AF Proxy Services Ltd

Domain Name Reseller Agreement

(hereinafter referred to as the "**Reseller**")

1.   Introduction

1.1.   The Registrar is accredited as a registrar both by ICANN and the Registry for the namespaces that are the subject of this agreement.

1.2.   The Reseller wishes to act as a reseller of domain names under one or more namespaces in which the Registrar acts as a registrar.

1.3.   The Registrar provides the facilities to allow the Reseller to resell domain names.

1.4.   Accordingly the parties agree to the terms as set out below.

2.   Definitions

In this Agreement the words and expressions contained below shall bear the meanings assigned to them:

2.1.   "2LD" or "Second Level Domain" means any subdomain which falls directly under a TLD in the domain name space.

2.2.   "Acceptable Use Policy" means the document so described in clause 15.4.

2.3.   "Affiliate" means, in relation to a Party, the Party's holding company, its subsidiaries, the subsidiaries of its holding company and any other companies which, directly or indirectly, is controlled by the Party, controls the Party or is under common control with the Party.

2.4.   "Agreement" means this document, as well as the Schedules and all Annexures, which are deemed to form part of the Agreement.

2.5.   "API" means an application programming interface.

2.6.   "Branding" means any and all of the Registrar's trademarks and trade names, service marks, trade logos and trade dress.

2.7.   "Business Day" means any day other than a Saturday, Sunday or official public holiday in the Republic of Mauritius.

2.8.   "Registrar Software" means the Software used by the Registrar for the purposes of reselling the Registrar Service.

2.9.   "Registrar Website" means the Internet website operated by the Registrar at URL http://proxy.net.za or such other URL as may be determined by the Registrar from time to time, and includes reference to parts of such websites accessible only to the Reseller.

2.10.   "Domain Name" means a domain name of the domain name system.

2.11.   "ICANN Registrar Accreditation Agreement" means the agreement between the Registrar and ICANN in terms of which the Registrar is accredited by ICANN to provide the Registrar Services.

2.12.   "ICANN Policies" means and include Consensus Policies, Specifications (such as the Whois Accuracy Program Specification) referenced in the ICANN Registrar Accreditation Agreement,

and any amendments, policies, procedures, or programs specifically contemplated by the ICANN Registrar Accreditation Agreement or authorized by ICANN's Bylaws.

2.13. "Intellectual Property Rights" means and includes:

2.13.1. rights in and in relation to any patent, design, trade mark, trade or business name (including all goodwill associated with any trade mark, or any trade or business name), copyright, database, Domain Name, circuit topography design, and/or utility model, Software, and including the benefit of all registrations or applications to register and the right to apply for registration of any of the foregoing items and all rights in the nature of any of the foregoing items, each for their full term (including any extensions or renewals thereof) and wherever in the world enforceable; and

2.13.2. all other intellectual property rights and forms of protection of a similar nature or having equivalent or similar effect and which may subsist anywhere in the world.

2.14. "MARC" means the Arbitration and Mediation Centre of the Mauritius Chamber of Commerce and Industry.

2.15. "Namespace" means a TLD.

2.16. "Party" means either of the signatories to this Agreement and "Parties" means both of them collectively and will be deemed to mean and include their respective successors and permitted assigns.

2.17. "Registrant" means the person listed in the registry for a particular Namespace as the holder of a Domain Name.

2.18. "Registrar" means AF Proxy Services Ltd, an ICANN Accredited Registrar with IANA number 3794.

2.19. "Registrar Services" means the services described as such in the Registrar Accreditation Agreement for the Namespace concerned.

2.20. "Registrant Personal Information" means personal information pertaining to Registrants.

2.21. "Reseller" means a party making use of the Reseller Interface to provision Registry domain names as a reseller of the Registrar.

2.22. "Reseller Interface" means the website, Application Programming Interface (API) or other facility made available to the Reseller by the Registrar for the purposes of performing Transactions.

2.23. "Personnel" means officers or employees of either of the parties but specifically excludes, without limitation, service providers and independent contractors.

2.24. "Registrar Accreditation Agreement" means either the ICANN Registrar Accreditation Agreement, the Registry-Registrar Agreement or both together as the context indicates.

2.25. "Registry" means the ZA Central Registry NPC; for the .capetown, .durban and .joburg TLDs; and Registry Africa for the .africa TLD; the lawfully accredited registrys for the relevant Namespace, where such accreditation is effected by ICANN.

2.26. "Registry Policies" means all policies, codes of practice and the like which are applicable to Domain Names in a particular Namespace.

2.27. "Registry-Registrar Agreement" means the agreement between the Registrar and the Registry for a particular Namespace in terms of which the Registrar is accredited by the Registry to provide the Registrar Services in respect of that Namespace.

2.28. "Signature Date" means the date upon which the Reseller has signed the Agreement, electronically or physically, so as to give it full force and effect.

2.29. "Software" means any computer programme (whether source- or object code), as well as any database structure or content, artistic work, screen layout, cinematograph film, sound recording, preparatory material, user or technical documentation or any other work created in connection therewith and any modifications, enhancements or upgrades thereto.

2.30. "Term" means the term of the Agreement as set out in clause 3.1.

