

STANDARD COMMUNICATIONS SERVICES TERMS

The following is a statement of the current standard terms of business under which SagacIT (Pty) Ltd provides communications services to its customers. We refer to ourselves as “**FATBUDGIE**” in this document. Any person or entity that validly accepts a service proposal for communications services made by us will enter into a binding agreement with us. Such a person or entity is referred to as a “**CUSTOMER**” in this document and we refer to a validly accepted service proposal for communications services as a “**Service Order**”. Unless otherwise agreed in writing, all our Service Orders are subject to these terms. These terms may be replaced or amended from time to time. Such changes will take effect as and when published. CUSTOMER should review these terms prior to concluding each Service Order since the then valid version of the terms will apply to such Service Order.

1. APPLICATION

1.1 **Application.** Unless otherwise agreed, the prevailing version of these terms will apply to each Service Order concluded with FATBUDGIE. These terms will be incorporated into and form part of each such Service Order while these terms remain valid. However, unless otherwise provided in a Service Order, the terms and conditions of any one Service Order shall not apply to any other Service Order. The term period of each service order will be detailed on the Service Order.

1.2 **Offer & Acceptance.** A quotation rendered by CTEL to the CUSTOMER, in electronic form or otherwise, constitutes an offer by CTEL to the CUSTOMER and will constitute a Service Order if accepted within the stipulated period, subject to any other conditions set out in the proposal.

1.3 **Replacement.** These terms shall be valid as from the date of signature hereof, or the date of acceptance of the quotation as the case may be, until replaced by agreement with amended or new standard terms or as imposed by law. Such replacement will affect the terms of all Service Orders concluded prior to the date on which the replacement terms are specified by to take effect.

1.4 **Conflicts.** Insofar as any term and condition in a Service Order conflicts with these terms, the Service Order shall prevail.

2. DEFINITIONS AND INTERPRETATION

2.1 **Definitions.** For purposes hereof, the following terms shall have the following meanings -

- 2.1.1 “**Affiliate**” means, with respect to any entity, any other entity Controlling, Controlled by or under common Control with such entity;
- 2.1.2 “**AESA**” means the Arbitration Foundation of Southern Africa, or its successors in title;
- 2.1.3 “**Authorised User**” means a Personnel Member of CUSTOMER that is provided with a Handset by CUSTOMER enabling such person to access the Communication Services;
- 2.1.4 “**Authority**” means any national, municipal, provincial, other local or administrative government, authority or department, or any agency, tribunal, commission, regulator or other similar body having jurisdiction by Law over the assets, resources, activities or operations of any of the Parties in any territory that is applicable to a Service Order;
- 2.1.5 “**Business Day**” means any day other than a Saturday, a Sunday or a public holiday in the Republic of South Africa;
- 2.1.6 “**Business Hours**” means the hours from 08h00 to 17h00 (Central African Time) on Business Days;
- 2.1.7 “**Communication Data**” means the communications of Authorised Users that are transmitted via the FATBUDGIE System and the information specifically relating to such communications;
- 2.1.8 “**Communication Services**” means the Services provided via the FATBUDGIE System as described in the Service Order, the Schedule and the relevant Manuals;
- 2.1.9 “**Confidential Information**” means any information of a confidential nature, which has been, or may be obtained directly or indirectly by one Party hereto from the other Party hereto, including, without limitation a Party’s, all non-public information relating to a Party’s business activities or technical know-how, as well as the terms hereof and of any Service Order;
- 2.1.10 “**Connectivity**” means the physical and logical interconnection to the FATBUDGIE System (including via third party data telecommunications networks) as may be

specified by FATBUDGIE to access and use the Communication Services, including the type and bandwidth of the relevant access circuit;

- 2.1.11 “**Contract Year**” means, in respect of a Service Order, each successive 12 (twelve) month period during the term of such Service Order, as measured from the Effective Date of such Service Order;
- 2.1.12 “**Control**” and its derivatives shall mean that an entity holds more than a fifty percent (50%) equity interest in the other entity in question;
- 2.1.13 “**FATBUDGIE**” means SagacIT (Pty) Ltd, a company incorporated in South Africa, with registration number 2004/035464/07 currently having its principal place of business at Corner House, Cnr. Wm Nicol and Leslie Roads, Fourways, JHB – P O Box 1826, Fourways 2055;
- 2.1.14 “**FATBUDGIE Software**” means the computer software programs that are made available to CUSTOMER by FATBUDGIE pursuant hereto, including as may be installed on the Customer Systems and Handsets;
- 2.1.15 “**FATBUDGIE System**” means any equipment, software and communications links used by FATBUDGIE to provide the Communication Services, but excluding all Customer Systems;
- 2.1.16 “**CUSTOMER**” means the entity or person that is entitled to receive Communications Services pursuant to the duly executed and binding Service Order;
- 2.1.17 “**Customer Material**” means all data, reports, documentation, software or materials provided or made available by or on behalf of CUSTOMER to FATBUDGIE, irrespective of the media on which they occur;
- 2.1.18 “**Customer Site**” means any location within the Territory at which Licensed Technology (other than Handsets) is agreed to be implemented by FATBUDGIE for the benefit of CUSTOMER pursuant to the Service Order;
- 2.1.19 “**Customer System**” means any computer system used by CUSTOMER or an Authorised User for the purposes of accessing and using the Communication Services, comprising the hardware, network connections, database management system software, application software and operating system software, including the Connectivity and the Equipment;
- 2.1.20 “**Designated Account**” means FATBUDGIE’s designated bank account for payment that has been duly notified to CUSTOMER in writing;’
- 2.1.21 “**Early Termination Fee**” means the sum of all outstanding Fees that would have become payable for the balance of the Minimum Term had termination not occurred, plus any costs incurred by FATBUDGIE in making early payment under its financing arrangements in connection with the Services and Equipment;
- 2.1.22 “**Effective Date**” means in respect of the Service Order, the date of acceptance of the relevant quotation, or the effective date stipulated on the cover sheet of such Service Order as the case may be, and failing such stipulation the date of such Service Order becoming binding in terms thereof;
- 2.1.23 “**Equipment**” means Handsets, routing devices and other hardware provided by FATBUDGIE for the purposes of making available the Communication Services to CUSTOMER, , including the software implemented thereon
- 2.1.24 “**Error**” means a failure by the Communication Services or Licensed Technology to conform in all material respects to

