



Y-I.T.

Think about IT - Professionally

MASTER SERVICES AGREEMENT - STANDARD TERMS AND CONDITIONS

Y-I.T. (PTY) LIMITED

(Registration No. 2005/013401/07)

(hereinafter referred to as "Y-IT")

Index

STANDARD TERMS AND CONDITIONS

1. INTERPRETATION AND PRELIMINARY
2. SCHEDULES
3. TERM
4. SERVICES
5. CHANGE MANAGEMENT
6. IT STEERING COMMITTEE
7. FEES AND PAYMENT TERMS
8. DISCLAIMER AND LIMITATION OF LIABILITY
9. BREACH
10. TERMINATION
11. CONFIDENTIALITY
12. INFORMAL DISPUTE RESOLUTION
13. ARBITRATION
14. RESTRAINT
15. DOMICILIUM CITANDI EXECUTANDI
16. FORCE MAJEURE
17. SEVERABILITY
18. SUB-CONTRACTING
19. CESSION
20. WHOLE AGREEMENT. NO AMENDMENT
21. COSTS

Standard Terms and Conditions

WHEREBY IT IS AGREED AS FOLLOWS:

1. INTERPRETATION AND PRELIMINARY

- 1.1. The headings of the clauses in this Agreement are for the purposes of convenience and reference only and shall not be used in the interpretation of nor modify the terms of this Agreement nor any clauses hereof. Unless a contrary intention clearly appears.
 - 1.1.1. any one gender include the other two genders;
 - 1.1.2. the singular include the plural and vice versa; and
 - 1.1.3. natural person include created entities (corporate or unincorporate) and the state and vice versa;
- 1.2. The following terms shall have the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings, namely:
 - 1.2.1. "ADSL" means Asynchronous Digital Subscriber Line which technology is provided to the Customer by Telkom through Y-IT as more fully described in any **Schedule E**;
 - 1.2.2. "After Hours" means 17h00 – 08h00 on weekdays (Monday through Friday) including weekends and South African public holidays;
 - 1.2.3. "Agreement" means this master services agreement together with all its schedules and annexures, each of which is an integral part of this Agreement and shall be interpreted and construed accordingly;
 - 1.2.4. "Business Hours" means 08h00 – 17h00 on weekdays (Monday through Friday) excluding weekends and South African Public Holidays;
 - 1.2.5. "CE Router" means Customer Edge router;
 - 1.2.6. "Change Order" means a change order as provided for in **Schedule J**, and which is used for the specific purpose of recording the details of any alteration or amendment to the Agreement, including any project documents, and which must be signed by authorised representatives of both Parties before becoming effective and binding on the Parties;
 - 1.2.7. "Commencement Date" means the date so described as such in any Schedule;
 - 1.2.8. "Confidential Information" means all information of any nature whatsoever, which either Party may obtain from the other or its associates ("The Designated Person"), regardless of how such information is disclosed to the receiving Party including, without limitation, whether orally, visually or by reason of inspection of documentation, electronic data or other matter on or at the Designated Person's premises;
 - 1.2.9. "Customer" means the customer whose details are described in **Schedule A**;
 - 1.2.10. "Designated Representative" means in the first instance the ITSC, and in the final instance, a Director of Y-IT and the Director of the Customer. Either Party may replace such designated representative (as applicable) from time to time on reasonable prior written notice to the other Party;
 - 1.2.11. "Dial On Demand Internet Access Services" means the dial On Demand Internet Access Services, domain name registrations and mailbox registration described in any **Schedule E**;
 - 1.2.12. "Fault" means when an entire System or component of a System has failed or is unable to process the Customer's transactions and Customer's users or customers are in some manner impacted by this;
 - 1.2.13. "Fault Priority" means the fault priority in respect of specific Support Services and more fully described in the relevant SLA relating to those Support Services;
 - 1.2.14. "Functional Specifications" means the functional specifications published by the manufacturer or licensor of the System (or component of the System, as the case may be) describing the operation of the System;
 - 1.2.15. "Help Desk" means Y-IT's help desk which receives and deals with Service Calls and provides Support Services;
 - 1.2.16. "Hosting Services" means the hosting services including, but not limited to, DR Server hosting, website hosting and development as more fully described in any **Schedule G**;
 - 1.2.17. "ITSC" means the IT Steering Committee to be established between the Parties as more fully described in clause 6;
 - 1.2.18. "Leased Line Internet Access Services" means the leased line Internet access services described in any **Schedule F**;
 - 1.2.19. "Y-IT" means Y-IT (Proprietary) Limited, a company duly registered and incorporated under the company laws of the Republic of South Africa, under Registration No., and having its principal place of business at 87 Adelaide Thambo Drive, Durban North, Kwa Zulu Natal, Republic of South Africa;

