

**OPENCOLLAB SERVICES ARE SUBJECT TO THESE GENERAL TERMS AND CONDITIONS
PLEASE READ THESE TERMS AND CONDITIONS CAREFULLY BEFORE MAKING USE OF OUR SERVICES.**

1. HOW THE CONTRACT IS FORMED

- 1.1 No electronic signature is required to conclude the contract between the Customer and OPENCOLLAB; the mere clicking on “I accept” or “Submit”, or submission of the Customer’s email, or other similar, instruction to OPENCOLLAB to commence with the Services demonstrates the Customer’s acknowledgement and agreement to these General Terms and Conditions and any Services Specific Terms that may apply for purposes of the Services under quotation.
- 1.2 **By Clicking on “accept” or “submit” or submitting an email, or similar, communication with instructions to proceed with the Services, the user acknowledges that:-**
- (a) He/she is 18 years and older;
 - (b) He/she is authorised to act on behalf of the Customer;
 - (c) He/she has read the General Terms and Conditions;
 - (d) He/she agrees to the General Terms and Conditions on behalf of the Customer; and
 - (e) The Customer will be bound by these General Terms and Conditions when utilising the Services made available by OPENCOLLAB; and
 - (f) **If he/she is not authorised to act on behalf of the Customer, that he/she will be personally bound by these General Terms and Conditions and that all references to ‘Customer’ will be amended to the ‘user’.**
- 1.3 **Invitation to do business:** presentation of the Services is OPENCOLLAB’s invitation to the Customer to do business;
- 1.4 **The Offer:** the Customer’s order (“Order”) and submission of same to OPENCOLLAB, constitutes an offer by the Customer to use the Service(s).
- 1.5 **Acceptance of the Customer Order:** OPENCOLLAB’s acceptance of each Customer Order will take place at OPENCOLLAB Premises on receipt of the Customer Order and when OPENCOLLAB sends the Customer an email, or other similar, confirmation of OPENCOLLAB’s acceptance, at which point a contract will come into existence between the Customer and OPENCOLLAB (“**Effective Date**”) in terms of the specific Services selected by the Customer. It is important to take note that the version of the General Terms and Conditions applicable on the day of the Customer’s receipt of OPENCOLLAB’s acceptance of the Offer, shall apply to the selected Service(s).
- 1.6 **The following documents/agreements/policies are hereby incorporated by reference into these General Terms and Conditions:-**
- (a) **Service Schedule** (as selected at time of agreeing to the General Terms and Conditions).
 - (b) **Acceptable Use Policy:** sets out what the Authorised Users and End Users may and may not do while using OPENCOLLAB’s Services (available at: <https://www.opencollab.co.za/legal/>).
 - (c) **Privacy Policy:** this policy describes who our information officer / data protection officer (for purposes of the GDPR) is, how we process personal data during the use of the Services and the rights of data subjects in terms of any personal data we may have under our control (available at: <https://www.opencollab.co.za/legal/>).
 - (d) **API Policy:** this policy describes the usage of Services APIs (available at <https://opencollab.atlassian.net/wiki/spaces/SP/pages/10470359072/API+Usage+Policy>)

2. INTERPRETATION

- 2.1 The definitions and rules of interpretation in this clause apply in this agreement.
- (a) **Activate or Activation:** as stated under clause 6.9;

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- (b) **Activation Date:** the date that the Subscription Services are Activated, as described under clause 6.9;
- (c) **Administrator** means an Authorised User in the Customer's employ who is authorised to provision, manage, and administer certain parts of the Services, as named in writing from time to time by the Customer;
- (d) **Affiliate** means in relation to any person, any Holding or Subsidiary Undertaking of the such person;
- (e) **Agreement:** these General Terms and Conditions, the documents/agreements/policies as reflected above and incorporated by reference and all annexures, appendixes and schedules attached hereto as amended from time to time for any or all Services accepted at a particular point in time between the parties;
- (f) **Acceptable Use Policy** means the set of rules and guidelines made available by OPENCOLLAB at <https://www.opencollab.co.za/legal>, or such other website as may be indicated by OPENCOLLAB from time to time to guide Users in the fair use of the Services;
- (g) **API** means application programme interface.
- (h) **API Policy** means the set of guidelines for the fair use of Services APIs made available by OPENCOLLAB for the customer to use. Such document may be amended by OPENCOLLAB in its sole discretion from time to time;
- (i) **Applicable Laws** means all law applicable in South Africa, and includes any present or future constitution, decree, judgment, legislation, order, ordinance, regulation, statute, treaty, directive, rule, guidance or code, practice note issued by any relevant authority or regulatory body and, if applicable, Data Protection Legislation;
- (j) **Authorised Users:** those employees, agents and independent contractors of the Customer or such third parties that may assist the Customer in the management and/or execution of its duties and who are authorised by the Customer to use the Services and the Documentation.
- (k) **Business Day:** a day other than a Saturday, Sunday or public holiday in the Republic of South Africa.
- (l) **Business Rule and Gap Report:** A report of Customer business rules mapped to available Software features and configurations that is drafted as part of the requirement mapping session of the Enabling and Implementation Phase;
- (m) **Confidential Information:** any information of proprietary and confidential nature which has been or may be obtained by either party from the other party pursuant to this Agreement, whether in writing or in electronic form or pursuant to discussions between the Parties or which can be obtained by examination, testing, visual inspection or analysis, including without limitation, scientific, business or financial data, know-how, formulae, processes, designs, sketches, photographs, plans, drawings, specifications, sample reports, models, Customer lists and details or information, price lists, studies, findings, computer software, inventions or ideas, Personal Information and agreed Fees between the Parties. For the avoidance of doubt, Confidential Information is inclusive of any intellectual property that either Party may disclose to the other pursuant to this Agreement;
- (n) **Contract:** see clause 1.5 above, which will form a separate and binding contract between the Parties;
- (o) **Customer:** means the customer or any of its Affiliates as detailed in the Party Schedule;
- (p) **Customer Data:** the data inputted by the Customer, Authorised Users, End Users or OPENCOLLAB on the Customer's behalf for the purpose of using the Services or facilitating the Customer's use of the Services (including but not limited to Personal Information).
- (q) **Customer Trade Marks** means the trade marks as stated under the relevant Service Schedule;
- (r) **Data Protection Legislation:** see the Privacy Policy;
- (s) **Deemed to Be Accepted:** see clause 6.5;
- (t) **Documentation:** the document(s) made available to the Customer by OPENCOLLAB via its website or during delivery of the Services which sets out a description of the Services and the user instructions for the Services, which documentation may be amended from time to time by OPENCOLLAB without compliance to clause 33.2.
- (u) **Effective Date:** see clause 1.5 above;

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- (v) **Enabling and Implementation Phase:** the period during which the Enabling and Implementation Services take place, prior to the Subscription Commencement Date;
- (w) **Enabling and Implementation Services:** the services associated with certain Subscription Services as stated under the relevant Service Schedule (for example configuration required for activation of the Services) and are required to be executed prior to the Subscription Commencement Date;
- (x) **End User Interface** means any user interface made available by OPENCOLLAB or the Customer or any Third Party Service Provider to the End Users, which user interface integrates with the Services;
- (y) **End Users** means the Customer's customers permitted to use the Services and the Documentation as described in this Agreement and Documentation;
- (z) **End User Services** means the subset of the Services provided by the Customer to the End Users by making use of OPENCOLLAB Services via any End User Interface.
- (aa) **Enhancement** means additions, amendments, customisation (adaptation to fit a Party's business) or modifications to a Party's existing IPR including but not limited the following in terms of software: a patch or fix that corrects bugs or errors in software, increases its protection against unauthorised penetration, maintains interoperability with relevant operating systems and other software, or which otherwise improves its performance, security or interoperability or functionality;
- (bb) **Fees and/or Subscription Fees:** the fees payable by the Customer to OPENCOLLAB for the Services, which entitle Authorised Users and End Users to access and use the Services and the Documentation in accordance with this agreement, as set out under the relevant Service Schedule.
- (cc) **GDPR:** see the Privacy Policy.
- (dd) **Holding company:** as defined in the Companies Act of 2008;
- (ee) **Initial Term:** the initial term of the Subscription Services as stated in the relevant Service Schedule;
- (ff) **Intellectual Property Rights or "IPR":** all patents, copyrights, design rights, trade marks, service marks, trade secrets, know-how, database rights (where applicable), look and feel of any service or product (as may be published or not) and other rights in the nature of intellectual property rights (whether registered or not) and all applications for the same which may now or in the future subsist anywhere in the world, including the right to sue for and recover damages for past infringements.
- (gg) **Malware** means any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.
- (hh) **Normal Business Hours:** 8:00am to 5:00pm SAST, each Business Day.
- (ii) **Pattern Data:** non-personally identifiable information, data and reports derived from or compiled through the Services, including but not limited to demographics data, mobility patterns, location data and trend data such as aggregated data and statistics indicating frequency of use and popularity of the Services. For greater certainty, Pattern Data is data that does not identify a specific Authorised User or End User and is data which does not relate to a specific customer's business (including data relating to a specific customer's locations that receive the Services).
- (jj) **Personnel** means the employees or contractors of OPENCOLLAB designated by OPENCOLLAB to perform Services;
- (kk) **Privacy Policy:** the privacy policy (as amended) available from the OPENCOLLAB website from time to time;
- (ll) **Project Plan:** the agreed plan for Enabling and Implementation Services to be conducted prior to the Initial Subscription term, as agreed to between the parties in writing;

