

Software & Data Engineering Services



G Cloud 14 Terms and Conditions Document





DYNAMIC VISUAL TECHNOLOGIES LIMITED

G CLOUD 14

TERMS AND CONDITIONS DOCUMENT

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DVT

A registered trademark of Dynamic Visual Technologies Ltd, a company with a registered address of C/- Sable International, 5th Floor, 18 St Swithin's Lane, London, EC4N 8AD, incorporated and registered in England and Wales

Registration No: 11483783

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1 DEFINITIONS AND INTERPRETATION

1.1 In This Agreement, unless inconsistent with or otherwise required by the context, the following words and expressions shall have the meanings ascribed to them below:

This Agreement this document together with all schedules, annexures and Statement Of Works each of which shall be deemed incorporated herein;

This agreement is an enabling agreement. The actual scope of work, services, deliverables, pricing and duration are covered in separate Statement Of Work documents.

Business Day means any day other than a Saturday, Sunday or official public holiday in the United Kingdom or RSA;

Change Control Procedure the Change Control Procedure set out more fully in clause 9 below;

Commencement Date

Commercially Reasonable Efforts that level of effort to achieve the objective in question as would be applied generally by information technology companies in the England and Wales;

Consortium DVT and one or more Parties that have agreed the terms and conditions on which they shall cooperate towards the fulfillment of DVT’s obligations in terms of this Agreement;

CPIX The official Consumer Price Index X as published from time to time by Statistics SA, or its successor in title.

Customer Caused Delay any delay caused by THE CLIENT not fulfilling its obligations, that results in a change to the implementation schedule and/or the Service Fee for the relevant Statement ;

Data Protection Laws means any applicable Law relating to the processing, privacy, and/or use of Personal Data, as applicable to the Customer, the Service Provider and/or the Services, including:
(a) in the United Kingdom:

	<p>(i) the Privacy and Electronic Communications (EC Directive) Regulations 2003, SI 2003/2426, and any laws or regulations implementing Directive 2002/58/EC (ePrivacy Directive); and/or</p> <p>(ii) the General Data Protection Regulation, Regulation (EU) 2016/679 (GDPR) and the Data Protection Act 2018, and/or any corresponding or equivalent national laws or regulations (Revised UK DP Law);</p> <p>(b) in member states of the European Union (EU) and/or European Economic Area (EEA): the GDPR and the ePrivacy Directive and all relevant EU and EEA member state laws or regulations giving effect to or corresponding with any of them</p>
Duration	the period as set out more fully in clause 5 below;
Intellectual Property Rights	<p>For the purposes of This Agreement, Intellectual Property Rights shall include all of the following legal rights of both Parties:</p> <ul style="list-style-type: none">• patents, patent applications and patent rights;• rights associated with works of authorship including copyrights, copyright applications and copyright registrations;• rights relating to the protection of trade secrets and confidential information including rights in unpatented know-how;• design rights;• trademarks, trade names, trademark applications and registrations, service marks and rights in trade dress;• any rights analogous to the aforementioned rights and any other proprietary rights relating to intellectual property; and• any divisions, continuations, renewals, reissues and extensions of the aforementioned rights (as



	applicable) now existing or filed, issued or acquired hereafter;
Invention	any idea, discovery, design, concept, technique, or improvement, whether or not patentable, made solely by a Party or any of its employees or agents hereto or jointly by employees of any Party in terms of This Agreement;
Material	all correspondence, reports, documentation, information, software or Inventions, irrespective of the media on which they occur, and includes, without limiting the generality thereof, all written and printed material, all micro-graphic and other reproductions of the written word, depiction and pictorial material, and all audio-visual, machine-readable and other information;
Parties	the Parties to this Agreement, and “Party” means either one of them;
RSA	the Republic of South Africa;
Services	the services to be rendered by DVT to THE CLIENT in terms of this Agreement, as more fully described in the SOW;
Service Fee	the fees payable by THE CLIENT to DVT in consideration for rendering the Services, as more fully described in the SOW;
Signature Date	the date upon which this Agreement is signed by the Party signing last in time;
Statement Of Work/SOW	any document issued pursuant to This Agreement which describes the Services to be rendered;
VAT	value added tax as defined in the VAT Act;
VAT Act	the Value Added Tax Act 89 of 1991, as amended.

