

DOCUMENTATION PACK TERMS AND CONDITIONS

1. DEFINITIONS

- 1.1. In this Agreement, unless the context requires otherwise, the words below mean the following:
- 1.1.1. **"Afiswitch"** means Afiswitch (Pty) Limited, part of the Muvoni Group Limited "Agreement" means these Terms and Conditions, the Schedule (if any), the Disclaimer Notice and any annexures hereto;
 - 1.1.2. **"Agreement"** means these Terms and Conditions, the Schedule (if any), the Disclaimer Notice and any annexures hereto;
 - 1.1.3. **"Business Day"** means any day other than a Saturday, Sunday, or official public holiday in South Africa;
 - 1.1.4. **"CPA"** means the Consumer Protection Act 68 of 2008;
 - 1.1.5. **"Constitution"** means the Constitution of the Republic of South Africa 108 of 1996;
 - 1.1.6. **"Customer"** means the Party that subscribes to one of the TPN documents packs, comprising the Document Pack, through TPN's website or by any other means;
 - 1.1.7. **"Database"** means the TPN online database containing information on the behaviour, profile and creditworthiness of prospective tenants, clients or employees of the clients and customers of TPN, as compiled and organized by TPN and / or an online portal providing access to the Third Party Services, as the case may be;
 - 1.1.8. **"Data Protection Legislation"** means POPIA, ECTA, NCA, PAIA and / or the Constitution, and all applicable laws and regulations relating to the processing of Personal Information and privacy;
 - 1.1.9. **"Disclaimer Notice"** means the disclaimer notice contained in the various documents comprising the Document Packs and forming part of this Agreement in terms of clause 1.1.2;
 - 1.1.10. **"Document Pack/s"** means the LeasePacks, SalesPacks, HR Packs, PopiPortal and / or DocPack system as advertised on the TPN shop website, and / or any other pack of documents that TPN makes available to the property industry or any other industry or market from time to time, and any Updates thereto;
 - 1.1.11. **"Document Pack Services"** means the service of supplying the Customer with the relevant documents comprising the Subscription in respect of Document Pack, and the supply of the relevant Updates thereto;
 - 1.1.12. **"ECA"** means the Electronic Communications Act 36 of 2008;
 - 1.1.13. **"ECTA"** means the Electronic Communications and Transactions Act 25 of 2002;
 - 1.1.14. **"Effective Date"** means the Signature Date or the date upon which TPN provides the Customer with access to the documents comprising the Subscription, whichever occurs first in time;
 - 1.1.15. **"Electronic Signature"** means a signature completed via use of the TPN Electronic Signature System, or by any other means in accordance with section 13(2) and (3) of ECTA;
 - 1.1.16. **"Experian"** means Experian Credit Bureau Proprietary Limited;
 - 1.1.17. **"Expression of Intent"** means an acceptance of this Agreement, as contemplated in section 13(5) of ECTA, which includes the ticking of the appropriate terms and conditions box online;
 - 1.1.18. **"Fees/s"** means the fees due and payable by the Customer to TPN in respect of the Subscription, and any other amounts listed on an Invoice;
 - 1.1.19. **"Initial Period"** means a period of 12 (Twelve) months from the Effective Date;
 - 1.1.20. **"Invoice"** means a tax invoice or commercial invoice issued by TPN to the Customer in respect of the Fees or any other amounts in relation to the supply of the Subscription and / or TPN Electronic Signature Services, from time to time;
 - 1.1.21. **"Juristic Person"** means any juristic person of whatever nature including a body corporate, association, company, close corporation, trust or partnership (whether or not having separate legal personality);
 - 1.1.22. **"MIE"** means Managed Integrity Evaluation Proprietary Limited;
 - 1.1.23. **"NCA"** means the National Credit Act No 34 of 2005;
 - 1.1.24. **"PAIA"** means the Promotion of Access to Information Act 2 of 2000;
 - 1.1.25. **"Parties"** means TPN, the Customer and **"Party"** means either one of them, as the context may indicate;

