

1. DEFINITIONS

- 1.1. "Addenda" means any documentation annexed to the Agreement that defines the Services or obligations of the parties, and which are attested to by both parties, all of which are included as part of this Agreement;
- 1.2. "Agreement" - means this default agreement entered into between the Customer and PMT, incorporating Service Schedules and Work Orders if any;
- 1.3. "Business day" shall mean Monday to Friday, but excluding public holidays in the Republic of South Africa;
- 1.4. "Calendar Month" is the period from the first business day to the last business day of a month;
- 1.5. "Customer" means the party for which the work is performed;
- 1.6. "Company" means Pattern Matched Technologies;
- 1.7. "Contract" means this agreement;
- 1.8. "Deliverable" means the result of the work performed under the "Work Order";
- 1.9. "Effective Date" means the date on which the "Service" commences;
- 1.10. "PMT" means Pattern Matched Technologies (Pty) Ltd;
- 1.11. "Service" means the activity and obligation of PMT to provide the services and/or deliverables as defined in the "Service Schedule" and/or "Work Order" to the Customer;
- 1.12. "Party" shall mean PMT or the Customer and "Parties" shall mean the Company, Customer and any other authorised agent working either for the Company or the Customer;
- 1.13. "Service Schedule" means the document that lists the services and associated charges that will be delivered as the "Service" to the Customer;
- 1.14. "Service Obligations" mean the undertakings of delivering the "Service" by PMT in accordance with the level of service agreed, and specified as per the categorised service activity that is detailed in the "Service Schedule";
- 1.15. "Signature Date" means the date of signature of the "Service Schedule" by the party last signing;
- 1.16. "Work Order" means any written instruction from the "Customer" or its authorised agent to perform work;
- 1.17. "Working day" means the same as "business day";
- 1.18. "Working hours" shall mean "business days" from 8:30 to 17:30;
- 1.19. Unless inconsistent with the context, or otherwise indicated, in this agreement
 - 1.19.1. a reference to a person shall include a juristic or artificial person, including without limitation, a firm, company voluntary association, or partnership;
 - 1.19.2. the singular shall include the plural, and the plural shall include the singular;
 - 1.19.3. a reference to the male form shall include the female form as well, and vice-versa.

2. ENTIRE AGREEMENT

- 2.1. This Agreement is considered to be the substantive agreement between the Parties at all times in the event that no replacement formal contract of agreement has been signed between the Parties. This Agreement is in no way intended to form that basis of a commercial agreement except by way of PMT communicating default terms and conditions in its favour, including its day rates and other charges published elsewhere and updated from time to time, and in the absence of a signed contract between the Parties. It is therefore explicitly stated that PMT expects a Customer to replace this

Agreement of Standard Terms and Conditions with a future contract of agreement signed by the Parties.

- 2.2. It is therefore further recorded that in the absence of a future signed contract of agreement, that this Agreement together with the any additional or optional Service Schedules, Detailed Specifications, Work Orders and addenda referred to in this Agreement constitute(s) the final, complete, and exclusive statement of the terms of the agreement between the parties pertaining to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings or agreements of the parties. This Agreement may not be contradicted by evidence of any prior or contemporaneous statements or agreements. No party has been induced to enter into this Agreement by, nor is any party relying on, any representation, understanding, agreement, commitment or warranty outside those expressly set forth in this Agreement.

3. SEVERABILITY

- 3.1. If any term or provision of this Agreement is determined to be illegal, unenforceable, or invalid in whole or in part for any reason, such illegal, unenforceable, or invalid provisions or part thereof shall be stricken from this Agreement, and such provision shall not affect the legality, enforceability, or validity of the remainder of this Agreement. If any provision or part thereof of this Agreement is stricken in accordance with the provisions of this section, then this stricken provision shall be replaced, to the extent possible, with a legal, enforceable, and valid provision that is as similar in tenor to the stricken provision as is legally possible.