- 1.2.20. "MPLS" means Multiprotocol Label Switching;
- 1.2.21. "Network Administration and Maintenance Services" means the network administration and maintenance services and Support Services described in any **Schedule C**;
- 1.2.22. "Parties" means both Y-IT and the Customer, and a reference to "Party" shall be a reference to either one of them as so determined by the context;
- 1.2.23. "Principal Period of Support" or "PPS" means the time period during which Y-IT provides Support Services to the Customer in respect of a System as more fully described in the SLA relevant to that System;
- 1.2.24. "RAPID Monitoring Services" means the RAPID monitoring services described in any **Schedule D**;
- 1.2.25. "Schedule" means any schedule referred to in clause 2.5;
- 1.2.26. "Security Infrastructure Administration and Maintenance Services" means the security infrastructure administration and maintenance services described in any **Schedule B**;
- 1.2.27. "Service Call" means a communication by the Customer to the Help Desk to report a Fault or to request Support Services;
- 1.2.28. "Service Level Agreement" or "SLA" means the service level agreement described in any **Schedule H**;
- 1.2.29. "Services" means the Security Infrastructure Administration and Maintenance Services; Network Administration and Maintenance Services; RAPID Monitoring Service; Dial On Demand Internet Access Services; Leased Line Internet Access Services; Hosting Services; Support Services and any other services, confirmed with a Change Order, as agreed by the Parties from time to time;
- 1.2.30. "Site" means the Customer's site so described in any Schedule;
- 1.2.31. "Support Services" means the various different types of support services provided by Y-IT to the Customer from time to time as described in any **Schedule H**;
- 1.2.32. "System" means an information technology system comprising hardware, software or a combination of hardware and software and so designated as a system in any Schedule to this Agreement;
- 1.2.33. "Time and Material" means (i) the hourly rate charged by Y-IT in respect of services rendered by it in accordance with Y-IT's reasonable standard service charges from time to time and (ii) the costs of all material(s) used by Y-IT in rendering such services;
- 1.2.34. "WAN" means Wide Area Network;
- 1.2.35. "VAT" means value added tax in terms of the Value Added Tax Act, No.89 of 1991, as amended;
- 1.2.36. "VPN" means Virtual Private Network;
- 1.3. any reference in this Agreement to "date of signature hereof" shall be read as meaning a reference to the date of the last signature of this Agreement;
- 1.4. any reference to an enactment is to that enactment as at the date of signature hereof and as amended or re-enacted from time to time;
- 1.5. if any provision in a definition is a substantive provision conferring rights or imposing obligations on any party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of the Agreement;
- 1.6. 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 Saturday, Sunday or public holiday;
- 1.7. where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail;
- 1.8. expressions defined in this Agreement shall bear the same meanings in schedules or annexures to this Agreement which do not themselves contain their own definitions;
- 1.9. reference to day/s, months or year/s shall be construed as Gregorian calendar day/s, month/s or year/s;
- 1.10. where any term is defined within the context of any particular clause in this Agreement, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of the Agreement, notwithstanding that term has not been defined in this interpretation clause;
- 1.11. the expiration or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this;
- 1.12. the rule of construction that a contract shall be interpreted against the party responsible for the drafting or preparation of the contract, shall not apply; and
- 1.13. any reference in this Agreement to a party shall, if such party is liquidated or sequestered, be applicable also to and binding upon that party's liquidator or trustee, as the cases may be.

2. SCHEDULES

The Parties agree that:

this Agreement is a master agreement and, accordingly, that its terms shall apply to each Schedule appended to this Agreement from time to time;

no Schedule shall be of any force or effect between the Parties until it has been signed by duly authorised representatives of each of them;

each Schedule signed between the Parties shall be appended to this Agreement and shall become a separate agreement between the Parties upon the terms of this Agreement

each Schedule may contain its own terms and conditions which shall be read in conjunction with these terms and conditions, and in the event of any conflict, the terms of the Schedule shall prevail;

the Schedules are:

- Schedule A:** Details of Customer;
- Schedule B:** Security Infrastructure Administration and Maintenance Services;
- Schedule C:** Network Administration and Maintenance Services
- Schedule D:** RAPID Monitoring Services;
- Schedule E:** Dial On Demand Internet Access Services;
- Schedule Ei:** ADSL Internet Access Service
- Schedule Eii:** FAX (VAX) Services
- Schedule F:** Leased Line Internet Access Services;
- Schedule Gi:** Shared Server / Hosting Services;
- Schedule Gii:** DR / Virtual Server Hosting Services;
- Schedule Giii:** Dedicated Server hosting Services;
- Schedule H:** Support Services and Service Level Agreement;
- Schedule I:** Fees;
- Schedule J:** Change Order;
- Schedule S:** ISAT VPN Service;

Termination of any one Schedule by effluxion of time or otherwise, shall not affect the continued operation of this Agreement or any other Schedule to it.