Initial

- 1.1.26. **"Personal Information"** has the meaning ascribed to it in POPIA;
- 1.1.27. **"POPIA"** means the Protection of Personal Information Act 4 of 2013;
- 1.1.28. **"Prime Rate"** means a rate of interest per annum which is equal to the published minimum lending rate of interest per annum, compounded monthly in arrears and calculated daily, charged by TPN's principle bankers on the secured overdrawn current accounts of its most favoured corporate clients in the private sector from time to time and, in the event of a dispute as to the rate so payable, the rate shall be certified by any manager or assistant manager of any branch of the said bank, whose authority and designation it shall not be necessary to prove and whose decision shall be final and binding on the Parties;
- 1.1.29. **"Schedule"** means the schedule to this Agreement, if applicable;
- 1.1.30. **"Sign"** means (i) a handwritten signature; (ii) an Electronic Signature; or (iii) the acceptance of this Agreement through an Expression of Intent by or on behalf of the Customer;
- 1.1.31. **"Signature Date"** means the date of Signature of this Agreement by the last Party Signing, alternatively the date on which TPN grants the Subscription, whichever occurs first;
- 1.1.32. **"South Africa"** means the Republic of South Africa, as constituted from time to time;
- 1.1.33. **"Subscription"** means the subscription purchased by the Customer for the selected Document Pack in the TPN online shop and any relevant Updates thereto;
- 1.1.34. **"Terms and Conditions"** means these terms and conditions, together with any annexures hereto;
- 1.1.35. **"Third Party Services"** means those services provided by Third Party Service Providers;
- 1.1.36. **"Third Party Service Providers"** means Experian, TransUnion, Afiswitch and MIE and any other third party service provider appointed by TPN from time to time in relation to Document Pack and / or the TPN Electronic Signature System;
- 1.1.37. **"TPN"** means TPN Group Proprietary Limited, a company incorporated in accordance with the laws of South Africa under registration number: 2002/032126/07, situated at 345 Rivonia, First Floor South Wing, Block First Floor, Rivonia, 2191, Gauteng;
- 1.1.38. **"TPN Electronic Signature Services"** means the service of supplying the Customer, and its User/s, with access to the TPN Electronic Signature System, which Service is to be supplied by TPN to the Customer and its User/s in terms of this Agreement and the TPN Electronic Signature System terms and conditions agreed to by the User/s;
- 1.1.39. **"TPN Electronic Signature System"** means TPN's web-based electronic signature system, that facilitates the Customer's, and its User/s', online electronic Signing of (i) this Agreement; (ii) documents generated in terms of Document Pack, excluding SalesPack; (iii) or any other document generated by TPN, by means of a two-step authentication process, in accordance with section 1, read with section 13(2) and 13(3) of ECTA;
- 1.1.40. **"TPN Electronic Signature System Link"** means the link generated by TPN and provided to the Customer, to send on to its Users, which allows the User access to the TPN Electronic Signature Services;
- 1.1.41. **"TransUnion"** means TransUnion Africa Proprietary Limited;
- 1.1.42. **"User/s"** means the user/s added to the TPN Electronic Signature System by the Customer in order for such user/s to electronically Sign a document generated by the Customer from its Subscription;
- 1.1.43. **"Updates"** means any updates, made by TPN, to any of the documents comprising the Document Pack, the case studies and / or frequently asked questions, from time to time;
- 1.1.44. **"VAT Act"** means the Value-added Tax Act 89 of 1991;
- 1.1.45. **"VAT"** means the value-added tax imposed in terms of the VAT Act, including any similar tax which may be imposed in place thereof from time to time; and
- 1.1.46. **"Writing"** means any mode of reproducing information or data in physical form, which includes handwriting and any document or information that is (i) in the form of data message; and (ii) is accessible in a manner usable for subsequent reference;

2. INTERPRETATION

- 2.1. Any reference in this Agreement to:
 - 2.1.1. a **clause** is, subject to any contrary indication, a reference to a clause of the main body of this Agreement;
 - 2.1.2. an **item** is, subject to any contrary indication, a reference to an item in the Schedule to this Agreement;
 - 2.1.3. **law** means any law including common law, statute, constitution, decree, judgment, treaty, regulation, directive, by-law, order or any other measure of the government, local government, statutory or regulatory body or court having legal authority within South Africa; and
 - 2.1.4. **person** means, unless the context indicates otherwise, any natural or Juristic Person, government, state, agency or organ of a state.
- 2.2. Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.

Initial

- 2.3. The headings do not govern or affect the interpretation of this Agreement.
- 2.4. If any provision in a definition confers rights, or imposes obligations on any Party, effect is given to it as a substantive provision of this Agreement.
- 2.5. Unless the context indicates otherwise, an expression which denotes any gender includes the other gender; reference to a natural person includes a Juristic Person; the singular includes the plural, and the plural includes the singular.
- 2.6. Any number of days prescribed in this Agreement excludes the first day and includes the last day.
- 2.7. The words “including” and “in particular” are without limitation.
- 2.8. Any reference to legislation is to that legislation as at the Signature Date, as amended or replaced from time to time, and includes all regulations and schedules to such legislation.
- 2.9. Any reference to a document or instrument includes the document or instrument as ceded, delegated, novated, altered, supplemented or replaced from time to time.
- 2.10. A reference to a Party includes that Party’s successors-in-title and permitted assigns.
- 2.11. A time of day is a reference to Johannesburg time.
- 2.12. The rule of interpretation that, in the event of ambiguity, the contract must be interpreted against the party responsible for the drafting of the contract does not apply.
- 2.13. The cancellation or termination of this Agreement does not affect those of its provisions which expressly provide that they will operate after cancellation or termination, or which must continue to have effect after cancellation or termination, or which must by implication or by their nature continue to have effect after cancellation or termination.
- 2.14. No provision in this Agreement is intended to contravene or limit any applicable provisions of the CPA, NCA or POPIA.

