

**Master Services Agreement  
("The Agreement")**

Entered into between:

**Uniteam Investments 101 (PTY) Ltd: 2010/009455/07  
(The "Supplier")**

whose registered office is at Concord House, Nollsworth Crescent, La Lucia, Durban 4001  
(the "Supplier").

and

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**(The "Customer")**

whose registered office is at \_\_\_\_\_

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## 1. INTRODUCTION:

(A) The Service Provider (PSI) is a leading provider of specialist information technology infrastructure solutions and services.

(B) The Customer (\_\_\_\_\_) wishes to appoint the Service Provider to provide the Services and the Service Provider has agreed to do so in accordance with the terms of this Agreement.

(C) The Services to be provided are covered under Schedule A – Service Level Agreement

## THE PARTIES AGREE AS FOLLOWS:

### 2. DEFINITIONS

In this Agreement (which expression includes the Introduction), the Parties defined in the heading shall retain such definitions and the following words and phrases shall, unless the context otherwise requires, have the following meanings:

- |     |                                 |  |
|-----|---------------------------------|--|
| 2.1 | “Affiliate”                     | means, with respect to a Party, any other person directly or indirectly Controlling, Controlled by, or under common Control with, such Party;                    |
| 2.2 | “Agreement”                     | means this agreement, including any schedules and the Introduction;  |
| 2.3 | “Applicable Law”                | means any national (or provincial) legislation, statutes, ordinances and other laws and regulations and any by-laws of any legally constituted public authority; |
| 2.4 | “Business Day”                  | means any day other than a Saturday, Sunday or statutory holiday in South Africa;  |
| 2.5 | “Commencement Date”             | means the date of signature  |
| 2.6 | “Commercial Terms”              | Supplier commercial terms as specified on quotations, invoices or other documents.   |
| 2.7 | “Commissioning of the Services” | The completion of installation and tests by network installation technicians confirming that the service is operational.   |
| 2.8 | Confidential Information        | means in relation to a Party, any information of a confidential and/or commercially sensitive nature,  |

		howsoever obtained or received and whether or not marked confidential, including any technical, commercial, financial or scientific information, Know How, trade secrets, processes, marketing and business information, clients, customer and supplier information, pricing information and/or any other information or Materials of whatever description or nature proprietary to a Party, whether in written, oral, magnetic, or machine-readable or other format
2.9	“Control”	means the power to direct or cause the direction of the management and policies of an entity whether through the ownership of voting securities, by contract or otherwise, and “Controlled” and “Controlling” shall have a similar meaning;
2.10	“Cost”	means all expenditure reasonably incurred (or to be incurred) by the Supplier, whether on or off the Customer’s site, including overhead and similar charges;
2.11	“Customer”	means _____ (___)
2.12	“Customer’s Equipment”	means any equipment, systems, cabling or facilities provided by the Customer and used directly or indirectly in the supply of the Products and/or Services;
2.13	“Customer Material”	means all Material provided by the Customer to the Supplier for the purposes of this Agreement;
2.14	Date of Signature	Means the date of the last signature by an authorised party to this agreement
2.15	“Deliverables”	means all tasks to be completed for and items to be provided to the Customer and Documents, products and materials developed by the Supplier in relation to the provision of Products and/or Services in any form, including computer programs, data, reports and specifications;
2.16	“Developed Material”	means all Material created or developed by or on behalf of the Supplier for the Customer under a Schedule or this Agreement;

2.17	“Dispute Resolution Procedure”	means the procedure set out in clause 14;
2.18	“Document”	means and includes any document in writing, any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form;
2.19	“Expert Determination”	means the procedure described in clause 15;
2.20	“Extension of Renewal Period”	means the renewal of the MSA for the period of the Renewal Period as set out in clause 4.1 of the agreement.
2.21	“Initial Period”	means the period as indicated and as set out in the Service Order/s, signed from time to time by the Customer. That period shall be your Initial Period.
2.22	“Insolvency Event”	<p>means the happening of any one or more of the following events:</p> <p>(a) a Party convenes a meeting of its creditors, makes an offer of compromise or makes a proposal for any other composition or scheme of arrangement with its creditors generally, or</p> <p>(b) a Party commits an act of insolvency in terms of Section 8 of the Insolvency Act, 24 of 1936, or is unable to pay its debts as set out in Section 345 of the Companies Act, 61 of 1973 or as amended, or is sequestrated or liquidated, as the case may be.</p> <p>(c) A Party applies for or invokes “Business Rescue” as envisaged under Chapter 6 of the new Company Act number 71 of 2008</p>
2.23	“Intellectual Property Rights”	<p>means all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world;</p>
2.24	“Key Personnel”	means key members of the Supplier's Team as represented by the Supplier or identified by the Customer and agreed with the Supplier;