3. TERM

This Agreement shall become effective upon the date of signature and shall continue in effect until terminated according to its terms or until all of the relevant Schedules has terminated by effluxion of time or otherwise, in which event this Agreement shall automatically terminate.

4. SERVICES

Security Infrastructure Administration and Maintenance Services

Y-IT shall provide the Security Infrastructure Administration and Maintenance Services described in **Schedule B** to the Customer. The Customer shall pay Y-IT the Security Infrastructure Administration and Maintenance Services fees so described in **Schedule I**. Y-IT warrants that the Security Infrastructure Administration and Maintenance Services shall be provided in a workmanlike manner

Network Administration and Maintenance Services

Y-IT shall provide the Network Administration and Maintenance Services described in **Schedule C** to the Customer. The Customer shall pay Y-IT the Network Administration and Maintenance Services fees so described in **Schedule I**. Y-IT warrants that the Network Administration and Maintenance Services shall be provided in a workmanlike manner. Support Services do not cover the supply or replacement of expendable items such as supplies, tape or disk media, printer bands, print heads, batteries, toner, ribbons or similar items; and repair of Faults;

- a) in a release of a software product which is not the current release or the immediately preceding release;
- b) resulting from accidents, misuse, negligence or failure by the Customer to follow instructions for proper use, care and cleaning of products;
- c) resulting from external factors such as flooding, fire, lightning, Acts of God, failure or fluctuation of electrical power or air conditioning;

- d) resulting from the installation, commissioning, alteration, repair (including any attempt to repair) or use of products by persons who have not been appropriately and properly trained to install, commission, alter, repair or use products;
- e) resulting from the Customer's failure to install any update or upgrade to any product as specified by Y-IT;
- f) resulting from the Customer's failure to install, use or store any product within any minimum hardware, software, environmental or configuration specifications specified by the manufacturer or licensor or as advised by Y-IT.
- g) Should Y-IT be required to provide support to the Customer to fix or correct errors, malfunctions or problems as described in clause 4.2.4, then Y-IT will provide such support on an ad hoc basis to the Customer charging on a Time and Materials basis, and subject to the availability of necessary resources.

RAPID Monitoring Services

Y-IT shall provide the RAPID Monitoring Services described in **Schedule D** to the Customer.
The Customer shall pay Y-IT the RAPID Monitoring Services fees so described in **Schedule I**.
Y-IT warrants that the RAPID Monitoring Services shall be provided in a workmanlike manner.

Dial on Demand Internet Access Services

Y-IT shall provide the Dial On Demand Internet Access Services described in **Schedule E** to the Customer.
The Customer shall pay Y-IT the Dial On Demand Internet Access Services fees so described in **Schedule I**.
Y-IT warrants that the Dial On Demand Internet Access Services shall be provided in a workmanlike manner.

ADSL Internet Access Service

Y-IT shall provide the ADSL Internet Access Services described in **Schedule Ei** to the Customer.
The Customer shall pay Y-IT the ADSL Internet Access Services fees so described in **Schedule I**.

Y-IT warrants that the ADSL Internet Access Services shall be provided in a workmanlike manner.

FAX (VAX) Service

Y-IT shall provide the FAX (VAX) Services described in **Schedule Eii** to the Customer
The Customer shall pay Y-IT the FAX (VAX) Services fees so described in **Schedule I**.
Y-IT warrants that the FAX (VAX) Services shall be provided in a workmanlike manner.

Leased Line Internet Access Services

Y-IT shall provide the Leased Line Internet Access Services described in **Schedule F** to the Customer
The Customer shall pay Y-IT the Leased Line Internet Access Services fees so described in **Schedule I**.
Y-IT warrants that the Leased Line Internet Access Services shall be provided in a workmanlike manner.

Hosting Services

Y-IT shall provide the Hosting Services described in any **Schedule G** to the Customer.
The Customer shall pay Y-IT the Hosting Services fees so described in **Schedule I**.
Y-IT warrants that the Hosting Services shall be provided in a workmanlike manner.

Support Services and Service Level Agreement

Y-IT shall provide the Support Services described in **Schedule H** to the Customer in accordance with their corresponding Service Level

Agreement described in **Schedule H**.

The Customer shall pay Y-IT the Support Services fees so described in **Schedule I**.

Y-IT warrants that the Support Services shall be provided in a workmanlike manner.

ISAT VPN Service

Y-IT shall provide the ISAT VPN Services described in **Schedule S** to the Customer in accordance with their corresponding Service Level

Agreement described in **Schedule H**.

The Customer shall pay Y-IT the ISAT VPN Services fees so described in **Schedule I**.