3. THIS AGREEMENT

- 3.1. The Customer agrees to purchase the Subscription in accordance with this Agreement.
- 3.2. Upon granting the Customer access to the Subscription, TPN agrees to sell the Subscription to the Customer in accordance with this Agreement. It is not necessary for TPN to Sign this Agreement in order for it to come into effect (in this event, the Signature Date will be deemed to be the date that the Customer Signs the Agreement).
- 3.3. TPN may, within its sole discretion, grant the Customer the right to access the TPN Electronic Signature System, and to add Users to the TPN Electronic Signature System, which access the Customer accepts, upon the terms and conditions set out in this Agreement.
- 3.4. This Agreement comprises the only terms and conditions upon which TPN will do business with the Customer in relation to the Subscription and in respect of the TPN Electronic Signature System, when utilised in relation to the Document Pack Services.
- 3.5. In the event that there is a conflict between this Agreement and any other TPN agreement, this Agreement will prevail in relation to the access to the Subscription by the Customer and access to the TPN Electronic Signature System by the Customer for the purposes of Signing this Agreement and Signing any documents generated in relation to this Agreement or forming part of the Subscription.
- 3.6. Other TPN terms and conditions may apply to other services rendered by TPN to the Customer and the provision of the TPN Electronic Signature System in relation to such services.

4. DOCUMENT PACKS

- 4.1. The Document Pack is not available for purchase as a bundle. The Customer is required to purchase each of the document packs comprising the Document Pack as individual Subscriptions and enter into separate agreements in respect of each Subscription.
- 4.2. The Customer may not sell any of the documents comprising the Subscription, nor may the Customer use or distribute the documents comprising the Subscription in any manner other than that contemplated in the relevant documents and this Agreement.
- 4.3. The payment of the Fee in respect of the Initial Period does not constitute acceptance by TPN of the application for Subscription. TPN reserves the right to refuse any application for Subscription in its sole discretion.
- 4.4. In the event that an application is refused by TPN in terms of clause 4.3, then TPN shall refund the Customer the Fee paid upfront in respect of the Initial Period.
- 4.5. The Customer will only have access to the relevant Updates to the Subscription for the duration of the Agreement.

5. COMMENCEMENT AND DURATION

- 5.1. This Agreement shall commence on the Effective Date and shall endure for the Initial Period, after which it will automatically be renewed for successive periods of 1 (One) month.
- 5.2. The Customer shall not be permitted to terminate this Agreement prior to the expiry of the Initial Period for any reason whatsoever.
- 5.3. TPN shall be entitled to terminate this Agreement prior to the expiry of the Initial Period in accordance with clause 15.
- 5.4. Subject to clause 5.3, after the expiry of the Initial Term, either Party may terminate this Agreement for any reason, by giving 30 (Thirty) days’ Written notice to the other Party of its intention to do so.

Initial

6. FEES AND PAYMENT TERMS

- 6.1. The Fees for the Initial Period are the Fees set out on the TPN website on the Effective Date.
- 6.2. The Fees payable in respect of the Initial Period may be paid in any one of the manners indicated at checkout at the time of application for the Subscription on the TPN website.
- 6.3. If the Subscription continues on a month to month basis, after the expiry of the Initial Period, as contemplated in clause 5.1, ("**Monthly Subscription**"), the Fees applicable shall be the annual Fee set out on the TPN shop website on the date on which each Invoice is issued, pro rata per month, for each month in which the Agreement endures.
- 6.4. TPN may, within its sole discretion, terminate the Monthly Subscription, without notice, at any time.
- 6.5. Unless special arrangements regarding credit facilities have been arranged with TPN, payment of each Invoice shall be paid by the Customer within 30 (Thirty) days of the date stipulated on such Invoice.
- 6.6. The Fees reflected on each Invoice are inclusive of VAT, notwithstanding that the Fees set out in the Schedule or on TPN's website are quoted exclusive of VAT.
- 6.7. Payments by the Customer shall not be deemed to have been received unless actually received by TPN at its offices or electronically paid into its bank account after all amounts have been cleared by the relevant financial institution.
- 6.8. The Customer shall not be entitled to make any deduction from the Fees payable by it to TPN in respect of any alleged rights to set off or counter-claims unless both the validity and the amounts thereof have been expressly acknowledged and admitted in Writing by TPN.
- 6.9. The amount of the indebtedness of the Customer to TPN at any time shall be proven, on the face of it, by a certificate issued under the signature of any one of TPN's managers, whose office need not be proved. In addition, such certificate will be valid as a liquid document in any competent court for the purpose of obtaining summary judgment against the Customer and such certificate will be deemed to be sufficient particularly for the purposes of pleading or trial in any action instituted against the Customer.
- 6.10. The Customer shall not, under any circumstances, be entitled to withhold payment of any amount due under this Agreement.
- 6.11. In the event that the Customer fails to make due and timeous payment of any amount owing to TPN under this Agreement:
 - 6.11.1. TPN shall be entitled to suspend the Customer's access to the Subscription and the TPN Electronic Signature System and any other service provided by TPN to the Customer, until such time as the Customer has paid to TPN any outstanding amounts due in terms of this Agreement, including any interest which may have accrued thereon; and
 - 6.11.2. such outstanding amounts will bear interest at the Prime Rate from the due date until the date that TPN receives payment in full from the Customer.
- 6.12. Notwithstanding the provisions of clause 6.13, the Customer will, if called upon to do so by TPN, in its sole discretion, Sign a debit order authorisation ("**Debit Order Form**") in favour of TPN in order to effect payment of the Fee applicable in terms of clause 6.3 or any other amounts due by it in terms of this Agreement.
- 6.13. If the Customer elects to pay the Fees via electronic transfer into the bank account of TPN, and TPN accepts such arrangement in its sole discretion, should the Customer subsequently fail to make timeous payment of any amount due in accordance with the provisions of clause 6.5, then the Customer hereby agrees that TPN may collect the outstanding Fees and all future amounts due to TPN by debit order and, in this regard, the Customer agrees to abide by the provisions of clause 6.12.
- 6.14. Should any debit order be returned for any reason whatsoever, the Customer will be responsible for reimbursing TPN for any fees debited to TPN's account by its bankers in connection with such return.
- 6.15. The Signature of the Debit Order Form and any other forms Signed pursuant to the Agreement shall be governed by the terms and conditions of this Agreement.

