

# STANDARD TERMS AND CONDITIONS

## DEFINITIONS

1. "THE WEBSITE" means the website hosted at appstage.co.za
2. "APPSTAGE" means Appstage (Pty) Ltd with registration number 2010/016583/07 and being based at 6 Nokwe Avenue, Umhlanga Ridge, Durban, 4319, South Africa.

## 1. INTERPRETATION

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

- 1.1. Reference to the singular includes the plural and vice versa, and reference to a single gender includes the other opposite gender, where applicable.
- 1.2. Persons will include juristic entities.
- 1.3. A reference to any statutory enactment will be construed as a reference to that enactment as at the EFFECTIVE DATE or COMMENCEMENT DATE and as amended or substituted from time to time or the date at which the services are rendered by APPSTAGE and/or the date of signature of this agreement, whatever date comes first.
- 1.4. All headings are for ease of reference only and shall not have any bearing on interpretation.
- 1.5. SERVICES are any and all service, products and offerings by APPSTAGE to THE CLIENT. Such SERVICES are contained in this AGREEMENT, the statement of work (SOW) and/or any other annexures pertaining to services between the parties.
- 1.6. Statement of work refers to the services that APPSTAGE provides to THE CLIENT, such is stated in a high level on the SOW in this AGREEMENT.
- 1.7. DAYS will mean calendar days unless qualified by the word BUSINESS. A BUSINESS DAY will be any day other than a Saturday, Sunday or official public holiday as gazetted or declared by the government of South Africa. "BUSINESS HOURS" will be the hours between 08H00 and 17H00 on any business day. Any reference to time will be based upon South African standard time being Greenwich Mean Time plus two (2) hours.
- 1.8. Unless specifically provided, any number of days prescribed will be determined by excluding the first and including the last day or, where the last day falls on a Saturday, Sunday or public holiday, the next business day.
- 1.9. Where figures are referred to in numerals and in words, and there is any conflict between the two, the words will prevail, unless the context clearly indicates a contrary intention.
- 1.10. All amounts in THE AGREEMENT are exclusive of value-added tax (VAT), unless specifically otherwise recorded.
- 1.11. In the event of any conflict between these terms and conditions with any other APPSTAGE document, the provisions hereof shall prevail.
- 1.12. If any covenant, clause, obligation or provision of THE AGREEMENT, or the application thereof to any person or circumstance, shall, to any extent, be invalid or unenforceable, the remainder of THE AGREEMENT (other than such covenant, clause, obligation or provision) and the application of such covenant, clause, obligation or provision to persons or circumstances other than those as to which it is held

invalid or unenforceable shall not be affected thereby, and each remaining covenant, clause, obligation and provision of THE AGREEMENT shall be separately valid and enforceable to the fullest extent as permitted by law.

- 1.13. "DATA PROTECTION LAW" means all applicable data protection laws, regulations, and codes of practice, including the Protection of Personal Information Act 4 of 2013 of South Africa.

"PERSONAL DATA" bears the meaning given to it in the Protection of Personal Information Act 4 of 2013 of South Africa.

## 2. APPSTAGE PERSONNEL

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

## 3. NON-SOLICITATION

- 3.1. During the course of THE AGREEMENT and for a period of 12 (twelve) months thereafter for whatsoever reason, THE CLIENT shall not employ, offer employment to or solicit, in any manner whatsoever, any employees of APPSTAGE without the prior written consent of the other APPSTAGE. Should THE CLIENT breach this clause, they will be liable to APPSTAGE for 15% of such employee's annual remuneration package.
- 3.2. The Parties' obligations in respect of this clause will survive the termination of THE AGREEMENT.

## 4. INDEMNITY AND LIABILITY

- 4.1. THE CLIENT agrees to indemnify and hold APPSTAGE free from liability in respect of all claims, made by THE CLIENT and/or Third Parties, in respect of, *inter alia*:
  - 4.1.1. Data leak and/or loss of whatsoever nature;
  - 4.1.2. Delays leading to loss, whether direct or consequential;
  - 4.1.3. Loss of profits and funds of whatsoever cause;
  - 4.1.4. Infiltration of and/or access to software systems by unauthorized Third Parties;
  - 4.1.5. Loss of whatsoever nature caused by Third Party software, whether installed and/or used by APPSTAGE or not; and
  - 4.1.6. Loss of whatsoever nature caused by THE CLIENT and/or THIRD PARTIES adding to, deleting from,

modifying or otherwise interfering with the software, provided by APPSTAGE.