2.25	“Licensed Material”	means all Material comprised in a Deliverable other than Developed Material or Customer Material, including all Material which the Parties pursuant to a Schedule agree will be Licensed Material;
2.26	“Materials”	means material in any form, including documents, reports, products, equipment, information, data, software, software tools and software development methodologies;
2.27	“Network Operator”	which has granted the Service Provider authorisation to make the Services available to the Subscriber
2.28	“Parties”	means the Customer and the Supplier; and “Party” means either of them as the context may require;
2.29	“Prime Rate”	means the publicly quoted prime rate of interest charged by First National Bank Limited, from time to time, as certified, in the event of any dispute, by any manager of such bank, whose appointment it shall not be necessary to prove;
2.30	“Products”	means the Hardware and/or goods (including software) to be provided by the Supplier under the Supply Schedule and the Parties obligations under the Supply Schedule (including any part or parts of them), together with any other hardware, software or goods which the Customer receives from the Supplier;
2.31	“Rand or ZAR”	means the official currency of the Republic of South Africa;
2.32	“Renewal Period”	means the renewal of the Initial Period of which Initial Period is set out in the Service Order in the event of no termination and/or notification being given as contemplated in clause 4.1
2.33	“Schedule”	means a schedule to this Agreement
2.34	“Services”	means the services to be provided by the Supplier under the Supply Schedule and the Parties obligations under the Supply Schedule, together with any other services which the Customer receives from the Supplier;
2.35	“Service Order/Order”	means an order placed by Customer with the Supplier for the provision of Services as quoted by the Supplier. It is specifically agreed by the Customer that the acceptance to the quotation shall constitute a binding agreement on

		it/them to be bound to the terms and conditions of this agreement.
2.36	“Signature Date”	means the date on which this Agreement is signed by the Party to last sign this Agreement;
2.37	“Statement of Work”	means a binding contract between the Parties that describe services to be supplied by the Supplier
2.38	“Subscriber”	means any party to whom the Services are made available in terms of this Agreement, including a Delegated Service Provider who on-sells the Services and bills an end user directly.
2.39	“Supplier”	PSI (Pty) Ltd Company registration number 2010/009455/07 , Republic of South Africa VAT number 4810195927 , South African Revenue Services Number 928631148
2.40	“Schedule”	means a document including but not limited to quotations, invoices or statement of work describing the products or services and any commercial terms and conditions that the supplier will provide to the customer;
2.41	“Supplier's Equipment”	any equipment, including tools, systems, cabling or facilities, provided by the Supplier or its sub-contractors and used directly or indirectly in the supply of the Products and/or Services which are not the subject of a separate agreement between the Parties under which title passes to the Customer;
2.42	“Supplier's Team”	the Supplier's manager and all employees, consultants, agents and sub-contractors which it engages in relation to the supply of the Products and/or the Services;
2.43	“Local Taxes”	means local taxes as applied from time to time in either South Africa or Angola including but not limited to VAT or its local equivalent

### **3. APPOINTMENT, ORDERING PROCEDURE AND APPLICATION OF TERMS**

- 3.1 From time to time the Customer may wish to obtain Products and or Services from the Supplier.
- 3.2 In the circumstances the Customer, hereby appoints the Supplier, in accordance with the provisions, subject to the conditions and for the duration of this Agreement, to provide those Products and or Services to the Customer which the Parties may agree are to be provided pursuant to one or more Schedules and the Supplier accepts such appointment.

- 3.3 The Supplier acknowledges and agrees that this appointment is not one of an exclusive supplier.
- 3.4 If the Customer wishes to procure Products and or Services from the Supplier and the Supplier wishes to supply Products and or Services to the Customer, the Parties shall seek to agree and execute a Schedule.
- 3.5 Upon the Parties executing a Schedule the Supplier will commence carrying out the services in accordance with the terms and conditions of the Schedule and the terms and conditions of this Agreement. A Schedule will constitute a separate binding agreement between the Parties that incorporates the terms and conditions of this Agreement.
- 3.6 The customer accepts goods or services on the commercial terms and conditions as may be provided by the Supplier from time to time

#### 4. COMMENCEMENT AND DURATION

- 4.1 Notwithstanding signature dates this contract will commence on 1 July, 2016 and shall continue thereafter for 36 months with an option to renew by the parties for subsequent periods of 12 months unless or until terminated by either Party in accordance with this Agreement.

#### 5. SCHEDULE PRICE, PAYMENT, RISK and TITLE

- 5.1 Price  
The price for the Products and/or Services shall be as set out in Schedule A and shall, unless stated otherwise payable in Rands.
- 5.2 Taxes  
Payments to be made by the Customer under this Agreement are stated **exclusive** of any taxes which shall be paid by the Customer to The Supplier at the rate and from time to time in the manner prescribed by law.
- 5.3 Late Payment Interest  
If The Supplier becomes entitled to charge interest by reason of late or non-payment under a Schedule, The Supplier will be entitled to charge interest at the higher of the Prime Rate +2% (two per cent) or the prevailing First National Bank rate of interest effective from the 45th day from the date of receipt of the invoice.



