proceedings against the other Party in connection with this Agreement in the High Court of South Africa.
  - 25.7.3. the Parties agree that the South African courts contemplated above shall have exclusive jurisdiction with regard to any matter contemplated herein.