- the Manuals relevant thereto, but shall exclude all Excluded Defects;
- 2.1.25 “**Excluded Defect**” means a defect in the Communications Services or Licensed Technology caused by any of the following:
- the Connectivity or any equipment or software not provided by FATBUDGIE;
 - accident, misuse, operator error, negligence or abuse or an operator’s failure to comply with the Manuals;
 - a modification, adjustment or alteration of the Equipment or FATBUDGIE Software by persons other than FATBUDGIE employees or a duly appointed contractor of FATBUDGIE;
 - the failure by CUSTOMER to implement promptly any upgrade or any recommendation in respect of or as solution to faults advised by FATBUDGIE;
 - any breach by CUSTOMER of any of its obligations hereunder or under the relevant Service Order; or
 - Force Majeure Events, including fire, power surge, flood, earthquake, storm, hurricane or other natural disaster, war, invasion, act of foreign enemies, hostilities (regardless of whether war is declared), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, nationalisation, government sanction, blockage, embargo, labor dispute, strike, lockout or interruption or failure of electricity or telephone infrastructure services;
- 2.1.26 “**Fees**” means the fees and charges to be paid by CUSTOMER to FATBUDGIE in respect of the Services and Equipment procured pursuant to a Service Order;
- 2.1.27 “**Handset**” means a telephone provided by FATBUDGIE to CUSTOMER pursuant to a Service Order to enable access and use of the Communications Services;
- 2.1.28 “**Intellectual Property Rights**” means patents, registered designs, trademarks (whether registered or otherwise), copyright, trade secret rights, database rights, design rights, service marks and other intellectual property rights and rights to claim something as its confidential information, including in other jurisdictions, that grant similar rights as the foregoing;
- 2.1.29 “**Know-How**” means any and all concepts, ideas, methods, methodologies, procedures, processes, know-how, formulae, techniques, models (including, without limitation, function, process, system and data models); templates; the generalised features of the structure, sequence and organisation of software, user interfaces and screen designs; general purpose consulting and software tools, utilities and routines; and logic, coherence and methods of operation of computer systems that a Party has created, acquired or otherwise has rights in and may, in connection with the performance of its obligations in terms of a Service Order, employ, provide, modify, create or otherwise acquire rights in;
- 2.1.30 “**Law**” means:
- any statute, regulation, by law, ordinance or subordinate legislation in force from time to time to which a party is subject;
 - the common law as applicable to the Parties from time to time;
 - any binding court order, judgement or decree;
 - any applicable industry code, policy or standard enforceable by law; or
 - any applicable direction, policy, rule or order that is binding on a party and that is made or given by any Authority;
- 2.1.31 in any territory that is applicable to the Service Order;
- 2.1.32 “**Licensed Technology**” means the Equipment, FATBUDGIE Software and Manuals made available by or on behalf of FATBUDGIE pursuant to the Service Order;
- 2.1.33 “**Loss**” means all losses, liabilities, damages and claims, and all related costs and expenses (including legal fees at an attorney and own client scale and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties);
- 2.1.34 “**Minimum Term**” means the minimum specified period of the Service Order commencing on the date of first invoice for the monthly Fees pertaining to the Communication Services under the Service Order;
- 2.1.35 “**Manuals**” means the operating and reference manuals provided by FATBUDGIE specifying the procedures, standards, rules and requirements applicable to users of the Communication Services (as may be amended by FATBUDGIE from time to time);
- 2.1.36 “**Parties**” means FATBUDGIE and CUSTOMER and “**Party**” means either one of them;
- 2.1.37 “**Performance Data**” means all data relating to the performance of the Communication Services as implemented for CUSTOMER, including without limitation all test and performance data, as well as usability feedback data generated during the use of the Communication Services;
- 2.1.38 “**Personnel**” means any director, employee, agent, consultant, contractor or other representative of an entity;
- 2.1.39 “**Professional Services**” means all services rendered by FATBUDGIE outside the scope of the Communication Services and Support Services, including without limitation, consultancy, installation, configuration, training, project management and support other than for Errors;
- 2.1.40 “**Professional Services Fees**” means the fees payable by CUSTOMER as consideration for the rendering of Professional Services by FATBUDGIE, which fees will be payable on a Time and Materials basis;
- 2.1.41 “**Rental Equipment**” means Equipment supplied by FATBUDGIE on a rental basis whereby no ownership thereof is transferred to the CUSTOMER.
- 2.1.42 “**Service Desk**” means FATBUDGIE’s helpdesk in respect of the Communication Services described in the Schedule;
- 2.1.43 “**Service Order**” means the proposal by FATBUDGIE for the implementation and provision of the Communication Services for one or more Customer Sites that has been duly accepted and signed by the CUSTOMER in accordance with the terms thereof;
- 2.1.44 “**Services**” means any and all services to be provided by FATBUDGIE to CUSTOMER, pursuant to the Service Order, including Communication Services, Support Services and Professional Services;
- 2.1.45 “**Support Services**” means the support services provided by FATBUDGIE to CUSTOMER in respect of the Communication Services as specified in the Schedule and the relevant Manuals;
- 2.1.46 “**Territory**” means the Republic of South Africa;
- 2.1.47 “**Third Party Software**” means any software forming part of the Licensed Technology that is proprietary to a third party;
- 2.1.48 “**Time and Materials**” means a basis for calculation of Fees based on the time actually spent by FATBUDGIE resources in delivering a service which are to be charged at FATBUDGIE’s prevailing standard fee rates and which also includes payment by CUSTOMER for all expenses reasonably incurred by FATBUDGIE in delivering such service, including for materials, travel, accommodation and subsistence;
- 2.1.49 “**Usage Rights**” means the rights of CUSTOMER to use the Licensed Technology as described in clause 5 hereof;
- 2.1.50 “**User Data**” means all data regarding the Authorised Users that may be required by FATBUDGIE, including the details of the Handsets allocated to the Authorised Users and such other data as FATBUDGIE may be required to hold by Law;
- 2.1.51 “**VAT**” means value added tax payable in terms of the Value-Added Tax Act, No 89 of 1991, as amended;
- 2.2 **Headings.** Headings and sub-headings are inserted for information purposes only and shall not be used in the interpretation of these terms.
- 2.3 **References.** Unless otherwise stated in these terms, references herein to the Service Order or to any other agreement are references to such Service Order or such other agreement as varied, supplemented, substituted or replaced from time to time.
- 2.4 **Clause References.** Unless otherwise stated herein, references to clauses, sub-clauses, schedules or paragraphs are references to clauses, sub-clauses, schedules or paragraphs of these terms, as the case may be.
- 2.5 **Enactments.** References to any Law shall be deemed to include references to such Law as re-enacted, amended or extended from time to time.
- 2.6 **References to persons.** References to persons shall include natural and juristic persons and references to either Party shall include such

Party's successors or permitted assigns.

2.7 **Substantive Provisions.** If any provision in a definition is a substantive provision conferring rights or imposing obligations on either Party, effect shall be given to it as if it were a substantive provision in these terms notwithstanding that it is only contained in this clause 2.

2.8 **Definitions.** Where any term is defined within the context of any particular clause in these terms, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in these terms, notwithstanding that the term has not been defined in this clause 2.

2.9 **Calculation of Days.** Unless expressly otherwise stated, when any number of days is prescribed in these terms or the Service Order, same shall be reckoned exclusively of the first and inclusively of the last day, unless the last day falls on a day that is not a Business Day, in which case the last day shall be the next Business Day.

2.10 **Consents.** Unless specifically otherwise provided, any consent, approval or agreement to be provided by a Party in terms of these terms or the Service Order may not be unreasonably withheld or delayed.

2.11 **Counterparts.** The Service Order may be executed in any number of counterparts (including faxed counterparts) and all of such counterparts taken together shall be deemed to constitute one and the same instrument.

2.12 **Contra proferentum excluded.** No rule of construction that an agreement shall be interpreted against the Party responsible for its drafting or preparation shall apply to these terms or to the Service Order.

3. TERM

3.1 **Term of Service Orders.** The Service Order shall commence on its Effective Date and be of force and effect until terminated in accordance with such Service Order or these terms.

3.2 **Termination of Service Orders.** Following expiry of its Minimum Term, the Service Order may be terminated by either Party by giving the other Party at least 1 (one) calendar month's prior written notice thereto, which termination will take effect as of the date specified in the notice of termination.

3.3 **Early Termination.** If a Service Order is wholly or partly terminated prior to the expiry of the Minimum Term for any reason whatsoever, CUSTOMER will immediately become liable for payment of Early Termination Fees pertaining thereto and CUSTOMER agrees to comply with such requirement and pay the relevant Early Termination Fees within 7 (seven) days of receipt of such notice.

4. DELIVERY AND IMPLEMENTATION

4.1 **Delivery.** In return for payment of the relevant Fees, FATBUDGIE will deliver to CUSTOMER and install such Equipment and FATBUDGIE Software as may be required to make available the Communication Services at the agreed Customer Sites. CUSTOMER will provide FATBUDGIE with such assistance as may be required by FATBUDGIE in this regard, including by providing access to the relevant Customer Sites and Customer Systems, and making available such Personnel and Customer Material as may be required by FATBUDGIE for such purpose.

4.2 **Customer System.** CUSTOMER shall, at its own expense, procure, install at the relevant Customer Sites and maintain all components of the Customer Systems specified by FATBUDGIE to be required to receive the Communication Services (other than the Equipment and the FATBUDGIE Software that are provided by FATBUDGIE). CUSTOMER may request FATBUDGIE to assist in the installation of such components and if FATBUDGIE agrees thereto FATBUDGIE will be entitled to charge Professional Services Fees for providing such assistance.