Y-IT warrants that the ISAT VPN Services shall be provided in a workmanlike manner.

5. CHANGE MANAGEMENT

Should either Party wish to make any amendment or alteration to the Services, that Party shall complete a Change Order which shall specify the following:

- the Party's name and contact details;
- the date of the Change Order;
- a description of the proposed amendment or alteration;
- the reason for making the proposed amendment or alteration; and
- when the Party requires the Change Order to be implemented.

Y-IT shall allocate a unique number to each Change Order and shall promptly undertake an exercise to determine the impact (including any knock-on effect) of the proposed amendment or alteration on:

the continued provision of the balance of the Services;
resources; and
fees and charges including any cancellation fees.

Y-IT shall incorporate the outcome of the impact assessment into the Change Order and present it to the Customer for consideration. No Change Order shall be of any force or effect until it is signed by duly authorised representatives of each Parties.

6. CHANGE MANAGEMENT

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- the date of the Change Order;
- a description of the proposed amendment or alteration;
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the continued provision of the balance of the Services;
resources; and
fees and charges including any cancellation fees.

Y-IT shall incorporate the outcome of the impact assessment into the Change Order and present it to the Customer for consideration. No Change Order shall be of any force or effect until it is signed by duly authorised representatives of each Parties.

7. IT STEERING COMMITTEE

The Parties will jointly establish the ITSC for the purpose of:

providing a central point of operation for IT with the Customer
prioritising tasks and deliverables regarding the Services and their provision;
addressing abnormal issues or matters arising during the course of the provision of the Services; and
attempting to resolve potential disputes between the Parties arising out of the provision of the Services or the Agreement.

The composition of the ITSC will be as follows:

Y-IT shall appoint 2 (two) members to the ITSC including the chairperson (who shall not have a casting vote);
the Customer shall appoint 2 (two) members to the ITSC; and
each of Y-IT and the Customer shall be entitled to appoint alternatives for each of their members.

The ITSC will meet as often as deemed necessary by either Party.

8. FEES AND PAYMENT TERMS

Payment in respect of all Services except Network Administration and Maintenance Services, shall be made strictly within 30 (thirty) days of date of invoice and shall be made in advance of the period during which Services are to be rendered.

Payment in respect of Network Administration and Maintenance Services shall be made strictly within 30 (thirty) days of date of invoice and shall be billed monthly in arrears.

Unless expressly stated to the contrary in **Schedule I** in respect of any specific fees or charges, all fees and charges specified in this Agreement exclude VAT which shall be charged to the Customer in addition to the fees and charges, at the then current rate of VAT, from time to time.

Fees and charges for Services shall escalate as follows:

All labor related Services fees and charges shall escalate annually on the anniversary of their respective Commencement Dates by a percentage equivalent to the percentage increase in the South African Consumer Price Index, all income groups, as quoted by the Central Statistical Services Release PO141.1 with the base index being August 2002. Provided that in the event of this publication being discontinued, or of any change in the basis of computation of the said index, an index prepared or recommended by Y-IT's auditors shall be adopted in the place of the said index; and

all product related Services fees and charges, as follows:

should the supplier of the products increase the cost of products pricing to Y-IT from time to time, then any increase to the Customer will be limited to the same percentage increase as the percentage increase by the supplier to Y-IT for same; and should the cost of Y-IT of obtaining products increase due to depreciation of the South African Rand against the United States Dollar exchange rate from time to time, then, on each such occasion Y-IT shall be entitled to increase the product related Services fees and charges accordingly to then current exchange rate. For purposes of determining any variation in the exchange rate, the South African Rand/US Dollar rate as quoted by First National Bank Limited, Durban North branch as their [●] rate for imports on the [●], shall be utilised. In the event of any dispute as to the exchange rate to be utilised in this clause, the decision of the branch manager of first National Bank Limited, Durban North branch, shall be final and binding.

Any additional services not stated in the Agreement shall be charged on a Time and Material basis and shall be payable within 30 (thirty) days of date of invoice.

All fees and charges which become due under this Agreement shall be payable by the Customer to Y-IT free of exchange, set-off and any other deduction, bankers in Durban, as follows:

Name of Bank:	Investec
Branch Name and Code:	580105
Account Holder:	Y-I.T.
Account Number:	10010954817

and payment shall not have been effected until the funds have been cleared to and received by Y-IT's bankers.

Interest on overdue payments shall be calculated at the rate quoted by Y-IT's Bankers (from time to time) as its prime overdraft rate plus 2 (two) percentage points from time to time, and will be calculated and compounded monthly in arrears from due date until the date payment is received by Y-IT. For the purposes of this Agreement, a certificate under the hand of any manager of Y-IT Bankers (whose appointment it shall not be necessary to prove) certifying the prime overdraft rate shall be conclusive proof of the facts contained in the certificate, in the absence of manifest error.