7. INCREASE IN CHARGES

- 7.1. TPN may adjust the Fees applicable in respect of the annual Fee in relation to the Monthly Subscription, at any time, within its sole discretion, by posting such Fee on the TPN Website.
- 7.2. TPN shall have the right, within its sole discretion, on 14 (Fourteen) days' notice to the Customer, in Writing, to commence charging the Customer and / or its User/s for the use of the TPN Electronic Signature Services.
- 7.3. Notwithstanding the provisions of clause 7.1, TPN endeavours, where possible, to limit its increases to an annual increase in March of each year, save for increases of a statutory nature or basis, or increases occasioned by the increase in charges of Third Party Service Providers.

8. CONNECTIVITY

- 8.1. The onus of accessing the Document Packs and the TPN Electronic Signature System via an internet or dedicated connection rests solely with the Customer and its User/s, and the Customer shall bear all costs associated with such connectivity, which costs are not included in the Fees.
- 8.2. It is the Customer's and the User/s responsibility to ensure that it / they possesses, or will possess, the hardware and software necessary to access the Document Packs and the TPN Electronic Signature System. The Customer and the User/s acknowledge that

Initial

the provision of software and hardware necessary to access the Database does not constitute a service rendered by TPN to the Customer or its User/s.

9. SECURITY

TPN shall have the right to take whatever action and to implement whatever measures it may deem necessary, in its sole discretion, to protect the confidentiality, security and integrity of the Document Packs and the TPN Electronic Signature System; and the information contained therein.

10. ACCESS TO SUBSCRIPTION

- 10.1. It is the Customer's responsibility to ensure that only authorised representatives of the Customer have access to its' Subscription and its' TPN website login credentials.
- 10.2. It is the Customer's responsibility to ensure that only the correct and authorised User/s has / have access to the link generated by the TPN Electronic Signature System.
- 10.3. The Customer will use its best endeavours to keep the Subscription, TPN login credentials and the TPN Electronic Signature System Link secure and to prevent any unauthorised access to such Subscription or to the TPN Electronic Signature System, as the case may be, by any person or entity without the necessary authority.

11. AUDIT

- 11.1. The Customer agrees that TPN may at any time conduct an audit of the Customer's books, records, and systems for the purposes of verifying that the Customer is in compliance with its obligations in terms of this Agreement.
- 11.2. The Customer agrees to take all such steps and do all such things as may be necessary to facilitate the conducting of the audit referred in clause 11.1, provided that TPN will provide the Customer with reasonable notice of its intention to conduct such audit.

12. CONSENT TO USE AND CONTROL OF INFORMATION

- 12.1. The Customer acknowledges, agrees and specifically provides consent, that:
 - 12.1.1. any information submitted by it and / or the User to TPN, in terms of or in relation to this Agreement, or captured on the documents generated by Document Pack, or in the TPN Electronic Signature System may be included in the Database and may be made available to other users of the Database;
 - 12.1.2. TPN shall have the right, in relation to any information submitted to it in terms of clause 12.1.1, to edit, alter or censor such information, either in whole or in part, in such fashion as it in its sole discretion may deem desirable;
 - 12.1.3. TPN shall have the right to verify the accuracy of any information submitted to it in terms of clause 12.1.1 by the Customer;
 - 12.1.4. it will not use the Database, the TPN Electronic Signature System, Document Pack or any information made available to the Customer or the User by TPN for any purpose that is unlawful or prohibited under South African or international law, or that constitutes a contravention of this Agreement; and
 - 12.1.5. any information submitted to TPN in terms of this clause 12, or this Agreement in general, may be used by TPN for the following purposes:
 - 12.1.5.1. recording, processing and continuously maintaining the Customer's and User's information on its Database;
 - 12.1.5.2. creating and maintaining new products;
 - 12.1.5.3. statistical analyses;
 - 12.1.5.4. the distribution of TPN's marketing material; and
 - 12.1.5.5. permitted or prescribed purposes under the NCA, and the Customer specifically provides the consent necessary to opt-in in respect of direct marketing in accordance with section 69 of POPIA.
- 12.2. Use of the TPN Electronic Signature System and / or Document Packs is entirely at the Customer's, and User's, own risk. TPN does not make any representations or warranties about the quality, accuracy, reliability, functionality, completeness, lawfulness or timeliness of the TPN Electronic Signature System and / or Document Packs or their contents; nor does TPN assume any responsibility, of any nature, for any errors, omissions, delays or inaccuracies in the TPN Electronic Signature System and / or Document Packs.
- 12.3. The provisions of this clause 12 shall survive the termination of this Agreement for any reason whatsoever.

