

SOFTWARE LICENCE AGREEMENT

MEMORANDUM OF AGREEMENT ENTERED INTO BETWEEN:

Sage VIP

A Division of Sage South Africa (Pty) Limited
Registration number: 2003/015693/07

A company duly incorporated under the laws of South Africa having its main place of business at Sage VIP building, corner of Aramist Avenue and Southern Cross Street, Menlyn Maine, Waterkloof Glen Ext 2, Pretoria; Postal: PO Box 38017, Garsfontein East, 0060;
Tel: (012) 420 7000; Fax: (012) 420 7339; Email: renewals@vippayroll.co.za.
(hereinafter referred to as "VIP")

And

Kareeberg Municipality
(Name of Licensee)

Local Government

Legal nature e.g. company/partnership/firm

Carnarvon

Registration number if applicable

Main place of business (domicilium citandi et executandi)

P.O. Box 10, Private Bag X 226 Carnarvon

053 3823012

Postal address

Telephone number

053 382 3142

kareeberg@xsinet.co.za

Facsimile number

Electronic mail

(hereinafter referred to as the "Licensee")

RECITAL

WHEREAS VIP is the owner of certain software and the Licensee wishes to obtain the right to use the software for specific purposes; and
WHEREAS the Licensee has accepted the Schedule of Fees and Rates (attached hereto as Annexure A) and has agreed to the terms and conditions stipulated in the written Quotation/Order confirmation (attached hereto as Annexure B); 1 March 2017 - 28 February 2018
NOW THEREFORE VIP agrees to licence such software to the licensee on the following terms and conditions:

1. DEFINITIONS

Unless the contrary is clearly indicated, the following words and/or phrases used in this Agreement shall have the following meaning:

- 1.1 Agreement shall mean this written document together with and including the *Order Confirmation*, *Schedule of Fees and Rates* and all other written appendices, annexures, exhibits or amendments attached to it from time to time;
- 1.2 Commencement date shall mean the date of signing of this agreement or the *Order Confirmation* whichever occurs first, by the Licensee;
- 1.3 Confidential Information shall mean:
 - 1.3.1 any information of whatever nature, which has been or may be obtained by either of the Parties from the other, whether in writing or in electronic form or pursuant to discussions between the parties, or which can be obtained by examination, testing, visual inspections or analysis, including, without limitation, scientific business or financial data, know-how, formulae, processes, designs, sketches, photographs, plans, drawings, specifications, sample reports, models, customer lists, price lists, studies, findings, computer software, inventions or ideas;
 - 1.3.2 analyses, concepts, compilations, studies and other material prepared by or in possession or control of the recipient which contain or otherwise reflect or are generated from any such information as is specified in this definition;
 - 1.3.3 any dispute between the parties resulting from this agreement;
- 1.4 Copyright shall mean all rights of reproduction whether existing now or in the future in and to the Software and Software Documentation;
- 1.5 Designated Site shall mean one independent computer only at the physical address or location determined in the *Order Confirmation* or networked environment as per the *Order Confirmation*;
- 1.6 Intellectual Property Rights shall mean all present and future rights in the Software and Software Documentation and other rights, which may in the future be based thereon, including but not limited to Copyright;
- 1.7 Licence shall mean a limited, non-transferable and non-exclusive right granted to the Licensee to use the Software and Software Documentation in terms of this Agreement and to make not more than two (2) machine-readable copies of the software diskettes for back-up and security purposes.
- 1.8 Notice shall mean a written document, delivered in accordance with the provisions of clause 20;
- 1.9 Order Confirmation shall mean the document detailing the Software, Licence and support services provided by VIP to the Licensee and the licence fees and rates payable in respect of the Software, Licence and support services.
- 1.10 Parties shall mean both VIP and the Licensee;
- 1.11 Schedule of Fees and Rates shall mean the document detailing VIP's prevailing licence fees and rates for support services and the implementation program for the software as extracted from the original VIP quotation upon acceptance thereof;
- 1.12 Software shall mean the software provided by VIP to the Licensee as specified in the *Order Confirmation* as well as all updates and corrections to the Software provided to the Licensee during the subsistence of this Agreement; and
- 1.13 Software Documentation shall mean the electronic user manuals containing instructions pertaining to the use of the Software and setting out the operation of the Software;

