

YOUR LOGO
HERE

INFORMATION TECHNOLOGY MAINTENANCE AGREEMENT

DATED THE ____ DAY OF _____ 20__

Company Pty Ltd

INFORMATION TECHNOLOGY MAINTENANCE AGREEMENT

DATED THIS _____ DAY OF _____ 20_____.

BETWEEN **Company Pty Ltd** a company incorporated in Cape Town and having its registered office at 1 Smith Street Pietersberg 7000 (the “**Service Provider**”);

AND **Other Company Pty Ltd** a company incorporated in Western Provençe and having its registered office at 12 Lambert Road Besterne 2000 (the “**Customer**”).

RECITALS

- A. The Service Provider has presented a proposal (the “**Proposal**”) to the Customer for the provision of maintenance and support for the Customer’s information technology requirements (the “**Services**”). The Proposal is for the provision of the Services and has been prepared based upon an inspection by the Service Provider of all of the computer hardware and software used by the Customer in the ordinary course of the Customer’s Business conducted at the Customer’s Premises.
- B. The Proposal has also been prepared on the disclosed needs (the “**Disclosure**”) of the Customer of all of its needs and requirements in respect of the Information Technology requirements of the Customer’s Business.
- C. A copy of the Proposal and the Disclosure are respectively Schedule One and Schedule Two to this Agreement.
- D. The Service Provider and the Customer have entered into this Agreement to set out the terms on which the Service Provider will maintain and support the Customer’s Information Technology requirements.

BY THIS AGREEMENT THE PARTIES AGREE AND DECLARE AS FOLLOWS

1. DEFINITIONS

- 1.1. These words and phrases have the following meanings:

Agreement means this agreement together with any amendments or modifications that might at any time be made to it and includes all Schedules and other attachments to it.

Business means the business currently conducted by the Customer at the Premises.

Confidential Information means:

- (a) all the Customer’s information of whatsoever kind or nature that is expressed to be confidential either by the use of words such as “private”, “in confidence”, “strictly confidential”, “not to be disclosed,” and all other information which by its nature is

confidential including but not limited to business records, employment records, agreements or arrangements with customers, suppliers and/or contractors and advices and/or reports to the Customer;

- (b) all information of whatsoever kind or nature relating to the affairs of third Parties in the possession of the Customer and to which the Service Provider may have access to at any time during the Term;

Confidential information *excludes* all information which is or becomes at any time in the public domain except where such information comes into the public domain as a consequence of any act or omission by a Party constituting a breach of this Agreement.

Customer means the company or individual named and described as such as a Party to this Agreement and includes all his or her or its lawful successors or assigns.

Fees means the fees and rates set out in Item One of Schedule Three which the Customer must pay to the Service Provider for the provision of the Services.

Information Technology means all current software, programs, systems, electronic document retention, storage and retrieval processes and all other information technology of whatsoever kind or nature reasonably required by the Customer in order to efficiently conduct the Business and includes all additional information technology which the Customer may acquire, develop or create during the Term and which the Service Provider agrees in writing to maintain and support under this Agreement.

Intellectual Property includes all of the intellectual property of the Customer.

Law(s) means all applicable laws that in any way govern or regulate the terms of this Agreement, or anything done or to be done under it. Law includes all relevant statutes, regulations, codes of practice and/or by-laws together with all amendments.

Maintenance Program means a program prepared by the Service Provider to provide the Services having regard to the Business, the Proposal and the Disclosure, and includes any agreed amendment or modification to the Maintenance Program made during the Term.

Party means a Party to this Agreement and includes its, his or her lawful successors or assignees.

Premises means 12 Lambert Road Besterne 2000 or such other place to which the Customer may move the Business at any time during the Term of this Agreement.

Schedule means a schedule to this Agreement.

Service Provider means the company or individual named and described as such as a Party to this Agreement and includes all its lawful successors or assigns.

Services means all the maintenance, support, advice and consulting services to be provided

by the Services Provider to the Customer during the Term pursuant to the Proposal in respect of the Information Technology Requirements.