4.3 **Site Readiness.** CUSTOMER will ensure that a Customer System compliant with FATBUDGIE's minimum specifications is installed and fully operational at each Customer Site prior to the planned date for commencement of the implementation of the Communication Services at such Customer Site. If FATBUDGIE's implementation of Communication Services is delayed by reason of CUSTOMER's failure to ensure same, CUSTOMER will pay all reasonable wasted costs of FATBUDGIE attributable to such delay, including, without limitation, the costs of accommodation, subsistence, travel, costs of sub-contractors and costs of time wasted in abortive site visits.

4.4 **Testing.** FATBUDGIE will be responsible for testing the Communication Services as implemented to ensure that it meets with the requirements of CUSTOMER and CUSTOMER will notify FATBUDGIE of any Errors that it detects during such testing and FATBUDGIE will provide Support Services in respect of such Errors.

5. LICENSING

5.1 **Licence Terms.** With effect from the Effective Date of the Service Order and in return for payment of the relevant Fees and for the duration of the Service Order only, FATBUDGIE grants to CUSTOMER a non-exclusive, non-transferable licence to permit the use of the Licensed Technology as provided and implemented by FATBUDGIE pursuant to the Service Order to access the Communication Services using the Handsets provided solely by the Authorised Users of CUSTOMER conducting business at the Customer Sites specified in the Service Order. CUSTOMER acknowledges that its rights to permit use of the Third Party Software are further specified in the licence terms of the relevant supplier of such Third Party Software.

5.2 **Restrictions.** CUSTOMER shall not, and shall not permit, whether directly or indirectly, any third party, to-

5.2.1 modify, adapt, translate, reproduce, distribute, use, rent, lease, share, sell, assign, sub-licence or otherwise transfer any part of the Licensed Technology;

5.2.2 remove, alter or conceal any proprietary notices or labels on the Licensed Technology; or

5.2.3 reverse assemble, decompile or reverse engineer any FATBUDGIE Software, whether in whole or in part, or otherwise attempt to derive the source code of any FATBUDGIE Software.

6. APPOINTMENT

FATBUDGIE is appointed on the terms and conditions hereof and of the Service Order to provide the Services to CUSTOMER and FATBUDGIE accepts such appointment.

7. SUPPORT SERVICES

7.1 **Scope.** In return for payment of the relevant Fees FATBUDGIE will provide Support Services in respect of Errors with the Communication Services in accordance with the terms of the Schedule.

7.2 **Term.** The Support Services will be provided in respect of Licensed Technology only for as long as Authorised Users remain entitled to receive Communication Services using the relevant Licensed Technology under the Service Order.

8. PROFESSIONAL SERVICES

CUSTOMER may request, and FATBUDGIE may provide, certain Professional Services to CUSTOMER during the term of the Service Order. Unless otherwise agreed in writing, FATBUDGIE may charge Professional Services Fees in respect of all Professional Services rendered hereunder.

9. FEES AND PAYMENT

9.1 **Fees.** CUSTOMER shall be liable for and shall pay the Fees in respect of Services supplied pursuant to the Service Order on the basis set out below (unless otherwise stated in the Service Order):

9.1.1 All upfront Fees applicable to the procurement and installation of Licensed Technology and Equipment may be invoiced immediately upon the ordering thereof;

9.1.2 All Fees applicable to the rental of Equipment may be invoiced monthly in advance as from the date of delivery thereof;

9.1.3 All Fees applicable to the rendering of the Communication Services and Support Services may be invoiced by FATBUDGIE on a monthly basis in advance as from the date of delivery of the Licensed Technology, save to the extent that call charges are billed in arrears on Post Paid accounts;

9.1.4 All Professional Services Fees may be invoiced monthly in arrears for all Professional Services rendered during the month.

9.1.5 FATBUDGIE may adjust the Fees on an annual basis, provided that the Fees will not be increased by a higher percentage than the percentage increase made by FATBUDGIE to its published standard rates generally offered to its customers. FATBUDGIE will provide CUSTOMER with written notice of any adjustments to the

- Fees, which notice will specify the date on which such adjustments are to take effect.
- 9.1.6 All Post Paid accounts requiring an upfront holding deposit may, during the rendering of the Communication Services, require an increase in such deposit which will be invoiced by FATBUDGIE where necessary to mitigate any increase in credit exposure.
- 9.2 **Expenses.** CUSTOMER shall reimburse all reasonable expenses incurred by FATBUDGIE or FATBUDGIE's Personnel in fulfilling FATBUDGIE's obligations pursuant to a Service Order. Such expenses include, but are not limited to, for travelling, accommodation, subsistence, and goods or services purchased on CUSTOMER's behalf. Travelling, accommodation and subsistence expenses may be charged in accordance with FATBUDGIE's standard policies in respect of such matters from time to time.
- 9.3 **Taxes.** The Fees shall exclude all taxes (including without limitation VAT, sales tax, withholding tax, (and any other similar taxes levied in any jurisdiction), duties (including without limitation stamp duties and customs and excise duties), tariffs, rates, levies and other governmental charges or expenses payable in respect of the Services, all of which shall be payable by CUSTOMER in addition to the Fees.
- 9.4 **Invoices (Only applicable to Post Paid accounts).** All invoices shall be paid by CUSTOMER within 7 (seven) calendar days of the date of FATBUDGIE's invoice. Save to the extent that it may be agreed otherwise in writing, no payment obligation undertaken pursuant to a Service Order will be cancellable and no payment made under a Service Order will be refundable. All pre-paid accounts are payable in advance and call costs and subscriptions reduce the account balance.
- 9.5 **Mode and method of payment.** All amounts due and payable by CUSTOMER shall be paid to FATBUDGIE in South African Rand without withholding, deduction or set-off for whatever reason at an address and by way of deposit into the Designated Account or such other manner nominated by FATBUDGIE in writing from time to time. Where applicable, an administration fee shall be payable upon return of any unsuccessful debit order
- 9.6 **Remedies for non-payment.** Where payment of any amount due is not made on due date, FATBUDGIE shall be entitled, without prejudice to any other right or remedy it may have, to -
- 9.6.1 charge interest on the outstanding amount at a rate of 2% (two percent) above the prime overdraft rate (percent, per annum) charged by FATBUDGIE's then current bankers from time to time on unsecured overdraft accounts, as evidenced by any manager of such bank, whose authority it shall not be necessary to prove. Such interest shall be calculated from the due date for payment to the date of actual payment, both days inclusive, compounded monthly in arrears and CUSTOMER agrees and undertakes to pay such interest, which it hereby accepts as fair and reasonable, on demand; and
- 9.6.2 remove any Licensed Technology supplied by FATBUDGIE or suspend the provision of Services or such portion thereof as FATBUDGIE in FATBUDGIE's sole discretion chooses (including by rendering Licensed Technology temporarily inoperable) until all payments in arrears have been paid in full.
- 9.7 **Allocation.** FATBUDGIE may allocate all amounts received from CUSTOMER as follows: Firstly towards interest and reimbursement of expenses, secondly to Fees payable for Services, and thirdly to Fees payable to rental or purchase of Equipment.
10. **CUSTOMER COOPERATION**
- In order to enable FATBUDGIE to provide the Services, CUSTOMER agrees to provide assistance, input, support and co-operation and shall, to the extent required by FATBUDGIE -
- 10.1 **provision of office and working space.** provide FATBUDGIE and its Personnel with access to adequate working space, facilities and parking at the Customer Sites to enable such Personnel to fulfil its obligations at the Customer Sites;
- 10.2 **liaise regularly.** liaise regularly with FATBUDGIE to ensure that FATBUDGIE is in a position to provide the Services;
- 10.3 **decisions and approvals.** render all decisions and approvals required as soon as is reasonably possible, so as not to delay or impede the performance of the Services;
- 10.4 **suitable infrastructure.** to the extent necessary, provide a suitable infrastructure for the components, software or deliverables that are to be implemented, including without limitation, the Customer System environment and infrastructure, in accordance with any specification requirements issued by FATBUDGIE to CUSTOMER;
- 10.5 **access.** provide FATBUDGIE with reasonable access to the Customer Material and CUSTOMER's computer systems to enable FATBUDGIE to comply with its obligations under the Service Order, including remote network access and direct physical access;
- 10.6 **notifications.** notify FATBUDGIE as soon as reasonably possible of any issues, concerns or disputes with respect to the Services;
- 10.7 **Customer Material.** be responsible for the accuracy and completeness of all Customer Material and other data and information, provided to FATBUDGIE for the purposes of FATBUDGIE providing the Services;
- 10.8 **supply of infrastructure.** provide electricity services, telephone services and other connectivity (including access to computer networks and the Internet) at each Customer Site; and
- 10.9 **dependent functions.** make available sufficiently qualified and authorised CUSTOMER Personnel, with appropriate access rights and permissions, to assist FATBUDGIE if required.
11. **CUSTOMER DATA**
- 11.1 **CUSTOMER Reporting.** For the duration of the Service Order, CUSTOMER shall monitor and keep a complete up-to-date and accurate record of all User Data and Performance Data and CUSTOMER will provide FATBUDGIE with such portions of the User Data and Performance Data as FATBUDGIE may from time to time reasonably request. The User Data and Performance Data may be used by FATBUDGIE for its internal purposes, including for improving the services rendered by it.
- 11.2 **Audit Rights.** CUSTOMER shall provide to FATBUDGIE, its auditors (including internal audit staff and external auditors), inspectors, regulators and other representatives as FATBUDGIE may from time to time designate in writing ("**Auditors**") access at all reasonable times (and in the case of regulators, at any time required by such regulator) to the Customer Sites and Customer Systems, and to the relevant CUSTOMER Personnel and Customer Materials for the purpose of performing audits and inspections ("**Audits**") to verify CUSTOMER's compliance with the terms hereof and of the Service Order including, to the extent applicable to the Services, performing audits of general controls and compliance with licensing limitations.
12. **SECURITY**
- 12.1 **Preservation of Licensed Technology.** CUSTOMER shall be responsible to ensure that the integrity of the Licensed Technology as provided to CUSTOMER is preserved and will procure that all reasonable precautions and security measures are implemented to prevent any unauthorised access, use or alteration of the Licensed Technology. Without limiting the generality of the aforesaid CUSTOMER shall:
- 12.1.1 not allow anyone other than Authorised Users to access or use the Licensed Technology or Communication Services;
- 12.1.2 provide adequate redundancy, backup and disaster recovery measures for the Licensed Technology as implemented for it as well as for all related data; and
- 12.1.3 comply with the security requirements and processes described in the Manuals.
- 12.2 **Notification of Breaches.** If CUSTOMER becomes aware of any unauthorised access to the Licensed Technology or Communication Services, CUSTOMER will promptly report the incident to FATBUDGIE describing in detail the scope and nature of the incident.
- 12.3 **FATBUDGIE Equipment.** In respect of all Equipment made available to CUSTOMER that is not owned by CUSTOMER, CUSTOMER shall ensure that:
- 12.3.1 the Equipment is used with care and that reasonable precautions are taken to avoid accidents and to safeguard it from loss or damage and excessive wear and tear;
- 12.3.2 FATBUDGIE is notified immediately of any loss of, or damage to, the Equipment or part thereof or any failure of the Equipment to function;