2. INTERPRETATION

- 2.1 The clause headings in this Agreement have been inserted for convenience only and will not be taken into account in the interpretation of this Agreement;
- 2.2 Any reference in this Agreement to the singular includes the plural and vice versa
- 2.3 Any reference to this Agreement to natural persons includes legal persons and references to any gender include references to the other genders and vice versa;

3. VALIDITY

If any provisions of this Agreement are found or held to be invalid or unenforceable, the validity and enforceability of all the other provisions of this Agreement will not be affected thereby.

4. GRANT AND NATURE OF LICENCE

- 4.1 VIP herewith grants a non-exclusive, non-transferable Licence to the Licensee to operate the Software for its intended function for the benefit of the Licensee on the Designated Site and to use the Software Documentation for the duration of this Agreement.
- 4.2 The Licensee shall not have the right to sub-licence or transfer the Software in any way, either in whole or in part, to any third party including any of the Licensee's subsidiaries.
- 4.3 The Licensee shall not copy nor permit any party to copy the Software, except to make not more than two (2) machine-readable copies of the Software for back-up and security purposes.
- 4.4 The Licensee shall not modify, de-compile, disassemble or otherwise reverse-engineer the Software, or attempt to do any of these.
- 4.5 The Licensee shall allow VIP, upon reasonable Notice, access to its premises to conduct a reasonable audit of the Licensee's compliance with the Agreement and the Licensee agrees that VIP may collect data electronically from time to time in order to verify the licensing compliance of the Software. This includes, but is not limited to, the number of employees paid by the Licensee, modules in use as well as the IP address or other address of the computer equipment on which the Software is installed. The collection of such data will assist in preventing unauthorized use of the Software and enable VIP to enforce rights conferred in terms of the Agreement. VIP undertakes that no personal data relating to Licensee employees or companies in the Software will be collected without written consent from the Licensee.
- 4.6 If the hardware at the Designated Site is inoperative due to malfunction, any right granted under the Agreement for such Designated Site shall be temporarily extended to authorise the Licensee to use the Software at any other site until the Designated Site is returned to operation. VIP must be informed, in writing, of such malfunction. The Licensee undertakes to notify VIP in writing immediately when the designated site is returned to operation, at which stage the temporary extension will be uplifted.

5. COMMENCEMENT AND DURATION

- 5.1 This Agreement shall commence on the Commencement Date and continue in force until 28 February of the year subsequent to the Commencement Date. Thereafter the Agreement will be renewed for further periods of 12 (twelve) months at a time, provided that the Licensee pays the annual licence fee before or on 28 February for each further 12 (twelve) month period of renewal.