4. TERM AND TERMINATION

- 4.1. The provision of the Services shall be for the Term stated in the Work Order, Service Schedule or any other reasonably communicated and binding instruction received by the Company from the Customer, commencing on the Effective Date;
- 4.2. The Parties may during the Term, terminate the Agreement which termination shall be effective from the end of the Term;
- 4.3. Irrespective of anything to the contrary in this agreement, in the event of the Customer acquiring and/or making use of a third party's services in conjunction with the PMT Service, the terms and conditions of the third party's service shall also be applicable and binding on the Customer;
- 4.4. If the Customer terminates the Service and/or breaches the Terms and Conditions prior to the end of the Term, the Customer shall pay to PMT all charges for the Services provided up to and including the actual date of such termination and/or breach together with a cancellation charge equal to the balance of the applicable charges (in effect at the time of cancellation) for such cancelled Services that otherwise would have become due for the unexpired portion of the term, either in full or on an agreed pro rata basis;
- 4.5. If the Customer terminates this Agreement in order to renegotiate other PMT Service at any time, the Customer shall not be liable to pay any termination charges. This clause §4.5 is subject however to the Customer entering into a new Agreement, which is to be determined at PMT's sole discretion, for a period at minimum, equal to the balance of the Term as determined at the date of termination of the Agreement.

5. EFFECTIVE DATE

- 5.1. Should the Effective Date occur after the Signature Date of this Agreement, nothing herein contained shall be construed so as to give the Customer the right to cancel or rescind this Agreement before expiry of the Term.

6. FEES

- 6.1. PMT will submit invoices to the customer monthly or on completion of the work on PMT's standard invoice form;
- 6.2. The terms of payment for the invoices in §6.1 is 30 days from invoice date; PMT does not issue statements by default unless requested in writing;
- 6.3. Unless indicated in writing, invoices will be based upon PMT's published Standard Hourly Rates in effect at the time the work is performed;
- 6.4. The minimum time segment for work performed is one (1) hour;
- 6.5. The Customer shall be responsible for any and all of PMT's fees and charges as set out in the Work Order or Service Schedule, such fees and charges shall be payable in South Africa currency, without deduction or set-off of any amount of whatsoever nature or for whatsoever reason;
- 6.6. Any amount falling due for payment by the Customer to PMT in terms of or pursuant to the Work Order or Service Schedule which is not paid on its due date, as per the Invoice stated in §6.1, shall bear interest calculated from the invoice date until date of payment, at a rate of 2% above the standard prime overdraft rate as determined by PMT's bank, from time to time, monthly in arrears. Additionally, PMT reserves the right to suspend service to the Customer immediately if the Customer is in default of payment. Such suspension and/or termination is without prejudice to any of the rights of PMT, which have accrued prior to the date of suspension and/ or termination;
- 6.7. All payments due to PMT shall be effected:
 - 6.7.1. by way of a debit order drawn on a registered bank; or
 - 6.7.2. by electronic transfer or by cheque, free of the cost transfer of funds and without any deduction or set-off;
- 6.8. The Customer acknowledges and understands that in the event of PMT being in possession of any of the Customer's property and in the event of any monies being outstanding by the Customer to PMT at any time, PMT shall have a bone fide lien over such property and shall have the right to retain same or services until such time that all outstanding amounts have been paid by the Customer to PMT in full;
- 6.9. Notwithstanding anything to the contrary contained herein:
 - 6.9.1. Any increase in third party costs, which third party costs affect the costs of the provision of services to the Customer will be passed on to the Customer as and when those charges become effective;
 - 6.9.2. Should PMT be forced to increase its charges, PMT shall be entitled to adjust the PMT charges set forth by way of 30 (thirty) days written notice to the Customer. The aforementioned increase shall not occur more than once a year and be in excess of industry norms.

7. DEFECTS IN SERVICE

- 7.1. The Customer shall promptly inform PMT of any actual or suspected defects in the any of PMT's Services or Deliverables;
- 7.2. The Customer's payment in full amount owed for Services rendered shall be taken to mean that the Customer is satisfied with PMT's Services and/or Deliverables and is unaware of any defects
- 7.3. Notwithstanding the obligations of the Customer of §7.1 and 7.2, the Customer may not withhold payments as a mechanism of dispute to withhold payment of Fees as detailed per §6 and its subclauses;

8. FAILURE TO FOLLOW RECOMMENDATIONS

- 8.1. PMT shall not be liable for any problems or unintentionally consequences that may arise during the implementation of any of PMT's plans, specifications or recommendations when PMT is not retained to observe such implementations.