2.31. "Transaction" means one of the following performed in respect of a Domain Name: create, delete, renew, transfer and update.

2.32. "Transaction Fee" means a fee levied by the Registrar in respect of a Transaction.

2.33. "TLD" or "Top-level Domain" means a top level domain of the domain name system.

3. Appointment

3.1. The Registrar appoints the Reseller, which accepts such appointment, to resell the Registrar Services during the Term of this Agreement.

3.2. This Agreement will commence on the Signature Date and will remain in force indefinitely, unless terminated by either Party on three (3) calendar months' written notice to the other or otherwise in accordance with the terms of this Agreement.

4. Resale of Registrar Service

4.1. *Reseller.* The Reseller may promote, market and provide Registrar Services as a reseller of such services to third parties in respect of the Namespaces agreed between the Parties.

4.2. *Use of Reseller Interface.* The Reseller may make use of the Reseller Interface as described below to resell the Registrar Services provided by the Registrar.

4.3. *Non-Exclusivity.* The relationship between the parties will not be an exclusive one and the Registrar will be free to provide similar agreements with third parties.

5. Fees and Payment

5.1. *Transaction Fees.* the Registrar will charge the Reseller the Transaction Fees for Transactions in respect of Domain Names, which fees will be as set out on the Registrar Website.

5.2. *Payment.* Charges for Transactions performed in respect of Domain Names will be dealt with as follows:

5.2.1. The Registrar will charge the Transaction Fee to the Reseller in South African Rands or US Dollars without deduction or set-off.

5.2.2. Such charges will be made against advance payments to the Registrar, so that the Reseller makes payment of the Transaction Fees on a declining balance basis.

5.2.3. All Transaction Fees shall be deducted from the Reseller's credit balance with the Registrar as and when the Transactions are undertaken.

5.2.4. It is the Reseller's responsibility to ensure that its account with the Registrar has a sufficient credit balance, and the Registrar may decline to carry out a Transaction should the Reseller's credit balance be insufficient.

5.3. *Invoicing.* The Registrar will furnish the Reseller with its valid tax invoices setting out the amounts payable monthly in arrears, together with any Value Added Tax (VAT) payable in terms of the VAT legislation applicable from time to time.

5.4. *Payment in Arrears.* The Parties may in exceptional circumstances agree in writing that the Reseller make payment of the Transaction Fees monthly in arrears in which case:

5.4.1. The Registrar will also furnish the Reseller with monthly statements reflecting the total amount owing in terms of the valid tax invoices rendered during the course of that particular month.

5.4.2. The Reseller must make payment of any amount due, owing and payable within 30 days of date of such invoices.

5.5. *Interest on Overdue Amounts.* The Registrar reserves the right to levy interest on all amounts which have not been paid timeously in accordance with this clause 5, at a rate of 2% (two percent) above the prime overdraft rate (percent, per annum) charged by the Registrar's then current bankers from time to time, as evidenced by any manager of such bank, whose authority it shall not be necessary to prove, to a maximum of 2% (two percent) per month. Such interest shall be calculated from the due date of payment to the date of actual payment, both days inclusive, compounded monthly in arrears and the Reseller agrees and undertakes to pay such interest on demand.

5.6. *Taxes.* Amounts payable in terms of this Agreement will exclude all taxes (including without limitation VAT, sales tax, withholding tax, and any other similar taxes levied in any jurisdiction), duties, tariffs, rates, levies and other governmental charges or expenses payable in respect of the Registrar Service, all of which shall be payable by the Reseller in addition to the amounts stipulated in this Agreement.

5.7. *Escalation.* The Registrar may review and increase the Transaction Fees at any time on 30 (thirty) days' notice to the Reseller. A change to the Transaction Fees listed on the Registrar Website (including the Reseller "control panel") will be sufficient notice for these purposes.

6. Domain Name Transactions

6.1. *Compliance with Policies and Accreditation Agreements.* When performing a Transaction the Reseller must comply with all Policies and Registrar Accreditation Agreements in respect of the Namespace and Registries concerned. These Polices will change from time to time, and the Reseller must familiarise itself with the contents of those documents.

6.2. *Notice of Policies and Accreditation Agreements.* The Registrar will make reasonable efforts to post links to such Policies and Registrar Accreditation Agreements on the Registrar Website, but gives no undertaking that such links will be accurate or up to date, and the Reseller acknowledges that any failure on the Registrar's part does not absolve the Reseller from responsibility to comply with the provisions thereof.

6.3. *Registrant Agreement.* The Reseller must enter into an agreement with each Registrant which includes at least the mandatory terms prescribed by the Registrar, as well as all other terms prescribed by ICANN.

6.4. *Negative Covenants.* The Reseller must not:

6.4.1. submit any Transaction, or Registrant Personal Information which does not comply with the relevant Policies; or

6.4.2. be involved in any activity that involves the acquisition or accumulation of Domain Names that are not connected to the provision of Registrar Services under this Agreement, for the purposes of removing them from the availability of others, transferring them for a direct or indirect, immediate or deferred gain or profit or for any other reason which can be considered to be done in bad faith, where such acts are performed by the Reseller itself or for a third party for the Reseller's benefit.