- 5.2 In the event that the Licensee elects the monthly payment option and the monthly debit order of the Licensee is rejected without being reclassified within a period of 30 days, this will be considered a material breach of this Agreement and will be dealt with in terms of clause 14 of this Agreement.
- 5.3 Save for the provisions of clauses 9.2.3 to 9.2.5 dealing with the increment of licence and other fees, the terms of this Agreement shall continue to apply during the renewal period(s) provided that VIP shall have the right to make reasonable amendments to this Agreement prior to any period of renewal.
- 6. TERMINATION**
- 6.1 Either of the Parties can terminate this Agreement at any stage by giving the other Party three (3) months' Notice of its intention to do so, provided that in the event that VIP gives such notice, termination will only take effect upon expiry of the twelve month period during which notice is given.
- 6.2 In the event that the Licensee terminates this Agreement in terms of clause 6.1, VIP shall not be obliged to refund initial or annual licence fees paid prior to such termination;
- 6.3 In the event of termination of this Agreement by either Party for whatever reason, the other Party reserves the right to exercise any rights or remedies which may have accrued as at date of termination;
- 7. ORDER CONFIRMATION**
- 7.1 VIP shall provide the Licensee with the Software and, if applicable, further software required to operate the Software and additional support services detailed in the *Order Confirmation* for the duration of this Agreement;
- 7.2 Save for the right to operate the Software for its benefit, VIP shall provide the Licensee with the following further services in consideration for the payment of annual licence fees for the duration of this Agreement:
- 7.2.1 Telephonic support during normal working hours;
- 7.2.2 Periodic updates to ensure that the Software conforms to new statutory requirements and which VIP will endeavour to make available prior to the date of coming into operation of the legislation in question;
- 7.2.3 New releases of the Software with system improvements;
- 7.2.4 Release notes on statutory changes and new system features;
- 7.3 VIP shall provide the Licensee with such other services as may be agreed to by the Parties in writing from time to time for the duration of and subject to this Agreement.
- 8. INSTALLATION, IMPLEMENTATION AND OTHER SERVICES**
- 8.1 Where required, VIP may install the Software, including setting up the parameters of the program to the Licensee's specific needs, and implementation thereof as detailed in the *Schedule of Fees and Rates*.
- 8.2 The Licensee shall provide the VIP consultant attending to the installation and implementation of the Software with the facilities, computer equipment, payroll details and such other information as may be required by the VIP consultant to effect such installation and implementation;
- 8.3 VIP shall provide the Licensee with such further consultations, training and other services as may be agreed upon in writing by the Parties from time to time;
- 8.4 Subject to the provisions of clause 11.1, operation of the Software is at the sole risk of the Licensee and the Licensee shall take all the reasonable and necessary steps usually implemented in a payroll office, or which the Licensee usually implements in its payroll office, to ensure that the operation of the Software complies with the Licensee's requirements.
- 9. LICENCE FEES AND RATES**
- In consideration of the Licence being granted, the Licensee shall pay VIP the following licence fees:
- 9.1 An initial once-off licence fee in the amount determined in the *Order Confirmation* payable upon the date of signature of this Agreement by the Licensee;
- 9.2 The annual licence fee, which for the first year or portion thereof shall be calculated *pro-rata* according to the number of months remaining to the February of the following year:
- 9.2.1 The Licence Fee for each subsequent year shall be determined, in part, by taking into account the number of employees the Licensee pays as well as the modules purchased by the Licensee. Module purchases are not refundable. It is reiterated that the full annual licence fee, (irrespective of termination of this Agreement during the particular year by the Licensee, is payable by the Licensee;
- 9.2.2 In the event that Licensee elects the monthly payment option, the Licensee shall be required to approve a monthly debit order agreement for the tax year ending on the last day of February with the amount stipulated in the *Order Confirmation*. This monthly payment will replace the initial licence fee as contemplated in clause 9.1 as well as the annual licence fee in clause 9.2.1.
- 9.2.3 The licence fee shall escalate annually by an amount usually not exceeding South African CPI for the preceding 12 (twelve) months, plus 2% (two percent), and subject to the provisions of clause 9.2.5 below.