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

## 5. CHANGE REQUEST PROCEDURE

- 5.1. THE CLIENT may, at any time, request (and APPSTAGE may, at any time, recommend) changes, modifications, or additions to any aspect of a SOW. All such requests (which are considered by APPSTAGE to be more than minor) shall be subject to the Change Request Procedure as set out in this clause 5.1 to clause 5.3 hereunder. THE CLIENT shall not take, or omit to take, any action or implement any decision which may have a materially adverse effect on APPSTAGE'S ability to fulfil any SOW.
- 5.2. No proposed amendment or variation of this AGREEMENT or any agreed SOW shall be effective unless it is in writing in a form agreed by APPSTAGE prior and duly executed by or on behalf of each of the Parties acting through the APPSTAGE Team Leader, representing APPSTAGE, and THE CLIENT Team Leader, representing THE CLIENT (a "Change Request").
- 5.3. Services requested by THE CLIENT, and agreed in the Change Request, which are additional to an applicable SOW, or work requested by THE CLIENT to be undertaken outside of normal working hours shall incur additional charges.

## 6. CONFIDENTIALITY

- 6.1. Each Party undertakes to, during the operation and after termination of THE AGREEMENT, keep confidential all Confidential Information. The Receiving Party agrees to only use the Confidential Information in order to provide the SERVICES and not to disclose or use any Confidential Information for its own or anyone else's benefit. The Receiving Party may only release Confidential Information to employees and or sub-contractors reasonably requiring such information in order to provide the SERVICES (in respect of THE AGREEMENT) and who are bound by written confidentiality obligations no less stringent than those contained in THE AGREEMENT, prior to such release. The Receiving Party will not release or disclose Confidential Information to any other party unless so required by Law.
- 6.2. If either of the Parties is uncertain about whether any information is to be treated as Confidential Information, it will be obliged to treat such information as Confidential.
- 6.3. Neither Party will use the Confidential Information of the other Party, without having secured the prior written approval of the other Party.
- 6.4. The obligations of confidentiality placed on the Receiving Party in terms of this clause will cease to apply in respect of any information or data which the Receiving Party can show:
  - 6.4.1. at the time of disclosure, is or has become generally lawfully available and lawfully known by the public and or any competitors of the Disclosing Party in a manner other than by the negligence or default of the Receiving Party or

by breach of this AGREEMENT by the Receiving Party; or

- 6.4.2. has lawfully become known by or come into the lawful possession of the Receiving Party, on a non-confidential basis from a source other than the Disclosing Party having the legal right to disclose same, provided that such knowledge or possession is evidenced by the written records of the Receiving Party; or
- 6.4.3. is disclosed pursuant to a requirement or request by operation of Law, regulation or court order, to the extent of compliance with such requirement or request only; or
- 6.4.4. to have been developed for the Receiving Party at any time independently of any information disclosed by the Disclosing Party; or
- 6.4.5. is disclosed by the Receiving Party with the prior written approval of the authorized representative of the Disclosing Party, provided that:
  - 6.4.5.1. the onus will always rest on the Receiving Party to establish that such information falls within the exclusions set out in clauses 6.4.1 to 6.4.5 and
  - 6.4.5.2. such information will not be deemed to be within the foregoing exclusions merely because the information is embraced by more general information in the public domain or in the Receiving Party's possession.
- 6.5. If the Receiving Party is required to disclose Confidential Information as contemplated in clause 6.4.3, the Receiving Party will:
  - 6.5.1. as soon as possible advise the Disclosing Party thereof in writing prior to making any disclosure, if there is no restriction on the Receiving Party to inform the Disclosing Party; and
  - 6.5.2. take steps to limit any disclosure to the minimum extent required to satisfy such requirement to the extent that it lawfully and reasonably can; and
  - 6.5.3. afford the Disclosing Party an opportunity to intervene in the proceeding, if possible; and
  - 6.5.4. comply with the Disclosing Party's requests where possible as to the manner and extent of any such disclosure.
- 6.6. The Parties' obligations of confidentiality under THE AGREEMENT will survive beyond the termination of THE AGREEMENT.

## 7. PUBLICITY

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

## 8. AUTHORISED CONTACTS

- 8.1. THE CLIENT is required to keep APPSTAGE updated as to who their contacts are which are permitted to request services, obtain information, and/or otherwise transact on behalf of THE CLIENT with APPSTAGE under this AGREEMENT. THE CLIENT is therefore required to regularly email through an Authorized Contacts list to AGREEMENTs@appstage.co.za clearly indicating any changes which APPSTAGE needs to be aware of. Any user not on the Authorized Contacts list

may be automatically denied service to protect THE CLIENT's interests.