Term means the period set out in Item Two of Schedule Three commencing from the date hereof provided that the Term may be a shorter period if this Agreement has been lawfully and properly terminated by a Party pursuant to this Agreement.

2. APPOINTMENT OF SERVICE PROVIDER

- 2.1. The Customer hereby appoints the Service Provider to provide the Services for the Term and the Service Provider hereby accepts its appointment and agrees to provide the Services to the Customer during the Term. Both Parties agree that the express provisions of this Agreement will govern all of their respective rights and obligations to each other and no terms will be implied into this Agreement unless by Law they cannot be excluded.
- 2.2. The Service Provider represents to the Customer that it can and will perform all the Services competently throughout the Term in accordance with the Disclosure and the Proposal. The Service Provider acknowledges that the Customer relies upon this representation in entering into this Agreement.

3. THE SERVICES

- 3.1. The Service Provider will within 30 days of the date of this Agreement prepare the Maintenance Program and submit it to the Customer for approval. The Service Provider will consult with the Customer about any change required by the Customer to the Maintenance Program. If the Customer is not reasonably satisfied with the Maintenance Program after such consultation then the Customer may terminate this Agreement by giving written notice to the Service Provider to that effect. Such termination will not be a breach of this Agreement and neither Party will be entitled to claim any damages or compensation from the other in respect of such termination. Such termination will not in any way affect either Party's rights to be paid any monies then outstanding and owing by the other Party.
- 3.2. The Maintenance Program as approved by the Customer will set out the basis upon which the Services will be provided by the Service Provider to the Customer during the Term. It is an essential term of this Agreement that the Service Provider complies with the Maintenance Program at all times during the Term.

- 3.3. Unless otherwise stated in the Maintenance Program the Service Provider will:
- (a) attend the Premises during ordinary office hours at least once per month to perform the Services including any pre-emptive maintenance of the Information Technology;
 - (b) in cases of emergency breakdowns, use its best endeavours to attend the Premises within 24 hours of the next working day (in ordinary office hours) after being required by the Customer by telephone or email to do so. The Customer must when reporting the breakdown provide the Service Provider with all reasonable details and information required by the Service Provider of the breakdown.
- 3.4. The Service Provider shall from time to time make recommendations, directions and/or give advice to the Customer in respect of upgrades or uses of Information Technology, hardware, componentry, software generally and any available alternatives for the use and /or storage of electronic information.
- 3.5. The Service Provider may use employees or consultants to provide the Services. Where the Service Provider uses employees or consultants to carry out the Services, the Service Provider must ensure that they are all competent, experienced, trained and otherwise suitable to perform the Services. The Service Provider will be exclusively responsible for all the acts, omissions and conduct of its employees and consultants.
- 3.6. The Service Provider will from time to time as reasonably requested by the Customer conduct acceptance testing of all Services, namely such tests as either Party may reasonably require to ensure that the Information Technology continues to meet with the Customer's requirements. In the event that acceptance testing is unsuccessful, the Service Provider will remedy the fault/s pursuant to the Services set out in this clause. Acceptance testing will form part of the Fees. In the event that the Service Provider is unable to remedy any fault within a reasonable period, the Customer may terminate this Agreement by giving one month's prior written notice to that effect. Such termination will not entitle either Party to claim damages or compensation from the other.

4. ACCESS TO PREMISES AND CO-OPERATION

- 4.1. The Customer must give the Service Provider, its employees and consultants all reasonable access required to the Premises and the Information Technology during ordinary business hours on work days to enable the Service Provider to carry out and provide the Services. The Customer acknowledges that such access may cause interruption and disruption to the Business whilst such maintenance is being carried out.
- 4.2. If requested by the Service Provider (acting reasonably) to shut down or not use the whole or any part of its Information Technology so as to allow the Service Provider to provide the Services, then the Customer must promptly shut down and cease using the Information Technology until permitted by the Service Provider to resume use. The Service Provider acknowledges that in the circumstance of a shut down, the Service Provider must do all things promptly and without delay as are necessary to allow the Customer to resume use of its Information Technology as soon as practicably possible.
- 4.3. The Customer must ensure that all its staff co-operate with the Service Provider, its employees and consultants at all times and provide them with all reasonable support and assistance that may be reasonably required.
- 4.4. The Customer must at all times ensure that the Premises are safe for the Service Provider, its employees and consultants to provide the Services.