9. DOCUMENTATION, PROPRIETARY RIGHTS AND CONFIDENTIALITY

- 9.1. The Customer agrees by default, save for anything that is deemed publically available, that any specifications, descriptive matter, drawings and other related documentation which may be furnished by PMT to the Customer from time to time:
 - 9.1.1. Is proprietary and confidential to PMT;
 - 9.1.2. do not form part of this Agreement and may not be relied upon unless otherwise agreed in writing by both parties hereto;
 - 9.1.3. shall remain the property of PMT and shall be deemed to have been imparted by PMT in trust to the Customer for use solely by the Customer;
- 9.2. Nothing in any of the documentation between PMT and the Customer confers or shall be deemed to confer on any party any rights in or licence to use any Intellectual Property of PMT;
- 9.3. The Customer agrees and warrants to PMT that it shall at all times keep the terms and conditions of this Agreement, any work orders and financial information confidential and shall not disclose the same to any other third party save to its legal advisors and accountants solely for the purposes of obtaining professional advice thereof. Each party acknowledges that it will exchange proprietary and confidential information with the other, as reasonably necessary for each to perform its obligations under this Agreement. All information relating to this Agreement provided by either party to the other, whether oral or written, shall be deemed to be confidential and proprietary information unless indicated to the contrary in writing.

10. GENERAL EMAIL TERMS AND CONDITIONS NOTICE

- 10.1. The Company email system is deemed to be a material system and may be used in conjunction with other written forms of communication that PMT relies on. As such, this Agreement makes provision for the use of the Company email system to:
 - 10.1.1. record, transmit and update Company proprietary information;
 - 10.1.2. enable authorised employees of the Company to communicate on any Company/ Customer matter resulting from this Agreement, Work orders or Service schedules;
- 10.2. Whilst the Company is entitled to change the terms and conditions of its email confidentiality notice at any time, the following terms and conditions are deemed to be the minimum terms and conditions that the Customer agrees to in each email sent and received:
 - 10.2.1. This disclaimer is deemed to form part of this message in terms of Section 11 of the Electronic Communications and Transactions Act, 2002 of South Africa and its further amendments.
 - 10.2.2. The Sender is hereby indemnified against all claims arising from any third party should information contained in this transmission be used illegally by you or any third party and which results in any form of damage for the recipient, the entities it may represent, or any other third party. Retransmission of this correspondence either in part or as a whole is strictly prohibited unless granted in writing by the Sender.
 - 10.2.3. No responsibility is assumed whatsoever for mails erroneously sent with viruses and you are advised to scan all mail with an up to date virus scanner.
 - 10.2.4. This email and any accompanying documentation and attachments may contain confidential or legally privileged information intended for a specific individual or entity and purpose. If you received the email in error, you may not disclose or use the contents. Please notify the sender of the error immediately and please destroy the original message.
 - 10.2.5. The Company cannot assure the integrity of this email or that it is free of any error, virus, interception or interference.
 - 10.2.6. The use or contents of this email is intended for the Company's official business. If it is used for any other purpose, the views, opinions or recommendations expressed are those of the author.
 - 10.2.7. Only personnel that are duly authorised by the Company are entitled to bind the Company contractually. Unless otherwise agreed: (a) the

Company or its employees are only deemed to have received an email once we have confirmed receipt thereof to you; (b) the Company or its employees are deemed to have sent an email once reflected as "sent" on our email server.

10.2.8. This disclaimer applies to our original message, any attachments and all subsequent messages or attachments we may send.

10.2.9. The Company reserves the right to monitor all email communication through their networks.

10.3. For the explicit purposes of clarity, the Customer's own email system terms and conditions may not violate or render void any of those set by the Company in its own email terms and conditions.

11. NON-SOLICITATION

11.1. For the duration of this agreement and for a period of twelve (12) months following the termination of this agreement for any reason whatsoever the Customer shall not whether directly or indirectly, either itself or via another entity, act in any manner whatsoever which results in an employee of PMT consulting to, working for or being contracted by the Customer.

12. IMPROPER USE

12.1. The Customer may use the services for lawful purposes only and at the domicile chosen by the Customer as recorded in the Work Order, or as further agreed by the Company;

12.2. Without derogating from any other right of recourse available to PMT in this Agreement, any breach of this clause by the Customer shall be deemed to be a material breach of this Agreement and shall entitle PMT to suspend and/or terminate the Agreement and, for this purpose, it shall be irrelevant whether the Customer is aware of the content of any material so transmitted. PMT may suspend the Service without notice with immediate effect if, in PMT reasonable opinion, the Customer is in breach of this Agreement and PMT may refuse to restore the Service until the Customer has given PMT an acceptable assurance that there will be no further contravention;

12.3. PMT shall be entitled to suspend and/or terminate the Services to the Customer in the event of, the PMT or third party network being or is potentially jeopardised, harmed and/or impeded, by the Customer's use of the Services.