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- (mm) **Services** means the services to be provided and performed by OPENCOLLAB and/or any of its Affiliates from time to time in terms of a Service Schedule, including (but not limited to) the Enabling and Implementation Services (where applicable), Subscription Services or any other associated services;
 - (nn) **Service Levels** means the levels as stated under the Support Services Policy;
 - (oo) **Service Schedule:** the Service Specific Terms and the Service details, including but not limited to the commencement and duration of the Enabling and Implementation Phase, the commencement of the Subscription Services, pricing, support and maintenance services associated with the Service and other commercial terms.
 - (pp) **Service Specific Terms:** means those terms and conditions specific to a specific Service as selected by the Customer;
 - (qq) **Signature Date** means the date the last signatory has signed a Service Schedule;
 - (rr) **Software:** the online software program / application(s) provided by OPENCOLLAB to enable the Customer to utilise the Services;
 - (ss) **Subscription Commencement Date:** shall be the Activation Date, being the date that the Subscription Services are Activated;
 - (tt) **Subscription Services** means those services as made available by OPENCOLLAB from time to time, where the Customer shall pay to OPENCOLLAB a subscription fee as per the agreed frequency for utilisation of the Services;
 - (uu) **Subsequent Term:** the period as confirmed under clause 4.3;
 - (vv) **Subsidiary:** has the meaning determined in accordance with section 3 of the Companies Act of 2008;
 - (ww) **Subscription Services Term:** means the Initial Term together with any Subsequent Term.
 - (xx) **Support Services Policy:** OPENCOLLAB's policy for providing support in relation to the selected Services as made available under the Service Schedule. Such document may be amended by OPENCOLLAB in its sole discretion from time to time.
 - (yy) **Transaction:** shall be as defined / stated under the relevant Service Schedule where Subscription Fees are transaction based;
 - (zz) **Updates** means incremental enhancements, patches, bug fixes and error fixes to the Software that are signified by version number changes to the right of the decimal point. For example, version 4.10, 4.20;
 - (aaa) **Upgrades** means versions of the Software that include new major features and significantly improved functionality, and which are signified by version number changes to the left of the decimal point. For example, version 5.0, 6.0.
- 2.2 Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.
- 2.3 A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality) [and that person's legal and personal representatives, successors or permitted assigns].
- 2.4 References to "**Days**" are references to normal calendar days unless specifically stipulated as being Business Days.
- 2.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 2.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 2.7 A reference to a statute or statutory provision is a reference to it as it is in force as at the date of the Contract and subsequent amendments.
- 2.8 A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of this agreement under that statute or statutory provision.
- 2.9 The rule of construction that the agreement shall be interpreted against the Party responsible for the drafting or preparation of the agreement shall not apply.

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2.10 References to clauses and schedules are to the clauses and schedules of this agreement; references to paragraphs are to paragraphs of the relevant schedule to this agreement.

3. STATUS AND PRECEDENCE

3.1 The Agreement applies to all Services ordered from OPENCOLLAB by the Customer.

3.2 Except where specifically provided to the contrary in a Service Schedule and then only to the extent so specified, each Service Schedule shall be a separate and legally binding contract (“Contract”) under which the Customer Contracting Party agrees to acquire, and OPENCOLLAB agrees to supply certain Services on the terms set out in the Agreement and the Service Schedule. Insofar as any term and condition in a Service Schedule conflicts with this General Terms and Conditions in respect of-

- (a) the description of Services (including but not limited to pricing, invoicing and payment terms, specifications), the description in the Service Schedule shall prevail;
- (b) the Term and/or Termination Notice period of a Subscription Service, the Term and Termination Notice period in the Service Schedule shall prevail;
- (c) any other matter, the General Terms and Conditions shall prevail.

3.3 **Conflicts with body of Service Schedule:** Unless otherwise stated in a Service Schedule, insofar as the meaning of any term or condition in a schedule or annexure to a Service Schedule or any other document referred to in a Service Schedule, conflicts with the meaning of the body of the relevant Service Schedule, the meaning of the terms and conditions in the body of the relevant Service Schedule shall prevail.

3.4 **Service Schedule amendment:** The terms of one Service Schedule will only apply to another Service Schedule to the extent specifically and expressly stated therein but to the extent that any Service Schedule expressly overrides the provisions of the General Terms and Conditions, such amendment will be effective only in respect of that Service Schedule and not any other Service Schedule.

4. TERM

4.1 The Agreement shall commence on the Effective Date and shall remain in force until the Agreement is terminated (clause 24) or until all Services under the Agreement have been terminated, cancelled or have expired as stated below.

4.2 Each Service Schedule will confirm the applicable Enabling and Implementation Phase commencement date and duration – see clause 6 below;

4.3 Each Subscription Service shall commence on the Subscription Commencement Date and endure until the end of the Initial Term as agreed under each Service Schedule, where after it will automatically renew on an annual basis for a subsequent term of 12 months “**Subsequent Term**”;

4.4 The Customer may during the Initial Term of any Subscription Service, terminate the particular Subscription Service at the end of the Initial Term of that Subscription Service by way of at least 90 (ninety) days prior written notice (“**Termination Notice**”), or as otherwise stated in the relevant Service Schedule.

4.5 Where the Customer has not terminated a Subscription Service in accordance with clause 4.4 above, the Customer may during any Subsequent Term and without cause, subject to a 90 (ninety) days written notice (“**Termination Notice**”), terminate the particular Subscription Service, which Subscription Services will terminate at the end of the 90 (ninety) days, or as otherwise stated in the relevant Service Schedule.

4.6 **IMPORTANT: the then current General Terms and Conditions and Service Specific Terms utilised by OPENCOLLAB on date of renewal of a Service will apply to the Subsequent Term. It is the Customer’s responsibility to ensure that it familiarise itself with the General Terms and Conditions and applicable Service Specific Terms prior to the commencement of a Subsequent Term (see clause 33.2 below in terms of variations / modifications).**

4.7 Any termination of an Agreement however caused, shall not affect the coming into force or the continuance in force of any provision of an existing Agreement which is expressly or by implication intended to come into or continue in force on or after such termination.

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- 4.8 Where Services are required and no Enabling and Implementation Services form part of the Services: In the event that OPENCOLLAB provides a Customer with a specific Subscription Commencement Date for a particular Service and activation does not take place by such Subscription Commencement Date, due to any act or omission by the Customer, OPENCOLLAB shall not be liable for any damages, costs or expenses whatsoever incurred or suffered by a Customer Contracting Party or any third party as a result of any failure by OPENCOLLAB to activate the particular Service by the Subscription Commencement Date. In the event that activation of Service is delayed as a direct and proven result of OPENCOLLAB's act or omission, OPENCOLLAB will not levy payment until the delayed Subscription Commencement Date.
- 4.9 OPENCOLLAB shall also promptly notify the Customer in writing as soon as it becomes aware that a deliverable may not be delivered, installed and implemented in accordance with any Contract, at which time alternative temporary service arrangements may be considered.

5. GRANT OF RIGHTS

For purposes of any Subscription Services the following shall apply: -

- 5.1 Subject to the Customer payment of the Fees and the terms and conditions of the Agreement, OPENCOLLAB hereby grants to the Customer a non-exclusive, non-transferable, non-sublicensable and revocable right to permit the Authorised Users and/or End Users to access and use the Services and the Documentation during the Services Term solely for the Customer's business operations.
- 5.2 In relation to the **Authorised Users**, the Customer undertakes that:-
- (a) It is the responsibility of the Customer to appoint and remove Authorised Users by making use of the prescribed functionality as made available by OPENCOLLAB;
 - (b) only Authorised Users may act on the Customer's behalf. It is the Customer's responsibility to ensure that the list of Authorised Users and their respective user levels for purposes of the Services are up to date and recorded accordingly;
 - (c) the activation of each Authorised User shall be subject to the provision of certain information for registration purposes which information shall be provided by the Customer or third party on behalf of the Customer to OPENCOLLAB in the prescribed form;
 - (d) each Authorised User shall adhere to the security provisions as per clause 11 below;
 - (e) The utilisation of the Services shall be subject to each Authorised User accepting the Acceptable Use Policy.
- 5.3 The Customer shall not, nor shall it allow an Authorised User to, access and use the Service in breach of OPENCOLLAB's Acceptable Use Policy and OPENCOLLAB reserves the right, without liability or prejudice to its other rights to the Customer or its Affiliates, to disable the Customer's and/or an Authorised User's access to the Services.
- 5.4 In relation to the **End Users**, the Customer understands and agrees that:-
- (a) It will allow OPENCOLLAB to present or present itself the Acceptable Use Policy to the End Users as prescribed by OPENCOLLAB;
 - (b) the activation of an End User shall be subject to the provision of certain information for registration purposes in the form prescribed by OPENCOLLAB from time to time;
 - (c) it shall bring to the attention of End Users, where reasonably possible, that their access to the Services may be suspended or terminated if the End Users do not comply with the Acceptable Use Policy.
- 5.5 The Customer shall not, nor shall it allow any third party to:
- (a) except as may be allowed by any Applicable Law which is incapable of exclusion by agreement between the parties:
 - (i) and except to the extent expressly permitted under this agreement, attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of OPENCOLLAB Services, including its Software and/or Documentation (as applicable) in any form or media or by any means; or

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- (ii) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Services (including any part of the Software); or
 - (iii) access all or any part of the Services and Documentation in order to build a product or service or software which competes with the Services and/or the Documentation; or
 - (iv) subject to clause 33.5, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Documentation available to any third party except the Authorised Users and End Users, or
 - (v) where Services involve outsourcing of certain Customer business processes, through the utilisation of OPENCOLLAB Services, store, distribute or transmit any material that may be in breach of OPENCOLLAB's Acceptable Use Policy.
 - (vi) attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under this clause 5
- 5.6 All rights, title, and interest in and to the Services, Software, Documentation, and all related intellectual property are and shall remain the exclusive property of OPENCOLLAB. The Customer acquires no rights or licenses with respect to the foregoing except as expressly set forth in this Agreement.
- 5.7 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify OPENCOLLAB.
- 5.8 The rights provided under this clause 5 are granted to the Customer only.