13. OWNERSHIP OF INFORMATION

- 13.1. Ownership of the Database and the TPN Electronic Signature System, Document Pack and the information contained therein, or submitted for inclusion from time to time, including all underlying intellectual property rights of whatsoever nature subsisting therein, will vest exclusively in TPN, or its Third Party Service Providers, as the case may be.
- 13.2. For the sake of clarity and the avoidance of all doubt, TPN shall retain possession and ownership of all information submitted to it by the Customer and its User/s in terms of clause 12, notwithstanding the termination or cancellation of the Agreement in accordance with the provisions of clause 15 or for any reason whatsoever, including the expiry of this Agreement.

Initial

- 13.3. The Customer shall keep and maintain as strictly confidential, all the information obtained by it from the Subscription and the TPN Electronic Signature System from time to time save to the extent that it is necessary to utilise the Subscription and the TPN Electronic Signature System in terms of this Agreement and the purpose for which the documents forming part of the Document Pack were created.
- 13.4. The provisions of this clause 13 shall survive the termination of this Agreement for any reason whatsoever.

14. WARRANTIES AND INDEMNIFICATION

- 14.1. TPN warrants that subject to clause 14.4, it will perform its obligations to the Customer in supplying the Document Pack forming part of the Subscription to the Customer, timeously upon acceptance by it of the Customer's application to the Subscription.
- 14.2. Should the Customer not understand this Agreement or the Disclaimer Notice, the Customer hereby undertakes to contact TPN prior to utilising the documents provided to it and prior to using the TPN Electronic Signature System, in order to request an explanation of the Disclaimer Notice. In the event that the User makes no such contact with TPN, the Customer is deemed to have fully understood the Disclaimer Notice.
- 14.3. Subject to the Disclaimer Notice, the Customer may request that TPN remedy any defect in the Subscription documents, or that TPN refund the Customer a reasonable portion of the Fee paid for the Subscription having regard to the extent of the alleged defect and the amount of time in which the alleged defect is said to have endured in relation to the duration of the Agreement.
- 14.4. The Customer shall familiarise itself with the Disclaimer Notice and shall ensure that the Customer understands the Disclaimer Notice. Should the Customer not understand the Disclaimer Notice, the Customer hereby undertakes to contact TPN prior to utilising the Subscription in order to request an explanation of the Disclaimer Notice.
- 14.5. Any refund or remedy requested in terms of clause 14.3 shall be granted in the sole discretion of TPN, without any acceptance of liability.
- 14.6. The Customer undertakes and warrants in favour of TPN that:
- 14.6.1. it is legally authorised to subscribe to the Subscription and subscribe to the TPN Electronic Signature System, and warrants that it has the requisite capacity to conclude legally binding transactions with TPN;
 - 14.6.2. it shall not do, nor omit to do, anything that would result in TPN contravening the provisions of the NCA, the ECA, the CPA, the ECTA, POPIA or the successor-in-title to any such legislation.
- 14.7. The Customer acknowledges that the TPN Electronic Signature Services:
- 14.7.1. does not make provision for an advanced electronic signature as defined in s13(1) of ECTA; and
 - 14.7.2. only applies to Electronic Signatures which require a two-step authentication process in terms of section 13(3) of ECTA. Where a signature is required by law in respect of any agreement including Salespack, the Customer agrees that it will not utilise the TPN Electronic Signature Services for such purpose.
- 14.8. The provisions of clauses 14.6, 14.9, 14.10, 14.11, 14.13, 14.15, 14.16 and 14.17 shall survive the termination of this Agreement for any reason whatsoever.
- 14.9. Without in any way limiting the generality of clauses 14.6 and 14.7, TPN shall not be liable for any loss, liability, damage or expense of whatsoever nature suffered by the Customer, and / or the User/s, as a result of, or which may be attributable to:
- 14.9.1. the use by the Customer and / or User, any other person, of information comprising, or obtained from the Subscription or the TPN Electronic Signature System;
 - 14.9.2. any mistake, error or omission in anyway arising from the Customer's, or its User/s, use of the TPN Electronic Signature System;
 - 14.9.3. any delay in accessing the Subscription at any time; and / or
 - 14.9.4. any delay in accessing the TPN Electronic Signature System by the Customer, and / or its User/s, at any time, or any failure in the TPN Electronic Signature System delivering, in any manner, or any error generated by the TPN Electronic Signature System.
- 14.10. The Customer hereby indemnifies and holds TPN harmless in respect of any claims, of whatsoever nature, howsoever arising, of the Customer and / or its User/s as a result of, in relation to, or attributable to, any matter referred to in clause 14.6, 14.7 and / or 14.9.
- 14.11. The Customer hereby indemnifies TPN against all loss, liability, damage and expense of whatsoever nature which TPN may suffer as a result of, or which may be attributable to:
- 14.11.1. any breach by the Customer or its User/s of any of the acknowledgements, undertakings or warranties in terms of this Agreement;
 - 14.11.2. any unauthorised use made by the Customer or its User/s of the Subscription;
 - 14.11.3. any unauthorised use made by the Customer or its User/s of the Third Party Services; or
 - 14.11.4. any contravention of the legislation referred to in clause 14.6.2 by the Customer or its User/s.
- 14.12. TPN warrants that it will perform its obligations to the Customer in supplying access to the Subscription; and it shall, where possible, afford the Customer prior notice of scheduled maintenance and shall schedule such maintenance for the most convenient time, so as to minimise the inconvenience to the Customer.