5.4 Risk and Title

Unless otherwise agreed to in writing risk of loss or damage for products will pass to customer upon delivery to Customer. Title remains with Supplier until payment is received in full.

**6. SUPPLIER'S OBLIGATIONS**

6.1 The Supplier shall provide the Products and/or Services to the Customer in accordance with the terms of the Schedule and shall allocate sufficient resources to enable it to comply with this obligation.

6.2 The Supplier shall:

6.2.1 co-operate with the Customer in all reasonable matters relating to the supply of Products and/or Services;

6.2.2 ensure that the Supplier's Team use reasonable skill and care in the performance of the Services.

6.2.3 observe, and ensure that the Supplier's Team observe, all health and safety rules and regulations and any other security requirements that apply at any of the Customer's premises and any unusual Customer specific health and safety rules and regulations;

6.2.4 notify the Customer as soon as it becomes aware of any health and safety hazards or issues which arise in relation to the Products and/or Services;

6.2.5 observe and ensure that the Supplier's Team observe the policies, requirements and procedures of the Customer as advised by the customer from time to time;

6.2.6 before the date on which the supply of the Products and/or Services are to start, obtain and at all times maintain all necessary licences

6.3 Procure Products from original equipment manufacturers, their agents or partners at all-times ensuring validity of the Product warranty

## **7. THE CUSTOMER'S OBLIGATIONS**

### **7.1 General.**

The Customer shall:

- 7.1.1 co-operate with the Supplier in all matters reasonable relating to the supply of Products and/or Services.
- 7.1.2 provide such access to the Customer's premises and data, and such office accommodation and other facilities as may reasonably be required by the Supplier and agreed with the Customer in writing, in advance, for the purposes of the Customer receiving the supply of Products and/or Services; and
- 7.1.3 provide such information as the Supplier may reasonably request and the Customer considers reasonably necessary, in order to supply the Products and/or carry out the Services, in a timely manner, and ensure that it is accurate in all material respects; and
- 7.1.4 Inform the Supplier of all unusual Customer health and safety rules and regulations and any other security requirements that apply at any of the Customer's premises.
- 7.1.5 Inform the Supplier of all local legislation and regulations and any other security requirements that apply to any goods or services to be provided by Supplier
- 7.1.6 Provide the Supplier upon receipt of a written request copies of Customer policies and procedure as they relate to the supply of products and or services
- 7.1.7 Where applicable, maintain an operating environment commensurate with original equipment manufacturers specifications for product supplied
- 7.1.8 Maintain and use the Products supplied in accordance with original manufacturers specifications and or recommendations.

## **8. SUB-CONTRACTING**

- 8.1 The Supplier may sub-contract the supply of Products or Services.
- 8.2 Where the Supplier engages a sub-contractor to supply the Products or perform the Services or any of them under the terms of a Schedule, the following provisions shall apply

to such engagement:

8.2.1 the sub-contractor shall be engaged by the Supplier on substantially the same terms and provisions as those described in this agreement; and

8.2.2 the Supplier shall remain fully responsible for:

the performance of the sub-contractor in accordance with Schedule A.

## 9. NON-SOLICITATION

9.1 Neither Party shall (except with the prior written consent of the other) during the term of this agreement or a Schedule, and for a period of 12 (twelve) months thereafter, solicit the services of any employee of the other Party who have been engaged in the provision of the Services or the management of this Agreement or any significant part thereof either as principal, agent, employee, independent contractor or any other form of employment or engagement other than by means of a national advertising campaign open to all-comers and not specifically targeted at such staff of the other Party.

9.2 The aforementioned restraint shall not be applicable: (i) where the prior written approval to make such an offer has been obtained from the Party, who is or has been the employer of such staff member; or (ii) where an offer is made to a staff member of a Party who has left the employ of such Party, on his own accord (i.e. not as a result of having been approached or solicited by the other Party) and at the time the offer is made a period of at least 12 (twelve) months has lapsed since the staff member has left the employment of such Party; or (iii) against a Party where such Party terminates this Agreement in terms of the provisions of clause 4.1 or clause 13 (as applicable).

9.3 Save for 9.2 (ii) and (iii) a placement fee equal to 15% of the employees offered remuneration package will be payable by the party employing the others employee.