2 INTERPRETATION

- 2.1 The clause headings in this Agreement are included for reference purposes only and shall not in any way affect or govern the interpretation or construction of this Agreement.
- 2.2 In this Agreement, unless a contrary intention clearly appears:
- 2.2.1 expression which denotes any gender includes the other genders, a natural person includes an artificial person and vice versa and the singular includes the plural and vice versa;
 - 2.2.2 any schedule or annexure to This Agreement shall form part of This Agreement;
 - 2.2.3 when any number of days is prescribed in this Agreement, same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a day other than a Business Day, in which case the last day shall be the next succeeding Business Day;
 - 2.2.4 should any provision in a definition be a substantive provision conferring rights or imposing obligations on any Party, then effect shall be given to that provision as if it were a substantive provision in the body of This Agreement;
 - 2.2.5 if figures are referred to in numerals and words, the words shall prevail in the event of any conflict between the two;
 - 2.2.6 a reference to a Party in a document includes the Party's successors and permitted assigns;
 - 2.2.7 a reference to a document includes an amendment or supplement to, or replacement or novation of that document;
 - 2.2.8 any reference to an enactment, regulation, rule or by-law is to that enactment, regulation, rule or by-law as at the Signature Date, and as amended or replaced from time-to-time;
 - 2.2.9 where any term is defined within a particular clause, other than the definitions clause, that term shall bear the meaning ascribed to it in that clause wherever it is used in This Agreement;

- 2.2.10 the use of the word “including” followed by a specific example/s shall not be construed as limiting the meaning of the general wording preceding it;
- 2.2.11 save where specifically stated, all amounts contemplated in This Agreement and any SOW shall be in Sterling currency.
- 2.2.12 save where specifically stated, all amounts contemplated in This Agreement and any SOW shall be exclusive of VAT, and accordingly any Party who is obliged to make any payments upon which VAT is payable to the other Party (“the Payee”) shall pay or reimburse to the payee VAT at the prescribed rate from time to time in terms of the VAT Act, on any amounts payable to the Payee in terms hereof, notwithstanding that the particular clause in This Agreement dealing with such payment may not expressly provide therefore.

3 SUPPLY

THE CLIENT hereby appoints DVT and DVT agrees to supply to THE CLIENT and THE CLIENT agrees to obtain from DVT the Services, as more fully described in the SOW, on the terms and conditions set out in This Agreement.

4 STATUS OF THIS AGREEMENT

- 4.1 This Agreement is an enabling agreement under the terms and conditions of which the Parties may from time to time arrange for services to be rendered in accordance with THE CLIENT's requirements. The Services and the Service Fees and any other specific terms and conditions shall be set out in the SOW.
- 4.2 Save to the extent as may be otherwise provided in any SOW, the terms and conditions of This Agreement shall apply to each and every Work Authorisation. The provisions of any one Work Authorisation shall not apply to any other SOW.
- 4.3 Where there is a conflict between the terms and conditions of This Agreement and the provisions of a Work Authorisation, the provisions of the Work Authorisation shall prevail.
- 4.4 Where a Work Authorisation is varied by a Variation Authorisation in terms of clause 9, and there is a conflict between the terms and conditions of the Work Authorisation and the provisions of the Variation Authorisation, the provisions of the Variation Authorisation shall prevail.

5 DURATION

- 5.1 Subject to clauses 5.2 and 15, This Agreement shall commence on the Commencement Date and shall continue indefinitely, subject to the right of either Party to terminate This Agreement at any time by giving the other Party not less than 30 (thirty) days prior written notice of such termination.
- 5.2 Notwithstanding clause 5.1 above, This Agreement cannot be terminated until each and every Work Authorisation has been terminated in accordance with the terms and conditions applicable to those SOW.
- 5.3 The termination of any one Work Authorisation shall not serve to terminate This Agreement nor any other Work Authorisation that may have been concluded in terms of This Agreement.

6 DVT' OBLIGATIONS

DVT shall -

- 6.1 Use all Commercially Reasonable Efforts to render the Services in accordance with the terms and conditions set out in This Agreement in any SOW.
- 6.2 Use an adequate number of qualified personnel with suitable training, experience and skill to render the Services.
- 6.3 Perform its obligations with reasonable and professional care and skill in accordance with the standards used by companies offering similar services within the information technology industry.
- 6.4 Use all Commercially Reasonable Efforts to prevent or minimise Customer Caused Delays.
- 6.5 Ensure its staff shall at all times when on THE CLIENT's premises adhere to the standard and reasonable health, safety and security procedures and guidelines applicable to THE CLIENT's staff, as varied and conveyed by THE CLIENT to DVT from time to time.
- 6.6 Use all Commercially Reasonable Efforts to ensure that it delivers the Services to THE CLIENT timeously.