Y-IT shall be entitled to suspend provision of Services until such time as all overdue amounts have been paid in full.

The Customer hereby authorises Y-IT to arrange with the Customer's bankers, as set out in **Schedule A**, and to collect the monthly fees and charges as set out in **Schedule I** via debit order.

9. DISCLAIMERS AND LIMITATION OF LIABILITY

Y-IT provides no warranties, whether expressed or implied, arising by operation of law or otherwise, in respect of Services provided to the Customer. Y-IT specifically disclaims any implied warranties of fitness for particular purpose or merchantability.

Under no circumstances will Y-IT be liable for loss of the Customer's data regardless of how such loss is occasioned and whether due to the negligence of Y-IT or otherwise. The Customer acknowledges and agrees that back-up of such data is the responsibility of the Customer and can be undertaken easily and regularly so as to be able to restore any such data which is lost.

Under no circumstances whatsoever, including as a result of Y-IT negligent (including grossly negligent) acts or omissions or those of its servants, agents or contractors or other persons for whom in law Y-IT may be liable, shall Y-IT or its servants (in whose favor this constitutes a stipulatio alteri) be liable for any indirect, extrinsic, special, penal, punitive exemplary or consequential loss, damage or damages of an kind whatsoever or howsoever caused (whether arising under contract, delict or otherwise and whether the loss was actually foreseen or reasonable foreseeable), sustained by the Customer, its directors, servants, or agents, including but not limited to any loss of profits, loss of revenue, loss of operation time, corruption or loss of information and/or loss of contracts.

Under no circumstances whatsoever, including as a result of Y-IT's negligent (including grossly negligent) acts or omissions of those of its servants, agents or contractors or other persons for whom in law Y-IT may be liable, shall Y-IT's or its servants' (in whose favor this constitutes a stipulation alteri) liability for any direct loss, damage or damages of any kind whatsoever or howsoever caused (whether arising under contract, delict or otherwise and whether the loss was actually foreseen or reasonable foreseeable, sustained by the Customer, its directors, servants or agents, exceed the amount actually paid by the Customer to Y-IT for the specific Service which is the subject matter of , or directly related to, the cause of action asserted during the immediately preceding 3 (three) month period prior to the cause of action arising.

10. BREACH

If any Party breaches any material provision or term of this Agreement (other than those which contain their own remedies or limit the remedies in the event of a breach thereof) and fails to remedy such breach within 14 (fourteen) days of receipt of notice requiring it to do so and warning that if the breach is not so remedied, the aggrieved Party may exercise its rights in terms of this clause, (or if it is not reasonably possible to remedy the breach within 14 (fourteen) days, within such further period as may be reasonable in the circumstances provided that the Party in breach furnishes evidence within a period of 2 (two) days, reasonable satisfactory to the other Party, that is has taken whatever steps are available to it, to commence remedying the breach) or even if the provision or term is not material but a breach thereof has been again committed after 2 (two) warnings from the aggrieved Party, then the aggrieved Party shall be entitled without notice, in addition to any other remedy available to it at law or under this Agreement, including obtaining an interdict, to cancel this Agreement or to claim specific performance of any obligation whether or not the due date for performance has arrived, in either even without prejudice to the aggrieved Party's right to claim damages in which event the aggrieved Party shall be entitled to retain on account of such damages all amounts paid by the defaulting party to it in term of this Agreement. If any aforementioned breach is not capable of being remedied, it shall be deemed to have been remedied (but without prejudice to the aggrieved Party's right to claim damages) provided that the defaulting Party has caused it to cease within the period aforesaid.

Notwithstanding the provision of clause 9.1, if a breach of any part of this Agreement is committed then the aggrieved Party shall be entitled, instead of cancelling the entire Agreement, to cancel either the relevant Schedule or part of this Agreement, or alternatively only the transaction concluded pursuant to the relevant part of this Agreement or Schedule which has been breached.

11. TERMINATION

Notwithstanding anything to the contrary herein contained, either Party shall be entitled, but not obliged, to terminate this Agreement at any time by addressing written notice to that effect to the other, if either of them:-