## 10. WARRANTIES, REPRESENTATIONS AND UNDERTAKINGS

10.1 Standard representations and warranties.

Each Party represents and warrants to the other Party as at the Commencement Date of this Agreement and at all times after the date of this Agreement, that:

10.1.1 it has full power and authority to enter into, perform and observe its obligations under this Agreement and all Schedules;

- 10.1.2 it has taken all necessary action to authorise the execution, delivery and performance of this Agreement and all Schedules in accordance with their terms;
- 10.1.3 the execution, delivery and performance by it of this Agreement and all Schedules do not and will not violate:
- any Applicable Laws;
- its constitution or other constituent documents; or
- any encumbrance, undertaking or document which is binding upon it or on any of its assets.
- 10.2 Supplier's representations and warranties.  
The Supplier represents and warrants to the Customer as at the Commencement Date, and at all times during the term of the Agreement that:
- 10.2.1 it has the level of skill, knowledge, experience and ability which may be expected of a professional organisation experienced in providing products and services of the type and complexity of the Products and Services;
- 10.2.2 each of the Supplier Team has the level of skill, knowledge, experience and ability which may be expected of an individual experienced in performing a role of the type and complexity which has been given to that person in relation to the Services;
- 10.2.3 it is entitled to, and has the right and power to provide the Products and Services to the Customer;

## 11. INTELLECTUAL PROPERTY RIGHTS

- 11.1 All Intellectual Property Rights belonging to a Party prior to the Effective Date will remain vested in that Party.
- 11.2 Neither Party's trademarks nor brands shall be used by the other Party for any purpose without obtaining prior written consent of the relevant Party and then only in the manner prescribed.
- 11.3 All Intellectual Property Rights in and to the Service Provider Tools and Methodologies vest in and shall remain vested in the Service Provider and where any of such the Service Provider Tools and Methodologies are required by the Customer to make effective use of any of the Services, the Service Provider shall grant to the Customer a non-exclusive, non-transferable, royalty-free and fully paid up licence to use such Service Provider Tools and

Methodologies for their internal business purposes and for the duration of the Services. To the extent the Service Provider Tools and Methodologies contain Materials that are licensed to or not owned by the Service Provider, it shall use its commercially reasonable endeavours to obtain such licenses for the Customer.

## **12. SUSPENSION AND TERMINATION**

The Customer may terminate this agreement by:

- 12.1 The Customer, on the expiry of the Initial Period, or, the expiry of the Renewal Period, as the case may be, by giving to the Supplier a written notice of termination not less than one calendar month and not more than 90 days before the expiration of the Initial Period or the Renewal Period, as the case may be; and/or
- 12.2 The Supplier may terminate this agreement, on written notice to the Customer in the event that the authorisation issued by the Network Operator in terms of which the Supplier is authorised and empowered to give the Subscriber access to the Services is terminated for whatever reason.
- 12.3 Notwithstanding the contents of clause 12.1, it is hereby agreed between the Supplier and the Customer that the Supplier may, without notice and with immediate effect, terminate any and all services as provided in this agreement.
- 12.4 It is agreed that in the event of the Customer not providing notice as set out in clause 12.1, in such event, the Initial Period shall recommence which shall be known as the Renewal Period, and, the Renewal Period shall be for the period as set out in the Initial Period. For clarity, if the Customer does not provide notice for the termination of the Initial Period, then the time period as set out in the Service Order (Initial Period) will then be known as the Renewal Period, which will be the time period for the Renewal Period. For clarity, if there is no notification of termination, the length of the Renewal Period will be exactly the same as the Initial Period and the Initial Period is found on the Service Order.
- 12.5 The termination of the Renewal Period will be identical to that as set out in clause 12.1 and in the event of termination not being given as set out in clause 12.1 for the Renewal Period, then the agreement shall be regarded as a month to month agreement, requirements 90 days' notice for termination.
- 12.6 It is agreed that the Service Order/s by the Customer is an offer made by the Customer to the Supplier, and, it is within the sole discretion of the Supplier whether to accept such Service Order or not. The Supplier's acceptance of the Service Order in no way places any obligation on the Supplier to render the services as set out in the Service Order until such time as the Completion Certificate has either been signed by the Customer, alternatively, the lapsing of the 5 (five) days of sending of the Completion Certificate to the Customer. It is specifically recorded that once the Service Order has been delivered to the Supplier, that it cannot be withdrawn pending the issuing of the Completion Certificate. It is further recorded that the Customer hereby expressly dispenses with notification of acceptance of the Service Order by the Supplier. There is no obligation on the Supplier to accept the Service Order. It is further recorded that after acceptance of a Service Order

