



## **Customer Relationship Terms and Conditions**

**Entered into between:**

**PREBO DIGITAL (PTY) LTD**

**Registration Number: 2016/198871/07**

**(Hereinafter referred to as “us/we/our”)**

**and**

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**Registration Number/ ID Number: \_\_\_\_\_**

**(Hereinafter referred to as “you/ your”)**

The terms and conditions contained in this Agreement govern the relationship between us and you. The terms and conditions contained herein are applicable to any transactions where we provide services to you. If there is any conflict between these terms and conditions and the order, the terms and conditions as contained in the order shall prevail.

## 1. Definitions:

1. **“Additional fee”** means an amount payable by you for the supply of any services not specifically stipulated in the order;
2. **“AFSA”** means the Arbitration Foundation of Southern Africa (or its successor in title);
3. **“Agreement”** means this Customer Relationship Terms and Conditions entered into between us and you, including any orders the parties enter into;
4. **“Business day”** means any day other than a Saturday, a Sunday, or a public holiday in the Republic of South Africa;
5. **“Business hours”** means Prebo Digital (Pty) Ltd’s normal business hours on business days;
6. **“Control panel”** means a **web**-based interface provided by us that allows you to manage our services in a single place;
7. **“Effective date”** means the date specified in each separate order. If no such date is specified in an order the effective date will be the date on which the order is accepted by us;
8. **“Existing material”** means any code, forms, algorithms or materials developed by or for either party independently and outside of the agreement and provided during the course of the agreement;
9. **“Fees”** mean the amounts and/or consideration that you will pay to us in respect of services we render to you;
10. **“Inception month”** means the month in which we begin to provide the service to you;
11. **“Order”** means an order for specific services which has been agreed to and has been signed by both parties hereto;
12. **“Our Technology”** means any technology created or acquired by Prebo Digital (Pty) Ltd or in which Prebo Digital (Pty) Ltd otherwise has rights in and may, in connection with the performance of its obligations under the agreement, employ, provide, modify, create or otherwise acquire rights in and includes any: concepts or ideas; methods or methodologies; procedures or processes; know-how or techniques; function, process, system, data, or object models; templates; the generalised features of the structure, sequence and organisation of software, user interfaces and screen designs; general purpose consulting and software tools, utilities, routines or frameworks; logic, coherence and methods of operation of systems; and patches or enhancements to open source libraries;
13. **“Parties”** mean both you and us;
14. **“Party”** means either one of us or you as the context may indicate;

15. **Personnel** means any director, employee, agent, affiliate, consultant, contractor or representative;
16. **“related”** and **“related persons”** means natural and juristic persons who are connected to one another in the manner contemplated in sections 2 and 3 of the Companies Act 71 of 2008;
17. **Services** means the services we provide to you;
18. **“Sign”** means the handwritten signature, an advanced electronic signature, or an electronic signature of a duly authorised representative;
19. **“Signature date”** means the date of signature by the party signing last in time;
20. **Tax** means any:
  - 20.1. tax (including value added tax, income taxes, pay-as-you-earn tax or other taxes levied in any jurisdiction);
  - 20.2. duty (including stamp duty);
  - 20.3. tariff, rate, levy; or
  - 20.4. any other governmental charge or expense payable;
21. **“Third party contractor”** means any supplier of part of the services where such supplier is not a party to this agreement;
22. **“Third party software”** means software owned by a third party but legally licensed to us for use in providing the services;
23. **“Writing”** means the reproduction of information in physical form or electronic form, but excludes information or data in the form of e-mail;
24. **“Your data”** means any data that you provide to us and/or any data that we generate, process or supply to you in providing the services, but excludes data that we create for our own internal purposes or which is proprietary or confidential to us;

## 2. Interpretation:

1. The headings of the clauses in this Agreement are for the purpose of convenience and reference only and shall not be used in the interpretation of nor modify nor amplify the terms and conditions of this Agreement nor any clause hereof. Unless a contrary intention clearly appears.
2. Words importing:
  - 2.1. Any one gender include the other genders;
  - 2.2. The singular includes the plural and vice versa; and
  - 2.3. Natural persons include created entities (corporate or unincorporated) and the state and vice versa.

## 3. Duration:

This Agreement commences on the date of signature of this Agreement by the party signing last in time and remains in force in respect of all orders between the Parties until such date as this Agreement is cancelled or terminated. Where the duration of this agreement is specified in an order and in the event that you are a “Consumer” for the purposes of the Consumer Protection Act, you may terminate the relevant service prior to the expiry of the term on 20 business day’s written notice to us and we may charge you an early termination fee.