commits an act which is or would (if committed by a natural person) be an act of insolvency within the meanings of section 8 of the Insolvency Act, 1936 or section 344 of the Companies Act, 1972; or allows any judgment against it to remain unsatisfied for a period of 30 (thirty) days, unless it takes steps to rescind or appeal against such judgment within such 30 (thirty) day period or, if it did not become aware of such judgment within such 30 (thirty) day period, then within 30 (thirty) days after the date on which it became aware of such judgment, and it successfully prosecutes such rescission or appeal to a timeous conclusion but in any event within 45 (forty five) days after the date on which it became aware of the judgment; or compromises or attempts to compromise or defer payment of any debt owing by it to any of its creditors; or being a juristic person, is provisionally or finally liquidated, removed from the register of companies or placed under judicial management, whether provisionally or finally, or takes any steps for it voluntary winding up; or is directly or indirectly acquired, owned an/or controlled by any person, firm, or company which is in direct competition with the other Party; or disposes of all or a material portion of its assets or business or ceases to conduct its business without the prior written consent thereto of the other Party; or encumbers or hypothecates in any manner whatsoever a material portion (as determined by the other Party within its reasonable discretion) of its assets (without the other Party's prior written consent thereto, such consent not to be unreasonably withheld); or has given any representation or warranty in terms of the Agreement and it proves to be incorrect in any material manner or respect whatsoever.

12. CONFIDENTIALITY

The Parties undertake to treat as strictly confidential all Confidential Information. The Parties undertake not to use the Confidential Information for any purposes other than carrying out their respective obligations in accordance with and upon the terms of this Agreement.

The receiving Party shall not –

disclose the Confidential Information to any person whomsoever other than the receiving Party's employees. Before revealing any Confidential Information to any such employees, the receiving Party Undertakes to procure that the employees sign a similar undertaking in favor of the Designated Person and that they are aware of the confidential nature of the Confidential Information being made available to them. The receiving Party undertakes to ensure that such employees will observe and comply with their obligations in respect thereof, whether or not they are still employees of the receiving Party; directly or indirectly use for the receiving Party's benefit or the benefit of any other person the Confidential Information other than for the purposes contemplated in clause 11.1 unless any part of such Confidential Information is or becomes public knowledge and in the public domain by reason of becoming public property other than through an act or omission on the part of the receiving Party or the employees contemplated in clause 11.1. For the purposes of the foregoing: discloses made to the receiving Party which are specific, e.g. design practices or techniques, shall not be deemed to be within the foregoing exceptions merely because they are encompassed by general disclosures which are generally available to the public or are in the receiving Party's possession; and any combination of features shall not be deemed to be within such exception merely because individual features thereof are generally available to the public or are in the receiving Party's possession.

The receiving Party agrees to use the same standard of care (which shall not amount to less than a reasonable standard of care) in protecting the Confidential Information, as its uses to protect its own confidential information.

The receiving Party agrees to return the Designated Person upon request or upon termination of this agreement, unless the Designated Person otherwise agrees in writing, all copies and partial copies of all Confidential information (whether in paper or electronic format) which the receiving Party may have obtained from the Designated Person as well as all notes (whether in paper or electronic format) which the receiving Party may have prepared or may obtain as a result of the Confidential Information being made available to the receiving Party as contemplated in clause 11.1.

13. INFORMAL DISPUTE RESOLUTION

Any dispute arising from this Agreement shall be subject to the following dispute resolution procedures. Prior to the initiation of formal dispute resolution procedures, the Parties shall first attempt to resolve the dispute informally as set out below.

Upon the written request of a Party, any dispute which arises between the Parties shall be referred to the Designated Representatives. The Designated Representatives shall meet as often as the Parties reasonably deem necessary in order to gather and furnish to the other all information with respect to the matter in issue which the Parties believe to be appropriate and germane in connection with its resolution. The Designated Representatives shall discuss the problem and attempt to resolve the dispute without the necessity of any formal proceedings. During the course of discussion, all reasonable requests made by one Party to another for non-privileged information reasonably related to the Agreement shall be honored in order that each of the Parties may be fully advised of the other Party's position. The specific format for the discussions shall be left to the discretion of the Designated Representatives.

Formal proceedings for the resolution of a dispute may not be commenced until the earlier of:

the Designated Representatives concluding in good faith that an amicable resolution through continued negotiation of the matter does not appear likely; or 14 (fourteen) days after the initial written referral to the Designated Representatives pursuant to clause 12.2 (this period shall be deemed to run notwithstanding any claim that the process described in this clause was not followed or completed).

Proceedings in terms of the clause 12 shall not be construed to prevent a Party from instituting, formal proceeding earlier to avoid the expiration of any applicable limitations period, or to preserve a superior position with respect to other creditors.

14. ARBITRATION

Save in respect of those provisions of the Agreement which provide for their own remedies which would be incompatible with arbitration, a dispute which arises in regard to –

the interpretation of; or

the carrying into effect of; or

any of the Parties' rights and obligations arising from; or

the termination or purported termination of or arising from the termination of; or

the rectification or proposed rectification of this Agreement, or out of or pursuant to the Agreement or on any matter which in terms of this Agreement requires agreement by the Parties, (other than where an interdict is sought or urgent relief may be obtained from a court of competent jurisdiction) shall be submitted to and decided by arbitration.