7. Incorporation by Reference of Accreditation Agreements

7.1. *Binding Effect of Accreditation Agreements.* The Registrar is accredited as a Registrar by virtue of the Registrar Accreditation Agreements with ICANN and the relevant Registries for the Namespace concerned. These agreements impose obligations upon the Registrar in its provision of Registrar Service. Accordingly the Reseller agrees to be bound itself (with the necessary changes made) by the terms of such agreements, as amended from time to time, insofar as they impose obligations upon the Registrar, and must not take any action inconsistent with the corresponding provisions of those agreements or applicable law. The Reseller further undertakes that it will not place the Registrar in breach of a Registrar Accreditation Agreement, whether by act or omission, nor will it do anything to endanger the Registrar's accreditation or relationship with ICANN or a Registry.

7.2. *Precedence.* Any obligation relating to or arising from a Registrar Accreditation Agreement for the Namespace concerned will take precedence over any obligation towards the Reseller in terms of this Agreement.

7.3. *Copies of Agreements.* Copies of these agreements are available from the Registrar on request and are incorporated into this Agreement by reference.

8. Obligations of the Reseller

The Reseller must:

8.1. **not** display the ICANN or ICANN-Accredited Registrar logo, or otherwise represent itself as accredited by ICANN; nor may the Reseller display the Registry's logo or represent itself to be accredited by the Registry unless is has written permission from ICANN or the Registry as the case may be to do so.

8.2. ensure that any registration agreement used by the Reseller includes all registration agreement provisions and notices required by the relevant Registrar Accreditation

Agreements and any ICANN Consensus Policies, as all as relevant Registry Policies, and must identify the Registrar as the sponsoring registrar or provide a means for identifying the Registrar as the sponsoring registrar, such as a link to the InterNIC Whois lookup service.

8.3.   identify the Registrar as the sponsoring registrar upon inquiry from the Registrant.

8.4.   comply with any ICANN Policy that establishes a program for accreditation of individuals or entities who provide proxy and privacy registration services (a "Proxy Accreditation Program"). Among other features, the Proxy Accreditation Program may require that:

8.4.1.   proxy and privacy registration services may only be provided in respect of domain name registrations by individuals or entities accredited by ICANN pursuant to such Proxy Accreditation Program; and

8.4.2.   the Registrar prohibits Resellers from knowingly accepting registrations from any provider of proxy and privacy registration services that are not accredited by ICANN pursuant the Proxy Accreditation Program,

8.4.3.   until such time as the Proxy Accreditation Program is established, the Reseller must comply with the "Specification on Privacy and Proxy Registrations" attached to the ICANN Registrar Accreditation Agreement.

8.5.   provide its Registrants with a link to the ICANN webpage detailing registrant educational information described in clause 3.16 of the ICANN Registrar Accreditation Agreement. The URL of the webpage is http://www.icann.org/en/resources/registrars/registrant-rights/educational as of the Signature Date.

8.6.   publish on its website or provide a link to the "Registrants Benefits and Responsibilities Specification" attached to the ICANN Registrar Accreditation Agreement, and must not take any action inconsistent with the corresponding provisions of the ICANN Registrar Accreditation Agreement.

8.7.   comply with all existing and future ICANN Policies and Registry Policies as amended from time to time as if they were incorporated into, and form a part of, this Agreement. Such policies will take precedence over the provisions of this Agreement in the event of a conflict of provisions.

8.8.   comply with any new or changed Published Policies as soon as practicable, but in any event within 30 days after being notified of the new or changed Published Policies, and ensure that it is able to legally enforce any applicable changes to the Published Policies onto Registrants if so required.

8.9.   comply with the provisions of the UDRP, URS, and any other dispute resolution policy or procedure required by the Registry of the Namespace concerned or which is otherwise established by lawful authority in respect of a particular Namespace, and give effect to the decisions resulting from adjudication of disputes under such policies.

8.10.   immediately give the Registrar notice if it becomes aware of any security breaches affecting the Registrar or any part of its systems where such security breaches could have a material effect upon its service as a Registrar, or could constitute a threat to the security of the Registrar's systems, the Registrar Service or the stability of the Namespace.

8.11.   immediately give notice to the Registrar if the Reseller becomes aware or has cause to believe that a Registrant is no longer entitled to a Domain Name registration.

8.12.   immediately give notice to the Registrar if the Reseller becomes aware or has cause to believe that a particular Registrant is in breach of, or a particular Domain Name breaches, any Policy.

8.13.   keep the Registrar informed of material changes of the Registrar's personal or company details.

8.14.   within five (5) days of becoming aware, give notice in writing to the Registrar of any impending claims, litigation, insolvency proceedings or material disputes against the Reseller by any person or authority relating directly or indirectly to its provision of Registrar Service including arbitration and administrative or governmental investigation.

8.15.   provide to the Registrar as soon as reasonably possible after written request (or on an ongoing basis if so required) all information required to be retained by the Registrar by the Registry or by ICANN in terms of a Registrar Accreditation Agreement, including without limitation transaction data, and information for purposes of data escrow. The Reseller must provide this information in the format requited by the Registrar, and on an ongoing basis should this be required by the Registrar Accreditation Agreement.

8.16.   allow for the transfer of Domain Names to another registrar or reseller as described in the Registrar Accreditation Agreement.