Initial

- 14.13. The Customer acknowledges that access to the TPN Electronic Signature System is a complementary service offered to it by TPN by virtue of the Customer being a customer and TPN reserves the right to withdraw this service at any time within its sole discretion. The Customer and the User shall have no claims, of whatsoever nature, howsoever arising, against TPN in relation to any failure to provide access, or working access, as the case may be, to the TPN Electronic Signature System in respect of the Customer and / or its User/s.
- 14.14. If TPN fails to perform to the standards set out in clause 14.1, the Customer may request that TPN remedy any defect in the quality of the services performed by it or that it be refunded a reasonable portion of the Fees paid by it to TPN, having regard to the extent of the alleged failure in TPN's service; provided that no refund may be requested, or shall be payable, in respect of any matter pertaining to the TPN Electronic Signature System.
- 14.15. TPN will not be responsible for any failure to perform its obligations to the Customer, or its User/s, in term of this Agreement where this failure is caused by circumstances beyond TPN's control.
- 14.16. TPN's total liability to the Customer, or its User/s, under this Agreement, in any event whatsoever, will not exceed the total Fees paid by the Customer to TPN for the 12 (Twelve) month period preceding that in which the alleged cause of action arose.
- 14.17. The Customer agrees that no warranties or representations, whether express or implied, other than those specifically recorded in this Agreement have been given or made by TPN in connection with this Agreement.

15. BREACH

- 15.1. Without prejudice to any of TPN's rights in law, should the Customer:
- 15.1.1. fail to pay any Fee or other amount in terms of this Agreement, or any other agreement with TPN;
 - 15.1.2. fail to comply with the provisions of clauses 14;
 - 15.1.3. breach any other term of this Agreement; or
 - 15.1.4. cause TPN to breach the terms of its Agreement with any Third Party Service Provider, then the provisions of clause 15.2 will apply.
- 15.2. TPN will be entitled to:
- 15.2.1. claim immediate payment of all outstanding amounts from the Customer;
 - 15.2.2. suspend the performance of any obligation owed by it to the Customer, and / or its User/s, in terms of this or any other agreement with TPN, including denying the Customer access to the Database and the TPN Electronic Signature System or any other service provided to the Customer by TPN;
 - 15.2.3. give the Customer 20 (Twenty) days' notice of its intention to cancel this Agreement; and / or
 - 15.2.4. claim any damages that it may have suffered from the Customer as a result of those acts listed in clauses 15.1.

16. SURETY

Should the Customer be a company, close corporation, trust or a principal represented herein by an agent, the person/s Signing this Agreement on behalf of the Customer hereby binds himself/themselves in favour of TPN as surety for, and co-principal debtor with, the Customer for the due and proper discharge of all of the Customer's obligations arising from this Agreement.

17. THIRD PARTY SERVICES

- 17.1. Currently, access to the Document Pack and the TPN Electronic Signature System enables the Customer and the User to access the Third Party Services.
- 17.2. Save where the contrary appears from the context, a reference to the Document Pack, and / or the TPN Electronic Signature System, will accordingly be deemed to also include a reference to the Third Party Services.
- 17.3. Access to the Third Party Services is provided in terms of separate agreements between TPN and the Third Party Service Providers.
- 17.4. TPN reserves the right to discontinue access to the Third Party Services at any time for any reason in its sole discretion.