7 THE CLIENT'S OBLIGATIONS

THE CLIENT shall, in order to enable DVT to carry out its obligations in terms of This Agreement and any SOW –

- 7.1 Be responsible for the procurement, provision, maintenance, support and safety of the operating environment, including but not limited to, premises, access, infrastructure, facilities, working space, furniture, parking, power, bandwidth, network services, telephone services, cleaning services, support services, security, virus protection, equipment, hardware, software and licenses as required by DVT in rendering of the Services;
- 7.2 Be responsible for the correctness of any information that it supplies in support of the Services.
- 7.3 Inform DVT from time to time of any circumstances within its knowledge that could impact the performance of the Services.

- 7.4 Provide and ensure adequate access to appropriate, skilled THE CLIENT resources necessary to enable DVT to render the Services.
- 7.5 Adhere to the acceptance, approval and signoff timeframes agreed to in any Work Authorisation. Failure to do so may result in a Customer Caused Delay, more fully described in clause 8.
- 7.6 Provide, at its own cost, all the supplies and consumables as expressly agreed to in terms of any SOW.

8 CUSTOMER CAUSED DELAY

- 8.1 THE CLIENT may fail to fulfil its obligations within agreed timeframes in terms of this Agreement and any SOW.
- 8.2 In this event, DVT will attempt to reschedule the project in such a way as to negate the impact of the failure of THE CLIENT to meet its obligations.
- 8.3 If DVT is unable to reschedule the project resources in such a way to enable it to fulfil its obligations and responsibilities, a Customer Caused Delay will be deemed to have occurred.
- 8.4 The reasonable effect of such a Customer Caused Delay on the Work Authorisation in terms of its implementation schedule, completion dates and Service Fee of the relevant Work Authorisation will be determined by the DVT, in consultation with THE CLIENT. This could include *inter alia* the costs of idle resources who are unable to proceed with other productive work.
- 8.5 All changes to the schedule, completion dates and/or Service Fee resulting from Customer Caused Delays shall be processed pursuant to clause 9, save that THE CLIENT will not have the right to decline such changes.

9 CHANGE CONTROL

- 9.1 Events may occur which require a change to the original specification of Services that DVT has agreed to render in terms of This Agreement and any SOW.
- 9.2 If DVT proposes a change, it shall do so by written notice to THE CLIENT, specifying the reasons for the change, the services required to implement the change and the effect that the change, if implemented, shall have on the relevant schedule, completion dates and/or Service Fee.

- 9.3 If THE CLIENT proposes a change, it shall furnish written notice of such change to DVT (“the Change Request”), which notice shall specify the reasons for that change and describe the change in sufficient detail to enable DVT to formulate a response in terms of 9.4.
- 9.4 Within 7 (seven) days of receipt by DVT of a Change Request, DVT shall notify THE CLIENT in writing of the services required to implement THE CLIENT’s requested change, and the effect that such proposed change, if implemented, shall have on the schedule, completion dates and/or Service Fee.
- 9.5 Neither Party shall proceed with the implementation of any change to This Agreement or any SOW pursuant to this clause until such time as all matters relating to such change (including without limitation, any additional services required to implement the change, the effect that the change shall have on the schedule, completion dates and the Service Fee, and any other specific terms and conditions related to the change) have been agreed to in writing between the Parties (“the Variation Authorisation”), which Variation Authorisation shall be incorporated into the relevant Work Authorisation and be subject to the terms and conditions of This Agreement and the Work Authorisation save as amended by the Variation Authorisation. Should agreement not be reached within 30 days a dispute will be deemed to have occurred and will be dealt with in terms of clause 19.
- 9.6 Pending approval of any Variation Authorisation, the Parties shall continue to perform their obligations without taking into account the proposed changes, unless otherwise agreed.

10 TRAVEL, SUBSISTENCE AND MATERIALS

- 10.1 The cost of local travel by motor vehicle between the premises of THE CLIENT and DVT, limited to 2 trips per person per day, shall be reimbursed by THE CLIENT to DVT, which amount shall be invoiced monthly with a schedule detailing all such local travel.
- 10.2 Any travel and subsistence expenses reasonably and necessarily incurred by DVT’s personnel in travelling internationally shall be reimbursed by THE CLIENT. DVT shall obtain prior written approval from THE CLIENT before incurring such expenses.