## **9. APPSTAGE'S RESPONSIBILITIES**

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

## **10. THE CLIENT'S RESPONSIBILITIES**

- 10.1. THE CLIENT warrants that it has full capacity and authority to enter into THE AGREEMENT with APPSTAGE.
- 10.2. THE CLIENT warrants that it will pay its accounts with APPSTAGE in accordance with its payment terms as stipulated by APPSTAGE and will ensure their account is settled promptly in line with their APPSTAGE credit terms.
- 10.3. THE CLIENT will ensure they have appropriate and adequate insurance as advised by their insurance brokers.
- 10.4. THE CLIENT will advise APPSTAGE immediately of any changes may impact THE AGREEMENT.
- 10.5. THE CLIENT will provide access, services, information and input as required for APPSTAGE to perform its obligations under THE AGREEMENT.
- 10.6. THE CLIENT undertakes to promptly comply with any reasonable request by APPSTAGE for information, including information concerning THE CLIENT's operations and activities that relates to THE AGREEMENT as may be necessary for APPSTAGE to perform its obligations relating to THE AGREEMENT.
- 10.7. APPSTAGE shall give THE CLIENT reasonable notice of any information it requires in accordance with the provisions relating to THE AGREEMENT.
- 10.8. THE CLIENT agrees to provide APPSTAGE or its representatives such access to and use of its facilities as is necessary to allow APPSTAGE to perform its obligations under THE AGREEMENT.
- 10.9. THE CLIENT warrants that any instruction or direction issued to APPSTAGE in relation to the accessing of THE CLIENT's information, which may amount to a violation or a breach of privacy for one of THE CLIENT's employees or users, would be in accordance with its internal conditions of employment and policy of use and therefore permissible. APPSTAGE will in all instances in carrying out a request of this nature act as THE CLIENT's agent in reliance on the express warranty recorded herein and shall not be liable in any manner to any person for infringement of privacy.
- 10.10. THE CLIENT will ensure that its facilities and equipment which APPSTAGE requires in order to fulfil the duties of THE AGREEMENT are available and functional. Should this not be the case THE CLIENT will not hold APPSTAGE responsible for degradation of services or a lack of service delivery.
- 10.11. THE CLIENT will ensure that its software and technology is legally obtained and correctly licensed.
- 10.12. THE CLIENT will provide APPSTAGE with all relevant established policies, processes and procedures where

applicable which are relevant to the services APPSTAGE will need to perform in terms of THE AGREEMENT.

- 10.13. THE CLIENT will ensure that their facilities, at which place APPSTAGE would perform works relating to THE AGREEMENT, meet all legislative health and safety requirements.

## **11. CLIENT FAILURE**

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

## **12. CLIENT REPRESENTATION**

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

## **13. ENGAGEMENT**

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

## **14. DATA PROTECTION**

14.1. For the purposes of Data Protection Law, THE CLIENT is the data controller and APPSTAGE is the data processor in respect of any Personal Data.

14.2. APPSTAGE will:

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

## 15. UNFORSEEN COMPLICATIONS

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

## 16. TERM AND TERMINATION

- 16.1. THE AGREEMENT shall commence on the date specified and shall remain in effect until termination or otherwise for as long as is needed to complete the SOW.
- 16.2. Termination in accordance with the provisions herein shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to either party and all provisions which are to survive THE AGREEMENT or impliedly do so shall remain in force and in effect.
- 16.3. On termination of THE AGREEMENT the ownership of all SERVICES will vest in APPSTAGE until fully paid for. To that extent APPSTAGE shall be entitled to remove same from the possession, or from under the control, of THE CLIENT.
- 16.4. In the event that any of the services and property referred to above are in electronic form and contained on non-detachable storage devices, THE CLIENT, at their costs, will provide APPSTAGE with unencrypted copies of same on appropriate media and will irretrievably destroy and delete the copies so held.
- 16.5. If THE AGREEMENT is terminated by THE CLIENT, THE CLIENT will pay to APPSTAGE all outstanding fees (duly apportioned if applicable) relating to the work undertaken by APPSTAGE up until the date of such termination. THE CLIENT will also pay the costs of any goods and materials ordered by APPSTAGE in relation to work for which APPSTAGE has paid or is legally obliged to pay for on behalf of THE CLIENT. In this

case, on receipt of such goods or materials, APPSTAGE will promptly deliver such goods and materials to THE CLIENT or otherwise as THE CLIENT may direct.