- 9.2.4 The determination by VIP of the escalation of the licence fee shall be with reference to the number and extent of statutory changes affecting the operation of the Software in any given year, with written notice to the Licensee should the escalation exceed the escalation referred to in clause 9.2.4.
- 9.2.5 The fees and rates for support services detailed in the *Fees and Rates Schedule* are subject to annual revision by VIP. This usually occurs in January of each year.
- 9.3 VIP has the right to withhold the renewal code for the Licence should the Licensee fail to pay the agreed licence fee within the time period stipulated herein. In which event the Licensee will be unable to utilise the system for the following tax year;
- 9.4 The Licensee shall pay VIP for the installation of the Software and implementation thereof at the prevailing rates detailed in the *Schedule of Fees and Rates*;
- 9.5 The Licensee shall pay VIP for such further consultations, training and other services as may be agreed upon by the Parties at the prevailing rates of the services detailed in the *Schedule of Fees and Rates*;
- 10. SUNDRY OBLIGATIONS OF THE LICENSEE**
- 10.1 The Licensee shall and, where applicable, at own cost and risk:
- 10.1.1 acquaint itself with the contents of this Agreement;
- 10.1.2 acquaint itself with the Software, its compatibility with the Licensee's computer equipment and software, and its capabilities and suitability to achieve the results required by the Licensee;
- 10.1.3 keep all Software and the Software Documentation in a safe place;
- 10.1.4 select only suitably trained staff to operate the Software;
- 10.1.5 be solely responsible for the installation and implementation of all updates and corrections to the Software according to the instructions of VIP.
- 10.1.6 Maintain and update machine operating software required for operating the Software and updates or corrections to the Software; and
- 10.1.7 Inform VIP should tax authorities amend or announce new tax regulations and the Licensee has not received an update to the Software pertaining to such tax amendments from VIP.
- 11. LIMITATIONS OF LIABILITY**
- 11.1 Save as expressly provided for in clause 11.2 VIP makes no representation and gives no warranties, whether expressed or implied, as to the suitability and operability of the Software for the Licensee's needs, its quality or functionality or its fitness for any purpose whatsoever, and VIP does not warrant that the operation of the Software will be uninterrupted or without error.
- 11.2 VIP warrants that for the duration of this Agreement:
- 11.2.1 the Software generally will comply with the specifications and documentation set out in the *Order Confirmation* and be capable of being used for its intended purpose;
- 11.2.2 all documentation, training and additional services provided in terms of the *Order Confirmation* shall be reasonably accurate, effectively conducted in a professional manner and provide adequate support for the use of the Software.
- 11.3 In the event that the Software and/or such additional documentation and services referred to in clause 11.2 fail to meet the warranted standards, then VIP shall at its own expense and election:
- 11.3.1 repair the Software to ensure that it conforms to the *Order Confirmation* and is capable of being used as intended;
- 11.3.2 upgrade or improve such additional services or documentation so that it conforms to the *Order Confirmation* and is capable of being used as intended; or
- 11.3.3 replace the Software with similar software, which complies in all aspects with the intended purpose of the Software.
- 11.4 The warranties set out in clauses 11.2 and 11.3 shall not apply in the event that:
- 11.4.1 the breach of warranty is a result of a force majeure event as set out in clause 22; or
- 11.4.2 the Software has been subject to misuse, neglect or unauthorised alteration by the Licensee; or
- 11.4.3 the data has been accessed or amended in any manner other than access via the VIP standard software.
- 11.5 Subject to clause 11.6 VIP will in no event be liable to the Licensee for the following, arising out of any cause of whatever nature and however arising, excluding liability incurred due to gross negligence on the part of VIP, its consultants, agents or representatives:
- 11.5.1 any direct or incidental, indirect, special or consequential damages or loss, including but not limited to, interrupted or complete loss of use, revenues, profits, or savings; or
- 11.5.2 loss or damage to the Licensee's data or database; or
- 11.5.3 claims, demands or actions against the Licensee by any third parties, or payments due or made by the Licensee to third parties; or
- 11.5.4 loss of funds contained in, dispensed by or associated with the Software; or
- 11.5.5 any faulty installation or implementation, delay, failure, breakdown or malfunction of the Software, interruption of service or inability to use the Software; or
- 11.5.6 any other loss or damage of whatsoever nature which may be sustained by the Licensee.