- 12.3.3 the Equipment is not repaired by anyone other than FATBUDGIE or its authorised subcontractors, save as may be expressly authorised by FATBUDGIE in writing;
- 12.3.4 no part or component for the Equipment is implemented which has not been supplied by FATBUDGIE or its designated suppliers;
- 12.3.5 FATBUDGIE or anyone authorised by FATBUDGIE is allowed to inspect and examine the Equipment at all reasonable times,
- 12.3.6 FATBUDGIE is provided with all such information as it may reasonably require to protect its right of ownership in the Equipment;
- 12.3.7 the Equipment is not sub-let, does not leave its possession, and no person or entity other than Authorised Users is permitted to use the Equipment;
- 12.3.8 the Equipment is used only for the purpose for which it has been designed, and in accordance with FATBUDGIE's reasonable instructions; and
- 12.3.9 the Equipment is covered by a comprehensive all-risks insurance policy in which the interest of FATBUDGIE or its designated subcontractor has been noted, which will insure the replacement value of the Equipment.
13. **RISK**
THE RISK OF LOSS OR DAMAGE IN RESPECT OF ALL COMPONENTS OF THE LICENSED TECHNOLOGY PROVIDED TO CUSTOMER SHALL TRANSFER TO CUSTOMER UPON DELIVERY THEREOF.
14. **COMPLIANCE WITH LAW**
CUSTOMER shall obtain such information and consents as may be required in Law to permit its compliance with the terms of the Service Order and its use of the Communications Services, including as may be necessary to allocate telephone numbers to Authorised Users and otherwise to permit Authorised Users to access and use the Communication Services.
15. **WARRANTIES**
- 15.1 **Warranty of Authority.** Each Party warrants that it has the legal right and full power and authority to execute the Service Order.
- 15.2 **Disclaimer of warranties.** Each Party hereby excludes and disclaims all warranties, whether expressed or implied, statutory or otherwise, except those warranties expressly made herein. Without limiting the foregoing -
- 15.2.1 FATBUDGIE disclaims that the Communication Services and/or Licensed Technology are free of Errors and any other defects; and
- 15.2.2 FATBUDGIE disclaims any warranty that the Communication Services or Licensed Technology will meet with the requirements of CUSTOMER or that it will be of satisfactory quality or fit for a particular purpose.
- 15.3 **No representations.** CUSTOMER acknowledges that it has not been induced to enter into the Service Order by any prior representations, warranties or guarantees, whether oral or in writing, except as expressly contained in herein.
16. **INTELLECTUAL PROPERTY INDEMNITY**
- 16.1 **Indemnity.** Subject to Clause 21, FATBUDGIE hereby indemnifies and holds CUSTOMER harmless from and undertakes to pay all damages, if any, finally awarded against CUSTOMER by a court of competent jurisdiction in any action which is attributable to a claim that a component of the FATBUDGIE Software (other than the Third Party Software) infringes the copyright or patent right of any third party in the Territory ("**a Claim**"), provided that CUSTOMER:
- 16.1.1 notifies FATBUDGIE of any such Claim promptly after becoming aware thereof;
- 16.1.2 gives FATBUDGIE sole control of and agrees that FATBUDGIE may undertake, at its option, the defence of any such Claim, including all settlement negotiations;
- 16.1.3 does not, at any time, admit liability or otherwise settle or compromise the Claim, without the prior written consent and instruction of FATBUDGIE; and
- 16.1.4 provides such assistance to FATBUDGIE as it shall reasonably require in the defence of the Claim including, but not limited to, the provision of all relevant documentation.
- 16.2 **Costs of Assistance.** FATBUDGIE shall reimburse CUSTOMER for its reasonable costs incurred in complying with the provisions of clause 16.1.4 above.
- 16.3 **Consequences of successful claim by third parties.** In the event of a Claim being successful or if FATBUDGIE becomes aware of a potential Claim, FATBUDGIE shall be entitled at its own expense and option either to -
- 16.3.1 obtain for CUSTOMER the right to continue using the infringing component or the parts thereof which gave rise or may give rise to the Claim;
- 16.3.2 replace the infringing component or the parts thereof which gave rise or may give rise to the Claim with another product which does not infringe;
- 16.3.3 alter the infringing component in such a way as to render it non-infringing; or
- 16.3.4 failing any of the above, withdraw the infringing component.
- 16.4 **Exclusion.** Notwithstanding the provisions of this clause, FATBUDGIE shall not be liable under the provisions of this clause to the extent that a claim hereunder arises as a result of: (a) the use of the Licensed Technology in combination with any equipment or software provided by CUSTOMER or which are procured from a third party; or (b) any alteration or modification which was not made by or on behalf of FATBUDGIE.
- 16.5 **Customer Material.** CUSTOMER warrants that the use of Customer Material provided by CUSTOMER to FATBUDGIE does not and will not infringe the Intellectual Property Rights of any other person or entity and CUSTOMER hereby indemnifies and holds FATBUDGIE harmless from any Losses arising as a result of such infringement.
17. **DELAYS**
- 17.1 Definition of Delay. If -
- 17.1.1 CUSTOMER gives an instruction changing the scope of the Services; does not provide access to a person, place or thing timeously; changes a decision which has been previously communicated to FATBUDGIE; does not reply to a communication from FATBUDGIE within the period required, or if no period stipulated, within a reasonable time; unreasonably withholds or delays an acceptance or consent; commits a breach of the the Service Order which is not otherwise categorised as a Delay; or
- 17.1.2 FATBUDGIE's performance is affected by an event of force majeure; or the failure of a third party supplier or service provider;
- same shall constitute a "**Delay**".
- 17.2 **Notification.** Either Party shall notify the other of an event which has occurred or is anticipated and which the notifying Party believes is or may be a Delay.
- 17.3 **Extension of time for performance.** Unless the Delay notified has no effect upon FATBUDGIE's costs or planned delivery, FATBUDGIE's performance shall be extended on a reasonable basis in proportion to the prejudice caused by the Delay, provided that the extension is at least the number of days of the Delay.
- 17.4 **Changes caused by Delay.** Should a Delay arise, either Party may propose a change to the agreed Services. In the event that the Parties are unable to agree on such change, a dispute will be deemed to exist between the Parties to be resolved in terms of clause 24.
18. **FORCE MAJEURE**
- 18.1 **Parties not liable for force majeure.** Neither Party shall be liable for any failure to fulfil its obligations under the Service Order if and to the extent such failure is caused by any circumstances beyond its reasonable control, including but not limited to acts of God, natural disasters, earthquakes, fire, explosions, floods, hurricanes, extreme weather, riots, wars, (whether declared or not), hostilities, revolutions, civil disturbance or usurped authority, accidents, embargo or requisition, unforeseeable acts (including failure to act) of any governmental authority (*de jure* or *de facto*), sabotage, nuclear incidents, epidemics, strikes over which the affected Party have no control, or the failure of any institution whose consent is required for the performance of any obligation hereunder to provide such consent, or delays in the performance of its sub-contractor caused by any such circumstances as referred to in this clause. The right of relief shall apply irrespective of whether the cause of prevention or delay occurs before or after the agreed due time for such obligations.
- 18.2 **Right to terminate.** Should a Party be unable to fulfil a material part of its obligations hereunder for a period in excess of 90 (ninety) calendar days due to circumstances of force majeure,