8.17.   continue to hold all material statutory licences, consents and authorisations necessary to perform its obligations under this Agreement.

8.18.   comply with all applicable law.

9.   Reseller Interface

9.1.   *Provision of Interface.* The Registrar will allow the Reseller to access the Reseller Interface during the Term subject to the provisions of this Agreement and the Acceptable Use Policy.

9.2.   *Interface Description.* The Reseller Interface will allow the Reseller to perform Transactions and other operations in respect of Domain Names. The Reseller may access the Reseller Interface either via the Registrar Website, an API, or any other means that the Registrar has allowed for. Further details of the Reseller Interface are contained on the Registrar Website.

9.3.   *Limitation on Usage.* Access to the Reseller Interface is limited to the Reseller and the Reseller's Personnel. The Reseller has a duty to ensure that no third party accesses the Reseller Interface by using any username or other access method assigned to the Reseller.

9.4.   *Transactions via Interface.* The Reseller may only effect Transactions via the Reseller Interface and is specifically prohibited from effecting or attempting to effect Transactions directly with the Registry.

10.   Maintenance & Upgrades

10.1.   *Scheduled Maintenance.* The Registrar may be required to suspend access to the Reseller Interface in order to carry out routine maintenance and / or upgrades, provided that such suspensions will:

10.1.1. be subject to 24 hours prior written notice to the Reseller on the Registrar Website;

10.1.2. if possible be conducted only between the hours of 08h00 and 09h00 or outside of Business Hours;

10.1.3. be undertaken so as to keep downtime to a minimum.

10.2. *Emergency maintenance.* Notwithstanding the above, the Registrar may suspend access to the Reseller Interface without notice should maintenance be necessary in an emergency, in such instance the Registrar will provide the Reseller with notice as soon as reasonable possible after becoming aware that such maintenance required.

11. Termination of Accreditation

11.1. *Termination.* If the Registrar is unable to continue with provision of the Registrar Service due to the withdrawal, cancellation, or refusal for any reason whatever or any license, permit, certificate consent, exemption, accreditation, agreement or other necessary legal requirement:

11.1.1. where such disability is in respect of the Registrar Service as a whole, this Agreement will terminate with immediate effect; and

11.1.2. where such disability is in respect of a particular Namespace only, the Registrar Service will be terminated in respect of the affected Namespace only, and such inability will not be deemed a breach of this Agreement.

11.2. *Transition.* If the Registrar's accreditation in respect of a particular Namespace or the Registrar's accreditation with ICANN as an Accredited Registrar is revoked, the Domain Names registered by the Reseller in terms of this Agreement will be transitioned to another Accredited Registrar as set out in the relevant ICANN or Registry Policies.

12. Suspension of Reseller Interface

12.1. *Grounds for Suspension.* The Registrar is entitled to suspend provision of the Reseller Interface to the Reseller under the following circumstances:

12.1.1. where the Reseller has not made payment of monies owing to the Registrar by due date, and has not rectified such breach within 30 (thirty) days of written demand;

12.1.2. where the Reseller is endangering the proper operation or security of the Reseller Interface;

12.1.3. where the Reseller has breached the Acceptable Use Policy in the circumstances described therein;

12.1.4. where so ordered by a court having jurisdiction over the matter referred to in the court order and the Parties hereto; and

12.1.5. where such suspension is necessary for the maintenance of the Registrar System, as set out in clause 10.

12.2.   *Notice of Suspension.*

    12.2.1. The Registrar is entitled to suspend access to the Reseller Interface as set out in clauses 12.1 immediately and without notice; however, if it is possible for the Registrar to provide the Reseller with reasonable notice of such suspension, the Registrar will do so.

    12.2.2. The period of suspension will be at maximum 30 calendar days under the particular circumstances that gave rise to the suspension.

13.   Intellectual Property Rights

13.1.   *No Rights in Domain Name Data.* The Reseller disclaims all right to Domain Name data, including any right to a compilation of such data (a so-called "database right").

13.2.   *License to use the Registrar Branding.* The Registrar hereby grants the Reseller a non-exclusive, non-transferable, royalty-free license to use and display applicable Branding solely in connection with and solely to the extent reasonably necessary for the marketing, promotion and demonstration of the Registrar Services in accordance with the terms and conditions of this Agreement and any branding and trademark policies of the Registrar that have been provided to the Reseller in writing. Reseller may not register, apply for registration as a trade mark or trade name or use the Branding or any word, symbol, or design confusingly similar thereto, as part of its corporate name, or as part of the name of any product of the Reseller.

13.3.   *The Registrar Software IPR Reservation.* All Intellectual Property Rights in and to the Registrar Software are and will remain the property of the Registrar, and is protected by Mauritian copyright laws and international treaty provisions and all other applicable international laws. Moreover the structure, organisation and code of the Registrar Software are valuable trade secrets of the Registrar. Consequently, and without limiting the generality of the aforegoing:

    13.3.1. The Reseller may not make reproductions of the Registrar Software except as specifically provided for in this Agreement.