- 10.3 Should DVT provide, at its own cost, any supplies and consumables reasonably required by DVT to render the Services or as expressly agreed to in terms of This Agreement and any SOW, THE CLIENT will reimburse DVT for these expenses at cost. DVT shall obtain prior written approval from THE CLIENT before incurring such expenses.

11 PAYMENT TERMS

- 11.1 THE CLIENT shall be liable for and shall pay the Service Fees set out in the relevant SOW, and as amended by any Variation Authorisation pursuant to clause 9 above, and any authorised travel, subsistence and materials expenses.
- 11.2 Invoices for all Service Fees and authorised expenses payable under this Agreement, together with VAT, shall be sent to THE CLIENT at the end of each month, or as specified in the Work Authorisation, and each invoice shall be due and payable on the date the invoice is received by THE CLIENT, which date, for purposes of this Agreement, shall be deemed to be no later than 30 (thirty) days from the date of the invoice. Invoices not disputed within 14 days of receipt, are deemed to be correct, and the Services delivered in terms of such invoice, accepted.
- 11.3 Should payment not be received within a period of 30 (thirty) days from the date the invoice is due and payable in terms of 11.2, DVT may discontinue the Services to THE CLIENT after having given THE CLIENT 7 days written notice. The amount outstanding shall bear interest, compounded monthly from the due date to date of payment, at a rate per annum equal to Prime
- 11.4 In the event of discontinuation of the Services as contemplated in 11.3 above DVT will use its Commercially Reasonable Efforts to recommence rendering the Services as soon as possible following payment in full of all outstanding amounts plus interest thereon. The relevant schedule and/or completion dates shall automatically be extended to take into account the period between suspension and recommencement of the Services.
- 11.5 Any failure by THE CLIENT to pay any amount invoiced within 60 (sixty) days of the date of the invoice shall be deemed a Material breach of This Agreement.
- 11.6 A certificate under the signature of the auditor's of DVT whose authority and designation it shall not be necessary to prove, together with copies of the relevant tax invoices and supporting documentation, shall constitute prima facie proof of

THE CLIENT's debt for purpose of insolvency and legal proceedings and the obtaining of provisional sentence.

12 INTELLECTUAL PROPERTY RIGHTS

- 12.1 DVT acknowledges and agrees that the Intellectual Property Rights and ownership of all Material made available to it by THE CLIENT from time to time, vests and shall remain vested exclusively in THE CLIENT.
- 12.2 THE CLIENT acknowledges and agrees that the Intellectual Property Rights and ownership of all Material made available to it by DVT from time to time, vests and shall remain vested exclusively in DVT.
- 12.3 DVT warrants that no Material supplied by DVT to THE CLIENT in terms of and pursuant to This Agreement and any Work Authorisation shall infringe any patent, design, copyright, trade secret, intellectual property right or other proprietary right of any third Party, and DVT shall, at its cost, defend THE CLIENT against any claim that such Material infringes any such right of any third Party, provided that THE CLIENT gives prompt notice to DVT of such claim and DVT controls the defence thereof.
- 12.4 The Intellectual Property Rights in any Material prepared or created for THE CLIENT by DVT or any personnel of DVT, pursuant to any SOW shall remain the exclusive property of DVT until such time as THE CLIENT has fulfilled all its obligations including but not limited to payment in full of the Service Fee in respect of such Work Authorisation. As soon as reasonably possible thereafter and subject to 12.5, DVT shall assign sole ownership of such Intellectual Property Rights to THE CLIENT.
- 12.5 Nothing in this Agreement conveys to THE CLIENT any ownership rights in any such Materials prepared by DVT prior to the commencement date or any works or modifications thereto that are made by DVT during or after the period of This Agreement, even if such works or modifications thereto are used in connection with the performance of Services hereunder. Such Materials must be defined in the relevant SOW.
- 12.6 DVT grants THE CLIENT a perpetual, royalty free licence to use the Materials referred to in clause 12.5 and incorporated into the solution rendered to THE CLIENT.