either Party may at its sole discretion terminate the Service Order or the affected Services forthwith by written notice.

19. PROPRIETARY RIGHTS

19.1 **Retention of Rights.** FATBUDGIE reserves all rights not expressly granted in these terms or the Service Order. CUSTOMER acknowledges that the rights granted to it in respect of the FATBUDGIE Software and Manuals are limited to the Usage Rights and that FATBUDGIE and its suppliers shall, remain solely entitled to all ownership rights in the FATBUDGIE Software and Manuals, including all Intellectual Property Rights therein and all Know-How represented by or incorporated therein. Furthermore, FATBUDGIE and/or its suppliers shall retain ownership of all Equipment supplied by them notwithstanding the delivery thereof to CUSTOMER, save for such Equipment as may be purchased by CUSTOMER and in respect of which the full agreed purchase price has been paid to FATBUDGIE.

19.2 **CUSTOMER Representations.** CUSTOMER undertakes that it shall not in any manner whatsoever represent that it is the owner or has any interest, other than as licensee in terms hereof, in the FATBUDGIE Software and Manuals and shall not take any action to impute any right, title or interest of FATBUDGIE in and to the FATBUDGIE Software or Manuals.

19.3 **Landlord Notices.** In the event that the Customer Site is leased by CUSTOMER, CUSTOMER will ensure that the landlord of such Customer Site is promptly notified of all Equipment that is located at such Customer Site that is owned by FATBUDGIE and/or its suppliers. The notice will conform to any standard format that may be prescribed by FATBUDGIE from time to time and CUSTOMER will use all reasonable endeavours to obtain an acknowledgement of receipt of such notice from the landlord and will provide a copy of the notice containing the receipt acknowledgement to FATBUDGIE. CUSTOMER will repeat the aforesaid process promptly following any change of landlord.

19.4 **FATBUDGIE Know-How.** To the extent that FATBUDGIE utilises any of its Know-How in connection with the performance of its obligations pursuant to the Service Order, same shall remain the property of FATBUDGIE and CUSTOMER shall acquire no right, title or interest in such Know-How.

20. CONFIDENTIAL INFORMATION

20.1 **Confidentiality obligation.** Each Party ("**Receiving Party**") must treat and hold as confidential all Confidential Information which they may receive from the other Party ("**Disclosing Party**") or which becomes known to them during the currency of the Service Order.

20.2 **The Receiving Party's obligations.** The Receiving Party agrees that in order to protect the proprietary interests of the Disclosing Party in the Disclosing Party's Confidential Information, unless the Disclosing Party has expressly agreed otherwise in writing -

20.2.1 the Receiving Party will only make the Confidential Information available to those of the Receiving Party's Personnel who are actively involved in the execution of the Receiving Party's rights or obligations under the Service Order and then only on a "need to know" basis;

20.2.2 the Receiving Party will only use and will ensure that its Personnel only uses the Confidential Information for the purposes of executing its rights or obligations under the Service Order;

20.2.3 the Receiving Party will not and will ensure that its Personnel does not at any time, whether during the Service Order or thereafter, either use any Confidential Information of the Disclosing Party or directly or indirectly disclose any Confidential Information of the Disclosing Party to any third party other than as allowed in terms hereof;

20.2.4 the Receiving Party will initiate internal security procedures reasonably acceptable to the Disclosing Party to prevent unauthorised use and disclosure and will take all practical steps to impress upon those Personnel who need to be given access to Confidential Information, the secret and confidential nature thereof;

20.2.5 all written instructions, drawings, notes, memoranda and records of whatever nature relating to the Confidential Information of the Disclosing Party which have or will come into the possession of the Receiving Party and its Personnel, will be and will at all times remain the sole and absolute property of the Disclosing Party and shall promptly be

handed over to such Disclosing Party when no longer required for the purposes of the Service Order; and

20.2.6 the Receiving Party shall promptly notify the Disclosing Party if it becomes aware of any breach of confidence in respect of the Confidential Information of the Disclosing Party by any person within it or by any person to whom it has divulged such Confidential Information and shall give the Disclosing Party all reasonable assistance in connection with any proceedings which it may institute as a result.

20.3 **Effect of termination.** Upon termination or expiry of the Service Order, the Parties will deliver to each other or, at each Party's option, destroy all originals and copies of Confidential Information in their possession and neither Party will continue using any Confidential Information of the other Party.

20.4 **Exceptions.** The foregoing obligations shall not apply to any information which -

20.4.1 is lawfully in the public domain at the time of disclosure;

20.4.2 subsequently and lawfully becomes part of the public domain by publication or otherwise;

20.4.3 is already lawfully known to the Receiving Party prior to the time of disclosure;

20.4.4 subsequently becomes available to the Receiving Party from a source other than the Disclosing Party, which source is lawfully entitled without any restriction on disclosure to disclose such information; or

20.4.5 is disclosed pursuant to a requirement or request by operation of Law, provided that the Receiving Party gave the Disclosing Party reasonable written notice prior of such requirement and provided the Disclosing Party with all reasonable assistance in preventing such disclosure;

20.5 **Indemnity.** The Receiving Party hereby indemnifies the Disclosing Party against all Losses which the Disclosing Party may suffer as a result of a breach of this clause by the Receiving Party or the Receiving Party's Personnel.