    13.3.2. The Reseller agrees not to adapt, modify, translate, create derivative works, include the Registrar Software in other Software, or distribute the Registrar Software with other Software. The Reseller agrees that copyright in any adaptations, translations or derivative works of the Registrar Software vests in the Registrar. Should assignment be necessary to give effect to such right, The Reseller agrees to sign any document necessary to effect assignment thereof to the Registrar.

    13.3.3. The Reseller is specifically prohibited from reverse engineering, disassembling, decompiling or otherwise using any method to discover the source code of the Registrar Software, or attempting to do so.

    13.3.4. The Reseller may not sell, let, hire or offer for sale or hire, copies of the Registrar Software.

13.4.   *General Reservation.* Other than expressly stated in this Agreement, no Intellectual Property Rights held by the Registrar are licensed or assigned to the Reseller or any third party.

13.5.   *IP Disputes.*

13.5.1. The Registrar is not a party to, nor will it render assistance to the Reseller or any third party involved in a dispute concerning a Domain Name or any other Intellectual Property Right.

13.5.2. The Registrar will comply with any order or lawful instruction given it by a court or tribunal with jurisdiction.

14. Warranties

14.1. *The Registrar's Warranties.* The Registrar warrants that:

14.1.1. there is nothing preventing the Registrar from entering into and complying with its obligations in terms of this Agreement;

14.1.2. it has the facilities, infrastructure, capacity and capability to provide the Registrar Service;

14.1.3. the provision of the Registrar Software does not and will not infringe the intellectual property rights of any third party and the Registrar indemnifies the Reseller against all liabilities, costs, expenses, damages and losses suffered or incurred by the Reseller arising out of or in connection with any claim made against the Reseller for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with use of the Registrar System, Reseller Interface or the Registrar Software, any new release, new version or documentation, or receipt of the benefit of thereof;

14.1.4. the Registrar Services comply with all relevant Policies whether of the Registries or ICANN.

14.2. *Limited Warranty.* Other than as agreed and warranted herein and subject to applicable law, the Registrar provides the Registrar Service and Reseller Interface on an "as is" and "as available" basis. Save as expressly set out in this Agreement and to the maximum extent permitted by law, the Registrar does not make any representations nor does it give any warranties or guarantees of any nature whatsoever in respect of the Registrar Service and Reseller Interface, and all warranties which are implied or residual at common law are hereby expressly excluded.

14.3. *Reseller's Warranties.* Reseller warrants that:

14.3.1. it has not been induced to enter into the Agreement by any prior representations, warranties or guarantees (whether oral or in writing), except as expressly contained in the Agreement;

14.3.2. by entering into this Agreement it is not acting in breach of any agreement to which Reseller is a party;

14.3.3. it has obtained the necessary consents from Registrants for the processing of Registrant Personal Information;

14.3.4. to the best of its knowledge the use of Registrant Personal Information does not and will not infringe the Intellectual Property Rights of any other third party.

14.4. *Interpretation of Warranties*

14.4.1. Each warranty is a separate warranty and is in no way limited or restricted by inference from the terms of any other warranty.

14.4.2. Each warranty will continue and remain in force notwithstanding the completion of any or all the transactions contemplated in this Agreement.

14.4.3. Each warranty is deemed to be material and to be a material representation inducing the Parties to enter into this Agreement.

15.   Use of the Service

15.1. *Responsibility.* Each party accepts that it is responsible for all of the consequences of its own activities and those of its employees, officers, agents, independent contractors and all others under its control.

15.2. *Technical Requirements.* Unless otherwise agreed in writing, the Reseller is responsible for acquiring, installing and maintaining all hardware and software required to meet its rights and obligations under this Agreement.

15.3. *Intellectual Property.* Both Parties undertake to comply with all intellectual property laws, and to do nothing related to or connected with this Agreement or its use of or provision of the Reseller Interface or the Registrar Software which may infringe the Intellectual Property Rights of the other party or any third party.

15.4. *Acceptable Use.* The Registrar imposes rules for the use of the Registrar Service and the Reseller Interface which are contained in the Acceptable Use Policy which is published on the Registrar Website. The Reseller must abide by the Acceptable Use Policy and ensure that its Personnel and anyone under its control that uses the Registrar Service or the Reseller Interface also does so. The Registrar will amend the Acceptable Use Policy from time to time. The Acceptable Use Policy as amended is available for viewing on the Registrar Website, provided that the Reseller will be provided with 30 (thirty) calendar days written notice of any amendments thereto.

15.5. *Status of AUP.* For the avoidance of doubt, the Acceptable Use Policy contains reasonable rules for conduct, which are not themselves material terms of this Agreement; the Reseller's duty under this Agreement is to abide by such reasonable rules as the Registrar may include in the Acceptable Use Policy from time to time. An amendment to the Acceptable Use Policy is hence not an amendment to this Agreement so long as it does not effect a material term.

15.6. *Breach of AUP.* Should the Reseller repeatedly breach the AUP in such a manner as to indicate a disregard for its contents, such repeated breach will constitute a breach of this Agreement.

16.   Personal Information

16.1. *Processing of Personal Information.*

16.1.1. The Registrar and Reseller are each responsible for complying with their respective obligations under applicable laws governing Registrant Personal Information.