- 12.7 DVT makes use of software components developed by DVT to speed up the development process for common tasks and common business processes for multiple clients. DVT may use one or more of these components to develop software for THE CLIENT and will provide the relevant software components to THE CLIENT royalty free and with source code. These components remain wholly owned by DVT but THE CLIENT may modify these components for its own use. These rights are transferable by THE CLIENT to another entity when THE CLIENT transfers ownership of software that uses DVT components. The DVT components may not be sold as stand-alone components. Unless specified otherwise, these components are provided at no additional charge and without maintenance and support from DVT, unless negotiated as part of a software maintenance and support service from DVT. Should DVT elect to use these components on THE CLIENT project, DVT will notify the client in advance. THE CLIENT may request DVT not to use such components, in which case additional costs and project delivery time may be required.
- 12.8 Should the project require the use of a 3rd party software component the 3rd party licencing and support cost will be for the client's account. Such 3rd party software to first be approved by the client.

13 NON SOLICITATION

- 13.1 Neither Party nor any entity in which such party is directly or indirectly interested or by which it is controlled shall, during the existence of This Agreement or for 12 months thereafter, directly solicit or encourage or entice or persuade, or attempt to solicit or encourage or entice or persuade any employee of the other Party, whom the first Party became aware of as a result of This Agreement or any Work Authorisation, to leave its employment with the other Party.
- 13.2 It shall not be a violation of this provision for either Party to advertise and recruit suitably skilled persons to fill its vacant positions in generally available public media and to employ the other Party's employees who seek such employment due to such advertisements and recruiting.

14 CONFIDENTIALITY

- 14.1 Subject to 14.2, each Party undertakes to the other that it shall treat as confidential the terms of This Agreement and any SOW together with all information whether

of a technical nature or otherwise relating in any manner to the business or affairs of the other Party as may be communicated to it hereunder or otherwise in connection with This Agreement and any SOW and shall not disclose such information to any person, firm or company (other than to its auditors and other professional advisors) or to the media, and shall not use such information other than for the purposes of This Agreement and any SOW, subject always to any prior specific authorisation in writing by the Parties concerned to such disclosure or use.

14.2 The provisions of 14.1 shall not apply to any information which –

14.2.1 Is placed in the public domain other than by default of the recipient Party;

14.2.2 Is obtained by the recipient Party from a bona fide third Party having the right to disseminate such information;

14.2.3 Is or had already been independently generated by the recipient Party and to which written proof can be supplied;

14.2.4 Is required to be disclosed by law or the valid order of a court of competent jurisdiction or the request of any governmental or other regulatory authority or agency, in which event the disclosing Party shall so notify the other as promptly as practicable (and, if possible, prior to making any disclosure) and shall use its reasonable endeavours to seek confidential treatment of such information.

14.2.5 The obligations contained in this 14 shall endure beyond the termination of This Agreement and any SOW without limit in time except and until any confidential information enters the public domain otherwise than through default of the recipient Party.

15 BREACH

15.1 If a Party (“the Defaulting Party”) commits a Material breach of any provision of This Agreement or a Work Authorisation and fails to remedy such a breach within 30 (thirty) days after receiving written notice from the other Party requiring it to do so, then the Party aggrieved by such breach (“the Aggrieved Party”) shall be entitled, without prejudice to its other rights in law (but subject to the provisions of This Agreement or Work Authorisation), to terminate This Agreement or Work Authorisation or to claim specific performance of all of the defaulting Party’s obligations whether or not such obligations would otherwise then ***have fallen due***

to performance, in either event without prejudice to the aggrieved Party's right to claim damages (subject to the provisions of This Agreement or Work Authorisation).

15.2 Should the Defaulting Party –

15.2.1 Be liquidated, whether provisionally or finally and whether compulsory or voluntarily;

15.2.2 Commit any act which if committed by a natural person would constitute an act of insolvency as contemplated in the Insolvency Act;

15.2.3 Have a judgement taken against it which judgement is not satisfied or rescinded within 30 (thirty) days of the granting of such judgement;

15.2.4 Attempt to enter or enters into any form of compromise with any of its creditors;

15.2.5 Take steps to deregister itself or is deregistered;

15.2.6 Cease to carry on business in the normal and regular manner;

Then, and in any of those events, the Aggrieved Party shall be entitled, without prejudice to its other rights in law (but subject to the provisions of This Agreement and any SOW), to terminate This Agreement with immediate effect or to claim immediate specific performance of the defaulting Party's obligations under This Agreement and any SOW whether or not otherwise due for performance.