- by the Supplier, the delivery of services and a subsequent Completion Certificate is solely within the discretion of the Supplier.
- 12.7 The contents of clause 12.6 shall not apply to a Customer in the event of the Supplier already providing the services so requested by the Customer in their Service Order/s. It is however agreed that the final decision in whether the Supplier is already providing that service is solely within the discretion of the Supplier.
- 12.8 The Customer may not, for any reason whatsoever and irrelevant of circumstances, terminate this MSA and/or any Service Order and/or demand any reimbursement, including but not limited to, damages whether direct or indirect, as a result of the Customer's relocation to an area outside of the Service Provider's coverage. In the event of the Customer terminating this MSA or any Service Order as a result of circumstances as mentioned in this clause shall immediately result in the Supplier being entitled to claim for the full amount of the Initial Period, Renewal Period and/or Extended Renewal Period.
- 12.9 At the time the Customer signs the Application form or Order for the provision of Services, the Subscriber agrees that they are entering into a legally binding Agreement.
- 12.10 In the event of Customer cancelling this or part of this Agreement other than for reasons stated in clause 4.1 or 12, Supplier reserves the right to charge a penalty equal to or less than the value that would have been paid by the Customer for the service being cancelled over the full remaining term of the contract. This will include, but not be limited to, services such as licensed wireless links, fibre links and services provisioned from third parties.
- 12.11 In the event that either Party (Primary) commits a breach of any of the terms and conditions herein, or, to any Service Order, then, in such event and in the event of the defaulting party remaining in breach for a period of 14 days after receipt of written notice ("notice of breach") from the other Party (Secondary) calling for such breach to be remedied, Secondary Party shall be entitled, without prejudice to any other rights or remedies it may have hereunder or in law including the right to claim damages, to –
- 12.11.1 claim specific performance, and/or
- 12.11.2 cancel this Agreement, and/or
- 12.11.3 claim damages.
- 12.12 Notwithstanding the contents of clause 12.11, it is specifically agreed that the Service Provider may at any time, without notice to the Subscriber and in any manner whatsoever, suspend the Customer's access to the Services in the event that:
- 12.12.1 Any modification, maintenance or remedial work is required to be undertaken pertaining in any manner whatsoever to the Services or the Network. Service Provider will endeavour to inform the Subscriber timeously in the event of planned maintenance.
- 12.12.2 The Subscriber fails to perform any of their obligations, or breaches any terms of the Agreement, in which event Service Provider may also suspend the Subscriber's use of the terminal equipment and/or services.

- 12.13 Service Provider reserves the right to require the Subscriber to effect payment of any applicable reconnection charges pursuant to restoration of Services suspended in the circumstances contemplated in clause 12.12.2. In the event that the Subscriber's access to the Network is suspended, the Subscriber shall still be liable for the monthly service charges during any such period of suspension.

### 13. CONFIDENTIALITY

- 13.1 Each Party agrees and undertakes that during the term of this Agreement and thereafter it shall keep confidential and shall not use for its own purposes, nor without the prior written consent of the other Party disclose to any third party, all information of a confidential nature (including, without limitation, information relating to a Party's products, operations, processes, plans or intentions, product information, know-how, design rights, trade secrets and information of commercial value) which may become known to that Party from the other Party (Confidential Information), unless the information is public knowledge or already known to that Party at the time of disclosure or subsequently becomes public knowledge other than by breach of this Agreement or subsequently comes lawfully into the possession of that Party from a third party.
- 13.2 To the extent necessary to implement the provisions of this Agreement, each Party may disclose Confidential Information to those of its employees and representatives as may be reasonably necessary or desirable, provided that before any such disclosure each Party shall make those employees and representatives aware of its obligations of confidentiality under this Agreement and shall at all times procure compliance by those employees and representatives with them.

### 14. DISPUTE RESOLUTION

- 14.1 If a dispute arises in respect of or from or pursuant to this Agreement or Schedule, or as to the interpretation, breach, termination or validity of this Agreement or Schedule, except a dispute or matter which is expressed in this Agreement, or agreed by the Parties in writing, to be one to be determined by Expert Determination ("**a Dispute**"), then either Party may give written notice to the other of such Dispute and may initiate the Dispute Resolution Procedure set out in this clause 14.
- 14.2 The Parties shall endeavour to settle the Dispute through negotiation and, if the Dispute cannot be settled through negotiation, the Parties may agree to refer the Dispute to an agreed mediator, who shall endeavour to assist the Parties to settle the Dispute by way of mutual agreement.
- 14.3 If the Dispute is not settled by negotiation or mediation within 5 (five) Business Days of the

notice referred to in clause 14.1 or such longer period of time as the Parties may agree to in writing, then the Dispute shall be determined by final and binding arbitration in accordance with the provisions set out below:

- 14.3.1                    There shall be one arbitrator who shall be, if the question in issue is:
- Primarily an accounting matter, an independent chartered accountant with not less than 10 (ten) years' experience as a chartered accountant;
- Primarily a legal matter, a practising Senior Counsel or, alternatively, a practising attorney with not less than 10 (ten) years' experience as an attorney; or
- Any other matter, a suitably-qualified person.
- 14.3.2                    The appointment of the arbitrator shall be agreed upon between the Parties but, failing agreement between them within a period of 14 (fourteen) days after the arbitration has been demanded, either of the Parties shall be entitled to request the Chairman for the time being of the Arbitration Foundation of Southern Africa to make the appointment who, in making his appointment, shall have due regard to the nature of the dispute.
- 14.3.3                    The Parties may agree on the procedure to be followed prior to and during the arbitration, as well as the time and place of the arbitration hearing, provided that, failing such agreement, the arbitrator shall finally determine the procedure to be followed and shall fix the time and place for the arbitration hearing.
- 14.3.4                    The arbitrator shall determine the Dispute in accordance with the laws of the Republic of South Africa and shall have the same remedial powers as a court of law would have were it adjudicating the Dispute.
- 14.3.5                    Unless otherwise agreed in writing between the Parties, the arbitration shall be held in Johannesburg, Gauteng, in the Republic of South Africa.
- 14.3.6                    The arbitrator shall render his or her award together with written reasons therefore within a period of 2 (two) months from the date upon which the arbitration ends, and the award of the arbitrator shall be final and binding on the Parties.
- 14.3.7                    Subject to the other provisions of this clause 14, the arbitration shall be held in accordance with the provisions of the Arbitration Act, 1965 (as amended or replaced).



14.4 Nothing contained in this clause 14 shall preclude either Party from seeking any urgent interim relief from a court of competent jurisdiction.

14.5 Save as provided elsewhere in this Agreement, each Party shall bear its own costs in relation to this clause 14 Dispute Resolution

## 15. EXPERT DETERMINATION

15.1 Any matter or dispute to be determined pursuant to Expert Determination shall be referred to an independent, suitably-qualified person ("**the Expert**") nominated by the Parties jointly or, failing agreement between the Parties as to such nomination within 5 (five) Business Days of the need to refer the dispute to the Expert having arisen, on the application of either Party, by the Chairman for the time being of the Arbitration Foundation of Southern Africa (or any relevant replacement body).

15.2 In all cases, the terms of the appointment of the Expert include:

15.2.1 a commitment by the Parties to supply the Expert with any assistance, documentation and information that the Expert may require for the purposes of making his/her determination; and

15.2.2 a requirement on the Expert to furnish his/her determination within 21 (twenty-one) days, or such other period as may be agreed between the Parties, from the date on which the relevant dispute was referred to him/her for determination and to hold adequate professional indemnity insurance both then and for a period of 3 (three) years following the date on which the Expert's determination is made.

15.3 The decision of the Expert shall be final and binding on the Parties in the absence of negligence, manifest error, fraud or demonstrable bias on the Expert's part unless a Party, by written notice to the other given within 30 (thirty) days of the date of the Expert's decision, refers the matter or dispute to arbitration in accordance with the provisions of clause 14. The Expert shall act as an expert and not as an arbitrator.

15.4 Save as provided elsewhere in this Agreement, each Party shall bear its own costs in relation to the referral of a dispute to Expert Determination and the costs of the Expert shall be borne between the Parties as determined by the Expert.

15.5 Should the Expert refuse or fail for any reason whatsoever to make a determination within the period stipulated by the Parties in accordance with clause 15.2.2, either Party shall be entitled to refer the dispute to arbitration in accordance with the provisions of clause 14.

## 16. FORCE MAJEURE

- 16.1 The term “**Force Majeure Event**” means any event or circumstance listed but not limited to those in clause 16, provided that such Force Majeure Event:
- 16.1.1 is beyond the reasonable control of the Party affected by such Force Majeure Event (the “Affected Party”);
- 16.1.2 wholly or partially prevents or delays the performance by the Affected Party of its obligations under this Agreement; and
- 16.1.3 could not have been avoided by steps which might reasonably be expected to have been taken by the Affected Party.
- 16.2 The events and circumstances referred to in clause 16.1 are as follows:
- 16.2.1 fire, flood, atmospheric disturbance, lightning, storm, typhoon, tornado, tsunami, earthquake, landslide, soil erosion, subsidence, washout or epidemic or other acts of God;
- 16.2.2 war (whether declared or undeclared), riot, civil war, blockade, insurrection, acts of public enemies, civil disturbances, acts of terrorism and sabotage;
- 16.2.3 strike, lockouts, labour disputes or other industrial disturbances;
- 16.2.4 accidents of navigation or breakdown of or injury to vessels;
- 16.2.5 any law, order, rule or regulation of any governmental authority, or compliance with such law, order, rule or regulation or any act or failure to act of any governmental authority; or
- 16.2.6 any event or circumstance beyond the reasonable control of the Affected Party other than any Force Majeure Event listed above.
- 16.3 No Party shall be relieved from liability by reason of a Force Majeure Event from making timely payment of any monies otherwise due and payable under this Agreement.
- 16.4 The Affected Party shall be excused from performance of its obligations under this Agreement to the extent made necessary by a Force Majeure Event and during the continuance of such Force Majeure Event, and the Affected Party shall incur no liability by reason of its failure to perform the obligations so excused.
- 16.5 If any Force Majeure Event continues in effect for a period of more than 60 Business Days,

then the non-Affected Party shall have the right to terminate the individual Services affected by giving written notice to the Affected Party of such termination at any time prior to the cessation of such Force Majeure Event.