21. LIMITATION OF LIABILITY

21.1 **DIRECT DAMAGES LIMITED.** EXCEPT TO THE EXTENT THAT SUCH LIMITATION IS NOT PERMITTED BY APPLICABLE LAW, EACH PARTY'S MAXIMUM AGGREGATE LIABILITY FOR ANY LOSSES WHATSOEVER CLAIMED IN CONNECTION WITH THE SERVICE ORDER DURING ANY CONTRACT YEAR SHALL BE THE TOTAL FEES ALREADY PAID BY CUSTOMER TO FATBUDGIE IN TERMS OF THE SERVICE ORDER DURING SUCH CONTRACT YEAR, IRRESPECTIVE OF THE FORM (WHETHER IN CONTRACT, DELICT (INCLUDING NEGLIGENCE), STATUTE OR OTHERWISE) OF SUCH LEGAL ACTION.

21.2 **INDIRECT DAMAGES EXCLUDED.** IN NO EVENT SHALL EITHER PARTY OR ITS PERSONNEL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, EXTRINSIC, SPECIAL OR CONSEQUENTIAL DAMAGES OR LOSSES (WHETHER FORESEEABLE OR UNFORESEEABLE) OF ANY KIND (INCLUDING, WITHOUT LIMITATION, LOSS OF PROFITS, LOSS OF INCOME, LOSS OF GOODWILL, LOST OR CORRUPTION OF DATA OR SOFTWARE, LOSS OF USE, BUSINESS INTERRUPTION, PROCUREMENT OF SUBSTITUTE PRODUCTS OR EQUIPMENT OR ANY OTHER PECUNIARY LOSS ARISING OUT OF A DELAY IN DELIVERY OR RELIANCE ON THE SERVICES) ARISING IN CONNECTION WITH THE SERVICE ORDER OR THESE TERMS, WHETHER BASED ON CONTRACT, DELICT, STATUTE OR OTHERWISE, EXCEPT TO THE EXTENT THAT THE LIMITATION OF LIABILITY CONTAINED HEREIN IS NOT PERMITTED BY APPLICABLE LAW. FATBUDGIE SPECIFICALLY EXCLUDES LIABILITY FOR UNAUTHORIZED USE OF THE COMMUNICATION SERVICE

21.3 **CUSTOMER DEFAULT.** FATBUDGIE SHALL NOT BE LIABLE FOR ANY LOSS OR DAMAGE OF WHATSOEVER NATURE ARISING OUT OF OR IN CONNECTION WITH ANY BREACH OF THE SERVICE ORDER OR THESE TERMS BY CUSTOMER OR ANY ACT, MISREPRESENTATION, ERROR OR OMISSION MADE BY OR ON BEHALF OF CUSTOMER OR CUSTOMER'S PERSONNEL.

22. BREACH AND TERMINATION

22.1 Termination for Breach. Should -

- 22.1.1 the terms of a Service Order be materially breached, and such breach is not remedied within 30 (thirty) calendar days of written notice thereof; or
- 22.1.2 any amount due under a Service Order that is 60 (sixty) calendar days outstanding not be paid;
- then, without prejudice to any other rights it may have in Law, the Party entitled to require performance of the relevant obligation may, in its discretion, terminate the Service Order on written notice to the other Party, such termination to take effect on the date specified in the notice.
- 22.2 **Termination for Insolvency.** Should either Party (“Defaulting Party”)-
- 22.2.1 commit an act which is an act of insolvency; or
- 22.2.2 defer or suspend payment of all or substantially all of its debts or is unable to pay its debts as and when they fall due; or
- 22.2.3 effect or attempt to effect a compromise or composition with the Defaulting Party’s creditors; or
- 22.2.4 commence business rescue proceedings, take steps for its voluntary winding up or be provisionally or finally liquidated or be placed in judicial management, whether provisionally or final or ceases to conduct business;
- then, without prejudice to any other rights it may have in Law, the other Party (“Innocent Party”) may, in its discretion, terminate the Service Order on written notice to the Defaulting Party, such termination to take effect on the date specified in the notice.
23. **EFFECT OF TERMINATION**
- 23.1 **Effect of termination of Service Orders.** The termination or expiry of any one Service Order will not affect the validity of any other Service Order.
- 23.2 **Amounts due to FATBUDGIE.** In the event of the termination of a Service Order by FATBUDGIE in terms of Clause 22 or by CUSTOMER for any reason prior to the expiry of the Minimum Term of the Service Order, all Fees which would have become payable over the unexpired period of the Minimum Term, will become due and payable to FATBUDGIE immediately upon the date of termination of the Service Order.
- 23.3 **Duties upon termination.** Upon termination, cancellation or expiry of a Service Order -
- 23.3.1 CUSTOMER will cease using all the Licensed Technology acquired in terms of the affected Service Order and promptly return to FATBUDGIE any and all tangible elements of such Licensed Technology, save for the Equipment in respect of which ownership passed to CUSTOMER;
- 23.3.2 the provision of all Services under such Service Order may be terminated forthwith including by rendering the relevant Licensed Technology inoperable; and
- 23.3.3 CUSTOMER will deliver to FATBUDGIE, or at FATBUDGIE’s option destroy all originals and copies of FATBUDGIE’s Confidential Information and proprietary materials in its possession or under its control.
- 23.4 **Accrued Rights.** The expiry or termination of the Service Order shall be without prejudice to any rights of the Parties accrued as at the date of such expiry or termination.
- 23.5 **Survival.** Termination of a Service Order shall not affect the enforceability of the provisions which have been specified or are by their nature required to operate after such expiry or termination, including without limitation, the following provisions contained herein: Clause 2 (Definitions), clause 14 (Compliance with Law), clause 19 (Proprietary Rights), clause 20 (Confidential Information), clause 21 (Limitation of Liability), clause 23 (Effect of Termination), clause 24 (Dispute Resolution), clause 25 (Assignment), clause 26 (Non-Exclusivity), clause 27 (Non-Solicitation), clause 28 (Non-Competition), clause 29 (Severability), clause 30 (Notices and Domicilia), clause 31 (Relationship) and clause 32 (General).
24. **DISPUTE RESOLUTION**
- 24.1 **Informal Resolution.** Should any dispute arise between the Parties in relation to the Service Order or these terms or any issue arising therefrom:
- 24.1.1 The authorised representatives, as appointed by each Party, shall meet as soon as reasonably practicable (but no less than 5 days of such meeting being requested in writing by either Party) to try to resolve the dispute and shall, if required by either Party, continue to negotiate for at least five (5) consecutive days (or such other period as may be agreed by the Parties in writing);
- 24.1.2 If the dispute had not been resolved at the meeting pursuant to Clause 24.1.1, the dispute shall be referred to an urgent meeting of the Chief Executive Officers of the Parties or such representatives as may be appointed by their Chief Executive Officers. This meeting is to take place within five (5) days of the matter being referred to them or such other period as may be agreed by the Parties in writing;
- 24.1.3 If the dispute has not been resolved within 5 days of the meeting contemplated in Clause 24.1.2 (or such other period as may be agreed by the Parties in writing), either Party may refer the dispute to arbitration in accordance with the terms of Clause 24.2.
- 24.2 **Arbitration.** In the event of there being a dispute relating to or arising out of the Service Order, including regarding the scope, effect, validity, implementation, execution, interpretation, rectification, termination or cancellation of the Service Order, which is not resolved in accordance with Clause 24.1 then, save where otherwise provided in the Service Order, such dispute shall be finally resolved on the terms as provided for below:
- 24.2.1 In the event of any such dispute or difference arising between the Parties the said dispute or difference shall on written demand by any Party to the dispute be submitted to arbitration in Cape Town in the English language in accordance with the rules of AFSA.
- 24.2.2 The arbitrator shall be, if the matter in dispute is principally:
- (a) a technical matter, an independent technical expert of not less than 10 years experience in the relevant technical area;
- (b) an accounting matter, an impartial chartered accountant of not less than ten (10) years standing;
- (c) a legal matter, an impartial practising advocate of not less than ten (10) years standing;
- 24.2.3 If the parties fail to agree whether the matter in dispute is of a legal, accounting or technical nature within seven (7) days after the arbitration has been demanded, it shall be considered to be a legal matter referred to in Clause 24.2.2(c) above.
- 24.2.4 Subject to either Party’s right to appeal in terms of Clause 24.2.6, each of the Parties hereby irrevocably agrees that the decision of the arbitrator in the arbitration proceedings:
- (a) shall be final and binding on each of them; and
- (b) will be carried into effect; and
- (c) can be made an order of any competent Court to whose jurisdiction the parties are subject.
- 24.2.5 It is the intention of the Parties that the arbitration shall, where possible, be held and concluded in twenty-one (21) days after it has been demanded.
- 24.2.6 The Parties irrevocably agree that the submission of any dispute to arbitration in terms of this clause 24.2 is subject to the Parties’ rights of appeal. Either Party may appeal the arbitration ruling by giving written notice to that effect to the other Party to the arbitration within 20 (twenty) calendar days of the ruling being handed down. The appeal shall be dealt with in accordance with the rules of AFSA by a panel of 3 (three) arbitrators appointed for this purpose by agreement between the Parties and, failing such agreement within 15 days of the appeal being notified by either Party, by AFSA.
- 24.2.7 Any arbitration in terms of this clause 24.2 shall be conducted in camera and the Parties shall treat as confidential and not disclose to any third party details of the dispute submitted to arbitration, the conduct of the arbitration proceedings or the outcome of the arbitration, without the written consent of the other Party.
- 24.2.8 This clause 24.2 shall constitute each Party’s irrevocable consent to the arbitration proceedings described herein, and no Party shall be entitled to withdraw from such proceedings or to claim at such proceedings that it is not bound by this clause.
- 24.3 **Urgent Relief.** Nothing herein contained shall be deemed to prevent or prohibit a Party from applying to any appropriate Court for an interdict, urgent relief, enforcement of intellectual property rights or for judgment in relation to a liquidated claim.