6. ENABLING AND IMPLEMENTATION

- 6.1 OPENCOLLAB shall perform the Enabling and Implementation Services against the agreed fee stated in the relevant Service Schedule;
- 6.2 The commencement date of the Enabling and Implementation Services and the duration of the Enabling and Implementation Phase shall be as agreed to between the Parties in the Service Schedule. The Customer understands and agrees that, where Enabling and Implementation Services are required, a Subscription Service shall commence on the Subscription Commencement Date, subsequent to the Enabling and Implementation Phase;
- 6.3 Where data migration services are included as part of the Services, it will be the responsibility of the Customer to ensure that the data submitted to OPENCOLLAB for the purposes of data migration is in the format as prescribed by OPENCOLLAB from time to time. **OPENCOLLAB shall not be responsible whatsoever for the accuracy of the data as received from the Customer.** Where customisation of the Services is required for the migration of data it will be the responsibility of the Customer to ensure that the information provided to OPENCOLLAB to enable it to customise the Services is accurate. It will also be the responsibility of the Customer to ensure that all data that has been migrated to the Software as instructed by the Customer reflects correctly in the provided Services;
- 6.4 Exact dates and time frames for the Enabling and Implementation Phase will be jointly agreed upon by OPENCOLLAB and the Customer as per the Project Plan and are dependent on the resource availability of both parties. Project role players, from OPENCOLLAB and the Customer, will perform tasks within the timeframes specified in the Project Plan;
- (a) Part of establishing a final Project Plan will be the drafting of a Business Rule and Gap Report during the project requirement session where the parties will agree on the Customer's specific configuration of the Software, as well as which tasks must be completed prior to Activation of the Subscription Services.
- 6.5 **Acceptance of the Services (where Enabling and Implementation applies):**
- (a) It is the responsibility of the Customer to test each component of the Services (including any customisation of Services and/or APIs) extensively prior to the Activation of the Services to determine that it appears to be free of any major defects and that it is suitable for use by the Customer.
 - (b) OPENCOLLAB shall notify the Customer in writing when the Service is ready for the Customer to approve the items addressed during the Enabling and Implementation Phase. The Customer shall approve that OPENCOLLAB has addressed all of the items listed under the Business Rule and Gap Report within 10 (ten) Business Days from receipt of such written notification.

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- (c) The Service shall be deemed to have been accepted ("**Deemed To Be Accepted**") by the Customer and that it complies with the Customer's own security and data protection requirements if:-
- (i) The Customer utilises the Services in a live environment; or
 - (ii) Receipt by OPENCOLLAB of the Customer's written confirmation that the Services have been accepted ("Acceptance Certificate"); or
 - (iii) 10 (ten) Business Days subsequent to OPENCOLLAB's notification as per clause (b) above, unless critical issues are found by the Customer that require resolution by OPENCOLLAB before the Service can be accepted, in which case the acceptance process shall restart again after the flagged issues have been rectified.

6.6 The Customer shall ensure that key personnel (especially the Administrator) are available:-

- (a) to attend the necessary workshops and be able to make decisions with regard to the Customer's business to ensure a successful implementation; and
- (b) to attend training where required;

6.7 The Customer shall ensure that the necessary hardware and software infrastructure at the Customer (as per specifications from OPENCOLLAB from time to time) are available before any enabling and implementation, setup and training can commence. Any delay in the availability of the required infrastructure will delay the delivery date of the Services;

6.8 It is noted and agreed that the Project Plan and timelines are dependent upon the receipt of the required base information and data in the correct digital format as well as timeous Customer feedback.

6.9 **Activation of the Subscription Services / Activation Date:**

- (a) The Subscription Services shall be activated by means of the issuing of the initial login and passwords for the Authorised Users by OPENCOLLAB subsequent to Deemed To Be Accepted date;
- (b) In the event that the Customer uses the whole or any part of the Subscription Services in a live environment such part of the Subscription Services will be deemed to have been activated as of the date of use; or
- (c) By any other date as agreed to in writing or as per agreed amendment on the Service Schedule.

6.10 No Service Levels shall apply during the Enabling and Implementation Phase.

7. THIRD PARTY SERVICE PROVIDER INTERACTION

7.1 Where OPENCOLLAB is required by the Customer to engage with a third party service provider ("**Third Party Service Provider**") to i) enable the Services for the Customer, and/or ii) to enable the Third Party Service Provider to integrate with the OPENCOLLAB Services to provide new or value added services or new data/information or share information for the benefit of the Customer and the Customer's Authorised User and/or End Users, the following terms and conditions will apply:-

- (a) OPENCOLLAB will only act on written instructions / consent from the Customer;
- (b) OPENCOLLAB will only make available API specifications or other integration specifications subject to the following:-
 - (i) Prior to any integration, the Third Party Service Providers shall sign the OPENCOLLAB standard Integration Agreement that shall make reference to the necessary data protection conditions and standards and such other terms and conditions, policies (including the API Policy) and or standards as prescribed by OPENCOLLAB from time to time; and
 - (ii) All APIs or integration information or development for purposes of the integration and any enhancements thereto shall remain the property of OPENCOLLAB and shall only be utilized for purposes of integration to the Services.
 - (iii) OPENCOLLAB, shall not be liable for any damages, losses or claims toward the Customer where OPENCOLLAB terminates the Integration Agreement with the Third Party Service Provider as a result of the Third Party Service Provider's breach of any term or condition under said agreement;

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- 7.2 Where the request as per clause 7.1 above involves a Third Party Service Provider that has an existing contract with the Customer, the following will apply:-
- (a) OPENCOLLAB will not be required to ensure or be responsible for ensuring the Customer's compliance with the terms and conditions of such supplier contracts, but OPENCOLLAB agrees to use reasonable endeavours to advise the Customer of any approvals or licences required pursuant to OPENCOLLAB contracts to the extent that OPENCOLLAB becomes aware thereof.
 - (b) OPENCOLLAB shall not be liable for any act or omission of a Third Party Service Provider or contractor or should OPENCOLLAB perform any services in the fulfilment of the Customer's request, which do not relate directly to the Services, the performance of such services will not be measured against or form part of any measurement of OPENCOLLAB's meeting of any Service Levels set out in this Agreement or any subsequent Contract;
 - (c) OPENCOLLAB shall not be liable for any damages or claims from any third party or any act or omission of a Third Party Service Provider in terms of any Customer Data being submitted by OPENCOLLAB to the Third Party Service Provider and processed by the Third Party Service Provider.
 - (d) OPENCOLLAB shall not be liable for any non-performances of Third Party Service Provider's services or inaccurate data made available by Third Party Service Provider via any integration with OPENCOLLAB;
 - (e) It shall be the responsibility of the Third-Party Service Provider to ensure that all required updates and upgrades take place to ensure continuous provision of Third Party Service Provider services; and
 - (f) OPENCOLLAB shall be compensated for such services in line with its then prevailing rates for the provision of the same Services on a time and materials basis.