## 17. INTERPRETATION

### 17.1 General interpretation

For the purposes of this Agreement the following rules of interpretation shall apply, unless the context clearly requires otherwise:

- 17.1.1 a reference to any one gender, whether masculine, feminine or neuter, includes the other two;
- 17.1.2 any reference to a person includes, without being limited to, any individual, body corporate, unincorporated association or other entity recognised under any law as having a separate legal existence or personality;
- 17.1.3 any word or expression defined in, and for the purposes of, this Agreement shall if expressed in the singular include the plural and vice versa, and a cognate word or expression shall have a corresponding meaning;
- 17.1.4 references to a statutory provision include any subordinate legislation made from time to time under that provision and references to a statutory provision include that provision as from time to time modified or re-enacted as far as such modification or re-enactment applies, or is capable of applying, to this Agreement or any transaction entered into in accordance with this Agreement;
- 17.1.5 a "law" shall be construed as any law, common law, statute, constitution, decree, judgment, treaty, regulation, directive, by-law, order or any other legislative measure or enactment of any government, local government, statutory or regulatory body or court and shall be deemed to include the rules and other requirements of any applicable stock exchange;
- 17.1.6 any reference in this Agreement to this Agreement or any other agreement, document or instrument shall be construed as a reference to this Agreement or that other agreement, document or instrument as amended, varied or substituted from time to time;
- 17.1.7 any word and expression defined in any clause shall, unless the application of the word or expression is specifically limited to the clause in question, bear the

meaning ascribed to the word or expression throughout this Agreement;

17.1.8 no rule of construction shall be applied to the disadvantage of a Party to this Agreement because that Party was responsible for or participated in the preparation of this Agreement or any part of it;

17.1.9 unless otherwise provided, any number of days prescribed shall be determined by excluding the first and including the last day or, where the last day falls on a day that is not a Business Day, the next succeeding Business Day; and

all the headings and sub-headings in this Agreement are for convenience only and are not to be taken into account for the purposes of interpreting it. where the words include(s), including or in particular are used in these terms and conditions, such words are deemed to have the words without limitation following them and where the context permits, the words other and otherwise are illustrative and shall not limit the sense of the words preceding them.

17.1.10 When any number of days is prescribed such number shall exclude the first and include the last day unless the last day falls on a Saturday or Sunday or a public holiday in the Republic of South Africa, in which case the last day shall be the next succeeding Business Day

## 17.2 Inconsistency between documents comprising this Agreement

Subject to clause 17.3, unless the contrary intention is expressed, if there is an inconsistency between any of one or more of: (i) this document; (ii) a Schedule; and (iii) a document expressly incorporated by reference in: (a) this document; or (b) a schedule, the order of precedence between them will be the order listed above, this document having the highest level of precedence.

## 17.3 Inconsistency between this Agreement and any Schedule

17.3.1 The terms and conditions of any Schedule must not be inconsistent with the terms and conditions of this Agreement unless otherwise agreed in writing by the Supplier and the Customer, or unless otherwise expressly permitted by this Agreement.

17.3.2 If there is an inconsistency between the terms and conditions of any Schedule and the terms and conditions of this Agreement which is not agreed in writing by the Customer and the Supplier, or which is not otherwise expressly permitted by this Agreement, the terms and conditions of this Agreement prevails.

**18. GENERAL**

- 18.1 Waiver. Any delay or waiver by any Party in exercising its rights under a Schedule or this Agreement does not limit or restrict the future exercise or enforceability of those rights.
- 18.2 No Partnership, Agency or Joint Venture. The Parties agree that this Agreement and a Schedule does not constitute any kind of partnership, agency or joint venture between them.
- 18.3 Communications between the Parties. All notices, demands and other oral or written communications given or made by or on behalf of any Party to the other Party or any of them shall be in English or accompanied by a certified translation into English.
- 18.4 Remedies. No remedy conferred by this Agreement is intended to be exclusive of any other remedy that is otherwise available under any law. Each remedy shall be cumulative and in addition to every other remedy given under this Agreement or under any existing or future law. The election of any one or more remedy by any of the Parties shall not constitute a waiver by such Party of the right to pursue any other remedy.
- 18.5 Severance. If any provision of this Agreement, which is not material to its efficacy as a whole, is rendered void, illegal or unenforceable in any respect under any law, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby and the Parties shall endeavour in good faith to agree an alternative provision to the void, illegal or unenforceable provision.
- 18.6 Survival of Rights, Duties and Obligations. Termination of this Agreement for any cause shall not release a Party from any liability which at the time of termination has already accrued to such Party or which thereafter may accrue in respect of any act or omission prior to such termination.
- 18.7 Entire Agreement. This Agreement contains the entire agreement between the Parties and supersedes any prior written or oral agreement between them in relation to the matters dealt with in this Agreement. Save as expressly provided for in this Agreement, none of the Parties shall have any claim or right arising from any undertaking, representation or warranty not included in this Agreement.
- 18.8 Non-variation. Save as otherwise expressly provided, no agreement to amend, add to or otherwise vary or waive any of the provisions of this Agreement or to cancel or terminate it shall be effective unless made in writing and duly signed by the Parties or on their behalf by their duly authorised agents.