That arbitration shall be held –

with only the Parties and their representatives other than legal representatives, present thereat; and at Durban.

It is the intention that the arbitration shall, where possible, be held and concluded in 21 (twenty one) days after it has been demanded. The Parties shall use their best endeavors to procure the expeditious completion of the arbitration.

Save as expressly provided in this Agreement to the contrary, the arbitration shall be subject to the arbitration rules of the Arbitration Foundation of South Africa

The arbitrator shall be, if the matter in dispute is principally –

a legal matter, an impartial practicing advocate of not less than 15 (fifteen) years standing, or an impartial admitted attorney of not less than 15 (fifteen) years standing;

an accounting matter, an impartial practicing chartered accountant or not less than 15 (fifteen) years standing; and

any other matter, an independent person agreed upon between the Parties

If the Parties fail to agree on an arbitrator within 3 (three) days after the arbitration has been demanded, the arbitrator shall be nominated, at the request of either of the Parties by the President for the time being of the Law Society of the Northern Provinces (or its successor body in Gauteng). If that person fails or refuses to make the nomination, Either Party may approach the High Court of South Africa to make such an appointment. The extent necessary. The court is expressly empowered to do so.

If the Parties fail to agree whether the dispute is of a legal, accounting or other nature within 3 (three) days after the arbitration has been demanded, it shall be a matter referred to in clause 13.4.3

The Parties shall keep the evidence in the arbitration proceedings and any order made by any arbitrator confidential unless otherwise contemplated herein

The arbitrator shall have the fullest and freest discretion with regard to the proceedings save that he shall be obliged to give his award in writing fully supported by reasons. His award shall be final and binding on the Parties to the dispute.

Furthermore the arbitrator –

may be notice to the Parties within 3 (three) days after his appointment, dispense wholly or in part with formal submissions or pleadings provided that the Parties are given the opportunity to make submissions;

shall determine the applicable procedure and shall not be bound by strict rules of evidence;

shall allow any Party to the arbitration to call any witnesses he determines and shall permit cross examination of witnesses;

shall be entitled to take equity into account and shall not be bound to decide the dispute according to the legal rights of the Parties;

may, in addition to any other award he may be able to make –

cancel this Agreement or any Schedule or determine that a Party has lawfully cancelled or is entitled lawfully to cancel this Agreement or any Schedule, or require specific performance, with an award of damages, but may not award cancellation of this Agreement unless the breach complained of is found by him to be a material one going to the root of the contract which cannot be compensated for by an award of damages or recoupment under any indemnity given in terms of this Agreement;

“make the contract” between the Parties by completing any gaps in the Agreement or by determining any matter which has been or is left to be agreed upon by the Parties and on which they have not reached agreement

take into account the practicality or otherwise of ordering the continuance of any legal relationship between disputants; and

award interest with effect from any date, and on any other basis, he considers appropriate in the circumstances.

Shall make such order as to costs as he deems just.

Either Party shall be entitled to have the award made an order of court of competent jurisdiction.

Any dispute shall be deemed to have been referred or subjected to arbitration hereunder when either Party gives written notice to the other of the dispute, demands an arbitration and requests agreement on an arbitrator.

The provision of this clause are severable from the rest of the Agreement and shall remain in effect even if this Agreement is terminated for any reason.

The Parties shall keep the evidence in the arbitration proceedings and any order made by any arbitrator confidential unless otherwise contemplated herein.

The arbitrator shall have the power to give default judgment if any Party fails to make submissions on due date and/or fails to appear at the arbitration.

15. RESTRAINT

The Customer hereby undertakes to and in favor of Y-IT that it will not at any time during the currency of the Agreement and for a period of 12 (twelve) months after this Agreement has terminated (for any reason whatsoever), and whether directly or indirectly:

make any offer of employment to; or

accept any request for employment by; or

in any manner whatsoever solicit, procure or engage the services of, any person who was at any time during the currency of this Agreement an employee of Y-IT without the prior written consent of Y-IT.

16. DOMICILIUM CITANDI ET EXECUTANDI

The Parties chooses as their domicilia citandi et executandi for all purposes under this Agreement, whether in respect of court process, notices or other documents or communications of whatsoever nature (including the exercise of any option), the following addresses;

Y-IT Physical Address: 87 Adelaide Tambo Drive
Durban North
KWAZULU NATAL
4051

Y-IT Postal Address: P O Box 3281
Somerset Park
4021

Fax: 0866 515 992

Email: wyatt@y-it.co.za

the Customer as per the details in Schedule A:

Any notice or communication required or permitted to be given in terms of this Agreement shall be valid and effective only if in writing but shall be competent to give notice by telefax or e-mail.