8. SERVICES

- 8.1 OPENCOLLAB shall, during the Service Term, provide the Services and make available the Documentation to the Customer on and subject to the terms of this Agreement.
- 8.2 Nothing contained in clause 8.1 above shall affect OPENCOLLAB's right to exercise its own judgement and to utilise its skills as it considers most appropriate in order to achieve compliance with the said resolutions and directions or otherwise to comply with its obligations under any Contract.
- 8.3 OPENCOLLAB will provide the Customer with OPENCOLLAB's standard customer support services for the Services in accordance with OPENCOLLAB's **Support Services Policy** in effect at the time that the Services are provided and such other additional support services that may be agreed to under a Service Schedule. OPENCOLLAB may amend the Support Services Policy in its sole and absolute discretion from time to time. Where any such amendments may affect the rights of the Customer, OPENCOLLAB will notify the customer in writing 30 (thirty) days in advance of said amendments. The Customer may purchase enhanced support services separately at OPENCOLLAB's then current rates.
- 8.4 Where the Customer or its appointed third-party provider requires assistance in implementing a journey APIs, OPENCOLLAB may, upon written request, provide such assistance on a time and materials basis at its prevailing rates, subject to a separate Service Schedule. The scope and timeline of such assistance will be agreed in writing.
- 8.5 **Incremental Services.** From time to time, additional OPENCOLLAB or third-party functionality (such functionality being deemed not to be part of the existing Services) may be made available by OPENCOLLAB to Customer (in the case of third-party functionality, such functionality being made available on a pass-through basis pursuant to terms specified by the third-party provider of such functionality), and which additional functionality may be purchased by Customer for additional fees in accordance with any additional terms and conditions specified by OPENCOLLAB.
- 8.6 **Changes to the Software or other technology.** OPENCOLLAB may alter, update or upgrade the Software or any other technology from time to time in accordance with its Support Services Policy ("Releases"). Updates and upgrades to core framework and plug-ins will be processed automatically. OPENCOLLAB will apply best endeavours not to interfere with the operations of the Customer during any update or upgrade, however where same may affect Customers' operations, OPENCOLLAB will notify the Customers in advance in writing.
- 8.7 The Customer acknowledges that it is the Customer's obligation to operate, manage, run and control its business and business processes. The Customer shall check and verify that the Service (or any relevant part thereof) is performing according to its specifications in order to prevent or at least minimise configuration errors and/or omissions and shall alert OPENCOLLAB of any problems the Customer may experience.

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8.8 OPENCOLLAB shall carry out its obligations under any Contract in compliance with all relevant statutes, regulations, orders, directions, statutory instruments, and codes of practice identified in any Service Schedule as applying to provision of the Services, and it shall obtain, effect and keep effective all relevant permissions, licenses and permits required in respect of its obligations and duties to be performed under any Contract.

8.9 In the performance of the Services OPENCOLLAB shall rely on information and materials as received from the Customer or Third Party Service providers (as directed by the Customer). Unless agreed to otherwise under a Service Schedule, OPENCOLLAB has no editorial rights to the information and will rely on the information as-is received from the Customer or any third party service provider as directed by the Customer in the execution of the Services; there is no obligation on OPENCOLLAB to verify or investigate the accuracy of such information or materials.

9. OTHER SERVICES

9.1 Customer may request, in writing, other services ("**Other Services**"). Other Services may include extended consulting services, customisation, new development, additional integration services, specific customization or development outside the scope of the generic Services as outlined in the Documentation, training, business analysis and additional professional services. Optional Services are subject to OPENCOLLAB's prevailing terms, conditions and prices for such Other Service at that time. **All Other Services shall be confirmed under a separate Service Schedule.**

10. SECURITY SAFEGUARDS

10.1 Appropriate and reasonable technological and organisational measurements shall apply to protect the:-

- (a) Authorised User identity, i.e. unique User profiles that are password protected. It is the responsibility of each Authorised User to protect his/her own username and password (see clause 11 below)
- (b) Customer Data – see clause 13 below;
- (c) communications over the Software and networks under the control of OPENCOLLAB.

10.2 Changes and deletions on the Software in terms of security safeguards during the provision of the Services will be user and time stamped and will be recorded for audit purposes.

11. SECURITY OF PASSWORDS

11.1 The Customer will, and will procure that each Authorised User will:-

- (a) keep the Password secure for his/her use of the Services and Documentation and not to give, disclose or make available the Password to any other person;
- (b) use the Password for purposes of the Services (on the Customer's behalf) in accordance with this Agreement;

11.2 If for any reason any Password is no longer secure or may be accessible to, or in the possession of any person other than an Authorised User, immediately notify the Customer's Administrator thereof. Where necessary, the Administrator will be responsible to reset the password for the Authorised User as soon as reasonably possible and where not possible, to notify OPENCOLLAB immediately in writing and request OPENCOLLAB to assist.

11.3 OPENCOLLAB shall not be liable for any loss or damage suffered by the Customer, its Affiliates or any other third party attributable to an Authorised User's failure to maintain the confidentiality of his/her Password or any other credentials relevant for purposes of the Services.

11.4 To ensure the security and reliable operation of the Services for all Authorised Users, OPENCOLLAB is entitled but not obliged to take whatever action OPENCOLLAB considers reasonably necessary to preserve the security and reliability of the Services from time to time.

12. AUDIT RIGHTS

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12.1 OPENCOLLAB and/or its authorised representatives or professional advisors shall have the right at any time to request or execute, during regular business hours and shall not interfere unreasonably with the Customer's activities, an audit at OPENCOLLAB's expense to ensure that the Customer complies with the terms of the particular Service Schedule and this Agreement. Such audits shall be carried out not more than once in any year of the term of a Service Schedule and on reasonable notice by OPENCOLLAB and/or its selected external auditor or attorney at OPENCOLLAB's cost. The Customer shall provide OPENCOLLAB or its representatives and its audit team with access to its relevant records, systems and facilities.

13. CUSTOMER DATA

13.1 The Customer shall own all right, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data.

13.2 The Customer hereby grants OPENCOLLAB a worldwide, royalty-free, and non-exclusive license during the term of its subscription to access Customer Data in order to provide the Services, including storing, hosting and management of such content ("**Content License**")

13.3 Unless otherwise agreed to under a Contract, OPENCOLLAB shall follow its archiving procedures for Customer Data as set out in its **Back-Up Policy**, which policy shall be made available on receipt of Customer's written request. In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy shall be for OPENCOLLAB to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by OPENCOLLAB in accordance with the archiving procedure described in its Back-Up Policy. OPENCOLLAB shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (except those third parties sub-contracted by OPENCOLLAB to perform services related to Customer Data maintenance and back-up).

13.4 The Customer understands that OPENCOLLAB, in performing the required technical steps to provide the Services, may

- (a) transmit or distribute Customer Data over various public or private networks and in various media; and
- (b) make such changes to Customer Data as are necessary to conform and adapt that Customer Data to the technical requirements of connecting networks, devices, Services or media;

13.5 Where the use of the Customer Data involves the Processing of any Personal Information, the Processing shall be performed in accordance with the OPENCOLLAB Privacy Policy.

13.6 The accuracy and maintenance of the Customer Data (Customer and/or Authorised User data or End User data) in the Services is the responsibility of the Customer and/or Authorised – or End Users. OPENCOLLAB will however provide (where reasonably possible) advice and assistance wherever possible, within the limits of this Agreement, to improve the accuracy of the information at all times.

14. OPENCOLLAB'S OBLIGATIONS

14.1 OPENCOLLAB undertakes that the Services will be performed substantially in accordance with the Documentation and with due and proper care, and in accordance with good and generally accepted industry practice.

14.2 In addition to the specific responsibilities and obligations of OPENCOLLAB set out elsewhere in the Agreement, OPENCOLLAB shall:

- (a) keep abreast and comply with Applicable Law and shall ensure that it complies fully with Applicable Law that is applicable to the Services;
- (b) maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this agreement.
- (c) promptly advise the Customer representative should (i) the Customer fail to provide information that is necessary for the fulfilment of the Services; or (ii) the non-compliance by the Customer with its duties and responsibilities which is likely to result in a situation where the Fees payable by the Customer may need to be increased;
- (d) employ suitably qualified and competent persons in the execution of any Contract;

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- 14.3 The undertakings under clauses 14.1 and 14.2 above will not apply to the extent of any non-conformance which is caused by use of the Services contrary to OPENCOLLAB's instructions, or modification or alteration of the Services by any party other than OPENCOLLAB or OPENCOLLAB's duly authorised contractors or agents. If the Services do not conform with the foregoing undertaking, OPENCOLLAB will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 14.1. Notwithstanding the foregoing, OPENCOLLAB:
- (a) does not warrant that the use of the Services will be uninterrupted or error-free; or that the Services, Documentation and/or the information obtained by the Customer through the Services will meet the Customer or Customer's requirements; and
 - (b) is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
 - (c) Where support is required due to incorrect use or overuse of APIs, OPENCOLLAB may, at its discretion, provide remedial assistance on a time and materials basis at its prevailing rates or as agreed. Response times for such issues may differ from standard support service levels and will be communicated to the Customer in advance.
- 14.4 This Agreement shall not prevent OPENCOLLAB from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this agreement.

15. CUSTOMER'S OBLIGATIONS

The Customer shall:

- 15.1 provide OPENCOLLAB with:
- (i) all necessary co-operation in relation to this Agreement or any subsequent Service Schedule;
 - (ii) all necessary access to such information as may be required by OPENCOLLAB;
- in order to provide the Services;
- 15.2 without affecting its other obligations under this Agreement or any Contract, comply with all Applicable Laws with respect to its activities;
- 15.3 carry out all other Customer responsibilities as set out in this Agreement and any subsequent Contract in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, OPENCOLLAB may adjust any agreed timetable or delivery schedule as reasonably necessary;
- 15.4 ensure that the Authorised Users use the Services and the Documentation in accordance with the terms and conditions of this Agreement and shall be responsible for any Authorised User's breach of this Agreement;
- 15.5 Under 19.4 of this Agreement the Customer is allowed to develop its own applications and interfaces ("Customer's Application(s) and Interfaces") against the Software APIs made available by OPENCOLLAB to the Customer as will be agreed (19.5) between the Parties from time to time. Where the Customer uses such APIs –
- (a) The Customer shall ensure correct use of the APIs according to the API documentation and API policy;
 - (b) OPENCOLLAB shall not be liable for any non-performances of Customer's services or inaccurate data made available by Customer's Application(s) and Interfaces via any integration with OPENCOLLAB's Services;
 - (c) It shall be the responsibility of the Customer to ensure that all required updates and upgrades take place to ensure continuous correct operations of the Customer's Application(s) and Interfaces;
 - (d) Where OPENCOLLAB is required to Support the Customer in the correct use of the APIs, take corrective actions, or where the Customer has utilized the APIs in a manner inconsistent with the API Policy, OPENCOLLAB shall be compensated for such services in line with its then prevailing rates for the provision of the same services on a time and materials basis.