13. WARRANTIES

13.1. Save as expressly set out in this Agreement and the corresponding Service Schedule, PMT does not make any representations nor gives any warranties or guarantees of any nature whatsoever in respect of the Services and/or Deliverables and all warranties which are implied or residual at common law are hereby expressly excluded;

13.2. Without limitation to the generality of clause §13.1 PMT does not warrant or guarantee that the results of any work performed:

13.2.1. will be suitable for any purposes;

13.2.2. will be free of inaccuracies, defects, bugs or viruses of any kind; and

13.2.3. PMT assumes no liability, responsibility or obligations in regard to any of the exclusions set forth in clause §13.1, or this clause §13.2.

14. EXCLUSION OF LIABILITY

14.1. Except for any deliberate act or gross negligence on the part of PMT, its associates, servants or agents, and except as otherwise expressly provided herein to the contrary, PMT shall not be liable to the Customer or any third party for any loss or

damage of whatsoever nature and/or arising (including consequential or incidental loss or damage which shall include but shall not be limited to loss to property or of profit, business, goodwill, revenue or anticipated savings) or for any costs, claims or demands of any nature whether asserted against PMT or against the Customer by any party arising directly or indirectly out of the Services, their use, access, withdrawal or suspension or out of any information or materials provided or not provided, as the case may be, by or from their use and the Customer hereby indemnifies and holds PMT harmless in respect thereof, such indemnity specifically includes, but is not limited to:

- 14.2. the incorrectness and/or loss of any service delivered or undelivered by or the delay in delivery thereof;
- 14.3. Subject to clause §13.1 above, the entire liability of PMT, and the Customer's exclusive remedy for damages from any cause related to or arising out of this Agreement, regardless of the form of action, whether in contract or in *delict*, will not exceed the average aggregate of the Fees and Charges paid by the Customer to PMT under this Agreement over any continuous period of 3 (three) months.

15. BREACH

- 15.1. PMT shall be entitled, but not obligated to suspend and/or terminate this Agreement without giving further notice to the Customer in of the following circumstances:
 - 15.1.1. In the event of the Customer failing to make payment in terms of this Agreement within 7 (seven) days after it becoming due and payable;
 - 15.1.2. In the event of the Customer failing to comply with any of the terms and conditions of this agreement, all of which are deemed to be material and it shall be irrelevant whether the Customer is aware of the content of any material so transmitted;
- 15.2. Either party shall be entitled, but not obligated to terminate this Agreement upon 30 (thirty) days prior written notice in of the following circumstances:
 - 15.2.1. In the event of a party allowing a judgement against it to remain unsettled for more than 7 (seven) days without taking immediate steps to have it rescinded and successfully prosecuting the application for rescission to its final end;
 - 15.2.2. In the event of a party being placed in final liquidation; and/or
- 15.3. With respects to §15.2.1 and §15.2.2, not appeal the judgement that was granted against it on an opposed basis;
- 15.4. In the event of their being a legal dispute between the Parties, of whatever nature, the Customer will be obliged to continue with the punctual payment of all and/or any amounts due in terms of this Agreement;
- 15.5. If PMT elects to cancel this Agreement as provided for in clause §15.1 hereof PMT shall be entitled to:
 - 15.5.1. Claim all outstanding monies as on the date of repudiation and/or cancellation of this Agreement;
 - 15.5.2. Treat all outstanding amounts as immediately due and payable which would have become due and payable over the balance of the period which has not expired in terms of the Agreement;
 - 15.5.3. To claim interest on the amounts as provided for in §15.5.1 and §15.5.2;
 - 15.5.4. 3.4. Immediately terminate all and/or any of the Services provided to the Customer in terms of this Agreement; Upon Signature of this Agreement by the Customer, the Customer consents to such termination under the circumstances and the termination not amounting to an act of spoliation;
 - 15.5.5. Claim any and/or all damages that PMT might incur as a direct and/or indirect result of the Customer's repudiation and/or breach of this Agreement;
 - 15.5.6. Claim the costs of any legal proceedings instituted against the Customer in any court of law on a scale as between attorney and own Customer irrespective as to whether summons has been issued or not; and/or
 - 15.5.7. To retain all amounts already paid by the Customer in terms of this Agreement;

15.5.8. To retain and/or reclaim possession of any goods of whatever nature provided by PMT, directly or indirectly, or by any third party instructed by PMT to the Customer, irrespective as to whether the said goods are prescribed in this Agreement, or not.

15.6. In the event of suspension, termination, cancellation and/or expiration of this Agreement as provided for in this Agreement and/or as provided for in common law, the provisions of this Agreement which are intended to continue and survive, shall continue to and survive accordingly.