18. LETTERS AND NOTICES

- 18.1. Any letter or notice given in terms of this Agreement shall be in Writing and shall:
- 18.1.1. if delivered by hand be deemed to have been duly received by the addressee on the date of delivery;
 - 18.1.2. if posted by prepaid registered post be deemed to have been received by the addressee on the 5th (Fifth) Business Day following the date of such posting; and
 - 18.1.3. if transmitted by facsimile or email be deemed to have been duly received by the addressee on the date of delivery.
- 18.2. Notwithstanding anything to the contrary contained herein, a Written notice of communication actually received by a Party shall be an adequate Written notice or communication to it notwithstanding that it was not sent to or delivered to the addresses set out in clause 18.3.

Initial

- 18.3. The addresses (i) set out in clause 24.1, in the case of TPN; and (ii) provided by the Customer, either when it creates its TPN login credentials, alternatively, purchases the Subscription, shall constitute the Parties chosen addresses for any and all purposes stipulated under this Agreement and the receipt of any documentation and the institution of any legal proceedings.

19. INTELLECTUAL PROPERTY

- 19.1. Copyright and any other intellectual property rights of whatsoever nature in (i) the Database, Document Pack and the TPN Electronic Signature System, or any part thereof (including all materials, texts, drawings, and data made available on the Database, Document Pack or on the TPN Electronic Signature System) and (ii) any/all data, lists, tables, and any other information supplied by TPN to the Customer will remain the exclusive property of TPN. The Customer and the User, hereby cedes, assigns, transfers and makes over ("**Transfer**") to TPN any copyright and any other intellectual property rights of the Customer that may subsist in any of the foregoing materials that may vest in the Customer and / or User by operation of law, and TPN hereby accepts such Transfer.
- 19.2. Given the provisions of clause 19.1, any unauthorised copying, reproduction, adaptation, reverse engineering, retransmission, distribution, dissemination, sale, publication, broadcast or other circulation or exploitation of any material contemplated in clause 19.1, or any component thereof, will constitute an infringement of such copyright and other intellectual property rights; provided that such materials or any component thereof may be used by the Customer for its own internal purposes and for the purposes of ordering service/s from TPN.
- 19.3. The trademarks, names, logos and other marks ("**Trade Mark/s**") displayed on the Database, the TPN Electronic Signature System, Document Pack and / or the TPN website are registered and unregistered trade marks of TPN. Nothing contained in this Agreement should be construed as granting any license or right to use any Trade Mark without the prior written permission of a director of TPN.
- 19.4. The provisions of this clause 19 will survive the termination of this Agreement for any reason whatsoever.

20. CONFIDENTIAL INFORMATION

- 20.1. The Customer will treat all information supplied by TPN to the Customer as strictly confidential, except to the extent that any such information is freely available in the public domain not as a result of a breach of this clause 20, and the Customer will not, without the prior written consent of a director of TPN, disclose or part with possession of any such information.
- 20.2. The provisions of this clause 20 will survive termination of this Agreement for any reason whatsoever.

21. DATA PROTECTION

- 21.1. Where the Party receiving Personal Information ("**Receiving Party**") from the other Party ("**Disclosing Party**") processes Personal Information in terms of this Agreement, the provisions of this clause 21 shall apply to such processing of Personal Information. For purposes of this clause, "processing" shall have the meaning ascribed to it in POPIA.
- 21.2. The Receiving Party agrees and undertakes that, in the event that it processes any Personal Information in terms of this Agreement, it will:
- 21.2.1. store and process the Personal Information on behalf of the Disclosing Party solely for the purposes set out in this Agreement;
 - 21.2.2. comply with the provisions of the Data Protection Legislation in respect of the Personal Information;
 - 21.2.3. ensure that it maintains all necessary technical and organisational measures to ensure the security, integrity and confidentiality of the Personal Information;
 - 21.2.4. comply with the express instruction or directions of the Disclosing Party from time to time in connection with the use of the Personal Information and the requirements of any Data Protection Legislation;
 - 21.2.5. not retain the Personal Information for longer than is necessary for achieving the specified purpose for which the Personal Information was collected, unless a specific retention period is required by law; and
 - 21.2.6. ensure that Personal Information pertaining to a Data Subject is not transferred to a foreign jurisdiction unless the requirements set out in the Data Protection Legislation have been met in full.
- 21.3. The Receiving Party agrees and undertakes to immediately notify the Disclosing Party if it:
- 21.3.1. becomes aware of any unauthorised or unlawful processing, loss of, damage to and/or destruction of the Personal Information;
 - 21.3.2. becomes aware that a disclosure of Personal Information may be required by law;
 - 21.3.3. receives a request, either in Writing or orally, from a Data Subject wanting to access their Personal Information, or to cease or not commence with the processing of any Personal Information; or
 - 21.3.4. becomes aware of a breach of the provisions of this clause.
- 21.4. The Receiving Party hereby indemnifies and holds harmless the Disclosing Party from any and all losses and damages arising from or in relation to or in connection with any breach by the Receiving Party, or any of its directors, officers, agents, employees, User/s or Permitted Recipients, of the obligations set out in this clause 21.
- 21.5. The provisions of this clause 21 will survive termination of this Agreement for any reason whatsoever.