## 17. CONSEQUENCES OF TERMINATION

- 17.1. In the event of service termination, following settlement of any outstanding amounts, APPSTAGE will assist with transition of the respective terminated service to another provider for a period of up to thirty (30) days after the date of termination should this be required. During this transition, APPSTAGE shall be entitled to remuneration for any assistance on a time and materials basis. On termination, any accumulated services will expire and APPSTAGE shall have no further liability in this regard.
- 17.2. THE CLIENT cannot terminate this contract, monthly subscriptions, and associated services within the initial period being stated in this AGREEMENT, SOW, or any other SERVICES. THE CLIENT will be entitled to terminate this contract on any renewal date, and subject to providing that the terminating party first gives the other party not less than sixty (60) days' prior written notice of its intention to terminate. Thereafter the contract will be on a month-to-month basis.
- 17.3. Should THE CLIENT terminate services before the initial period stated in clause 19, payment for the remainder of the full contract term signed will be due owing, payable and applicable by THE CLIENT and/or surety. These costs will be calculated and given within five (5) days of the cancellation by APPSTAGE.
- 17.4. Should an order be cancelled or terminated by THE CLIENT after the initial survey has been completed, cancellation fees will be applicable and will be determined by the amount of work and resources used up to date of cancellation.
- 17.5. THE CLIENT is liable for any obligation accrued at the date of termination or suspension of services, including the payment of any costs or charges that may arise in connection with such termination or suspension, and the payment of all outstanding fees, damages, set up costs and monthly fees for use of services prior to the said termination or suspension. These fees will be calculated and given to THE CLIENT within seven (7) days of cancellation for immediate payment.
- 17.6. Monthly services are charged for in advance and payment is strictly via EFT or debit order. In the event of non-payment, services will be immediately suspended and a reactivation charge of R750 (seven hundred and fifty rand) will be levied or if THE CLIENT is in breach of these conditions, all amounts unpaid and the remaining contract period shall immediately become due and payable.
- 17.7. APPSTAGE may upon five (5) days' written notice to THE CLIENT, suspend, without fault, liability or risk to THE CLIENT, THE CLIENT's use of the SERVICES in the event that;
  - 17.7.1. Any modification, maintenance or remedial work is required to be undertaken pertaining to the SERVICES; and/or
  - 17.7.2. THE CLIENT fails to perform any of its obligations or breached any term/s of this AGREEMENT; and/or
  - 17.7.3. THE CLIENT at any time exceeds the credit limit which APPSTAGE, in its absolute discretion shall set and notify THE CLIENT of from time to time.

17.7.4. THE CLIENT remains liable for the applicable charges payable by it in terms of this AGREEMENT, and during any period of suspension in the circumstances contemplated in clauses 19.

17.7.5. It is THE CLIENT's responsibility to ensure that any onsite equipment supplied by APPSTAGE is insured. APPSTAGE is not responsible for any equipment damaged due to power surges, lighting and or water.

## **18. INTELLECTUAL PROPERTY**

18.1. APPSTAGE shall retain all intellectual property rights in all materials and working papers, including methodologies, know-how, trade secrets, software and tools used, provided, or developed by APPSTAGE used in delivering the SERVICES as contracted.

18.2. All intellectual property and proprietary rights in material provided by THE CLIENT for performance of the services shall remain the property of THE CLIENT.

18.3. THE CLIENT shall not be entitled to use or sell the products/software/services under APPSTAGE without APPSTAGE's written prior consent.

## **19. INTEREST**

19.1. If a payment is not made on the due date, APPSTAGE may recover from THE CLIENT and/or surety on the amount outstanding for the period of the default at the compound rate of 3% above the annual prime overdraft rate of APPSTAGE'S bankers per month.

## **20. RIGHT TO AMEND**

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

## **21. FAIR USAGE & FAULTS**

21.1. Fair usage applies whereby abuse is monitored and restricted to prevent misuse. The service shall not be used for activities contravening any South African law, and should same contravene any laws, APPSTAGE reserves the right to cancel THE AGREEMENT and THE CLIENT and/or surety will be liable for payment for the remainder of the full contract term signed.

