

## MANAGED SERVICE AGREEMENT

### for DIAG

*Capitalised terms shall have the meaning given to those terms in Exhibit A.*

#### 1. Term

Notwithstanding the date of signature of this Agreement, this Agreement shall commence on the Effective Date and shall continue to remain of full force and effect for the Term or until such time as it is terminated in accordance with clause 16. During the Term, the Managed Service Provider shall provide the Managed Service to the End User.

#### 2. Agreement Renew

- 2.1. Subject to clause 2.2, at the end of the Term this Agreement shall automatically renew, on substantially the same terms and conditions, for a further renewal period of 12 (twelve) months ("Renewal Term"). It is agreed between the Parties that the Fees for the Renewal shall increase by (i) the consumer price index as published by the relevant authority applicable to the jurisdiction in which the Managed Service Provider is domiciled from time to time; (ii) the change in foreign rate of exchange as published by the relevant banking authority selected by the Managed Service Provider; and (iii) the annual increase in the price of the Software as published by the Licensor from time to time.
- 2.2. At the end of the Term or any Renewal Term, the End User may give the Managed Service Provider written notice of its intention not to renew this Agreement ("Termination Notice"). Such Termination Notice must be served on the Managed Service Provider no less than 90 (ninety) days before the end of the Term or any Renewal Term, failing which the Agreement will automatically renew in accordance with its terms.

#### 3. The Software

- 3.1. The End User is granted a non-exclusive, non-transferable subscription based license to Use the Software, the Documentation and the Licensor Materials in the Territory to run the End User's internal business operations for the Term in accordance with the terms and subject to the conditions set out in this Agreement.
- 3.2. The Software is licensed to the End User under this Agreement as a single solution and a bundled product. Accordingly, the End User warrants that it shall not use any components of the Software individually and/or independently of the Software.
- 3.3. The Managed Service Provider shall install or assist the End User to install the Software on hardware that is owned or controlled and in any event operated by the Managed Service Provider via a private network or the internet (the "Hardware"). The End User shall be entitled to access and Use the Software using License Keys provided by the Managed Service Provider.
- 3.4. The End User hereby warrants that –
  - 3.4.1. anyone who uses the Software (whether locally or remotely) shall do so on the End User's behalf and shall comply with the terms of this Agreement;

- 3.4.2. Use of the Software by the End User shall (i) be governed by the terms of this Agreement; and (ii) not exceed the Licensed Level;
  - 3.4.3. Legacy Software shall be uninstalled and promptly terminated;
  - 3.4.4. it shall reproduce all copyright notices and other legends of ownership on each copy or partial copy of the Software;
  - 3.4.5. it will not disassemble, reverse engineer or decompile, nor otherwise create or attempt to create the source code from the object code of the Software in any manner;
  - 3.4.6. it will not Use any Third Party Products or Third Party Software contained in or provided with the Software independently of the Software;
  - 3.4.7. it will not run a Mixed Landscape;
  - 3.4.8. the Software will not be transferred or sub-licensed to a third party;
  - 3.4.9. it will not use the Licensor Materials to (i) provide services to third parties; (ii) lease, loan, resell, sublicense or otherwise distribute the Licensor Materials; (iii) make any Use of or perform any acts with respect to the Licensor Materials other than as expressly permitted in terms of this Agreement; or (iv) Use Software components other than those specifically identified in the Order Form; and
  - 3.4.10. the Software shall only be used with data access limited to data created by the Software or data processed by the Software that is necessary to enable the functionalities of the Software.
- 3.5. The End User is not permitted to (i) Modify, adapt, translate, process, arrange or otherwise rework the Software or make derivative works of the Software; nor (ii) reproduce the results achieved from any of these acts. Any unauthorized works listed in (i) or (ii) above developed by the End User and the Intellectual Property Rights embodied therein, shall be the sole and exclusive property of the Managed Service Provider and/or the Licensor or their respective Affiliates and the End User hereby assigns all rights in them (including moral rights) to the Managed Service Provider and/or the Licensor or their designated Affiliate(s). To the extent that the Intellectual Property Rights embodied therein are not to be transferred by operation of law, the Managed Service Provider and/or the Licensor and its Affiliate(s) shall be granted exclusive rights to use such unauthorized works to the widest extent lawfully possible.
- 3.6. With the Managed Service Provider's prior written consent, the End User may permit service providers to access the Software solely for the purpose of providing facility, implementation, systems, application management or disaster recovery services to the End User in connection with the business for which the Software is licensed provided that: (i) prior to such access, the service provider and the End User have concluded a written agreement requiring the service provider to comply with the terms of this Agreement; (ii) the End User is appropriately licensed, in terms of Licensed Level, to permit the employee(s) of such service provider to access the Software; (iii) under no circumstances may such service provider Use the Software to operate or provide processing services to the End User or any other party; (iv) the End User shall be responsible for any additional software, migration tools, or third party software needed to effect such

transition; and (v) the End User expressly agrees to indemnify the Managed Service Provider, its officers, employees, agents and subcontractors from and against all claims, liabilities, losses, damages and costs (including reasonable attorney fees) suffered by the Managed Service Provider arising from a breach by the service provider of the conditions of this Agreement. Upon request of the Managed Service Provider, the End User shall provide written confirmation to the Managed Service Provider that items (i)-(iii) have been fulfilled.