## 4. Orders:

1. By entering into this Agreement and by placing an order, you warrant that you are legally capable and possess the authority to enter into this Agreement.
2. The marketing of our services constitutes an invitation to do business or for you to make an offer to procure our services.
3. The order will only become valid and binding once we have accepted the offer made by you. Such acceptance need not be communicated to you. The order will be deemed to have been entered into at the place where your head office is situated.
4. An offer made by you is only deemed to have been accepted by us once we begin providing the services to you.
5. We may in our own discretion accept or reject any offer.
6. Any fees paid by you will be refunded to you if we reject your offer prior to the commencement of rendering services to you.
7. You will be deemed to have placed an order for services once you start utilizing any of our services.
8. We may in our absolute discretion cancel any order at any time for any reason whatsoever.
9. The fees payable by you will be confirmed on our acceptance of your offer.
10. Each order will constitute a separate agreement and the terms and conditions contained in this Agreement shall be applicable to each order. We may consider the breach of any one order to constitute a breach of any or all orders.

#### **5. Website design and website development:**

1. We provide you with a Custom and open-source development solution for your website.
2. We carefully code to provide a faster page load time which also helps with the search engine optimization of your website.
3. We make use Google Analytics which helps us with page speed across all browsers.
4. We provide you with responsive design websites. We will make your website design and development user friendly, while making sure that your website conforms to Google's best and responds well to all devices, desktop, mobile and tablets. Unless you request otherwise.
5. Our services to you in respect of Website design and website development will continue until the project is finished.
6. Once you receive our invoice, you must either pay us the total amount immediately or you have the option of paying 50% (fifty percent) of the total amount immediately and the balance thereof to be paid upon completion.

#### **6. Website maintenance:**

1. We will provide you with website maintenance which includes, but is not limited to, Content updates; Bug fixes; Small front-end changes and Security updates.

2. Any additional website changes will be quoted for separately at a rate of R500 per hour (excluding VAT).
3. We will also ensure that the links on your website function properly.
4. The website maintenance order between you and us will constitute a 12 (twelve) month agreement.
5. You may cancel the website maintenance order 60 (sixty) calendar days prior to the end of the 12 (twelve) month period. If the website maintenance order is not cancelled as aforesaid, the order for website maintenance will be reinstated automatically for another 12 (twelve month) period. You may cancel the website maintenance order at any time after the expiry of 6 (six) months of the effective date of the website maintenance order by giving 60 (sixty) calendar days written notice to us.

## 7. Search Engine Optimisation (SEO):

1. Search Engine Optimisation assists your website to become naturally accessible to a search engine when users search for your products or services. We provide you with our SEO solutions are aimed at improving your rankings in various search engines.
2. The optimisation we provide will help your website rank higher in natural or organic search results.
3. The service we provide will improve your possibility of sale and / or lead conversions. We encourage you to use both paid search (SEM) and organic search (SEO) marketing campaigns to improve your conversions.
4. We will provide you with a quote for our Search Engine Optimisation services. Once we receive the signed quote from you, we will invoice you. Once we receive payment of the total amount contained in the invoice, we will start rendering the service to you. Payment can be made by EFT or by Debit Order.
5. The Search Engine Optimisation order between you and us will constitute a 6 (six) month agreement as this is typically the period after which significant results will be measurable.
6. You may cancel the Search Engine Optimisation order 60 (sixty) calendar days prior to the end of the 6 (six) month period. If you do not cancel the Search Engine Optimisation order as aforesaid, the order for Search Engine Optimisation will be reinstated automatically for another 6 (six) month period. You may cancel the Search Engine Optimisation order at any time after the expiry of 3 (three) months of the effective date of the Search Engine Optimisation order by giving 60 (sixty) calendar days written notice to us.

## 8. Google AdWords (Google paid search):

1. We will provide Pay Per Click (Google AdWords) services to you to use as an online marketing (lead generation) tool.
2. We will run a keyword analysis on your industry and will assess various recommended keyword ideas.
3. You will be furnished with a monthly invoice. If payment of the full amount contained in the invoice is not received by the 1<sup>st</sup> day of the month following the invoice, the AdWords will stop automatically. AdWords will only resume once payment of the total amount contained in the invoice is received.
4. We accept no liability and you indemnify us in the event of the following:
  - 4.1. if Google changes its algorithm and you drop in rank; and/or
  - 1.1. if a third party commits click fraud on your AdWords by deliberately clicking on your ad to deplete your budget.
1. The AdWords order between you and us will constitute a 6 (six) month agreement as this is typically the period after which significant results will be measurable.