16.1.2. Reseller remains solely responsible for obtaining Registrants' consent to processing of Registrant Personal Information and for ensuring that the Registrar's processing of Registrant Personal Information for purposes of the Registrar Services will not place the Registrar in breach of any laws, provided that the Registrar may use Registrant Personal Information only for the purpose of providing the Registrar Services in accordance with applicable law.

16.2. _Consent for Processing of Personal Information._ Notwithstanding the above:

16.2.1. The Reseller must inform Registrants of the purposes for which it will collect and process the Registrant Personal Information, including without limitation the purposes set out in the Registry Policies.

16.2.2. The Reseller must obtain the Registrants' consent for the collection and processing of Registrant Personal Information for the purposes set out in clause 16.2.1, including consent to the transfer of Registrant Personal Information anywhere in the world for such purposes.

17. Relationship between the Parties

17.1. _Independent Contractor._ The Parties agree that the relationship between them is one of commissioner and independent contractor, and nothing in this Agreement will be construed as giving rise to a relationship of employer and employee, whether between the Parties or between either of the Parties and any officer, employee or agent of the other Party.

17.2. _No Agency._ This Agreement does not give rise to a relationship of Principal and Agent. Neither Party shall be entitled to conclude any agreement on behalf of the other, nor to sign any document on behalf of the other, unless so specifically authorised in writing by the other.

17.3. _Co-operation._ Both parties to this Agreement (including the employees, officers and agents of such parties) undertake to use their best endeavours and exercise good faith in implementing the provisions of this Agreement according to its intent and purpose and they further undertake to pass such resolutions and do all such acts and deeds as may be necessary, to this end.

18. Assignment, Subcontracting and Reselling

18.1. _General Restriction._ The Reseller will not be entitled to cede, assign, delegate, sub-license, sub-contract, encumber or otherwise transfer the benefit or burden of all or any part of this Agreement without the prior written consent of the Registrar, which consent may not be unreasonably withheld or delayed.

18.2. _Permitted sub-contracting._ The Registrar may nonetheless sub-contract its obligations in terms of this Agreement to a third party, provided that:

18.2.1. such sub-contracting shall not absolve the Registrar from responsibility for complying with its obligations in terms of this Agreement; and

18.2.2. the Registrar shall at all times remain the sole point of contact for the Reseller.

18.3. _Assignment by Registry to Affiliate._ It is expressly recorded that Registrar will be entitled to cede and assign all rights and obligations in terms of this Agreement to its Affiliate or any

successor of all or substantially all of the business or assets of the Registrar, provided that the Registrar must notify the Reseller of such event within a reasonable time of it occurring.

19. No Solicitation

19.1. Both Parties undertake that they will not during the term of this Agreement and for a period of 12 (twelve) months after the termination thereof for any reason, directly or indirectly employ or persuade, induce, encourage or procure any employee of the other, or any person who was an employee of the other during the previous 12 (twelve) months, to become employed by or through them or to terminate his or her employment with the other or any of its Affiliates.

20. Dispute Resolution

20.1. Should any dispute of whatsoever nature arise between the Parties concerning this Agreement, the Parties must try to resolve the dispute by negotiation. This entails that the one Party invites the other in writing to meet and attempt to resolve the dispute within 7 (seven) days from date of written invitation.

20.2. If the dispute has not been resolved by such negotiation, either of the Parties may submit, by written notice to the other party, the dispute to the MARC for administered mediation, upon the terms set by the MARC Secretariat.

20.3. Failing such a resolution, the dispute, if arbitrable in law, shall be finally resolved in accordance with the Rules of the MARC by an arbitrator or arbitrators appointed by the MARC.

20.4. This clause constitutes an irrevocable consent by the parties to any proceedings in terms hereof and neither of the parties shall be entitled to withdraw from the provisions of this clause or claim at any such proceedings that it is not bound by this clause.

20.5. The aforegoing shall not restrict the right of either Party to apply to a competent court for relief of an urgent nature or should its intellectual property rights be violated or threatened, and the parties consent to the jurisdiction of the Supreme Court of Mauritius for such purposes.

20.6. Pending final settlement or determination of a dispute, the Parties shall continue to perform their subsisting obligations hereunder.

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

21. Limitation of Liability and Indemnity

21.1. *Limitation.* Save and except for liability in respect of claims by third parties regarding Intellectual Property Rights infringements and disclosure of Confidential Information, which liability will not be capped or excluded in any way, neither party will be liable to the other party or any third party in respect of any and all indirect, consequential or special damages, loss, claims or costs, of whatever nature, relating to or arising from this Agreement or the Registrar Service or the Reseller Interface, suffered by the other party or a third party, whether through the act or omission of a party's employee, breach of contract, vicarious or strict liability or any other cause.

21.2. *Specific Exclusions.* Without limiting the provisions of clause 21.1 in any way, the Registrar will not be liable to the Reseller for direct, indirect, consequential or special damages arising from:

21.2.1. any act or omission of the Reseller in breach of this Agreement;

21.2.2. any action taken by the Registrar in terms of clauses 6 (Maintenance), 11 (Regulatory Challenges), 12 (Suspension of Services) or 13.5 (IP Disputes), provided that such action is taken in terms of the procedures in this Agreement;

21.2.3. any unauthorised access to the Reseller Interface or data contained thereon due to the Reseller's negligence; and/or

21.2.4. the processing or transfer of Registrant Personal Information provided that the Registrar is not negligent and such negligence gives rise to the damage, and complies with applicable laws.