- 24.4 **Severability.** The provisions of this clause 24 are severable and will continue to be binding on the Parties notwithstanding any termination or cancellation of the Service Order or any part thereof.
25. **ASSIGNMENT**
- 25.1 **No Assignment.** Neither Party shall be entitled to cede, assign, delegate or otherwise transfer any of its rights or obligations under the Service Order without the prior written consent of the other Party, such consent not to be unreasonably withheld, subject to clause 25.2 below.
- 25.2 **Exception.** Notwithstanding the provisions of clause 25.1, it is expressly recorded that FATBUDGIE shall be entitled to cede and assign all rights and obligations hereunder or in terms of the Service Order to any Affiliate of FATBUDGIE, or to any successor of all or substantially all of the business or assets of FATBUDGIE as it pertains to the Communication Services, provided that FATBUDGIE shall notify CUSTOMER of such event within a reasonable time of it occurring.
26. **NON-EXCLUSIVITY**
Nothing in these terms or a Service Order shall be construed as precluding or limiting in any way the right of FATBUDGIE to license any technology or to provide products or services of any kind or nature whatsoever to any person or entity as FATBUDGIE in its sole discretion deems appropriate.
27. **NON-SOLICITATION**
Neither Party shall during the currency of the Service Order or for a period of 12 (twelve) months following the termination thereof directly or indirectly solicit or offer employment to any of the Personnel of the other Party, and shall not employ or contract in any manner with any Personnel of the other Party.
28. **NON-COMPETITION**
During the term of a Service Order and for a period of 12 (twelve) months after termination thereof, CUSTOMER will not, and will procure that its Affiliates are not, without the prior written consent of FATBUDGIE, concerned or interested either directly or indirectly in the production, sale, licensing or advertisement of any technology anywhere in the world, which is so like or similar to the Licensed Technology as to be capable of restricting, competing or otherwise interfering with or which might otherwise restrict or interfere with the market for the Licensed Technology anywhere in the world.
29. **SEVERABILITY**
- 29.1 **Reading Down.** If a provision herein or in the Service Order is reasonably capable of an interpretation which would make that provision valid and enforceable and an alternative interpretation that would make it void, illegal, invalid or otherwise unenforceable, then that provision shall be interpreted, so far as is possible, to be limited and read down to the extent necessary to make it valid and enforceable.
- 29.2 **Severability.** If the whole or any part of a provision of a Service Order is void or voidable by either Party or unenforceable or illegal, the whole or that part (as the case may be) of that provision, shall be severed, and the remainder of the Service Order shall have full force and effect, provided such severance does not alter the nature of the Service Order.
- 29.3 **Restraints.** Each of the undertakings, restraints and restrictions in clauses 27 and 28 above shall, notwithstanding that they have been grouped or linked together or linked grammatically, be regarded as separate, divisible and severable undertakings, restraints and restrictions, whether as to:
- 29.3.1 the nature of activity or interest; or
- 29.3.2 the areas in which they are applicable; or
- 29.3.3 each of the calendar months falling within the period of the restraint,
- 29.4 and they shall be given effect to as such so that if any such undertakings or restraints or restrictions becomes unenforceable for any reason whatsoever, then that undertaking or restraint or restriction, as the case may be, shall be severable and shall not affect the validity of any other undertakings or restraints and restrictions contained in the said clause.
- 29.5 **Reasonableness.** Each of the Parties acknowledge that by reason of and in consideration for the benefits accruing to them under the

- Service Order, all the restraints set out in clauses 27 and 28 are reasonable as to duration, area and scope of operation.
- 29.6 **Onus.** In the event that any of the Parties ever hereafter contends that any one or more of the restraints granted in clauses 27 and 28 are unreasonable, it shall be obliged to discharge the onus in a court of law or arbitration forum to prove that such restraint or restraints are unreasonable.
30. **NOTICES AND DOMICILIA**
- 30.1 **Addresses.** The Parties hereby choose domicilium citandi et executandi ("**Domicilium**") for all purposes their physical addresses set out in the Service Order.
- 30.2 **Change of Address.** Either Party may give written notice to the other, change its Domicilium to any other physical address in the Republic of South Africa and its telefax number to any other South African number, provided that such change shall take effect 14 (fourteen) calendar days after delivery of such written notice.
- 30.3 **Deemed Delivery.** Notice will be deemed given –
- 30.3.1 if delivered by hand to a responsible person during Business Hours to the designated physical address, on the date of delivery;
- 30.3.2 if sent by an express courier with a system for tracking delivery, when received; and
- 30.3.3 if sent by fax during Business Hours, upon production of a satisfactory transmission report by the fax machine which sent the fax and if outside such Business Hours then at the beginning of the next Business Day.
- 30.4 **Notice actually received.** Notwithstanding anything to the contrary stated above, if a notice or communication is actually received by a Party, adequate notice or communication shall have been given, even though it was not delivered in a manner described above.
31. **RELATIONSHIP**
- 31.1 **No temporary employment service.** Nothing in a Service Order shall be construed as constituting a temporary employment service as contemplated in section 198 of the Labour Relations Act, 1995.
- 31.2 **No agency or partnership.** Nothing in a Service Order shall be construed as creating any form of agency or partnership between the Parties and neither Party shall have any authority to bind, make representations or incur any liability on behalf of the other.
32. **GENERAL**
- 32.1 **Entire Agreement.** The Service Order and these terms constitute the entire agreement between CUSTOMER and FATBUDGIE in respect of the subject matter of such Service Order and no agreements, representations or warranties between the Parties other than those set out therein are binding on the Parties.
- 32.2 **Variation.** No amendment or modification to a Service Order shall be effective unless in writing and signed by authorised signatories of both CUSTOMER and FATBUDGIE.
- 32.3 **Waiver.** No latitude, granting of time or forbearance of a Party hereto regarding the performance of the other Party shall be or be deemed to be a waiver of any term or condition hereof or of a Service Order and no waiver of any breach shall operate a waiver of any continuing or subsequent breach. No waiver shall be effective unless it is expressly stated in writing and signed by the Party giving it.
- 32.4 **Governing Law and jurisdiction.** Service Orders shall be governed and construed according to the laws of the Republic of South Africa and, subject to clause 24, the Parties agree to submit to the exclusive jurisdiction of the Western Cape High Court, Cape Town regarding any and all disputes arising in connection therewith.
- 32.5 **Costs.** Each Party shall be responsible for its own legal and other costs relating to the negotiation of the Service Order.
- 32.6 **Publicity.** Neither Party will make or issue any formal or informal announcement or statement to the press in connection with the Service Order without the prior written consent of the other Party, provided that either Party may name the other of them as a customer or supplier, as applicable, and disclose the general nature of the overall arrangement between the Parties.