- 8.6 You may cancel the AdWords 30 (thirty) calendar days prior to the end of the 6 (six) month period. If the AdWords is not cancelled as aforesaid, the order for the AdWords will be reinstated automatically for another 6 (six) month period. You may cancel the AdWords at any time after the expiry of 3 (three) months of the effective date of the AdWords by giving 1 (one) calendar month's written notice to us on the first day of the month.

*E.g. if you cancel the contract on the 15th month of march you will be billed until the end of april.*

## **9. Social Media Advertising:**

1. We provide social media management to help you understand the demographics and patterns of your customer's and/or client's behavior, thereby enabling you to reach the right users with your marketing message. This includes but is not limited to Facebook, Twitter, Instagram, Pinterest, LinkedIn and YouTube.
1. If payment of the full amount contained in the invoice is not received by the 1<sup>st</sup> day of the month following the invoice, the Social Media Advertising will stop automatically. Social Media Advertising will only resume once payment of the total amount contained in the invoice is received.
2. We will provide you with a quote for our Social Media Advertising services. Once we receive the signed quote from you, we will furnish you with an invoice. Once we receive payment of the total amount contained in the invoice, we will start rendering the service to you. Payment to us can be made by EFT or by Debit Order.
1. The Social Media Advertising order between you and us will constitute a 6 (six) month agreement as this is typically the period after which significant results will be measurable.
3. You may cancel the Social Media Advertising order 30 (thirty) calendar days prior to the end of the 6 (six) month period. If the Social Media Advertising order is not cancelled as aforesaid, the order for the Social Media Advertising order will be reinstated automatically for another 6 (six) month period. You may cancel the Social Media Advertising order at any time after the expiry of 3 (three) months of the effective date of the Social Media Advertising order by giving 1 (one) calendar month's written notice to us on the first day of the month.

*E.g. if you cancel the contract on the 15th month of march you will be billed until the end of april.*

## **10. Social Media Marketing:**

1. We provide social media management to help you understand the demographics and patterns of your customer's and/or client's behavior, thereby enabling you to reach the right users with your marketing message. This includes but is not limited to Facebook, Twitter, Instagram, Pinterest, LinkedIn and YouTube. Social Media Marketing does not include Paid Advertising with a media budget but rather the setting up, maintenance and posting of organic content and reporting.
2. We will provide you with a quote for our Social Media Marketing services. Once we receive the signed quote from you, we will furnish you with an invoice. Once we receive payment of the total amount contained in the invoice, we will start rendering the service to you. Payment to us can be made by EFT or by Debit Order.
3. The Social Media Marketing order between you and us constitutes a 6 (six) month agreement as this is typically the period after which significant results will be measurable.
4. You may cancel the Social Media Marketing order 30 (thirty) calendar days prior to the end of the 6 (six) month period. If you do not cancel the Social Media Marketing order as aforesaid, the order for Social Media Marketing will be reinstated automatically for another 6 (six) month period.

## **11. E- Commerce Solutions:**

- 11.1 We provide assistance in building your online store.

- 11.2 We conduct research to help you understand the needs of your customers and/or clients.
- 11.3 We provide user-friendly architecture, functionality and navigation for your e-commerce solutions website.
- 11.4 We provide assistance in developing a good product catalogue and listing and promoting products on third party e-commerce portals.
- 11.5 The E-Commerce Solutions order between you and us constitutes a month to month agreement which includes Content uploads; Content management and Performance reporting.
- 11.6 We will not be liable for performance fluctuations due to 3rd party e-commerce portal changes in design, functionality, process or policy but will make our best attempt to inform you and provide potential alternative solutions of responding to such changes.
- 11.7 We will provide you with a quote for our E-Commerce Solution services. Once we receive the signed quote from you, we will furnish you with an invoice. Once we receive payment of the total amount contained in the invoice, we will start rendering the service to you. Payment to us can be made by EFT or by Debit Order.
- 11.8 If the quotation and service provided includes a software license to a third party e-commerce platform this will either be billed directly to you or as part of our service and quotation to you. If payment of the full amount contained in the quotation and/or invoice is not received by the 1<sup>st</sup> day of the month following the quotation and/or invoice, the E-Commerce Solutions will stop automatically. E-Commerce access will only resume once payment of the total amount contained in the invoice and/or quote is received.
- 11.9 You may cancel the E-Commerce Solutions order 60 (sixty) calendar days prior to the end of the 12 (twelve) month period or as stated by third party software licence agreement. Should you cancel the order as aforesaid the remaining balance for the 12 (twelve) month period will become due, owing and payable by you immediately.