21.3. *Quantum Limited.* Without in any way limiting or derogating from the above provisions, the Parties agree that the total amount of each party's liability relating to or arising from this Agreement or the Registrar Service or the Reseller Interface, whether in contract, delict, or otherwise, will not exceed the amount of the Transaction Fees paid by the Reseller for the Registrar Service from which the damage arose in the 12 (twelve) month period immediately preceding the damage-causing event.

21.4. *Indemnity.* The Reseller will indemnify, defend, and hold the Registrar and the Registry harmless from all third party demands and claims (including reasonable legal costs on the scale as between attorney and own client and any additional legal costs) relating to or arising directly or indirectly out of:

21.4.1. any act or omission of the Reseller in breach of this Agreement;

21.4.2. a breach of the Reseller's warranties as set out in clause 14.3;

21.4.3. breach of privacy rights, including infringement of any law (whether South African or foreign) governing cross-border data flows where such breach is the fault of the Reseller ; or

21.4.4. the infringement by Reseller of any Intellectual Property Right, including any Domain Name dispute.

21.5. *Procedure on Indemnity.* In the event of any third party claim contemplated in clauses 21.4 claims against any Party ("the Innocent Party") such Innocent Party will promptly notify the other Party in writing of any claims covered by this indemnity. Promptly after receipt of such notice, the other Party will assume the defence of such claim with counsel reasonably satisfactory to the Innocent Party. If the other Party fails, within a reasonable time after receipt of such notice, to assume the defence with counsel reasonably satisfactory to the Innocent Party or, if in the reasonable judgment of the Innocent Party, a direct or indirect conflict of interest exists between the Parties with respect to the claim, the Innocent Party will have the right to undertake the defence, compromise and settlement of such claim for the account and at the expense of the other Party. Notwithstanding the foregoing, if the Innocent Party in its sole judgment so elects, the Innocent Party may also participate in the defence of such action by employing counsel at its expense, without waiving the other Party's obligation to indemnify and defend. The other Party will not compromise any claim

(or portions thereof) or consent to the entry of any judgment without an unconditional release of all liability of the Innocent Party as to each claimant or plaintiff.

21.6. _Precedence._ In the case of ambiguity, this clause 21 will take precedence over any expression of the Parties' intention, whether express or implied, that may be contained elsewhere in this Agreement.

22. Force Majeure

22.1. Neither party will be liable for any delay in performing or any failure to perform any obligations under this Agreement due to any cause beyond their reasonable control, including but without being limited to any of the following: strikes, lock outs or other industrial action, sabotage, terrorism, civil commotion, riot, invasion, war, threat of or preparation for war, fire, explosion, storm, flood, subsidence, epidemic or other natural physical disaster, impossibility of the use of railways, shipping aircraft, motor transport or other means of public or private transport, interruption of electricity supply, any act or policy of any state or government or other authority having jurisdiction over either party, sanctions, boycott or embargo.

23. Breach & Termination

23.1. Should either Party:

23.1.1. fail to comply with any of its obligations or commit a breach of this Agreement and fail to remedy such default or breach within 20 (twenty) Business Days after having received a written notice to do so,

23.1.2. be placed in provisional or final liquidation or sequestration, or judicial management,

23.1.3. enter into any compromise arrangements with its creditors,

23.1.4. resolve to begin business rescue proceedings,

23.1.5. fail to satisfy any judgment to the value of more than R1 000 000.00 (one million rand) taken against it within ninety (90) Business Days, or

23.1.6. anything analogous to any of the aforegoing under the law of any jurisdiction occurs in relation to that Party,

the other Party shall be entitled either:

23.1.7. to demand specific performance; or

23.1.8. to cancel the Agreement.

23.2. Without derogating from the provisions of clause 23.1, if the Reseller repeatedly breaches any of the terms of this Agreement, and in particular the provisions of clause 8 or the Acceptable Use Policy, and does so in such manner as to justify the Registrar in holding that the Reseller does not have the intention or ability to carry out the terms of this Agreement, then the Registrar may terminate this Agreement on thirty (30) days' written notice to the Reseller.

23.3. The provisions of this clause will not affect the rights of the Parties to seek legal redress including a claim of damages in respect of a breach of any of the provisions of this Agreement.

24. Domicilium & Notices

24.1. The Parties choose their addresses where they will accept service of any notices/documents for all purposes arising from or pursuant to this Agreement, as set out on the first page (signature sheet) of the Agreement.

24.2. Any Party shall be entitled from time to time by written notice to the other(s), to vary its given address to any other address which is not a post office box or to vary its other domicilium contact details.

24.3. Any notice given in terms of this Agreement shall be in writing and any notice given by any Party to another ("the addressee") which:-

24.3.1. is delivered by hand or transmitted by telefax shall be deemed to have been received by the addressee on the first business day after the date of delivery or transmission, as the case may be;

24.3.2. is transmitted by e-mail shall be deemed to have been received upon confirmation of receipt (not automated receipt) thereof by the addressee; or

24.3.3. is posted by pre-paid registered post to the addressee at its domicilium address for the time being shall be deemed to have been received by the addressee on the 7th (seventh) day after the date of such posting.