- 3.7. The End User hereby indemnifies the Managed Service Provider, its Affiliates and/or the Licensor, including their officers, employees, agents and subcontractors, from and against any and all claims, liabilities, losses, damages and costs arising from or relating to an unremedied breach of this Agreement or Use of the Software other than in accordance with the terms and conditions of this Agreement.

#### **4. Software Performance Warranty**

- 4.1. Subject to clause 4.2, the Managed Service Provider warrants that the Software will substantially conform to the specifications contained in the Documentation for 90 (ninety) days following delivery of the Software when it is used in its specified operating environment (which is described in the License Information).
- 4.2. The warranty described in clause 4.1 will not apply if: (i) the Software is Used other than in accordance with the Documentation; or (iii) the Software is Used other than in accordance with the terms of this Agreement; or (ii) if the non-conformance is caused by the End User, service provider, third party software or unauthorised hardware.
- 4.3. The Managed Service Provider does not warrant that the Software will operate uninterrupted or that it will be free from minor defects or errors that do not materially affect such performance, or that the applications contained in the Software are designed to meet all of the End User's business requirements. The Managed Service Provider further does not warrant that it will correct all Software defects.
- 4.4. Provided the (i) End User notifies the Managed Service Provider in writing, within 30 (thirty) days, with a specific description of the Software's non-conformance within the warranty period; (ii) the Software's non-conformance cannot be resolved with information available from the Master Licensor; and (iii) the Managed Service Provider validates the existence of such non-conformance, the Managed Service Provider will, at its option: (a) repair or replace the non-conforming Software, or (b) refund to the End User the *pro rata* portion of the Fees paid for the remaining period of the Term in respect of the applicable non-conforming Software in exchange for a return of such non-conforming Software (whereafter the license granted to Use the Software shall terminate). This is the End User's sole and exclusive remedy under the warranty contained in this clause 4.
- 4.5. Except as set forth in writing in this Agreement, and to the maximum extent permitted by applicable law, the warranties set out in this clause 4 are the End User's exclusive warranties and replace all other warranties or conditions, express or implied, including, but not limited to any implied warranties or conditions of merchantability, satisfactory quality, fitness for a particular purpose, title, and any warranty or condition of non-infringement.

## 5. Services

- 5.1. Subject to clause 5.2, the Managed Service Provider and/or its Affiliates shall provide the End User with the Services.
- 5.2. The provision of the Services by the Managed Service Provider to the End User shall be subject to (i) the End User's compliance with the terms and conditions contained in this Agreement; and (ii) the limitations, if any, imposed on such Services in the Order Form or specified by the Managed Service Provider in writing. Any Service Hours not used by the End User during a particular month shall be forfeited and shall not roll over to the succeeding month.
- 5.3. Unless otherwise agreed between the Parties in writing, neither the Managed Service Provider nor the Licensor will be responsible under this Agreement for: (i) the modification, enhancement or other improvement of the Software to fit the End User's business requirements; (ii) the correction of any program errors as a result of misuse of the Software by anyone other than the Licensor and/or the Managed Service Provider; or (iii) preparation or conversion of data into the form required for use with the Software.
- 5.4. The Managed Service Provider hereby warrants that the Services will be performed by qualified personnel in a professional manner conforming with generally accepted industry standards and practices.
- 5.5. Any Work Product and all patent, trademark, copyright, trade secret, and other intellectual property rights related thereto, are the property of the Managed Service Provider or the Licensor on creation and are licensed nonexclusively to the End User, at no additional license fee, pursuant to the applicable Order Form and subject to the terms of this Agreement.
- 5.6. Save for what is set out in clause 5.4, all other warranties, conditions and/or representations in respect of the Services, whether express or implied by statute, common law, custom, trade usage, or otherwise, including without limitation any implied terms, conditions or warranties of satisfaction quality, fitness for a particular purpose or non-infringement are hereby excluded to the fullest extent permitted by law.
- 5.7. Support Services

The Services shall include the Support Services. The End User shall be entitled to receive the Support Services for the Software from the Managed Service Provider for the duration of this Agreement in accordance with the terms, conditions and procedures set out in **Exhibit B**.