THE SCHEDULE

SECTION A: SERVICES

1. GENERAL

1.1 The following services will be provided by FATBUDGIE in return for payment of the Fees. Professional Services Fees will be chargeable to CUSTOMER for all services that are not included in FATBUDGIE's responsibilities hereunder

2. COMMUNICATION SERVICES

2.1 **Scope of Service.** FATBUDGIE will make available the FATBUDGIE System and Licensed Technology in order to transmit and receive Communications Data for Authorised Users using Handsets. The Communication Services are further described in the Manuals. All Communications Data must be submitted in compliance with the requirements specified for same in the Manuals, including with respect to the format and process for submission.

2.2 **Authorisation.** CUSTOMER will permit only Authorised Users using Handsets provided by FATBUDGIE to receive and submit Communications Data via the FATBUDGIE System and Licensed Technology. CUSTOMER will procure that all access to the Communications Services are controlled by way of suitable access controls, including by allocating a unique telephone number to each Handset as obtained from FATBUDGIE and not permitting any Communications Data to be received or submitted other than by way of such Handsets.

3. SUPPORT SERVICES

3.1 **Scope of Support.** The support services provided by FATBUDGIE hereunder will only include services in respect of "Errors". FATBUDGIE may, upon the request of CUSTOMER, provide support in respect of any problem that is not an "Error", but may charge Professional Service Fees in respect of such support. FATBUDGIE may also charge Professional Services Fees for all time reasonably spent and all expenses reasonably incurred by it in order to verify that a problem reported to it by CUSTOMER is not an Error.

3.2 **CUSTOMER Responsibilities.** CUSTOMER shall be responsible for the maintenance of all components of the Customer Systems that are not provided by FATBUDGIE and for providing a suitable operating environment for such Customer Systems.

3.3 **FATBUDGIE Responsibilities.** In consideration for payment of the relevant Fees, FATBUDGIE undertakes to provide support services in respect of all Errors logged with FATBUDGIE. Such support will be limited to assisting with the resolution of Errors in the Licensed Technology, including by providing workarounds and coding fixes where reasonably possible.

3.4 **Support Time Limits.** If a maximum support time entitlement is agreed to apply to the Licensed Technology, FATBUDGIE will not be obliged to provide any support in excess of such entitlement. If FATBUDGIE does provide such additional support, FATBUDGIE will be entitled to charge Professional Services Fees for any time spent providing such additional support.

3.5 **Severity.** When reporting an Error, CUSTOMER in consultation with FATBUDGIE will reasonably allocate a Severity Level to its support requests in accordance with the table below.

Severity Level	Definition of Severity
Severity 1	The Communications Service at a Customer Site is unavailable.
Severity 2	The Communications Service at a Customer Site is available but severely degraded or a Handset fails.
Severity 3	The Communications Service at a Customer Site is available but moderately impaired or the problem can be circumvented

3.6

3.7 **Logging.** All problems logged by CUSTOMER must be reported to FATBUDGIE as follows:

3.7.1 All problems must be reported at FATBUDGIE's Service Desk. FATBUDGIE will provide support during Support Hours only. All after hours support must be pre-arranged with FATBUDGIE and will be chargeable at FATBUDGIE's prevailing after hour rates. FATBUDGIE's "Support Hours" are the hours from 07h30 to 16h30 (GMT+2 hours) on Business Days. Problems can be logged with FATBUDGIE as follows:

(a) via email to support@fatbudgie.co.za;

(b) or on 0-10 590 3300;

3.7.2 At the time of first reporting the problem to FATBUDGIE, CUSTOMER will provide FATBUDGIE with the complete chronological history of the problem from the moment it was first reported, as well as the steps taken and results obtained from first and second line support efforts and CUSTOMER will also ensure that the appropriate support engineer is assigned by it and remains available to assist FATBUDGIE in resolving the problem.

3.7.3 FATBUDGIE and CUSTOMER shall over the term of the Service Order jointly endeavour to draw up a FAQ list to assist CUSTOMER to render support in respect of the Licensed Technology.

3.8 **Network Access.** CUSTOMER will give FATBUDGIE and its authorised representatives controlled remote and direct network access to the Customer Systems to resolve problems.

3.9 **On-Site Support.** The Parties will endeavour to attend to all problems by way of remote support. Should support be provided by FATBUDGIE on-site at any Customer Site, CUSTOMER will refund all FATBUDGIE's reasonable expenses in providing such support on-site at a Customer Site, including for travel, accommodation and subsistence.

3.10 **Escalation.** CUSTOMER will provide a list of at least three responsible persons and contact numbers that FATBUDGIE may contact in the sequence as set out in the list to escalate any Error logged to FATBUDGIE in respect of which CUSTOMER is required to provide assistance to FATBUDGIE.

3.11 **Response.** Depending on the severity level of the reported problem, FATBUDGIE will commercially reasonable endeavours to respond to CUSTOMER in respect of all problems reported and to provide a workaround or solution for Errors within the following time frames:

Severity Level of Problem	Response Time	Resolution Time
Severity 1	2 Support Hours	6 Support Hours
Severity 2	4 Support Hours	12 Support Hours
Severity 3	8 Support Hours	N/A

- 3.12 **Replacements for Purchased Equipment.** All replacement parts (except consumable parts) and replacement Equipment provided for purchased Equipment that are under warranty are inclusive of the Fees (save for replacement parts and replacement Equipment necessitated by any Excluded Defect), but all replacement parts and replacement Equipment provided to CUSTOMER in respect of purchased Equipment after the expiry of the applicable warranty will be chargeable at the standard prevailing price. All replacement parts and replacement Handsets necessitated by any Excluded Defect are chargeable at the standard prevailing price. A walk-in policy applies to all qualifying warranty replacements and repairs.
- 3.13 **Replacements for Rental Equipment.** All replacement parts (except consumable parts) and replacement Equipment provided for rental Equipment are inclusive of the Fees (save for replacement parts and replacement Equipment necessitated by any Excluded Defect). All replacement parts and replacement Handsets necessitated by any Excluded Defect are chargeable at the standard prevailing price. A walk-in policy applies to all qualifying replacements and repairs.
- 3.14 **Runway.Xx warranty.** The Runway gateway has a one (1) year hardware warranty and a one (1) year software warranty. FATBUDGIE undertakes for the term of the Communication Services Agreement to support the Runway hardware and software platform. If purchased the one (1) year hardware warranty will apply and if post one (1) year there is a hardware failure then it will be the customers responsibility to replace the unit. If the Runway gateway is under rental then FATBUDGIE undertake to maintain and replace any hardware failure after the 1st year.
- 3.15 **Upgrades.** FATBUDGIE may from time to time release upgrades, updates or error corrections for the Licensed Technology (“Upgrades”). CUSTOMER will enable FATBUDGIE to install such Upgrades on the Customer Systems remotely from FATBUDGIE’s premises by procuring that FATBUDGIE is provided with the required controlled remote and direct network access in this regard. CUSTOMER will install all Upgrades that cannot be installed by FATBUDGIE as soon as reasonably possible, but in any event by the date specified for implementation by FATBUDGIE in the release, or failing such specification, within 1 (one) month of the date of being notified in writing of the release. If an Upgrade is not implemented within the specified period, and provided that FATBUDGIE has given CUSTOMER at least 30 (thirty) days written notice of its intention to do so, then, until such time as the relevant Upgrade is installed, FATBUDGIE shall be entitled to suspend its provision of Support Services to CUSTOMER in respect of the relevant Licensed Technology.