16 TERMINATION

16.1 On termination of This Agreement or any SOW for any reason whatsoever

16.1.1 All amounts due to DVT for any agreed Services rendered prior to termination shall become payable and payment may not be withheld for any reason. DVT will immediately issue tax invoices for any such amounts not previously invoiced.

16.1.2 All amounts not yet due to DVT for Services rendered prior to termination will not automatically become payable.

16.1.3 Each Party shall return all Material and intellectual property (in whatever form and whether confidential or not) belonging to the other Party.

16.1.4 Subject to clause 16.1.1, DVT shall assign ownership of all Intellectual Property Rights and Material as defined in clauses 12.4, to THE CLIENT.

17 LIMITATION OF LIABILITY

- 17.1 Both Parties shall not be liable, whether in contract, delict or otherwise, for any indirect or consequential damages including, but not limited to, loss of data, loss of profits, loss of custom, and/or business foregone, whether foreseeable or not and whether or not in the contemplation of the Parties at the time of the conclusion of This Agreement and any SOW, arising from or in connection with This Agreement and any SOW.
- 17.2 Notwithstanding anything to the contrary contained in This Agreement and any SOW, the aggregate liability of DVT to THE CLIENT for any one or more claims relating to the services that DVT has agreed to render in terms of a specific Work Authorisation, whether in contract, delict or otherwise, shall not exceed the total amount paid by THE CLIENT to DVT in terms of that specific Work Authorisation as at the date of the cause of action except if caused by gross negligence or wilful misconduct of DVT.

18 FORCE MAJEURE

- 18.1 If either Party is prevented from complying, either totally or in part, with any of the provisions of This Agreement and any SOW (other than THE CLIENT's obligation to pay for the Services already performed by DVT), by reason of fire, flood, storm, strike, lockout or other labour trouble, riot, war, rebellion, accident, or other acts of God or such other cause as is beyond the control of that Party ("the Force Majeure Event"), then upon written notice to the other Party, the obligations of the first Party in terms of This Agreement and any SOW shall, to the extent affected, be suspended during the period of such Force Majeure Event.
- 18.2 In the event that DVT's obligations to render the Services or any part thereof are suspended in terms of 18.1, THE CLIENT shall not be obliged to pay Service Fees in respect of the Services so suspended, to the extent of such suspension.
- 18.3 Each Party shall use its Commercially Reasonable Efforts to resume full performance as soon as practical and shall seek agreement to modification of the relevant provisions of This Agreement and the SOW in order to accommodate the new circumstances caused by the Force Majeure Event.

19 DISPUTE RESOLUTION

- 19.1 Save where another particular form of dispute resolution mechanism has been provided in any other provision of this Agreement, if any dispute arises in

connection with this Agreement, either Party may deliver a written notice to the other setting out the details of the dispute. The Parties must first attempt to resolve the dispute by negotiation through their respective senior executives. The agreed process would be to arrange a meeting in good faith within 10 days of receiving the notice and aim to resolve within the following 20 days. If not resolved within 20 days, the dispute to be referred to the parties chairmen to resolve. If unable to reach a resolution at this point, both parties agree to move to an independent dispute resolution agent.

- 19.2 For the purposes of this clause 19 and for the purposes of having any award made by the relevant dispute resolution agent being made an order of court, each of the Parties hereby submits itself to the jurisdiction of the High Court of the United Kingdom.
- 19.3 Notwithstanding anything to the contrary contained in this clause 19, any party shall be entitled to apply for, and if successful, be granted, an interdict from any competent court having jurisdiction, pending the outcome of the arbitration proceedings.
- 19.4 This clause 19 constitutes an irrevocable consent by each of the Parties to any proceedings in terms hereof, is severable from the rest of this Agreement and shall, notwithstanding the termination of this Agreement, remain in full force and effect
- 19.5 The Parties must continue to perform their respective obligations under this Agreement despite the existence of a dispute under this clause 23.