5. FEES AND PAYMENT

- 5.1. The Customer will pay the Service Provider the Fees for the Services in accordance with the rates specified in Item One of the Schedule Three. The Fees must be paid by the Customer within 28 days of receipt of a tax invoice from the Service Provider setting out the Fees charged, the Services provided and the date the Services were provided.
- 5.2. The Service Provider must promptly and from time to time and at least monthly render to the Customer a tax invoice for the Services provided. A tax invoice that has been posted to the Customer will be deemed received by the Customer two (2) days after posting (whether or not it is in fact received). The Service Provider may also fax or email the tax invoice as well as posting it. In the case of faxing or emailing the tax invoice, it will be deemed received on the date of faxing, emailing (even if posted as well).

- 5.3. Where there is a change in the Business or a change in the Information Technology during the Term, the Service Provider may at its discretion vary by increasing or decreasing the Fees to reasonably reflect any changes in the Services. The Service Provider must give the Customer 30 days' prior written notice of any variation in the Fees. The Customer may within that time if it does not accept that variation by notice in writing to the Service Provider, terminate this Agreement. Such termination will take effect immediately and will not be a breach of this Agreement. From such termination the Customer will cease to be liable for any further Fees but must pay all Fees rendered and unpaid up to the date of termination. This provision will continue to be enforceable notwithstanding termination.

6. EXCLUSIVITY

- 6.1. The Customer will only use the Service Provider during the Term for the provision of the Services. This is an essential term of this Agreement.
- 6.2. The Customer must not without the express prior written consent of the Service Provider permit any other person to interfere with, alter or change the Information Technology.

7. RECOMMENDATIONS

- 7.1. The Service Provider may from time to time give reasonable advice and/or recommendations as to the use, storage and maintenance of the Information Technology and as to the acquisition of software and new operating systems.
- 7.2. The Customer may from time to time require the Service Provider to give advice and make recommendations as to any aspect of the Information Technology and the Service Provider will promptly, competently and professionally respond to such request for advice.

8. CONFIDENTIALITY

- 8.1. The Service Provider must keep any Confidential Information it becomes aware of strictly confidential and must not without the express prior written consent of the Customer use or disclose such information to any third Party.
- 8.2. The Service Provider must only use Confidential Information of which it becomes aware for the proper and legitimate purposes of carrying out the Services. In so doing the Service Provider must take all reasonable steps to ensure that such Confidential Information is secure and that no third Parties can directly or indirectly access such Confidential Information.

- 8.3. Where the Service Provider by act or omission places at risk any Confidential Information of the Customer or places at risk any intellectual property of the Customer or the intellectual property of any third Party, then the Customer may take all reasonable steps including refusing access to the Premises (without being in breach of this Agreement) and including seeking injunctive relief to protect such Confidential Information and/or such intellectual property. In the event of the Customer seeking injunctive relief, the successful Party will be entitled, in addition to such relief and notwithstanding any other provision of this Agreement limiting liability, to the benefit of any consequential costs order in its favour.

9. WARRANTIES AND UNDERTAKINGS

- 9.1. The Service Provider warrants and represents to the Customer that it has all the necessary skills, competencies, training and experience to provide the Services to the Customer throughout the Term and that it will continue to do so.
- 9.2. The Service Provider acknowledges to the Customer that any delay or failure to carry out the Services properly or in a timely manner is likely to cause the Customer substantial damage and loss.
- 9.3. The Service Provider undertakes and promises to the Customer to carry out all the Services properly and promptly.
- 9.4. The Service Provider must in carrying out the Services use its best endeavours to minimise any disruption to the Business whilst carrying out the Services.
- 9.5. Where the Service Provider becomes aware of any inadequacy of the Information Technology requirements of the Customer having regard to the Business then the Service Provider must promptly inform the Customer and make recommendations to the Customer as to what is required to remedy those inadequacies.