- 11.6 The liability of VIP for all damages of whatever nature suffered by the Licensee as a direct result of faulty installation or implementation of the Software by VIP and the consequential malfunctioning of the Software as a direct result thereof, shall be limited, at VIP's option and in consultation with the Licensee, to the replacement of software within a reasonable time and free of charge, or, the refund of the annual licence fee paid for the 12 (twelve) month period during which the installation or implementation takes place, it being recorded and agreed that such liability shall be completely excluded if the Licensee itself attempts to correct or allows third parties to correct or attempt to correct the installation or implementation of the Software or in any manner interfere with the Software without the prior written consent of VIP.
- 11.7 VIP shall not be liable for any delay, malfunction, faulty implementation, failure breakdown, damage or injury suffered by the Licensee as a result of:
- 11.7.1 the Software or other software and/or computer programs and/or support services being supplied by or obtained by the Licensee from any source without the prior written consent of VIP; or
- 11.7.2 the Software or other software and/or computer programs being modified by the licensee or any third party not authorised to do so in terms of the agreement; or
- 11.7.3 the actions or the requirements of any telecommunications authority or supplier of telecommunications services or software; or
- 11.7.4 any data structure changes that VIP may deem to be necessary from time to time. This may affect specific Licensee data extracts or screen views.
- 11.8 In no event will VIP be liable for loss of profits or for incidental special or consequential damages arising out of or in connection with the Software or the delivery, installation, implementation, modification, servicing, execution, performance or use of the Software in combination with any other computer software, or arising out of or in connection with the provision of other support services by VIP to the Licensee.
- 12. INTELLECTUAL PROPERTY RIGHTS**
- 12.1 The Licensee acknowledges that any and all of the Intellectual Property Rights used or embodied in or in connection with the Software and Software Documentation are and will remain the sole property of VIP.
- 12.2 The Licensee shall not question or dispute the ownership of such rights at any time during the continuation in force of the Agreement or thereafter;
- 12.3 Upon the termination of this Agreement (or whatever reason, the Licensee shall return the Software, Software Documentation and all amendments thereto to VIP within 30 (thirty) days of said termination taking effect.
- 12.4 VIP warrants that the Software does not infringe any third party patent, copyright, trademark or any other intellectual property rights.
- 13. VIP EMPLOYEES**
- 13.1 During the existence of this Agreement the Licensee shall not make any offer(s) of employment to VIP employees, nor employ VIP employees, or otherwise acquire the services of VIP employees other than in terms of this Agreement or another agreement concluded between the Licensee and VIP.
- 13.2 For the purposes of clause 13.1 an employee who resigns from the employ of VIP and immediately thereafter accepts a position of employment, whether temporary or permanent, with the Licensee shall be regarded as a VIP employee.
- 13.3 Should the Licensee obtain the services of a VIP employee in breach of clause 13.1, the Licensee shall pay to VIP upon demand an amount equal to 20% (Twenty Percent) exclusive of Value Added Tax of the total annual cost to VIP of the employee, including but not limited to the total earnings, VIP contributions and fringe benefits of the employee.
- 14. MOBILITY**
- 14.1 An optional feature that the Licensee may elect to use is the Mobility functionality of the Software. This functionality requires that data be transferred to the Sage cloud based computing network to be made available for mobility applications. Due to the fact that this data includes individual's personal information, as defined by the Protection of Personal Information Act, there is a requirement that the Licensee obtain the consent of those individuals prior to transferring the data.
- 14.2 VIP confirms that, in terms of the Confidentiality undertakings in this Agreement, that no information will be provided to third parties without the prior written consent and that this highly confidential personal information will be protected in terms of reasonable, applicable industry standards.
- 15. BREACH**
- 15.1 Should the Licensee breach any stipulation contained in this Agreement, and that breach is not due to force majeure, then;
- 15.1.1 VIP may terminate this Agreement, provided that the Licensee fails to remedy such breach within seven (7) calendar days after receiving a Notice to remedy such breach from VIP. Provided further that VIP confirms this termination, by way of a Notice to the Licensee, and claim all damages that VIP might have suffered as a result of that breach; or
- 15.1.2 VIP may claim specific performance of this Agreement from the Licensee and all damages that it might have suffered as a result of that breach;
- 15.2 Should VIP breach any stipulation contained in this Agreement, and that breach is not due to force majeure then;