## **12. Copyright Content Creation:**

1. We provide you with optimized copyright content creation to drive traffic to your website. We will brainstorm with you to determine what your website should represent and how it should be represented. We will then create uniquely written content for your business.
2. The Copyright Content Creation order between you and us constitutes a 6 (six) month agreement.
  1. Once you receive our invoice, you must pay us the total amount divided in equal instalments over a period of 12 (twelve) months on the first day of each successive month. Should you choose the 12 (twelve month) payment option as set out above and you fail to effect payment of any one instalment by due date, the entire amount payable ( for the entire 12 month period) will become due, owing and payable immediately and we will suspend your services.
  2. You may cancel the Copyright Content Creation order 30 (thirty) calendar days prior to the end of the 6 (six) month period. Should you cancel the order as aforesaid the remaining balance for the 6 (six) month period will become due, owing and payable by you immediately.

## **13. Analytical reporting and Dashboards**

1. Google Analytics reporting comes standard with all our products including a once-off setup fee. We use web analytics to measure, collect and analyze your website data. With this information we can optimize your website for search engine optimization. We provide accurate figures on how well your website is doing and we create custom reporting for you to help you understand the information you receive.
2. We also offer a monthly dashboard to you at a once-off setup fee, depending on the quoted and agreed package, combined with a monthly 12-month service agreement.

3. Once you receive our invoice, you must pay the total amount divided in equal instalments over a period of 12 (twelve) months on the first day of each successive month. Should you choose the 12 (twelve month) payment option as set out above and you fail to effect payment of any one instalment by due date, the entire amount payable ( for the entire 12 month period) will become due, owing and payable immediately.
1. You may cancel the Analytical reporting and Dashboards order 30 (thirty) calendar days prior to the end of the 12 (twelve) month period. Should you cancel the order as aforesaid the remaining balance for the 12 (twelve) month period will become due, owing and payable by you immediately.

#### 14. Services :

1. We will remain the legal owner of all services we render to you until you have paid us in full in respect of such services.
2. We grant you a limited, non-exclusive, non-transferrable, revocable right to use our services in accordance with the terms and conditions contained in this Agreement and the terms and conditions of any third party agreement. Any person wishing to use the services contrary to the terms and conditions in this Agreement or contained in any third party agreement must obtain our prior written consent to do so.
3. You hereby consent to us monitoring your use of the service for security purposes and to enable us to ensure that the service is always running and functioning as it should.
4. **Categories of Website Maintenance service request.**

Category	Description	Response time	Time to fix	Personnel
P1	It is inoperable or computes incorrectly and it threatens your ability to generate revenue.  You are losing money and there is no workaround. Includes a critical bug.	2 business hours	1 business day	Management
P2	Performance (throughput or response) is substantially degraded under reasonable loads, such that there is a severe impact on its use and it threatens your ability to generate revenue.  It is usable but materially incomplete - one or more mainline functions or commands are inoperable or incomplete and it threatens your ability to generate revenue.  You are losing money, but there is a workaround.	8 business hours	3 business days	Management
P3	It is usable or it does not threaten your ability to generate revenue, but there is a functional deficiency that does not fall within Level 1 or Level 2.  Includes an update, support, and non-critical Bugs.	24 business hours	5 business days	Management



P4	Enhancements.	Next meeting	Next scheduled release	Management
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- The parties may amend any service level in writing from time to time. Such amendment will only be valid and binding if such amendment is made in writing and signed by all parties to such service level.