10. DEFAULT

- 10.1. In addition to any other provision in this Agreement, the occurrence of any one or more of the following events constitute a default (**an “Event of Default”**):
- 10.1.1. failure to pay any sum (including Fees) within fourteen (14) days after written notice being given by the Service Provider to the Customer to the effect that such payment has not been received by the Service Provider;
- 10.1.2. breach of any other provision of this Agreement where such breach is not remedied within fourteen (14) days of a written notice being given by the Party not in default to the Party in default requiring such breach to be rectified.

- 10.2. Where a breach is incapable of remedy and where the breach by one Party causes material and irreparable damage or loss to the other then the Party not in breach may, notwithstanding anything elsewhere in this Agreement, immediately terminate this Agreement by written notice to that effect to the other Party in default.
- 10.3. Upon the occurrence of any Event of Default, the Party not in default may at its sole option, exercise any or all of the following remedies:
- (a) demand in writing that the Party in default remedy the breach;
 - (b) where the Party in default is the Customer, suspend the provision of the Services until the breach has been remedied;
 - (c) where the Party in default is the Service Provider, suspend the payment of the Fees until the breach has been remedied;
 - (d) subject to any limitations in this Agreement, claim damages from the Party in default;
 - (e) exercise a lien over any property of the Party in default in the possession of the Party not in default to secure compliance with this Agreement by the Party in default.

11. ASSIGNMENT

- 11.1. If the Service Provider assigns its Business or a majority shareholder in the Service Provider transfer its shares in the Service Provider to a third Party or if there is a change in the constitution of the board whereby the control or management of the Service Provider has shifted to newly appointed directors or managers, then the Customer may by written notice to the Service Provider terminate this Agreement.
- 11.2. The rights of either Party are not assignable without the prior written consent of the other Party, which consent may be refused without the other Party being required to give any reason. A change in ownership or control of a Party shall be deemed to constitute an assignment.

12. WARRANTIES BY THE CUSTOMER

- 12.1. The Customer warrants to the Service Provider that all information which it has provided to the Service Provider in the Disclosure and subsequent thereto and which the Service Provider has reasonably relied on in assessing any quotation, making the proposal or giving estimate of the resources necessary to perform the Services is accurate, complete and not misleading in any way.

- 12.2. The Customer warrants to the Service Provider that it has not withheld any material information about the Information Technology or its Business and that all the Customer's relevant employees who use the Information Technology in the Business are competent and experienced and suitably trained in using the Information Technology.

13. PASSWORDS AND ACCESS CODES

- 13.1. All passwords and access codes to any of the Information Technology at all times remain the sole and exclusive property of the Customer and must not be used or disclosed by the Service Provider except for the proper and lawful purposes of providing the Services.
- 13.2. Notwithstanding anything elsewhere contained, on termination of this Agreement the Service Provider must disclose and handover to the Customer all passwords, access codes that it has or knows and which are reasonably required by the Customer to use or access the Information Technology.
- 13.3. Notwithstanding any other provision of this Agreement, the Service Provider must not claim any lien over any access codes or passwords.

14. INTELLECTUAL PROPERTY

- 14.1. The Parties acknowledge and agree that nothing in this Agreement confers any right or interest whether at Law or in equity in the Intellectual Property of the other Party.
- 14.2. The Customer acknowledges and agrees that no aspect of the Services performed by the Service Provider which involves the development of any products or systems may be altered, reproduced, reverse engineered, stored in a retrieval system or transmitted to any third Party by the Customer or any contractor, employee, agent or related entity of the Customer.
- 14.3. The Customer acknowledges and agrees that the Service Provider owns all intellectual property created by the Service Provider to enable it to perform the Services.

15. NOTICES

- 15.1. All notices under these terms and conditions must be in writing. Unless delivered personally, all notices must be addressed to the appropriate addresses noted in this Agreement or as otherwise noted in writing in accordance with this provision. Notices shall be deemed to have been received two (2) days after the posting if mailed in accordance with these terms. Any notice sent by facsimile or electronically shall be deemed received on the day after the day of sending.

- 15.2. A notice shall be deemed to be in writing if sent by post or by any form of electronic communication that is electronically date stamped or which produces an electronic record of the date and time of sending, including without limitation emails and facsimiles.