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- 15.6 obtain and shall maintain all necessary licences, consents, and permissions necessary for OPENCOLLAB, its contractors and agents to perform their obligations under any Contract, including without limitation the Services;
- 15.7 ensure that its network and systems (where required) comply with the relevant specifications provided by OPENCOLLAB from time to time;
- 15.8 be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to OPENCOLLAB's data centres, as applicable, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.
- 15.9 promptly report any incident or fault in the delivery of the Services and promptly respond to any queries or requests from OPENCOLLAB and provide its full cooperation in the troubleshooting and resolution of any incident or fault or outage.
- 15.10 not do anything that may bring OPENCOLLAB into disrepute or reflect adversely on the business and integrity of OPENCOLLAB.

16. PERSONNEL AT THE CUSTOMER'S PREMISES

- 16.1 The Customer shall afford to the Personnel such access to the Customer's premises as is reasonably required for the provision of the Services, subject to the Customer's security requirements. The Customer shall make such security requirements and any amendments made thereto from time to time, applicable to OPENCOLLAB's Personnel, available to in writing OPENCOLLAB for inspection.
- 16.2 The Customer shall afford to the Personnel such facilities as may be specified under applicable Service Schedule, as is reasonably required for the provision of the Services.
- 16.3 While the Personnel attend the Customer's premises, OPENCOLLAB shall ensure that they conform to the Customer's reasonable codes and regulations, including but not limited to the Customer's IT policies, procedures and standards in place from time to time and as presented to the Personnel and that the Personnel adopt proper standards of behaviour and co-operate with the Customer's employees, brokers or agents with designated security and system responsibilities. The Customer shall make such policies, procedures and standards (including any amendments made thereto from time to time) available in writing to OPENCOLLAB for inspection.
- 16.4 Subject to clause 16.3 above, the Customer shall ensure and allow OPENCOLLAB and its Personnel or any appointed representative of OPENCOLLAB unrestricted access to perform the Services to the Customer. OPENCOLLAB cannot be held liable for any failure to perform any of the Services timeously or at all should OPENCOLLAB not be allowed the required access and failure to perform is not the direct result of OPENCOLLAB actions.

17. CHANGE CONTROL

- 17.1 From time to time during the term of this Agreement, the Customer may request small changes in or additions to the Services. No such changes or additions shall be effective or binding on the Parties unless a service desk support ticket has been logged by the Customer and accepted by OPENCOLLAB. The Customer shall ensure that an authorised representative submit all change requests. The Customer shall deliver, as part of the aforesaid support desk ticket, a written notice to OPENCOLLAB describing the request. OPENCOLLAB shall in its sole discretion decide whether to submit a proposal for said requested changes or not. Where OPENCOLLAB decides to reply to the request for proposal it will reply within reasonable time of receipt of the written notice by preparing at OPENCOLLAB's expense, and delivering to the Customer, a written proposal ("Change Order Proposal"), indicating:
 - (a) the effect of the proposal, if any, on the amounts payable by the Customer and the basis on which such effect was calculated;
 - (b) the effect of the proposal, if any, on service levels with a full explanation reasonably acceptable to the Customer;
 - (c) the anticipated time schedule for implementing the proposal.
- 17.2 Any discussions or communications required to implement clause 17.1 shall not bind the Parties. Only a signed Change Order or a written agreement (which may include an email from the Customer or an acknowledgement by the Customer in a service desk support ticket) shall be binding for implementing the change order..

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- 17.3 A Change Order Proposal, once submitted as aforesaid, shall constitute an invitation to do business by OPENCOLLAB. The Customer will within a time as stated in the Change Order Proposal, confirm whether it would like to continue with the Change Order or not ("Offer"). If the Customer's Offer is not accepted by OPENCOLLAB in writing within 30 (thirty) days from the date of Customer's Offer, the Customer shall be entitled to revoke its Offer. OPENCOLLAB shall not be obliged to accept the Customer's Offer.
- 17.4 If OPENCOLLAB elects to accept the Offer set out in the Change Order Proposal, as evidenced by the written acceptance of OPENCOLLAB, the Change Order Proposal shall become a Change Order, any changes in or additions to the Services described in the Change Order Proposal shall thereafter be "Services". Any other changes described in the Change Order Proposal shall automatically amend the applicable Service Schedule and/or other aspect of this Agreement referred to in clause 17.1, and the Parties shall make any further modifications to the applicable Service Schedule and/or other aspect of this Agreement required to reflect the Change Order.
- 17.5 All Change Orders shall be implemented pursuant to the procedures set out in this clause 17.

18. CHARGES AND PAYMENT

- 18.1 The Customer to pay the Fees to OPENCOLLAB as set out in the quote/proposal or Service Schedule(s) or /Change Order Proposal or written agreement (as per 17.2).
- 18.2 The Customer shall prior to provision of the Services provide to OPENCOLLAB valid, up-to-date and complete contact and billing details;
- 18.3 OPENCOLLAB shall issue the Customer an invoice in accordance with the requirements under the Value Added Tax Act of 1991 and South African Revenue Services guidelines;
- 18.4 Unless otherwise agreed to in a Service Schedule, all Fees shall be due and payable within 30 (thirty) days of date of invoice into the designated account of OPENCOLLAB as made available from time to time.
- 18.5 The Customer shall be liable to OPENCOLLAB in respect of any travelling, accommodation and any expenses incurred as a result of services to be delivered outside the scope of the Services on instructions from the Customer, which expenses shall only be incurred subsequent to written consent from the Customer.
- 18.6 If OPENCOLLAB has not received payment within **20 (twenty) days** after the due date, and without prejudice to any other rights and remedies of OPENCOLLAB:
- (a) OPENCOLLAB may, without liability to the Customer or its Affiliates, disable the Customer's and/or an Authorised User's password, account and access to all or part of the Services and OPENCOLLAB shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and
 - (b) interest shall accrue on a daily basis, compounding monthly, on such due amounts at an annual rate equal to 2 (two) % over the then current prime lending rate as published by the South African Reserve Bank, commencing on the due date and continuing until fully paid, whether before or after judgment.
- 18.7 All amounts and fees stated or referred to in this Agreement:
- (a) shall be payable in the currency as agreed to between the parties;
 - (b) are non-cancellable and non-refundable;
- 18.8 It is agreed that should there be a subsequent price increase on components of the Services, beyond the control of OPENCOLLAB, including but not limited to foreign exchange fluctuations, increased third party products or services, surcharges, taxes, rates or levies, delay caused by any instruction of Customer, OPENCOLLAB shall be entitled to increase the affected Services Fees accordingly but no more than 10% (ten percent) above the official South African CPI inflation rate, by the exact value of the increase but in proportion to the Services provided after written notification to Customer.
- 18.9 Unless specifically agreed to otherwise in a Service Schedule, the Fees for each Subsequent Term shall be as per the OPENCOLLAB then current Fee rate, which shall take into consideration the prevailing inflation rate as well as certain external costs such as (but not limited to) hosting fees applicable for the Services on an annual basis, which shall take effect on the each anniversary of the Subscription Commencement Date.

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18.10 The Customer shall provide access to OPENCOLLAB's auditor(s) (whether internal or external), and/or any law enforcement agents at all reasonable times, during the term of the Agreement and for up to six (6) months following expiration or termination of the Agreement to ensure compliance with a Contract.

19. PROPRIETARY RIGHTS

19.1 The Customer acknowledges and agrees that OPENCOLLAB and/or its licensors own all existing and future Intellectual Property Rights and all Enhancements, Updates and Upgrades thereto in the Services (including but not limited to the Software utilised for purposes of the Services), the Documentation and the Pattern Data that may result as a result of the utilisation of the Services. Except as expressly stated in the Agreement, these terms and conditions do not grant the Customer, Authorised User or End User any Intellectual Property Rights, or any other rights or licences in respect of the Services, Pattern Data or the Documentation. The Customer acknowledges that it shall have no claim to the said IPR merely as a result of the use of the Services or certain configuration of - or amendments to the Services that may be executed as per the Customer's requirements, instructions or any other specific request for enhancements or modifications, unless specifically authorised in writing under a Service Schedule in advance between the parties, and will accordingly protect the IPR and assist OPENCOLLAB in protecting it.