#### 15. Changes:

- During the currency of a Website Development order, events may occur which require a change to the nature and scope of services. Once we hand over the website logins to you, we are at no point liable for any changes, damage or hacks whatsoever. Any changes or repairs that need to be made will be made at your cost and will be charged for at a rate of R800 per hour (excluding VAT).
- We build and develop the website within 30 calendar days based on the brief we receive from you. Once the website is built, you have the opportunity to request three changes by sending a scope change document to us within 15 business days of delivery of the website in which document you need to set out the details of the proposed changes and the reasons for such changes. We will investigate the impact of any proposed changes on the services and will furnish you with a scope change proposal, including amended pricing and time frames. You may accept or reject the scope change proposal in writing within three business days of your receipt of same. Should you accept the scope change proposal in writing and once we have received payment from you of the amended pricing we will implement the changes and thereafter the website will go live. Should you reject the scope change proposal the website will go live as is, without any changes being implemented.
- We will not proceed with any change to an order until the change and all matters relating to the change have been agreed in writing between you and us. Pending such agreement, the parties will continue to perform their obligations without taking any of the proposed changes into account.

#### 16. Data:

- You agree to indemnify, defend and hold us (including those related to us and our personnel) harmless against any responsibility and/or liability in respect of your data stored on our system.
- We are able to provide the website in multiple locations that are located in different countries. Your data will remain in whatever location you place it in, unless we have to transfer it across a country border to enable us to comply with our obligations under this agreement.
- Both Parties are responsible for complying with their obligations under the laws governing your data. You are responsible for determining the purpose and means of our processing of your data, including that processing will not place us in breach of any laws. You hereby agree and consent that we may transfer your data across a country border to enable us to comply with our obligations under this agreement. You are responsible for ensuring that any transfer of your data across a country border complies with the applicable laws.
- You hereby agree to indemnify, defend, and hold us (including those related to us and our personnel) harmless against any claim, demand, loss, damage, cost, or liability (including legal costs) arising out of or relating to you failing to comply with your obligations under this clause 16.
- We shall not unreasonably withhold information regarding your data and its processing from you, upon your request for same in order to comply with your obligations under this clause 16. Any such information will be furnished to you at your own cost.
- Both Parties will take reasonable precautions to preserve the integrity of your data and to prevent unauthorized access, loss of data or the corruption thereof.

1. On termination of any order, each party will return to the other party in the form in which it was received all of the other party's data or information provided to the party for the purpose of the performance of the relevant order.

#### **17. Intellectual Property:**

1. You retain ownership in and to all your data. We have no ownership over any third party content used as part of your website. All rights, title and interest (including intellectual property rights) in and to the content accessed through the website either belongs to you or to the applicable third party. You acknowledge that such content may be subject to copyright or protected under another law.
2. We do not source any images for you to use as part of your website.
1. When you upload your data to the website, you give us a worldwide license to use, host and store your data, solely for purposes of providing the services.
2. We own all right, title and interest in technology created and/or acquired by us or in which we have otherwise obtained rights ("our technology") and you will not acquire any right or interest in our technology.
3. We own all right, title and interest in all Search Engine Optimisation related information and you will not acquire any right or interest in any Search Engine Optimisation related information.
4. Our logo and sub-logos, marks, and trade names constitute our exclusive trademarks and you may not use them without our written consent. Any other trademark or trade name that may appear on our marketing material is the property of its respective owner.
5. Our services under this agreement may under no circumstances be modified, distributed, loaned, sold, assigned, rented, reverse engineerd, copied, reproduced, distributed or transferred by you.
6. Any breach of this clause 17 will be prosecuted to the fullest extent permissible under the applicable law.

#### **18. Confidential Information:**

1. The Parties must keep all information it receives from the other Party under this Agreement confidential ("Confidential Information")
2. The Parties shall only use the Confidential Information to comply with its obligations under this Agreement.
3. The Parties may only disclose the Confidential Information to its Personnel that need it
4. The Parties shall treat and safeguard the Confidential Information as private and confidential.
5. The Parties shall ensure the proper and secure storage of all Confidential Information.
6. The Parties shall not at any time without the prior written consent of the other Party disclose or reveal the Confidential Information to any other third party, except where required by law or any governmental, international or regulatory body.
7. The Parties shall not at any time use the Confidential Information to solicit or entice away or endeavour to solicit or entice away any suppliers to, customers of, or employees of the other Party.
8. On termination/cancellation of this Agreement, the Parties will give all originals and copies of the Confidential Information back to the other, alternatively the Parties will act with the Confidential Information, in accordance with a written notice delivered to it by the other Party.
9. Clauses 18.1 to 18.6 above does not apply to any information that:
  - 9.1. is at the time of disclosure, within the public domain and could be obtained by any person with no more than reasonable diligence;