Either Party may by notice to the other Party change the physical address chosen as its domicilium citandi et executandi to another physical address where postal delivery occurs in the Republic of South Africa or its postal address or its telefax number or e-mail address, provided that the change shall become effective on the 7th (seventh) business day from the deemed receipt of the notice by the other Party.

Any notice to a Party –

sent by prepaid registered post (by airmail if appropriate) in correctly addressed envelope to it at an address chosen as its domicilium citandi et executandi to which post is delivered shall be deemed to have been received on the 7th (seventh) business day after posting (unless the contrary is proved); or

delivered by hand to a responsible person during ordinary business hours at the physical address chosen as its domicilium citandi et executandi shall be deemed to have been received on the day of delivery; or

sent by telefax to its chosen telefax number stipulated in clause 15.1 shall be deemed to have been received on the date of dispatch (unless the contrary is proved); or

sent by e-mail to its chosen e-mail address stipulated in clause 15.1, shall be deemed to have been received on the date of dispatch (unless the contrary is proved).

Notwithstanding anything to the contrary herein contained a written notice or communication actually received by a Party shall be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen domicilium citandi et executandi.

17. FORCE MAJEURE

If vis major or force majeure or casus fortuitus ("the Interrupting Circumstances") cause delays in or failure or partial failure of performance by a Party of all or any of its obligations hereunder, this Agreement, or as the case may be, the affected portion thereof shall be suspended for the period during which the Interrupting Circumstances prevail, but if they affect any material part of the Agreement only for a maximum period of 90 (ninety) days whereafter any affected Party shall be entitled on 14 (fourteen) days' written notice to cancel this Agreement. Written notice of the Interrupting Circumstances specifying the nature and date of commencement thereof shall be dispatched by the Party seeking to rely thereon (on whom the onus shall rest) to the other/s as soon as reasonably possible after the commencement thereof. Written notice of the cessation of the Interrupting Circumstances shall be given by the Party who relied thereon with 2 (two) days after such cessation. No Party shall subsequently be obliged to comply with the obligations suspended during such period. The Party whose performance is interrupted by the Interrupting Circumstances shall be entitled, provided that such Party shall give notice to that effect with the written notice of the Interrupting Circumstances as provided above, to extend the period of this Agreement by a period equal to the time that its performance is so prevented.

For the purposes hereof vis major or force majeure include acts or omissions of any government, government agency, provincial or local authority or similar authority (other than the Customer), any laws or regulations having the force of law, civil strife, riots, insurrection, sabotage, acts of war or public enemy, illegal strikes, interruption of transport, lockouts, inability on the part of Y-IT as a result of force majeure of the nature contemplated in this clause to obtain any goods or materials from the supplier or contemplated supplier thereof, combination of workmen, prohibition of exports, rationing of supplies flood, storm, fire or (without limitation eiusdem generis) any other circumstances beyond the reasonable control of the Party claiming force majeure or vis major and comprehended in the terms force majeure or vis major.

18. SEVERABILITY

Any provision in this Agreement which is or may become illegal, invalid or unenforceable in any jurisdiction affected by this Agreement shall, as to such jurisdiction, be ineffective to the extent of such prohibition of unenforceability and shall be treated pro non scripto and severed from the balance of this Agreement, without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such provisions in any other jurisdiction.

19. SUB-CONTRACTING

Y-IT shall be entitled to engage/appoint any sub-contractor without any prior notice to the Customer to perform any of its obligations in whole or in part, in terms of this Agreement.

20. CESSION

The Customer may not cede, delegate, assign, or in any other manner dispose of any of its rights or obligation in terms of this Agreement, without the prior, written consent of Y-IT.

21. WHOLE AGREEMENT, NO AMENDMENT

This Agreement constitutes the whole Agreement between the Parties relating to the subject matter hereof.

No amendment or consensual cancellation of this Agreement or any provision or term hereof or of any Agreement, bill of exchange or other document issued or executed pursuant to or in terms of this Agreement and no settlement of any disputes arising under this Agreement and no extension of time, waiver or relaxation or suspension of any of the provisions or terms of this Agreement or of any agreement, bill of exchange or other document issued pursuant to or in terms of this Agreement shall be binding unless recorded in a written document signed by the Parties (or in the case of an extension of time, waiver or relaxation or suspension, signed by the Party granting such extension, waver or relaxation). Any such extension, waiver or relaxation or suspension which is so given or made shall be strictly construed as relating strictly to the matter in respect whereof it was made or given.

No extension of time or waiver or relaxation of any of the provisions or terms of this Agreement or any agreement, bill of exchange or other document issued or executed pursuant to or in terms of this Agreement, shall operate as an estoppel against any Party in respect of its rights under this Agreement, nor shall it operated so as to preclude such Party thereafter from exercising its rights strictly in accordance with this Agreement.

22. COSTS

Each Party shall bear its own costs relating to the negotiation and execution of this Agreement.