16. EARLY TERMINATION

- 16.1. If for whatever reason after the expiry of six (6) months from the date hereof the Customer elects to terminate this Agreement, it may do so by giving ninety (90) days prior written notice to the Service Provider to that effect or may terminate the Agreement immediately by giving such notice and paying to the Service Provider with such notice an amount equal to the total of the Fees invoiced to the Customer by the Service Provider over the preceding three months.
- 16.2. If the Service Provider fails to carry out the Services at any time to the reasonable satisfaction of the Customer or fails to carry out the Services promptly then the Customer may by giving one (1) month's prior written notice to the Service Provider terminate this Agreement.
- 16.3. If the Service Provider in providing the Services in any way improperly interferes with the Business then notwithstanding anything elsewhere contained, the Customer may by giving written notice to the Service Provider terminate this Agreement immediately.
- 16.4. If the Service Provider becomes insolvent, fails to provide the Services, refuses to provide the Services or refuses to follow any reasonable direction of the Customer, then upon such event occurring the Customer may by giving written notice to the Service Provider terminate this Agreement immediately.

17. GENERAL

- 17.1. No waiver of any right or remedy will be effective unless in writing and will not operate as a waiver of that right or remedy or any other right or remedy on a future occasion.
- 17.2. Every provision of these terms and conditions is intended to be severable and the deletion, invalidity or unenforceability of any provision shall not affect the enforceability and validity of any other provision.
- 17.3. If any term or provision is illegal, invalid, or unenforceable there shall be added automatically as a part of these terms and conditions a provision as similar in terms as necessary to render such provision legal, valid and enforceable.

- 17.4. Nothing in these terms and conditions shall be deemed or construed to constitute or create a partnership, association, joint venture, employment relationship or agency between the Parties.
- 17.5. Neither Party will be responsible for any failure to comply with the terms of this Agreement or any loss or damage to the other where such failure, loss or damage is unforeseen and due to causes beyond its reasonable control. These causes include but are not limited to terrorism, acts of terror, fire, storm, flood, earthquake, explosion, accident, interruption to services, industrial disputes, war, rebellion, insurrection and acts of God.
- 17.6. The Parties acknowledge that the provisions of this Agreement represent and contain the whole of their agreement in respect of the subject matter of the Agreement and that no prior representations, undertakings and understandings shall be construed as imposing or implying any term into this Agreement. All implied terms that can be expressly excluded by the Parties are hereby expressly excluded.

SIGNED as an **AGREEMENT** by the Parties on the day and year first mentioned.

SIGNED AS A DEED BY)
Company Pty Ltd)
in the presence of:)

Signature of Witness
Print Name:

Director
Print Name:

Director/Secretary
Print Name:

SIGNED AS A DEED BY)
Other Company Pty Ltd)
in the presence of:)

Signature of Witness
Print Name:

Director
Print Name:

Director/Secretary
Print Name:

SCHEDULE ONE

PROPOSAL:

[If you as Service Provider have previously provided the Customer with a formal proposal, replace this page with a copy of that proposal and insert the words ‘SCHEDULE ONE’ at the top of the page]

SAMPLE ONLY
YOUR DOCUMENT WILL VARY DEPENDING ON THE ANSWERS YOU
PROVIDE THROUGH THE BUILDING PROCESS

SCHEDULE TWO

DISCLOSURE:

[If the Customer has previously provided you as the Service Provider with a formal disclosure, replace this page with a copy of that disclosure and insert the words ‘SCHEDULE TWO’ at the top of the page]

SAMPLE ONLY
YOUR DOCUMENT WILL VARY DEPENDING ON THE ANSWERS YOU
PROVIDE THROUGH THE BUILDING PROCESS

SCHEDULE THREE

ITEM ONE: FEES & RATES:

\$100 per hour and R10 000 monthly retainer

ITEM TWO: TERM:

2 Years

SAMPLE ONLY
YOUR DOCUMENT WILL VARY DEPENDING ON THE ANSWERS YOU
PROVIDE THROUGH THE BUILDING PROCESS