19.2 The Customer, Authorised Users or End Users are only entitled to the limited use of the Intellectual Property Rights granted to them in this Agreement, Service Schedule and subsequent Acceptable Use Policy (where the Authorised User accesses the Services account). The Customer will not take any action to jeopardise, limit or interfere with OPENCOLLAB's or its licensor's Intellectual Property Rights. Any unauthorised use of said Intellectual Property Rights is a violation of the Agreement as well as a violation of intellectual property laws and other common law rights and may result in immediate termination of this Agreement.

19.3 OPENCOLLAB shall have a royalty-free, worldwide, transferable, sublicensable, irrevocable, perpetual, unrestricted license to use and/or incorporate into its products, services and business any suggestions, enhancement requests, recommendations or other feedback provided by the Customer, Authorised User or End Users relating to the operation of the Services, unless otherwise agreed to in writing between the parties.

19.4 The Customer shall be entitled to:

- (a) develop interfaces between the Software and any other applications within the Customer's environment (where OPENCOLLAB does not make same available as part of the Services); and/or
- (b) make modifications to or develop applications which operate in conjunction with the Software without modifying the source code of the Software. All Intellectual Property Rights in and to the interfaces, modifications and/or applications referred to in this clause 19.4 shall vest in the Customer. Any integration of Customer owned interfaces shall be subject to OPENCOLLAB's then standard integration specifications.

19.5 **API License.** Subject to the terms and conditions of this Agreement, OPENCOLLAB, at its discretion may grant the Customer or any Customer appointed Third Parties a non-exclusive, non-transferable license for the Customer's use of OPENCOLLAB's and/or its licensor's APIs to enable the Customer's systems to interface with OPENCOLLAB Services. The Customer acknowledges that the APIs contain confidential information and know-how and the Customer shall not or allow any Third Party to use such confidential information or know-how except to the extent necessary to exercise the rights granted to the Customer hereunder. If the Customer or its appointed Third Party service provider use open source software ("OSS") in conjunction with the APIs, the Customer must ensure that the Customer or appointed Third Party service provider's use of such open source software does not: (i) create, or purport to create, obligations on OPENCOLLAB with respect to the Software; or (ii) grant, or purport to grant, to any third party any rights to or immunities under OPENCOLLAB's intellectual property or proprietary rights in the APIs.

19.6 **API License Restrictions.** For greater certainty and where applicable, the Customer shall not, nor shall it allow any third party to, except to the extent permitted under clause 19.4:

- (a) disclose any performance, benchmarking, or feature-related information about the APIs;
- (b) distribute, lease, rent, grant a security interest in, assign, or otherwise transfer the APIs;
- (c) create a subset, superset or other derivative work of the APIs;
- (d) disclose, transfer or otherwise provide to any third party any portion of the APIs or confidential information or know-how, except as explicitly permitted herein.

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- (e) develop an application using the APIs and any open source software that results in any program file(s) that contain code from both the APIs and any open source software (including without limitation libraries), if the open source software is licensed under a license that requires any "modifications" be made freely available. The Customer also may not combine the APIs with programs licensed under the GNU General Public License ("GPL") or any other similar OSS licenses, in any manner that could cause, or could be interpreted or asserted to cause, the APIs or any modifications thereto to become subject to the terms of the GPL or such OSS license;
 - (f) violate any law, statute, ordinance, contract or regulations;
 - (g) include any Malware, Trojan horses, worms time bombs or other computer programming routines that may (or are intended to) damage, interfere with or expropriate any system or data.
- 19.7 **API Title.** All right, title, and interest (including all intellectual property rights) in, to and under the APIs (including all copies thereof) shall remain with OPENCOLLAB, alternatively its licensors.
- 19.8 The Customer and its Affiliates will not do, cause or permit anything to be done which may adversely affect any element of the OPENCOLLAB's Intellectual Property, or OPENCOLLAB's rights in and to its Intellectual Property, and will not attack or assist in any attack on the validity, and or registration of Intellectual Property of OPENCOLLAB.
- 19.9 **Trademarks:**
- (a) OPENCOLLAB acknowledges the Customer and its Affiliates' rights, title and interest in and to its Trade Marks and will never in the future do anything, or assist, directly or indirectly, anyone to do anything to impair any part of that right, title and or interest, or attack or interfere in any way with the Customer's and or its Affiliates' Trade Marks.
 - (b) The Customer agrees that OPENCOLLAB may make use of the Customer's Trade Marks and/or business names to present on OPENCOLLAB's website or such other channel or document to confirm the Customer as a customer of OPENCOLLAB, in accordance with the Customer branding guidelines as presented by the Customer to OPENCOLLAB;
 - (c) Except for clause (b) above, OPENCOLLAB undertakes never to use or register a corporate name, trading style, trade mark or domain name that incorporates the Customer's Trade Marks, or any confusingly or deceptively similar mark, in the specific Trade Mark class, unless otherwise agreed to under the Service Schedule.
- 19.10 OPENCOLLAB confirms that it has all the rights in relation to the Services and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this agreement.
- 19.11 The Parties' obligations in respect of the Intellectual Property under this Agreement will survive the termination of this Agreement.

20. CONFIDENTIALITY

- 20.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under this agreement. A party's Confidential Information shall not be deemed to include information that:
- (a) is or becomes publicly known other than through any act or omission of the receiving party;
 - (b) was in the other party's lawful possession before the disclosure;
 - (c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure;
 - (d) is independently developed by the receiving party, which independent development can be shown by written evidence; or
 - (e) is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.
- 20.2 Each party shall hold the other's Confidential Information in confidence and, unless required by law or permitted under the relevant licence conditions, not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this agreement.
- 20.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this agreement.

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- 20.4 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.
- 20.5 The Customer acknowledges that details of the Services, and the results of any performance tests of the Services, constitute OPENCOLLAB's Confidential Information.
- 20.6 OPENCOLLAB acknowledges that the Customer Data is the Confidential Information of the Customer.
- 20.7 This clause 20 shall survive termination of this agreement, however arising.
- 20.8 No party shall make, or permit any person to make, any public announcement concerning this agreement without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.

21. WARRANTIES

Each Party represents and warrants that:

- 21.1 by agreeing to these Terms and Conditions it is acting as principal and not as agent for an undisclosed principal;
- 21.2 the execution and performance under this Contract has been duly authorised by the requisite corporate action on the part of such Party; and
- 21.3 it has not violated any Applicable Law or policies of the other Party of which it has been given written notice, regarding the offering of unlawful inducements in connection with these Terms and Conditions.

OPENCOLLAB warrants that:

- 21.4 the provision of the Services by OPENCOLLAB shall not as at the date of performance of the Services constitute an infringement or misappropriation of any Intellectual Property Rights of any third party.
- 21.5 the Services shall be rendered in accordance with Applicable Laws;
- 21.6 the Services shall be rendered in a professional manner with due care, skill and diligence.

22. INDEMNITY

- 22.1 The Customer shall defend, indemnify and hold harmless OPENCOLLAB, its Affiliates, its officers, directors and employees against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Customer's use of the Services and/or Documentation, provided that:
- (a) the Customer is given prompt notice of any such claim;
 - (b) OPENCOLLAB provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and
 - (c) the Customer is given sole authority to defend or settle the claim.
- 22.2 OPENCOLLAB shall defend the Customer and its Affiliates, its officers, directors and employees against any claim that the Services or Documentation infringes any South African patent effective as of the Effective Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that:
- (a) OPENCOLLAB is given prompt notice of any such claim;
 - (b) the Customer provides reasonable co-operation to OPENCOLLAB in the defence and settlement of such claim, at OPENCOLLAB's expense; and
 - (c) OPENCOLLAB is given sole authority to defend or settle the claim.

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- 22.3 In the defence or settlement of any claim, or where OPENCOLLAB, in its opinion determines that there is a likelihood that a third party's intellectual property rights may be infringed, then OPENCOLLAB may procure the right for the Customer to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate the Agreement on 5 (five) Business Days' notice to the Customer and follow the Exit Management Plan, without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer or its Affiliates.
- 22.4 In no event shall OPENCOLLAB, its employees, agents and sub-contractors be liable to the Customer or any Customer Affiliate to the extent that the alleged infringement is based on:
- (a) a modification of the Services or Documentation by anyone other than OPENCOLLAB; or
 - (b) the Customer 's use of the Services or Documentation in a manner contrary to the instructions given to the Customer by OPENCOLLAB; or
 - (c) the Customer 's use of the Services or Documentation after notice of the alleged or actual infringement from OPENCOLLAB or any appropriate authority.
- 22.5 The foregoing states the Customer or its Affiliates' sole and exclusive rights and remedies, and OPENCOLLAB's (including OPENCOLLAB's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

23. LIMITATION OF LIABILITY

- 23.1 This clause 23 sets out the entire financial liability of OPENCOLLAB (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer:
- (a) arising under or in connection with this Agreement or any Contract;
 - (b) in respect of any use made by the Customer of the Services and Documentation or any part of them; and
 - (c) in respect of any representation, statement or delictual act or omission (including negligence) arising under or in connection with a Contract.
- 23.2 Except as expressly and specifically provided under this Agreement:
- (a) the Customer assumes sole responsibility for results obtained from the use of the Services and the Documentation by the Customer, and for conclusions drawn from such use. OPENCOLLAB shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to OPENCOLLAB by the Customer in connection with the Services, or any actions taken by OPENCOLLAB at the Customer's direction or as per information received from Authorised Users, End Users or any Third Party Service Provider as approved by the Customer;
 - (b) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this Contract; and
 - (c) the Services and the Documentation are provided to the Customer on an "as is" basis.
- 23.3 Nothing under these Terms of Conditions excludes the liability of either party for:
- (a) infringement of a party or any other third party's intellectual property; or
 - (b) fraud or fraudulent misrepresentation.
- 23.4 Subject to clause 23.3, and to the maximum extent permitted by applicable law neither of the parties or their respective affiliates, licensors, suppliers, subcontractors shall have any liability to the other for any indirect, incidental, special, punitive or consequential damages, including but not limited to data, business interruption, loss of data, replacement or recovery costs or other commercial or economic loss, whether arising from contract, delict or any other theory of liability, even if a party (including its affiliates, licensors, suppliers and subcontractors) has been advised of the possibility of such damages, or they are foreseeable.