21.2. Service fault(s) logging is facilitated through email to the following address: [support@appstage.co.za](mailto:support@appstage.co.za)

## **22. BREACH**

22.1. In the event that either party is in breach of any terms or conditions of this AGREEMENT and has failed to remedy such breach within a period of ten (10) days after receipt by that party of a written notice requiring such breach to be remedied, the party aggrieved thereby shall be entitled, without prejudice to any other rights which it may have in terms of this AGREEMENT or at law, to claim specific performance and damages; cancel this AGREEMENT and recover damages; keep this AGREEMENT in force and recover damages arising from the breach.

22.2. A certificate signed by any director or managing member of APPSTAGE indicating the amount due and owed by THE CLIENT and/or surety to APPSTAGE at any given time, as well as any other factor of which

proof may be required, shall be prima facie proof of the facts therein stated for the purpose of all legal proceedings against THE CLIENT and/or surety.

## **23. SET OFF**

23.1. THE CLIENT and/or surety shall not be entitled to claim set-off or deduction in respect of any payment due by THE CLIENT and/or surety to the APPSTAGE in respect of goods and/or services supplied.

## **24. OWNERSHIP AND RISK**

24.1. Ownership of all goods delivered or supplied by APPSTAGE will remain vested in APPSTAGE until the purchase price has been paid in full. The risk in any equipment, licenses, infrastructure, or software shall pass to THE CLIENT and/or surety when the goods are delivered to THE CLIENT's premises and APPSTAGE shall not be liable for any damage or loss whatsoever, direct or indirect, consequential or otherwise, arising out of or in connection with the use by the by THE CLIENT of the goods.

24.2. Should THE CLIENT request an onsite visit from an APPSTAGE Technician for either general assistance or for a fault query, a call out charge will be applied as a once off. Should the cause of a service fault not be that of APPSTAGE, the call out charge will be applied indefinitely.

## **25. ASSIGNMENT**

25.1. THE CLIENT may not assign any of its rights or obligations in terms of this AGREEMENT, nor pass any equipment to any third party, nor allow any third party to use the equipment, without the APPSTAGE's prior written consent.

25.2. APPSTAGE shall be entitled to at any time during the currency of this AGREEMENT to cede and/or assign and/or sub-contract any or all of its rights and obligations in terms of the AGREEMENT to any other party.

## **26. DELIVERY AND ACCEPTANCE**

26.1. Acceptance of any of the SERVICES will be regarded as complete, when such SERVICES or such part of the SERVICES would have successfully satisfied any relevant acceptance criteria as set out in the SOW and in the absence of such acceptance criteria, on agreement between the parties.

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

27.1. Where applicable APPSTAGE shall quote THE CLIENT and 50% of the accepted quote will be payable before commencement of work.

27.2. APPSTAGE shall invoice THE CLIENT and the invoice will be payable in accordance with THE CLIENT's payment terms as stipulated by APPSTAGE.

27.3. THE CLIENT will pay to APPSTAGE the charges at the rates as detailed within THE AGREEMENT.

27.4. Unless otherwise agreed in a SOW, THE CLIENT will reimburse to APPSTAGE all reasonable and proper expenses incurred directly and solely in connection with THE AGREEMENT, provided that all such expenses:

27.4.1. are agreed by THE CLIENT in advance; and

27.4.2. are supported by relevant receipts.

27.5. APPSTAGE shall increase its rates and fees annually in line with the rate of inflation.

- 27.6. Where the payment of any invoice or part thereof is not made in accordance with the payment terms, APPSTAGE shall be entitled to charge cumulative interest, calculated daily on the outstanding amount at the prevailing prime rate of its bankers from the date the amount has become due until the date it has been settled in full. APPSTAGE reserves the right to suspend services and to withhold any source code relating to said outstanding payment/s the moment payment for any invoice in relation to THE AGREEMENT is in arrears.
- 27.7. Unless specified, all fees and other sums detailed within THE AGREEMENT and SOW are exclusive of VAT.
- 27.8. VAT will be payable at the applicable rate and will be shown separately on each invoice.
- 27.9. THE CLIENT will not be entitled to withhold payment of any amount payable to APPSTAGE to satisfy any claim of THE CLIENT arising from this or any other AGREEMENT between THE CLIENT and APPSTAGE, nor will THE CLIENT be entitled to set off such an amount against the amount payable to APPSTAGE in terms of this or any other AGREEMENT.
- 27.10. Charges are based on the items and services provided as specified under one or more respective Annexures and/or duly accepted quotations or proposals.
- 27.11. APPSTAGE reserves the right to suspend all services on unpaid accounts at its discretion.
- 27.12. Payment shall be made by means of Electronic Funds Transfer to APPSTAGE's bank account.
- 27.13. All payments are non-refundable and required even if the SERVICES are not used by client.