Initial

22. ECTA

22.1. In compliance with section 43(1) of the ECTA, TPN makes the following available:

22.1.1. Full name and legal status: TPN Group (Pty) Limited, a private company incorporated in accordance with the laws of the Republic of South Africa;

22.1.2. Registration Number: 2002/032126/07;

22.1.3. Physical address: 345 Rivonia, First Floor South Wing, Block First Floor, Rivonia, 2191, Gauteng; ;

22.1.4. Telephone number: 0861 876 000;

22.1.5. Website address: <https://mrsoftware.tpn.co.za>;

22.1.6. Email address: helpdesk@tpn.co.za;

22.1.7. Codes of conduct: TPN is regulated by the Credit Bureau Code of Conduct, Credit Information Ombud Code of conduct and the Credit Providers Association Code of Conduct.

22.1.8. Pricing: see the Cost Structure (Annexure A) in the Schedule, or the TPN website at: <https://app.tpn.co.za/Subscribe/>

22.1.9. Manner of payment: Electronically by credit card, debit order, annually (unless the contrary is stipulated in clause 6).

23. JURISDICTION OF THE MAGISTRATES COURT / GOVERNING LAW

23.1. This Agreement is governed by South African Law.

23.2. Not limiting the jurisdiction that any other court may have, the Parties consent in terms of section 45 of the Magistrates' Courts Act 32 of 1944 (or any similar section of an act replacing such act) to the jurisdiction of the Magistrate's Court for the purpose of any proceedings in terms of or incidental to this Agreement, notwithstanding that the amount claimed or the value of the matter in dispute may exceed such jurisdiction.

23.3. The Customer will be liable for and pay all reasonable legal costs, including collection commission, expenses and charges incurred by TPN in enforcing any of the terms contained in this Agreement on an attorney and client scale.

24. ENTIRE AGREEMENT / MUTUAL SUPPORT

24.1. The Parties agree that this Agreement is the whole agreement between the Parties in regard to its subject matter.

24.2. The Parties undertake at all times to do all such things, to perform all such acts and to take all such steps as may be open to them and necessary for or incidental to the putting into effect or maintenance of the terms, conditions and import of this Agreement.

25. GENERAL

25.1. The Customer shall not be entitled to cede or assign any of its rights and obligations contemplated in this Agreement.

25.2. The Customer warrants and acknowledges that any person who Signs the Agreement on behalf of the Customer is and will be deemed to be duly authorised by the Customer to sign this Agreement, on its behalf and to bind the Customer to the terms thereof.

25.3. The provisions set out in this Agreement are of general application to the provision of the Database Services by TPN to the Customer and no amendment to this Agreement will be deemed to have occurred unless specifically agreed to by TPN in Writing.

25.4. TPN may at any time amend this Agreement subject to notification to the Customer, in Writing, of such amendment.

25.5. Without prejudice to any other provision of this Agreement, any successor-in-title, including any executor, heir, liquidator, judicial manager, curator or trustee of any either Party, shall be bound by this Agreement.

26. RELAXATIONS / INDULGENCES

No indulgence by one Party to the other Party, or failure to strictly enforce the terms of this Agreement, is to be construed as a waiver or a basis for raising estoppel in any way.

27. SEVERABILITY

Each provision in this Agreement is severable from all others, notwithstanding the manner in which they may be linked together or grouped grammatically, and if in terms of any judgment or order, any provision, phrase, sentence, paragraph or clause is found to be defective or unenforceable for any reason, the remaining provisions, phrases, sentences, paragraphs and clauses shall nevertheless continue to be of full force. In particular, the Parties acknowledge their intention to continue to be bound by this Agreement notwithstanding that any provision may be found to be unenforceable or void or voidable, in which event the provision concerned shall be severed from the other provisions, each of which shall continue to be of full force.

Initial

28. SIGNATURE

- 28.1. In the event that this Agreement is signed in handwriting by both Parties, it may be executed in counterparts each of which will be an original and which together constitute the same agreement.
- 28.2. The Agreement may be signed by the Customer on TPN's website by selecting the appropriate box, or by any other Expression of Intent, and this will constitute a valid signature by the Customer for all purposes, indicating its agreement to be bound by the provisions of this Agreement.
- 28.3. The Customer and any person who Signs the Agreement (either on a Written agreement, or signed online) acknowledges, undertakes and warrants that:
- 28.3.1. they are duly authorised to complete the Schedule (on behalf of the Customer, where applicable);
 - 28.3.2. the information contained in the Schedule is true and correct in every respect;
 - 28.3.3. to the extent that any of the information contained in the Schedule changes at any stage, they shall immediately advise TPN of any such change in writing;
 - 28.3.4. they are aware of and have read and understand the terms contained in this Agreement, which forms part of the Schedule, which they understand and accept will form the basis on which TPN will contract with the Customer; and
 - 28.3.5. they are aware that the Customer is obliged to comply with the terms contained in this Agreements at all times and that, if the Customer does not understand any provision contained in this Agreement, then the Customer may contact TPN so that the nature, scope and implications of the provision can be explained to the Customer.

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