- 18.9 Assignment. Save as otherwise expressly provided in this Agreement, neither of the Parties may cede or delegate this Agreement or any of its rights and obligations under it without the prior written consent of the other Party which shall not unreasonably be withheld..
- 18.10 Costs. Each Party must pay its own costs and expenses in relation to the negotiation, preparation, execution, delivery, stamping, registration, completion, variation and discharge of this Agreement.
- 18.11 Further Assurance. Each Party shall co-operate with the other Parties and execute and deliver to the other Parties such other instruments and documents and take such other actions as may be reasonably requested from time to time in order to carry out, evidence and confirm that Party's rights and the intended purpose of this Agreement.
- 18.12 Publicity. The Parties shall not publish or disclose the existence of this Agreement or the Products or Services supplied without the prior written consent of the other Party, except to the extent that such disclosure is necessary for the performance of the Services or is required by law.
- 18.13 Counterparts. This Agreement may be signed in any number of counterparts, all of which taken together shall constitute one and the same instrument. Either Party may enter into this Agreement by signing any such counterpart.
- 18.14 Successors Bound. This Agreement shall be binding on and shall inure for the benefit of the successors and permitted assigns and personal representatives (as the case may be) of each of the Parties.
- 18.15 Good Faith. Each of the Parties undertakes with each of the others to do all things reasonably within its power which are necessary or desirable to give effect to the spirit and intent of this Agreement.
- 18.16 Governing Law. The validity of this Agreement, its interpretation, the respective rights and obligations of the Parties and all other matters arising in any way out of it or its expiration or earlier termination for any reason shall be determined in accordance with the laws of Republic of South Africa.

## 19. NEUTRAL CONSTRUCTION , EXCLUSION OF THE *CONTRA PROFERENTEM* RULE

- 19.1 The Parties hereby acknowledge that this Agreement was negotiated fairly between them at arm's length and that the final terms are the product of the Parties negotiations and

accordingly the provisions of this agreement shall not be construed against a Party on the grounds that such a Party drafted or was responsible for drafting any or the majority of the provisions.

## 20. ADDRESSES FOR LEGAL PROCESS AND NOTICES

20.1 The Parties choose, for the purposes of this Agreement, the addresses and telefax numbers specified below:

20.1.1	The Supplier	Physical: Concorde House, Nollsworth Crescent, La Lucia, Durban, 4001 Phone : 031 566 1525 For Attention of Managing Director: Shane Morrow Email: shanem@psiservices.co.za
	The Customer:	Physical: Phone: For Attention: Email:

20.2 Any legal process to be served on the Parties may be served on it at the address specified for it in clause 20.1 and it chooses that address as its *domicilium citandi et executandi* for all purposes under this Agreement.

20.3 Any notice or other communication to be given to the Parties in terms of this Agreement shall be valid and effective only if it is given in writing, provided that any notice given by e-mail shall be regarded for this purpose as having been given in writing.

20.4 A notice to any Party which is delivered to the Party by hand at that address shall be deemed to have been received on the day of delivery, provided it was delivered to a responsible person during ordinary business hours.

20.5 Each notice by e-mail to a Party at the e-mail address specified for it in clause 20.1 shall be deemed to have been received (unless the contrary is proved) within 24 (twenty-four) hours of transmission if it is transmitted during normal business hours of the receiving Party or within 48 (forty-eight) hours of the beginning of the next Business Day after it is transmitted, if it is transmitted outside those business hours.

20.6 Any Party may by written notice to the other Parties change its address for the purposes of clause 20.1 to any other address (other than a post office box number) provided that the change shall become effective on the 7<sup>th</sup> (seventh) day after the receipt of the notice.

SIGNED at \_\_\_\_\_ on \_\_\_\_\_ 2016

For: **Uniteam investments 101 (PTY) Ltd**

\_\_\_\_\_  
Signatory: Bhupesh (Nick) Dhaya

Capacity: Chief Operating Officer

Authority: Board mandate

Witness for PSI: \_\_\_\_\_

SIGNED at \_\_\_\_\_ on \_\_\_\_\_ 2016

For: **Customer**

\_\_\_\_\_  
Signatory:

Capacity:

Authority:

Witness for Customer \_\_\_\_\_