## **28. NO WARRANTIES**

APPSTAGE gives no warranties, whether express or implied, with regard to the services/goods, and specifically excludes the warranty that the goods/services purchased by THE CLIENT and/or surety will be suitable for the purpose for which they are intended, and any implied warranty or conditions (statutory or otherwise) are hereby excluded unless otherwise stipulated in this AGREEMENT.

## **29. FORCE MAJEURE**

29.1. If APPSTAGE is prevented or restricted from carrying out all or any of its obligations under this AGREEMENT by reason of any event constituting force majeure (being any cause beyond the reasonable control of either Party, including without limitation adverse weather conditions, unpredictable delay caused by traffic congestion, COVID, diversion or road works, the unavailability of raw materials, strikes, power outages, industrial disputes, regulatory interference or the unavailability of any communication lines and/or network operator facilities), and/or the death, removal and/or resignation of key personal then APPSTAGE shall be relieved of its obligations under this AGREEMENT during the period that such event continues, and shall not be liable for any delay and/or failure in the performance of such obligations during such period, provided that if the force majeure event continues for a period longer than fourteen (14) days, APPSTAGE may cancel this AGREEMENT on written notice, at its sole discretion.

## **30. LAW**

30.1. THE AGREEMENT shall be governed by and construed in accordance with South African law and each party agrees to submit to the exclusive jurisdiction of the relevant Magistrate's Court.

## **31. JURISDICTION**

31.1. The parties consent and submit to the jurisdiction of the Magistrate's Court as required by Section 45 of Act 32 of 1944, as amended, with reference to any dispute arising from or in connection with THE AGREEMENT, notwithstanding the nature thereof or the amount involved thereby, provided that any party may, at its own election, institute proceedings in another Court having jurisdiction.

## **32. LEGAL COSTS**

32.1. In the event of APPSTAGE instituting any legal action in respect of this contract, rights and/or obligations, THE CLIENT and/or surety shall be liable for all costs incurred by APPSTAGE, on the scale as between attorney and own client, including collection commission and any other charges, including tracing charges.

## **33. DISPUTE RESOLUTION**

- 33.1. Should any dispute arise between the parties in connection with the interpretation or application of the provisions of THE AGREEMENT or its breach or termination or the validity of any documents furnished by the parties pursuant to the provisions of THE AGREEMENT, that dispute will, unless resolved amongst the parties, be referred to and be determined by arbitration in terms of this clause.
- 33.2. Any party to THE AGREEMENT may demand that a dispute be determined in terms of this clause by written notice given to the other party.
- 33.3. This clause will not preclude any party from obtaining interim relief on an urgent basis from a court of competent jurisdiction pending the decision of the arbitrator.
- 33.4. The arbitration will be held:
- 33.4.1. In Durban, South Africa; and
  - 33.4.2. With only the legal and other representatives of the parties to the dispute present; and
  - 33.4.3. In accordance with the formalities and procedures set out by the arbitrator, it being the intention that the arbitration will be held and completed as soon as possible; and
  - 33.4.4. On the basis that the arbitrator will be entitled to decide the dispute in accordance with what he considers to be just and equitable in the circumstances.

## **34. COUNTERPARTS**

34.1. This contract may be signed in any number of counterparts, each of which shall be an original, but all which together shall constitute a single indivisible contract.

## **35. SEVERABILITY**

35.1. Each clause of these conditions is severable, the one from the other and if any one or more clauses are found to be invalid or unenforceable, that clause/clauses shall not affect the balance of these conditions of sale, which shall remain of full force and effect.

**36. ENTIRE AGREEMENT**

36.1. This contract is the entire AGREEMENT between the parties. No alteration or variation of these terms and conditions shall be of any force or effect unless reduced to writing and signed by a duly authorized representative of both parties in writing.

**37. NO EXTENSION OF TIME OR WAIVER**

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

**38. CONTACT INFORMATION**

If you have any questions about these Terms and Conditions, kindly contact:

- Via email to: [informationofficer@appstage.co.za](mailto:informationofficer@appstage.co.za);  
or
  - Via post to APPSTAGE, 6 Nokwe Avenue,  
Umhlanga Ridge, KwaZulu Natal, 4319, South  
Africa.
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