- 9.2. comes into the public domain and could be obtained after such disclosure, otherwise than by reason of a breach of any of the undertakings contained in this clause 18;
  - 9.3. is, at the time of such disclosure, already within the possession of the Party, or it has been independently developed by the Party receiving the Confidential Information; or
  - 9.4. is subsequently provided to the Party by a person who has not obtained such information from the other Party to this Agreement, provided that, in any such case, such information was not obtained illegally or disclosed by any person in breach of any undertaking or duty as to confidentiality whether express or implied;
  - 9.5. is disclosed with the written approval of the other Party;
  - 9.6. is obliged to be reproduced Confidential Information under order of a court or government agency of competent jurisdiction.
- 1. You indemnify us and hold us harmless from and against any loss or damage that we may suffer because of a breach of this clause 18 by you and/or your employees and/or agents.
  - 1. This clause 18 is severable from the rest of this Agreement and shall survive the termination or cancellation of this Agreement for any reason whatsoever. This clause 18 shall remain valid and binding for a period of 5 (five) years after the termination or cancellation of this Agreement.

#### **19. Non-Solicitation:**

- 19.1 No party will, during the currency of this Agreement or for a period of 12 calendar months following termination and/or cancellation of this Agreement, directly or indirectly solicit, offer employment to, employ, or contract in any manner with any Personnel of the other party who were involved in the implementation or execution of this Agreement.

#### **20. Warranties:**

- 20.1 We and our Personnel possess the knowledge and the expertise to provide the services to you.
- 20.2 We employ a sufficient number of suitably qualified Personnel to provide the services to you.
- 20.3 The services will be provided to you in accordance with all applicable laws and regulations in the Republic of South Africa.
- 20.4 We have the legal right and authority to perform and exercise our rights under this Agreement.
- 20.5 You acknowledge and agree that you make use of our services at your own risk. The services will be provided to you on an "as is" and "as available" basis.
- 20.6 No representation, warranty or condition, whether express or implied, which is not expressly contained in this Agreement will be valid and binding on the Parties.
- 20.7 We accept no responsibility for and you agree to indemnify, defend and hold us harmless against any damages, claims or defect arising out of your negligence, your failure to follow our instructions or your misuse in respect of the services.
- 20.8 You warrant that you are entering into this Agreement of your own free will and that you have not been induced to enter into this Agreement by any prior representations, warranties or guarantees, except as expressly contained in this Agreement.
- 20.9 You indemnify us against any loss, claim by a third party or damage, including legal costs on attorney and own client scale that we may suffer as a result of your, your employees and/or your agent's breach of this clause 20.

#### **1. Payment of Fees:**

- 21.1 You must pay us the fees specified in the invoice/ quotation and/or order on the due date. All payments must be made without deduction, set off or demand and must be free from any exchange in currency.
- 21.2 We may cease the rendering of services to you until such time as the fees due to us have been paid by you in full.
- 21.3 Should you fail to effect any one payment on the due date, such arrear amount will accrue interest at a rate of 9% per annum, calculated from the due date until the date on which payment is received. Interest at a rate of 9% per annum on a claim for damages will also be payable by you, calculated from the date on which the damages were suffered.
- 21.4 We may in our sole discretion appropriate any payment received from you towards the satisfaction of any amount you owe to us.
- 21.5 You may not withhold the payment of any amount due and owing by you to us, for any reason whatsoever.
- 21.6 A certificate signed by us as to the existence of and the amount of your indebtedness to us will be prima facie proof of the contents and correctness thereof for the purpose of any proceedings in respect of this Agreement.
- 21.7 If we suspend the service or remove any goods supplied by us, you will pay the costs incurred by us as a result of our recommencing of the services or the re-installing of the removed goods.

## 2. Limitation of Liability:

1. To the extent permitted by applicable law, regardless of the form (whether in contract, delict or any other legal theory) in which any legal action may be brought against us, our maximum liability to you for direct damages will be an amount equal to the total fees already paid by you to us for the services related to the claim. The aggregate amounts for all claims will not be greater than the maximum amount.
2. In no event will we be liable to you for any indirect or consequential damages (including loss of profits) or losses of any kind arising from the agreement.
3. In no event will we be liable for any loss or damage suffered by you arising out of your breach of this agreement or any misrepresentation made by you or your Personnel.
4. In no event will we be liable for goods or services of a third party.