- 15.2.1 The Licensee may terminate this Agreement; provided that VIP fails to remedy such breach within seven (7) calendar days after receiving a Notice to remedy such breach from the Licensee. Provided further that the Licensee confirms this termination, by way of Notice to VIP;
- 15.2.2 Any claim for damages which the Licensee may bring pursuant to breach on the part of VIP shall be subject to the provisions of clause 11.
- 16. CONFIDENTIALITY AND NON-DISCLOSURE**
- 16.1 The Parties shall hold in confidence all Confidential Information received from each other and not divulge the Confidential Information to any person, including any of its employees, save for employees directly involved with the execution of this Agreement.
- 16.2 The Parties shall prevent disclosure of the Confidential Information, by the use of reasonable means which are at least as stringent as those used to protect the Party's own Confidential Information, except as may be required by law;
- 16.3 Within six (6) months after the termination of this Agreement, for whatever reason, the recipient of Confidential Information shall return same or at the discretion of the original owner thereof, destroy such Confidential Information, and shall not retain copies, samples or excerpts thereof;
- 16.4 It is recorded that the following Information will for the purpose of this Agreement, not be considered to be Confidential Information:
- 16.4.1 Information known to either of the Parties prior to the date that it was received from the other Party; or
- 16.4.2 Information known to the public or generally available to the public prior to the date that it was disclosed by either of the Parties to the other; or
- 16.4.3 Information which becomes known to the public or becomes generally available to the public subsequent to the date that it was disclosed by either of the Parties to the other, through no act or failure to act on the part of the recipient of such information.
- 16.4.4 Information which either of the Parties, in writing, authorises the other to disclose.
- 17. RELATIONSHIP**
- This Agreement does not constitute either of the Parties an agent or legal representative of the other for any purposes whatsoever and neither of the Parties shall be entitled to act on behalf of, or to represent the other unless duly authorised thereto in writing.
- 18. DISPUTE RESOLUTION**
- 18.1 If the Parties are unable to resolve any dispute resulting from this Agreement by means of joint cooperation or discussion between the individuals directly involved with the execution of this Agreement, within one week after a dispute arises or such extended time period as the Parties may in writing allow, then such a dispute shall be submitted to the most senior executives of the Parties who shall endeavour to resolve this dispute within five (5) calendar days after it having been referred to them.
- 18.2 Should the dispute not be resolved in the aforesaid manner, then it shall be resolved by way of arbitration, in accordance with the provisions contained in this Agreement.
- 19. ARBITRATION**
- 19.1 A dispute between the Parties relating to any matter arising out of this Agreement or the interpretation thereof shall be referred to arbitration, by either of the Parties, by way of a Notice to the other Party, in which Notice particulars of the dispute are set out;
- 19.2 Such arbitration proceeding shall be held in Pretoria and shall be held in a summary manner, which shall mean that it shall not be necessary to observe or carry out;
- 19.2.1 the usual formalities of procedure (e.g. there shall not be any formal pleadings or discovery) however, the arbitrator shall be entitled to direct that such formalities may take place in the event that either Party will be materially disadvantaged through the disregarding of such rules;
- 19.2.2 the strict rules of evidence.
- 19.3 The arbitration proceedings shall proceed at the earliest convenience and with a view to being completed within 14 (fourteen) calendar days after being demanded;
- 19.4 The arbitrator for such arbitration proceedings shall be a practising advocate or attorney, admitted as such in accordance with the legislation of the law governing this Agreement, with at least 10 (ten) years' experience, agreed upon by the Parties and, failing agreement, nominated by the chairperson for the time being of the Law Society of the Northern Province;
- 19.5 The decision of the Arbitrator shall be final and binding on the Parties, who shall summarily carry out that decision and either of the Parties shall be entitled to have the decision made an order of any court with competent jurisdiction.
- 19.6 The "arbitration" clause in this Agreement shall be severable from the rest of this Agreement and therefore shall remain effective between the Parties after this Agreement has been terminated.
- 19.7 No clause in this Agreement which refers to arbitration shall mean or be deemed to mean or interpreted to mean that either of the Parties shall be precluded from obtaining interim relief on an urgent basis from a court of competent jurisdiction pending the decision of the arbitrator.
- 20. DOMICILIUM**
- 20.1 The Parties elect as their respective *domicilium citandi et executandi* the physical addresses indicated on the front page of this Agreement.