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23.5 In no event shall OPENCOLLAB's aggregate liability arising out of or related to a Contract, whether in contract (including in respect of the indemnity at clause 22.2), or delict (including negligence or breach of statutory duty) or under any other theory of liability, exceed the total amount paid by the Customer under the particular Contract, with respect to any single incident (including incidents related to the 'single' incident), for the Services in the 6 (six) months preceding the incident.

24. BREACH AND TERMINATION

24.1 Without affecting any other right or remedy available to it, either party ("Aggrieved Party") may terminate the Agreement with immediate effect by giving written notice to the other party if ("Defaulting Party"):

- (a) the other party ("Defaulting Party") fails to pay any amount due under this agreement or Service Schedule on the due date for payment and remains in default not less than 20 (twenty) days after being notified in writing to make such payment;
- (b) the other party commits a material breach of any other term of this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 7 (seven) days after being notified in writing to do so;
- (c) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts or commit any act of insolvency within the meaning of section Insolvency Act 1936;
- (d) an application is made to court, or an order is made, for the business rescue of a party or the other party is placed, provisionally or finally, in voluntary or compulsory liquidation or is "financially distressed" as contemplated in the Companies Act 71 of 2008, as amended;
- (e) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 (fourteen) days;
- (f) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or

24.2 The Parties agree that, without prejudice to any other right it may have in law, the termination of any particular Agreement shall not affect the operations of any other Service under another agreement between the Customer and OPENCOLLAB, unless the performances under said Contract relies on the Agreement to be terminated, which will result in the automatic termination of said other agreement.

24.3 OPENCOLLAB shall be entitled to terminate all Agreements between the Customer and OPENCOLLAB where the Customer commits any material breach (including but not limited to infringement of OPENCOLLAB Intellectual property Rights) of any Contract.

25. CONSEQUENCES OF TERMINATION

25.1 In the event of:

- (a) the termination of this Agreement by the Customer as the Aggrieved Party under clauses 24.1(a), 24.1(b), 24.1(e) or 24.1(f) above; or
- (b) termination, cancellation or expiry of any of the Services,

the Parties undertake to comply with the Exit Management Plan set out in Annexure A, unless and to the extent that the Parties otherwise agree to in writing.

25.2 In the event of:

- (a) the termination of this Agreement by OPENCOLLAB as the Aggrieved Party in terms of clause 24 or
- (b) OPENCOLLAB being the Defaulting Party contemplated in clauses 24.1(c) and 24.1(d) above

the following shall apply:

- (i) The provision of all Services shall forthwith cease;

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- (ii) OPENCOLLAB shall deliver to the Customer all of the Customer's Confidential Information in the possession of OPENCOLLAB and, at the Customer's request, destroy all copies thereof not delivered to the Customer, no later than 10 (ten) days after such termination. Actual costs incurred in such delivery and/or destruction shall be for the Customer's account.
- (iii) the Customer shall deliver to OPENCOLLAB all of OPENCOLLAB's Confidential Information and Documentation in the possession of the Customer and, at OPENCOLLAB's request, destroy all copies thereof not delivered to OPENCOLLAB, no later than 10 (ten) days after such termination. Actual costs incurred in such delivery and/or destruction shall be for OPENCOLLAB's account and
- (iv) in addition to the payment of any other fees set out in a Contract, the Customer shall be liable to pay to OPENCOLLAB all fees due to OPENCOLLAB for Services already provided and/or Services rendered prior to termination even if they have not yet been invoiced yet (as may be agreed to under a Service Schedule).

25.3 Should OPENCOLLAB be obliged to institute legal action against the Customer to enforce any provisions of an Agreement and / or to collect outstanding monies (undisputed monies) which is in arrears, then the Customer will be responsible for all legal costs on an attorney and own client basis, including such tracing fees and collection commission which such attorneys are entitled to charge, on successful judgement of OPENCOLLAB claim. All other legal costs shall be on an attorney own client scale and the party successful in its claim and has obtained judgment shall be entitled to said costs.

26. FORCE MAJEURE

- 26.1 Neither Party shall have any claim against the other Party ("**the Affected Party**") for any delay or failure of the Affected Party to carry out any of its obligations under this agreement, other than a payment obligation, arising from or attributable to acts of God, war, terrorism, government, legislation, labour action, unrest, disease pandemic, failure of third party supplier (i.e. communication operator or utilities provider or infrastructure provider) or any other cause whatsoever beyond the reasonable control of the Affected Party ("**force majeure**").
- 26.2 The performance of the obligations of the Affected Party shall, subject to clause 26.3, be suspended for the duration of the force majeure, which shall be deemed to commence only upon the date of written notice by the Affected Party to the other Party. Upon cessation of the force majeure, this agreement shall again become fully operative and the Affected Party shall immediately resume its performance.
- 26.3 If the suspension of performance continues for more than 20 (twenty) consecutive Days, then either Party may summarily terminate this agreement by written notice to the other Party, prior to the cessation of the force majeure.

27. NO PARTNERSHIP OR AGENCY

Nothing in this Agreement is intended to or shall operate to create a partnership between the Parties, or authorise either Party to act as agent for the other, and neither Party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

28. NON-SOLICITATION

- 28.1 Except as otherwise agreed in writing, neither Party will directly solicit, offer work to, employ or contract with, whether directly or indirectly as a partner, employee or independent contractor, any of OPENCOLLAB's personnel who are directly and currently involved in the provision of the Services, or for a period of 6 (six) months thereafter. If the Customer solicits OPENCOLLAB's personnel in contravention of this clause, the Customer will pay to the OPENCOLLAB an amount equal to 100% (hundred percent) of the employee's current annual cost to company as liquidated damages.

29. THIRD PARTY RIGHTS

Except as agreed to under this Agreement, this agreement does not confer any rights on any person or party other than the Parties to this Agreement and, where applicable, their successors and permitted assigns.

30. GOOD FAITH

In the implementation of this Agreement, the Parties undertake to observe the utmost good faith and they warrant in their dealings with each other that they shall not do anything which might prejudice or detract from the rights, assets or interests of any other(s) of them.

31. DISPUTE RESOLUTION

Any dispute arising from the agreement shall be subject to the following dispute resolution procedures –

- 31.1 **Informal dispute resolution:** Prior to referring any dispute to arbitration, the Parties shall first attempt to resolve their dispute informally by referring a dispute to its senior management. Senior management of both Parties shall discuss the problem and attempt to resolve the dispute, without the necessity of any formal proceeding, within 14 (fourteen) days of the dispute having been referred.
- 31.2 **Informal dispute resolution does not reduce Parties' rights:** Proceedings in terms of this clause 31.1 shall not be construed to prevent a Party from instituting formal proceedings earlier to obtain urgent or interim relief, avoid the expiration of any applicable limitations period, or preserve a superior position with respect to other creditors.
- 31.3 **Institution of Formal Proceedings:** Subject to the provisions of clauses 31.1 and 31.2, the Parties agree that either Party may elect to refer any dispute which may arise to either the High Court of South Africa or to arbitration proceedings as contemplated in clause 31.4. Upon election by a Party initiating the relevant dispute proceedings, the other Party will be bound by such election for the purposes of the dispute in question.
- 31.4 **Arbitration:** If the Parties are unable to resolve any dispute informally and either Party has elected to commence arbitration proceedings to resolve the dispute in terms of clause 31.3, then such dispute shall on written demand by the electing Party be submitted to arbitration at Arbitration Foundation of Southern Africa as per the Expedited Rules and arbitration shall be held in Cape Town.
- 31.5 **Status of arbitration ruling:** The decision of the arbitrator shall be binding on the Parties to the arbitration after the expiry of the period of 20 (twenty) days from the date of the arbitrator's ruling if no appeal has been lodged by any Party or upon the issue of determination by the appeal panel, as the case may be. A decision, which becomes final and binding in terms of this clause 31.5 may be made an order of court at the instance of any Party to the arbitration. The parties agree to keep the arbitration confidential and not to disclose it to anyone except for purposes of obtaining an order as contemplated herein.
- 31.6 **Continued performance:** Each Party agrees to continue performing its obligations under the agreement while any dispute is being resolved.
- 31.7 **Rapid resolution of disputes:** The Parties shall use commercially reasonable efforts to resolve disputes arising as rapidly as possible.
- 31.8 **Confidentiality:** All disputes will be dealt with in confidentiality to protect the reputation of the parties;
- 31.9 **Excluded relief:** This clause 31 shall not preclude either Party from seeking urgent or interim relief from the High Court of South Africa or any other competent organs of state created for the specific purpose of regulating the business or industry activities in which the Parties are engaged.
- 31.10 **Agreed Jurisdiction:** the Parties hereby consent to the jurisdiction of the Western Cape High Court (Cape Town) in respect of proceedings referred to in clause 31.3 above