20 DOMICILIUM AND NOTICES

- 20.1 The Parties choose *domicilium citandi et executandi* for all purposes of the giving of any notice, the payment of any sum, the serving of any process and for any other purpose arising from This Agreement and any SOW, as follows -

DVT: Scott House, Suite 1,
The Concourse Waterloo Station,
SE1 7LY
Phone: +44 (0)20 3422 3400

- 20.2 Any notice given in terms of This Agreement and any SOW shall be in writing.
- 20.3 Each Party shall be entitled from time-to-time, by written notice to the other, to vary its domicile to any other physical address and/or facsimile number within the same country.
- 20.4 Any notice given and any payment made by a Party to another Party which is delivered by hand during the normal business hours of the addressee's domicile shall be rebuttably presumed to have been received by the addressee at the time of delivery.
- 20.5 Any notice given by a Party to another Party by facsimile shall be rebuttably presumed to have been received by the addressee on the date of successful transmission thereof.
- 20.6 Notwithstanding anything to the contrary in this clause 20, a written notice or other communication actually received by a Party shall be adequate notice to it notwithstanding that the notice was not delivered to its given domicile.

21 RELATIONSHIP OF THE PARTIES

- 21.1 The Parties shall, at all times, be independent contracting Parties and neither Party shall be construed as a partner, agent, employer or employee of the other or represent itself as such.
- 21.2 As This Agreement and the SOW do not create an employment relationship between the Parties, as per clause 21.1 above, neither Party shall provide to any employee of the other Party, nor be liable for, any employee tax, worker's compensation insurance, unemployment insurance, pension plans, health insurance, life insurance, medical aid, leave, or any other benefits made available that Party to its own employees.
- 21.3 Nothing in This Agreement and any SOW shall be construed as creating a partnership between the Parties and neither Party shall have any authority to incur any liability on behalf of the other, or to pledge the credit of the other Party, or make any warranty or representation on behalf of the other Party except as such other Party has authorised it to do so in writing.

22 ASSIGNMENT AND SUB-CONTRACTING

- 22.1 Neither Party shall be entitled to assign or otherwise transfer the benefit or burden of all or any substantial part of This Agreement and any SOW without the prior

written consent of the other Party, which consent shall not be unreasonably withheld.

22.2 DVT may sub-contract any of its obligations in terms of This Agreement and any SOW with the prior written consent of THE CLIENT, which consent shall not be unreasonably withheld.

22.3 DVT may form a Consortium, where DVT shall act as Primary Contractor, in order to perform any of its obligations in terms of This Agreement and any SOW with the prior written consent of THE CLIENT, which consent shall not be unreasonably withheld.

23 GENERAL

The Parties acknowledge and agree that –

23.1 No Party shall be bound by any representation, warranty, promise or the like not recorded in this document and any SOW;

23.2 No addition to, variation, novation or agreed termination of This Agreement and any SOW shall be of any force or effect unless in writing and signed by or on behalf of the Parties;

23.3 No relaxation, extension of time, latitude or indulgence which any Party (“the Grantor”) may show, grant or allow to the other (“the Grantee”) shall in any way constitute a waiver by the Grantor of any of the Grantor’s rights in terms of This Agreement and any SOW and the Grantor shall not be prejudiced thereby or stopped from exercising any of its rights against the Grantee which may have then already arisen or which may arise thereafter, unless in writing and duly signed by or on behalf of the Parties.;

23.4 All costs, charges and expenses of any nature whatever which may be incurred by a Party in enforcing its rights in terms of This Agreement and any SOW, including without limiting the generality of the foregoing, legal costs on the scale of attorney and own THE CLIENT and collection commission, irrespective of whether any action has been instituted, shall be recoverable from the Party against which such rights are successfully enforced;

23.5 The provisions of This Agreement and any SOW shall be binding upon successors-in-title and the permitted assigns of the Parties.

- 23.6 All provisions in This Agreement and any SOW are, notwithstanding the manner in which they have been put together or linked grammatically, severable from each other. Any provision of This Agreement and any SOW which is or becomes unenforceable in any jurisdiction, whether due to voidness, invalidity, illegality, unlawfulness or for any other reason whatsoever, shall, in such jurisdiction only and only to the extent that it is so unenforceable, be treated as *pro non scripto* and the remaining provisions of This Agreement and any SOW shall be of full force and effect. The Parties declare that it is their intention that This Agreement would be executed without such unenforceable provisions if they were aware of such unenforceability at the time of its execution;
- 23.7 Both Parties shall at all times during the continuance of this Agreement observe the principles of good faith towards one another in the performance of their obligations in terms of this Agreement.
- 23.8 This Agreement may be signed in counterparts hereto and the individual signed versions thereof shall together constitute the agreement between the Parties.
- 23.9 Each Party shall bear its own legal costs of and incidental to the negotiation, preparation, settling, signing and implementation of this Agreement and any SOW.