20.2 Either of the Parties may change its *domicilium citandi et executandi* to another address within the same country by way of a notice to the other Party to this Agreement, provided that such a Notice is received by the addressee, at least seven (7) calendar days prior to such a change taking effect.

21. NOTICES

- 21.1 The Parties elect the physical, postal, email and telefacsimile addresses on the front page of this Agreement at which all Notices and other communications may be delivered for the purpose of this Agreement.
- 21.2 Any Notice or communication required or permitted to be given in terms of this Agreement shall only be valid and effective if it is in writing;
- 21.3 Any Notice addressed to either of the Parties and contained in a correctly addressed envelope and sent by registered post to it at its chosen address or delivered by hand at its chosen address to a responsible person on any day of the week between 09h00 and 16h00 excluding Saturdays, Sundays and South African public holidays, shall be deemed to have been received, unless the contrary is proved, if sent by registered post on the 5th (fifth) calendar day after posting and in the case of hand delivery on the day of delivery.
- 21.4 Any Notice sent by email or telefacsimile to either of the parties at its email address or telefacsimile number shall be deemed unless the contrary is proved, to have been received:
- 21.4.1 If it is transmitted on any day of the week between 09h00 and 16h00 excluding Saturdays and Sundays and South African public holidays within two (2) hours of transmission.
- 21.4.2 If it is transmitted outside of these times within two (2) hours of the commencement of any day of the week between 09h00 and 12h00 excluding Saturdays and Sundays and South African public holidays after it has been transmitted.

22. FORCE MAJEURE

- 22.1 Neither of the Parties shall be liable for a failure to perform any of its obligations insofar as it proves:
- 22.1.1 That the failure was due to an impediment beyond its control;
- 22.1.2 That it could not reasonably be expected to have taken the impediment and its effects upon the party's ability to perform into account at the time of the conclusion of this Agreement; and
- 22.1.3 That it could not reasonably have avoided or overcome the impediment or at least its effects.
- 22.2 An impediment as aforesaid may result from events such as the following, this enumeration not being exhaustive:
- 22.2.1 war, whether declared or not, civil war, civil violence riots and revolutions, acts of sabotage;
- 22.2.2 natural disasters such as violent storms, cyclones, earthquakes, tidal waves, floods, destruction by lightning;
- 22.2.3 explosions, fires, destruction of machines, factories and any kind of installation;
- 22.2.4 boycotts, strikes and lock-outs of all kinds, go-slows, occupation of factories and premises and work stoppages;
- 22.2.5 acts of authority, whether lawful or unlawful, apart from acts from which the party seeking relief has assumed the risk by virtue of any other provision of this agreement.
- 22.3 For the purposes of this clause, "impediment" does not include lack of authorisations, licences, permits, or approvals necessary for the performance of this Agreement and to be issued by the appropriate public authority if applicable.
- 22.4 Relief from liability for non-performance by reason of the provisions of this clause shall commence on the date upon which the Party seeking relief gives Notice of the impediment relied upon and shall terminate upon the date upon which such impediment ceases to exist, provided that if such impediment continues for a period of more than 60 (sixty) days either of the Parties shall be entitled to terminate this Agreement.