32. NOTICES

- 32.1 Each Party hereby selects as its *domicilium citandi et executandi* the physical, postal and email addresses, as stated in the Party Schedule or as per the OPENCOLLAB proposal or quotation, at which all notices and legal processes must be delivered to it for the purposes of this Agreement and for the attention of the Managing Director of a party;
- 32.2 In respect of invoices and statements and any other related queries, the Customer agrees that OPENCOLLAB may deliver it via email to an address as confirmed in writing by the Customer;
- 32.3 Any termination and or breach notice or other legal notice will be valid and effective only if in writing and delivered by hand, registered post or electronic mail message ("e-mail") to the addresses as set out under the Party Schedule by a party authorised to do so.
- 32.4 Any notice to the other Party delivered by hand to its physical address will be deemed, unless the contrary is proved, to have been received on the day of delivery.

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- 32.5 Any notice to a Party posted by prepaid registered mail will be deemed, unless the contrary is proved, to have been received by the addressee, on the 5th (fifth) day following the date of such posting.
- 32.6 Any email to a Party, using its chosen e-mail address as per the Party Schedule, will be regarded as having been received by the recipient when the complete data message enters the information system designated and used for that purpose by the recipient, and is capable of being retrieved and processed by the recipient, or upon receipt by the sender, of an automated acknowledgement of read by the recipient or any conduct of the recipient reasonably sufficient to indicate to the sender that the email has been received. Any termination notice sent by e-mail to a Party will be deemed, unless the contrary is proved, to have been received by the recipient, 24 (twenty-four) hours after the e-mail was sent.
- 32.7 If either Party changes its domicilium address, it will notify the other Party in writing of the change.
- 32.8 Notwithstanding anything to the contrary contained in this Agreement, a notice actually received by either Party from the other Party will be adequate written notice or communication to such Party, despite the terms and conditions of this clause 32 were not strictly complied with.

33. GENERAL PROVISIONS

33.1 Entire agreement

- (a) This Agreement, and any documents referred to in it, constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover.
- (b) Each of the parties acknowledges and agrees that in entering into this agreement it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this agreement or not) relating to the subject matter of this agreement, other than as expressly set out in this agreement.

33.2 Variation / Modifications:

- (a) **The General Terms and Conditions / Service Specific Terms:** OPENCOLLAB may change the terms of the General Terms and Conditions and Service Specific Terms from time to time and will post any such changes on <https://www.opencollab.co.za/> or notify the Customer in writing. These changes will only take effect at the beginning of Customer's next Subsequent Term, at which time Customer's continued use of the Services will constitute its acceptance of the changes.
- (b) **Privacy Policy :** OPENCOLLAB may only change the Privacy Policy where such change is required to comply with Applicable Law or where such change:
- (i) is commercially reasonable;
 - (ii) does not result in a degradation of the overall security of the Services;
 - (iii) does not expand the scope of or remove any restrictions on OPENCOLLAB processing of "Customer Personal Data," as described in the "Scope of Processing" Section of the Data Processing Agreement; and
 - (iv) does not otherwise have a material adverse impact on Customer's rights under the Data Processing Agreement.
- (c) **Support Services Policy, API Policy and Acceptable Use Policy:** OPENCOLLAB may amend the Support Services Policy, API Policy and Acceptable Use Policy from time to time, which amended version will be made available to the Customer and Authorised Users and End Users. Subsequent use of the Services will be subject to those amended Policy/ies, however where any such changes may affect the rights of the Customer, OPENCOLLAB will first notify the Customer in writing prior to implementation of same.

- 33.3 **Waiver:** No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

33.4 Severance:

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- (a) If any provision (or part of a provision) of this agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.
- (b) If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

33.5 Assignment:

- (a) The Customer shall not, without the prior written consent of OPENCOLLAB, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement.
- (b) OPENCOLLAB may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement.

33.6 Governing law

This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of the Republic of South Africa.

ANNEXURE A: EXIT MANAGEMENT PLAN**1. PURPOSE**

- 1.1. The purpose of this Exit Management Plan is to set out the provisions which will apply on termination, cancellation or expiration of the Agreement or any of the Services (under Contract); more specifically to:
 - 1.1.1 require that OPENCOLLAB continues to provide the Services for so long as is reasonably necessary, but in any event for a period not less than the Transfer Period;
 - 1.1.2 require that OPENCOLLAB provides the Exit Management Services, which Exit Management Services may not be withheld by OPENCOLLAB for any reason and to
 - 1.1.3 deal with matters incidental thereto.

2. TRANSFER PERIOD

- 2.1. The Transfer Period shall commence on the date with effect from which the Agreement is terminated, cancelled or expires, or any of the Services (Contracts) are terminated.
- 2.2. The duration of the Transfer Period shall be the shortest period of time reasonably practicable to:
 - 2.2.1. determine the method and programme of the Exit Management Plan and to
 - 2.2.2. implement the Exit Management Plan.
- 2.3. The duration of the Transfer Period shall be agreed upon by the Parties in writing within 5 (five) Business days of commencement of the Transfer Period. Failing such agreement, the Transfer Period shall be 6 (six) months.
- 2.4. If an extension to the Transfer Period is required to implement the Exit Management Plan, any such extension shall require agreement in writing between the Parties.

3. CONTINUATION OF THE SERVICES

- 3.1. Subject to clause 5 below, OPENCOLLAB shall continue to provide the Services until such time as the Exit Management Services have been implemented and completed to the reasonable satisfaction of the Customer, unless the Customer elects that some or all of the affected Services do not continue to be provided by OPENCOLLAB even though the Exit Management Services have not been completed.
- 3.2. OPENCOLLAB shall endeavor to ensure that there is no interruption and/or or degradation of the Services prior to OPENCOLLAB ceasing to provide the Services.

4. EXIT MANAGEMENT SERVICES

- 4.1. In order to enable the Customer, or the Customer's nominated third party service provider, to commence providing services similar to the Services, OPENCOLLAB shall:
 - 4.1.1. provide the Customer and/or the Customer's nominated Third Party Service Provider with such reasonable assistance, cooperation and sufficient information (excluding OPENCOLLAB's Confidential Information) as shall be required for such transfer;
 - 4.1.2. endeavor to facilitate a smooth and seamless transition at the time of disengagement;
 - 4.1.3. take such additional actions and perform such additional tasks as may be reasonably necessary to facilitate a timely disengagement and
 - 4.1.4. ensure full performance of all of OPENCOLLAB's obligations under this Exit Management Plan;

5. FEES AND CHARGES

- 5.1. In the Transfer Period the Customer shall:

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- 5.1.1. pay to OPENCOLLAB the fees as agreed to under the relevant Contract(s) for so long as OPENCOLLAB is actually providing the Services and to the extent that only part of the Services are provided, the Customer shall only pay a pro-rata portion of the fees for such Services;
- 5.1.2. pay to OPENCOLLAB the reasonable costs actually incurred and payable by OPENCOLLAB in carrying out the Exit Management Services in accordance with the Exit Management Plan at the time and materials rates of OPENCOLLAB at that time.

6. RELATED CONTRACTS, RIGHTS AND EQUIPMENT**6.1. Upon implementation of this Exit Management Plan:-**

- 6.1.1. all licenses and other rights granted by the Customer to OPENCOLLAB, as well as those granted by OPENCOLLAB to Customer in terms of clause 5 of the Agreement shall continue whilst OPENCOLLAB continues to provide the Services in accordance with this Exit Management Plan; thereafter such licenses and other rights shall automatically terminate;
- 6.1.2. OPENCOLLAB shall deliver to the Customer all of the Customer's Confidential Information in the possession of OPENCOLLAB and, at the Customer's request, destroy all copies thereof not delivered to the Customer, no later than 10 (ten) days after implementation of the Exit Management Plan. Actual costs incurred in such delivery and/or destruction shall be for the Customer's account.
- 6.1.3. the Customer shall deliver to OPENCOLLAB all of OPENCOLLAB's Confidential Information and Documentation in the possession of the Customer and, at OPENCOLLAB's request, destroy all copies thereof not delivered to OPENCOLLAB, no later than 10 (ten) days after implementation of the Exit Management Plan. Actual costs incurred in such delivery and/or destruction shall be for OPENCOLLAB's account.

7. COMPLETION OF EXIT MANAGEMENT PLAN

- 7.1. This Exit Management Plan shall be deemed to have been implemented in its entirety only when the Parties agree thereon in writing or expiration of the Transfer Period, whichever date occurs first. Any dispute arising out of same, including whether or not it has been properly implemented and/or completed, shall be determined in accordance with clause 31 of the Agreement.