## 23. Cancellation:

23.1 In the event that either Party:

23.1.1 allows judgment that has been taken against it to remain unpaid for more than 7 (seven) days; or

23.1.2 is sequestrated or liquidated, or performs an act of insolvency in terms of the Insolvency Act 24 of 1936;

23.1.3 enters into a compromise with any of its creditors; or

23.1.4 being a natural person, dies, or being a juristic person undergoes a material restructure

then the other party may (without affecting any of its/his/her other rights) proceed with the cancellation of this Agreement with immediate effect and the infringing party will return at its/his/her costs, to the other Party within 7 (seven) business days of receipt of such termination all documentation and/or property in its/her/his possession belonging to the other Party and both Parties will make payment of any amount due and owing to the other Party within 7 (seven) business days of receipt of such termination arising out of this Agreement, without prejudice to any

rights which either Party may have in terms hereof and at law.

## 24. Breach:

24.1 Should any Party breach any of its/his/her obligations in terms hereof and persist in such breach for a period 20 (twenty) business days after written notice has been given to the other Party, the aggrieved Party shall be entitled without prejudice to any rights which it may have in terms hereof or at law, to:

24.1.1 an order for specific performance and damages; or

24.1.2 cancel this Agreement and claim damages.

24.2 If the aggrieved Party institutes legal action against the infringing Party or appoints collection agents to recover any amounts from the infringing Party in terms of this Agreement, the infringing will pay all costs as between Attorney and own Client, together with collection commission.

## 1. Suspension of your service:

25.1 Your right to use any of the services will be suspended by us immediately in the event of any of the following:

25.1.1 you attempt a service attack on any of the services;

25.1.2 you attempt to or you hack or break any security mechanism on any of the services;

25.1.3 that your use of the services, in our sole discretion, poses a security threat to us or any other user of the services;

25.1.4 your use of the services disrupts the services;

25.1.5 in the event of fraud in respect of your account;

25.1.6 that you are, in our sole discretion, using the services contrary to the law or for illegal purposes;

25.1.7 our provision of the services to you is prohibited by law.

## 2. Termination:

1. We are entitled to terminate this Agreement at any time by giving you notice in writing if the services are discontinued, the provision of the services could create an economic or technical burden or a material security risk for us. We are further entitled to terminate this Agreement in terms of this clause if the termination is necessary to comply with an applicable law or if the provision of the services to you has become impractical or unfeasible for any reason.
2. On the termination, cancellation or expiry of this Agreement the rendering of the services to you will cease, your access rights will no longer exist and your data will be erased.
3. The termination, cancellation, or expiry of this Agreement will not affect the enforceability of the terms that are intended to operate after the expiry, cancellation or termination.
4. On the termination, cancellation or expiry of this Agreement all amounts due to us for services rendered before the termination, cancellation or expiry of this Agreement will become due, owing and payable immediately.

## 27. Domicilium citandi et executandi:

27.1 The Parties choose their last known addresses as their chosen *domicilium citandi et executandi*

27.2 Any notice to any Party shall be addressed to such Party at its *domicilium citandi et executandi* as aforesaid and either sent by prepaid registered post (deemed to have been received unless the contrary is proved on the fourth business day after posting), or by confirmed delivery e-mail or facsimile (deemed to have been received unless proved to the contrary on the date of the successful transmission thereof if it is a business day, otherwise the next following business day), or by hand (deemed to have been received unless proved to the contrary on the date of delivery, provided such date is a business day or otherwise on the next following business day). Any notice actually received by the other Party shall be sufficient, despite the method or address of delivery.

27.3 Any Party shall be entitled, by notice to the other, to change its/her/his *domicilium citandi et executandi* to another address in the Republic of South Africa, provided that any notice of the change shall be given in writing to the other Party's *domicilium citandi et executandi* and shall only become effective 14 (fourteen) days after service of the notice in question.

## 1. Force Majeure

28.1 Neither of the Parties will be liable for failure to perform any of its/her/his obligations if it proves:

- 28.1.1 that the failure was due to an impediment beyond its/her/his control;
- 28.1.2 that it/her/he could not reasonably be expected to have taken the impediment and its effects upon the Party's ability to perform into account at the time of the conclusion of this Agreement; and
- 28.1.3 that it/he/she could not reasonably have avoided or overcome the impediment or at least its effects.