23. ENTIRE AGREEMENT AND VARIATIONS

- 23.1 This Agreement constitutes the whole agreement between the Parties and supersedes all prior verbal or written agreements or understandings or representations by or between the Parties regarding the subject matter of this Agreement and the Parties will not be entitled to rely in any dispute regarding this Agreement or any terms conditions or representations not expressly contained in this Agreement.
- 23.2 No variation of or addition to this Agreement will be of any force or effect unless reduced to in writing and signed by or on behalf of the Parties.
- 23.3 Neither Party to this Agreement has given any warranty or made any representation to the other Party other than any warranty or representation, which may be expressly set out in this Agreement.

24. ANTI-BRIBERY AND CORRUPTION

- 24.1 The Licensee acknowledges that integrity, honesty, and compliance with all applicable laws are core business values and practices that VIP adopts.
- 24.2 The Licensee warrants that it has not and will not participate, directly, indirectly, or at all, in any unlawful conduct as between itself and any party that may exert an influence over any end-user that may be construed as bribery and / or corruption as envisaged in the Prevention and Combating of Corrupt Activities Act, Act 12 of 2004, or any other applicable law or legislation.
- 24.3 The Licensee accordingly indemnifies and holds VIP harmless against any such claim of whatsoever nature in terms of which it is alleged that the Licensee has acted unlawfully and the Licensee agrees to defend any such claim made against VIP on VIP's behalf and further agrees to pay any legal costs associated therewith.
- 24.4 The Licensee acknowledges that if on reasonable suspicion VIP believes that the Licensee is participating in such unlawful conduct, VIP will be obliged in law to report such conduct to a police official.
- 24.5 The Licensee also acknowledges that the Prevention and Combating of Corrupt Activities Act contains extraterritorial provisions and that even if the alleged illegal conduct occurred outside of the Republic of South Africa, a court of the Republic of South Africa will, in certain circumstances, have jurisdiction in respect of such alleged illegal conduct.
- 24.6 VIP reserves the right to summarily cancel this Agreement on written Notice if on reasonable suspicion VIP believes that the Licensee is participating in such unlawful conduct.

25. ASSIGNMENT, CESSION AND DELEGATION

Neither of the Parties shall be entitled to assign, cede, delegate or transfer any rights obligations, share or interest acquired in terms of this Agreement in whole or in part to any other party or person without the prior written consent of the other, which consent shall not unreasonably be withheld or delayed.

26. RELAXATION, WAIVER AND SEVERABILITY

- 26.1 No indulgence leniency or extension of a right, which either of the Parties may have in terms of this Agreement and which either Party ("the grantor") may grant or show to the other Party, shall in any way prejudice the grantor or preclude the grantor from exercising any of the rights that it has derived from this Agreement or be construed as a waiver by the grantor of that right.
- 26.2 No waiver on the part of either Party to this Agreement of any rights arising from a breach of any provisions of this Agreement will constitute a waiver of rights in respect of any subsequent breach of the same or any other provision.
- 26.3 In the event that any of the terms of this Agreement are found to be invalid, unlawful and/or unenforceable such terms will be severable from the remaining terms, which will continue to be valid and enforceable.

27. DRAFTING COSTS

Each of the Parties shall bear its own cost incurred as a result of the negotiation, drafting and finalisation of this Agreement, which shall include but not be limited to all legal fees.

28. GOVERNING LAW

The validity and interpretation of this Agreement will be governed by the Laws of the Republic of South Africa;

29. AUTHORISATION WARRANTY

The persons signing this Agreement on behalf of the parties hereto each warrant that he/she has the authority to do so.

SIGNED at _____ on this 1 day of March 2017 in the presence of the undersigned witnesses

AS WITNESSES

1. T. de Kock
Joubert

2. G. de Wee

[Signature]
Signature of or on behalf of the Licensee

SIGNED at Pretoria on this 23rd day of March 2017 in the presence of the undersigned witnesses

AS WITNESSES

1. [Signature]

2. Fontenhorst

[Signature]
Signature of or on behalf of VIP