16. NO VARIATION OR AMENDMENT

16.1. No amendment or consensual cancellation of this Agreement or any provision or term thereof or of any agreement, bill of exchange or other document issued or executed pursuant to or in terms of this Agreement shall be binding unless recorded in a written document, signed by a duly authorised representative from both PMT and Customer;

16.2. No extension of time or waiver or relaxation of any of the provisions or terms of this Agreement, bill of exchange or other document issued or executed pursuant to or in terms of this Agreement, shall operate as an estoppel against either parties hereto in respect of its right under this Agreement, nor shall it operate so as to preclude either of the parties thereafter from exercising its rights strictly in accordance to this Agreement;

16.3. Neither party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein, whether it induced the contract between Customer and PMT or not. This Agreement supersedes any other agreement tacit or implied, in discussions as part of or prior to the signing of this Agreement, Proposal and Addenda without any restrictions or limitations whatsoever.

17. FORCE MAJEURE

17.1. Neither of the parties shall be held liable for failure to perform any of its obligations under any circumstance where the failure or default is caused by or arises as a result of force majeure including, but not limited to, fire, flood, lightning, civil unrest and acts of governmental, regulatory or military authorities;

17.2. The defaulting party affected by force majeure shall as soon as reasonably possible notify the other party in writing of the occurrence of the circumstances and the estimated extent and duration of its inability to perform its obligations under the circumstances;

17.3. In the event of a force majeure circumstance, both parties shall use all reasonable endeavours to minimise the effects to the affected party.

18. GENERAL

18.1. The agreement shall be binding on the Parties hereto and their respective successors and assigns. Neither party shall be entitled to assign or otherwise transfer the benefit or burden of all or any part of the agreement without the prior written consent of the other party except that PMT may assign its rights and obligations under the agreement without the approval of the Customer to an entity which acquires all or substantially all of the assets of PMT and/or PMT's is a party to any form of corporate restructuring; provided that in no event shall such assignment relieve PMT of its obligations under the agreement;

18.2. Nothing in this agreement shall constitute a partnership, joint venture, agency or employment between the parties hereto and neither party shall have the authority or power to bind, or contract in the name of, or to create a liability against, the other in any way for any purpose.

19. DISPUTE RESOLUTION

- 19.1. If any dispute arises between the parties in connection with this agreement or its subject matter that cannot be resolved amicably between the parties, the parties and their legal representatives shall promptly meet to consider whether there is a possibility of resolution by mediation and conciliation;
- 19.2. If both parties agree to refer the dispute to mediation or conciliation; the parties will promptly consider whether to refer the dispute to arbitration;
- 19.3. If the parties agree to refer the dispute to arbitration, the rules of arbitration will be the rules of the South African Association of Arbitrators in force at the time of referral of the dispute to arbitration and the arbitration will be conducted in accordance with the provisions of the arbitration Act, No 42 of 1965;
- 19.4. If the parties do not agree to refer the dispute to arbitration, they will proceed to litigation in the courts;
- 19.5. Nothing in this clause shall prevent any party from obtaining interdict relief in the courts pending the outcome of or pending the consideration or alternative resolution procedures.

20. JURISDICTION

- 20.1. This agreement shall be deemed to have been made under the laws of the Republic of South Africa and shall be read, construed and given effect in accordance with the laws of South Africa other than the necessary enforcement of judgement in any other country;
- 20.2. The parties hereto hereby submit to the jurisdiction of the South African High Courts.

21. NOTICES AND DOMICILIA

- 21.1. The parties choose as their domicilia citandi et executandi their respective addresses set out in the corresponding Work Order or Service Schedules for all purposes arising out of or in connection with this agreement at which addresses all processes and notices arising out of or in connection with this agreement, its breach or termination may validly be served upon or delivered to the parties;
- 21.2. or at such other address in the Republic of South Africa of which the party concerned may notify the others in writing provided that no street address mentioned in this sub-clause shall be changed to a post office box or poste restante;
- 21.3. Any notice given in terms of this agreement shall be in writing and shall:
 - 21.3.1. if delivered by hand be deemed to have been duly received by the addressee on the date of delivery;
 - 21.3.2. if posted by prepaid registered post be deemed to have been received by the addressee on the 8th (eight) day following the date of such posting;
 - 21.3.3. if transmitted by facsimile be deemed to have been received by the addressee on the day following the date of dispatch;
 - 21.3.4. unless the contrary is proved;
- 21.4. 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 facsimile transmission shall be adequate written notice or communication to such party.

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