28.2 An impediment, includes but is not limited to:

- 28.2.1 war, whether declared or not, civil war, civil violence, riots and revolutions, acts of sabotage;
- 28.2.2 natural disasters such as violent storms, cyclones, earthquakes, tidal waves, floods, destruction by lightning;
- 28.2.3 explosions, fires, destruction of machines, of factories and of any kind of installations;
- 28.2.4 boycotts, strikes and lock-outs of all kinds, go-slows, occupation of factories and premises and work stoppages;
- 28.2.5 acts of authority, whether lawful or unlawful, apart from acts from which the Party seeking relief has assumed the risk by virtue of any other provisions of this Agreement.

28.3 For the purposes of this clause "impediment" does not include lack of authorisations, of licenses, of permits or of approvals necessary for the performance of this Agreement.

28.4 Relief from liability for non-performance under this clause 28 will start on the date which the Party seeking relief gives notice of the impediment and will stop on the date when the impediment ceases to exist, provided that if the impediment continues for a period of more than 60 (sixty) days either of the Parties will be entitled to cancel this Agreement by written notice to the other.

## 2. Assignment and Subcontracting:

29.1 No Party shall be entitled to assign, cede, delegate or transfer any rights or obligations under this Agreement, in whole or in part, to any other party or person without the prior consent of the other Party. Notwithstanding the aforesaid we may assign, cede delegate or transfer any rights or obligations under this Agreement to any related person, any successor or purchaser of our business or some of our assets without your consent.

29.2 We shall at all times be entitled to engage contractors or sub-contractors to carry out all or any of our obligations under this Agreement;.

## 3. Relationship:

1. Nothing in this Agreement will be construed as constituting a temporary employment service or as creating a partnership between the Parties hereto and no Party will have any authority to incur any liability on behalf of the other Party or to pledge the credit of the other Party. Each Party enters into this Agreement as an Independent Contractor. The agreement does not create any other relationship, including an employment relationship for any purpose, partnership, agency, trust or joint venture relationship.

## 31.General:

31.1 This Agreement constitutes the whole agreement between the Parties and supersedes all prior verbal or written agreements, understandings or representations by or between the Parties regarding the subject matter of this Agreement. The Parties will not be entitled to rely, in any dispute regarding this Agreement, on any terms, conditions or representations not expressly contained in this Agreement.

- 31.2 No variation of or addition to this Agreement will be of any force or effect unless reduced to writing and signed by or on behalf of the Parties.
- 31.3 We will notify you of any changes to any third party software license terms by placing a notice in a prominent place on our website, or notifying you by email. The updated third party software license terms will be effective immediately and you will be deemed to have accepted them upon notification. If you do not agree with the changes, you must stop using the service. If you continue to use the service following notification of a change, the changed terms will apply to you and you will be deemed to have accepted them.
- 4. No indulgence, leniency or extension of a right, which either of the Parties may have in terms of this Agreement, and which either Party ("the grantor") may grant or show to the other Party, shall in any way prejudice the grantor, or preclude the grantor from exercising any of the rights that it/he/she has derived from this Agreement, or be construed as a waiver by the grantor of that right.
- 5. No waiver on the part of either Party to this Agreement of any rights arising from a breach of any provision of this Agreement will constitute a waiver of rights in respect of any subsequent breach of the same or any other provision.
- 6. In the event that any of the terms of this Agreement are found to be invalid, unlawful or unenforceable, such terms will be severable from the remaining terms, which will continue to be valid and enforceable.
- 7. The validity and interpretation of this Agreement will be governed by the laws of the Republic of South Africa.
- 8. Both Parties consent to the jurisdiction of the Magistrate's Court in respect of any action or proceedings which may be brought against either of them by the other; provided that either Party shall be entitled to bring any proceedings in the High Court where such proceedings would, but for this consent, fall outside the jurisdiction of the Magistrate's Court.
- 9. We may provide any goods or services to any other person or entity. We may exploit our intellectual property subject to our confidentiality obligations.
- 1. Each party is responsible for its own costs of drafting and negotiating this agreement.

SIGNED AT \_\_\_\_\_ on this the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_ in the presence of the undersigned witnesses.

**AS WITNESSES:**

1. \_\_\_\_\_

\_\_\_\_\_  
For and on behalf of the Prebo Digital (Pty) Ltd,  
he/she being duly authorized hereto

2. \_\_\_\_\_

Name: \_\_\_\_\_

Position: \_\_\_\_\_

**AS WITNESSES:**

\_\_\_\_\_

1. \_\_\_\_\_

2. \_\_\_\_\_

For and on behalf of \_\_\_\_\_,  
he/she being duly authorized hereto

Name: \_\_\_\_\_

Position: \_\_\_\_\_