24.4. Notwithstanding anything to the contrary contained or implied in this Agreement, a written notice or communication actually received by one of the parties from another, including by way of telefax or e-mail transmission, shall be adequate written notice or communication to such Party.

25. Applicable Law & Jurisdiction

25.1. This Agreement shall be governed by and construed in accordance with the laws of Mauritius, and all disputes, actions and other matters relating thereto shall be determined in accordance with such law.

25.2. Where either party employs the services of attorneys or other debt-recovery agencies in respect of any outstanding debt or amount then the other party undertakes to pay on demand all reasonable legal costs incurred on the scale as between attorney and own client and including related costs such as reasonable collection commission and tracing fees.

26. Interpretation

26.1. *Number, Gender and Status.* In this Agreement, unless the context requires otherwise: - words importing any one gender will include the other gender; the singular will include the plural and vice versa;

26.2. *Reference to Persons.* A reference to natural persons will include created entities (corporate or unincorporate) and vice versa. Reference to any Party will be interpreted to include reference to their successors or permitted assigns, unless the context indicates otherwise.

26.3. _Local Definitions._ Words and expressions defined in any clause will, for the purposes of that clause, bear the meanings assigned to such words and expressions in such clause. If it is clear from the context that the term so defined has application beyond the clause in which it was defined, it will bear the meaning ascribed to it for all purposes in terms of this Agreement, notwithstanding that the term has not been defined in a definitions clause.

26.4. _Substantive Provisions._ If any provision is a substantive provision conferring rights or imposing obligations on any party, notwithstanding that it is only in a definitions clause, effect will be given to it as if it were a substantive provision in the body of the Agreement.

26.5. _Clause Headings._ Clause and sub-clause headings have been inserted for convenience only and will not be used for nor assist or affect its interpretation.

26.6. _Clause References._ Unless otherwise stated herein, references to clauses, sub-clauses, schedules or paragraphs are references to clauses, sub-clauses, schedules or paragraphs of this Agreement, as the case may be.

26.7. _Clause Numbers._ Where a clause or sub-clause number is cited, such citation will be deemed to include reference to all sub-clauses of that numbered clause or sub-clause as the case may be.

26.8. _Contra Proferentum Excluded._ The rule of construction that an agreement will be interpreted against the party responsible for its drafting or preparation (_contra preferentum_) will not apply.

26.9. _References to this Agreement._ Unless otherwise stated in this Agreement, references in this Agreement to this Agreement or to any other agreement are references to this Agreement or such other agreement as varied, supplemented, substituted or replaced from time to time.

26.10. _Enactments_. References to any Law will be deemed to include references to such Law as re-enacted, amended or extended from time to time.

26.11. _Date of Signature._ Any reference in this Agreement to "date of signature" will be read as meaning a reference to the date of signature of the last party required to sign an agreement in order for it to come into existence.

26.12. _Calculation of Days._ When any number of days is prescribed in this Agreement, it will be reckoned excluding the first and including the last, unless the last day falls on a Saturday, Sunday or public holiday in Mauritius, in which event the last day will be the next succeeding Business Day.

26.13. _Counterparts._ This Agreement may be executed in any number of counterparts (including faxed counterparts) and all of such counterparts taken together will be deemed to constitute one and the same instrument.

27.   General

27.1. _Whole Agreement._ This Agreement constitutes the whole of the agreement between the Parties hereto relating to the subject matter hereof and the Parties shall not be bound by any terms, conditions or representations whether written, oral or by conduct and whether express or tacit not recorded herein; no addition to, variation, consensual cancellation or

novation of this Agreement, including this clause, shall be of any force or effect unless reduced to writing and signed by both parties or by their duly authorised representatives.

27.2. *Capacity.* The signatories hereto acting in representative capacities warrant that they are authorised to act in such capacities.

27.3. *No Waiver.* The failure by any Party to enforce any provision of this Agreement shall not affect in any way that Party's right to require performance of the provision at any time in the future, nor shall the waiver of any subsequent breach nullify the effectiveness of the provision.

27.4. *Survival.* For the avoidance of doubt, any provision of this Agreement which contemplates performance or observance subsequent to any termination or expiration of this Agreement shall survive any termination or expiration of this Agreement and continue in full force and effect.

27.5. *Variations in writing.* No variation, addition to or cancellation of this Agreement and no waiver of any right under this Agreement shall be of any force or effect unless reduced to writing and signed by or on behalf of the parties to this Agreement.

27.6. *Reading Down*. If a provision of this Agreement is reasonably capable of an interpretation which would make that provision valid and enforceable and an alternative interpretation that would make it void, illegal, invalid or otherwise unenforceable, then that provision shall be interpreted, so far as is possible, to be limited and read down to the extent necessary to make it valid and enforceable.

27.7. *Severability.* If the whole or any part of a provision of the Agreement is void or voidable by either Party or unenforceable or illegal, the whole or that part (as the case may be) of that provision, shall be severed, and the remainder of the Agreement shall have full force and effect, provided such severance does not alter the nature of the Agreement between the Parties.

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