## 6. Fees

- 6.1. The provision of the Managed Service by the Managed Service Provider to the End User shall, at all times, be subject to the payment of the Fees in accordance with this clause 6. The End User shall pay the Fees, annually in advance, on the relevant payment dates stipulated in the Order Form or an invoice issued by the Managed Service Provider, whichever is the earlier. The Fees shall be paid without deduction, demand or set off.
- 6.2. The Managed Service Provider reserves the right to:

- 6.2.1. amend the Fees if the currency set out in the Order Form weakens by 5% or more against the USD\$ or EURO€ from the date on which the Order Form is executed to the date on which the Managed Service Provider issues an invoice for payment of the Fees;
  - 6.2.2. increase the Fees annually by either the consumer price index publicly quoted by the United States Bureau of Labor Statistics; or 7% (seven percent), whichever is the highest and;
  - 6.2.3. any annual increase applicable to the Software set out in the price list of the Managed Service Provider that it may publish on its website from time to time
- 6.3. Except as expressly provided for in this Agreement, the End User shall not be entitled to a refund in respect of any Fees. Any late payment of Fees in terms of this Agreement shall accrue interest at a rate of 15% (fifteen percent) per annum from the date on which payment was due.
- 6.4. In the event that the End User fails to make payment of the Fees in accordance with the terms of this Agreement, the Managed Service Provider shall be entitled to suspend the End User's Use of and access to the Managed Service.

## **7. Reporting Obligations, Audit Rights and Compliance Fees**

- 7.1. During the Term and for 2 (two) years thereafter, the End User -
- 7.1.1. permits the Managed Service Provider and/or the Licensor to audit the End User's Use of the Software (which audit shall include the right to inspect and audit records, computer systems and the premises of the End User during normal business hours);
  - 7.1.2. maintain relevant records regarding its activities under the Agreement, including compliance with the license terms applicable to the Software, the Licensed Level and payment of Fees; and
  - 7.1.3. in order to give effect to clause 7.1, make available to the Managed Services Provider and/or the Licensor and/or any auditor appointed by the Managed Service Provider and/or Licensor such records and/or information and/or other documentation as may be reasonably required to determine the End User's Use of the Software.
- 7.2. If the audit reveals that –
- 7.2.1. the End User underpaid Fees to the Managed Service Provider; and/or
  - 7.2.2. the Use of the Software by End User exceeds the Licensed Level,
- then the End User shall (i) pay the cost of the audit; (ii) pay the Compliance Fees for the period during which the licenses were first used; and (iii) execute an order form to affect the required licensing of any additional quantities or levels of licenses in respect of the Software.
- 7.3. The End User shall pay the Managed Service Provider Compliance Fees where the End User: (i) transfers the Software to a third party for Use; (ii) sub-licenses the Software to a third party for Use; (iii) Uses the

Software (or any component thereof) beyond the Term or Renewal Term; (iv) Circumvents the Managed Service provider as contemplated in this Agreement; (v) runs a Mixed Landscape without approval from the Managed Service Provider; (vi) fails to permit the Managed Service to conduct an audit in terms of clause 7.1; (vii) fails to provide the Managed Service Provider with written notice of uninstallation of the Software and removal of the Software from the Hardware within 10 (ten) days of termination of this Agreement as contemplated in clause 17.4.4; (viii) fails to comply with the terms of this Agreement; or (iv) exceeds the Licensed Level (as contemplated in clause 7.2 or clause 3.4.2)

## **8. Confidential Information**

- 8.1. Confidential Information shall not be reproduced in any form except as required to accomplish the intent of this Agreement. The Receiving Party shall (i) take all reasonable steps to keep Confidential Information strictly confidential; (ii) not disclose any Confidential Information to any person other than its Representatives who are involved in the performance of this Agreement; (iii) not use Confidential Information for any purpose other than in connection with the Parties' performance of this Agreement; and (iv) not disclose to any person (other than its Representatives) any information about this Agreement.
- 8.2. The Receiving Party shall be responsible for any breach of the terms of this Agreement by it or its Representatives. The above restrictions on the use or disclosure of the Confidential Information shall not apply to any Confidential Information that: (i) is independently developed by Receiving Party without reference to the Disclosing Party's Confidential Information; (ii) is lawfully received free of restriction from a third party having the right to furnish such Confidential Information; (iii) has become generally available to the public without breach of this Agreement; (iv) at the time of disclosure was known to the Receiving Party free of restriction; or (v) the Disclosing Party agrees in writing is free of such restrictions.
- 8.3. In the event that the Receiving Party or any of its Representatives are requested pursuant to, or required by, applicable law or regulation or by legal process to disclose any Confidential Information, the receiving party shall provide the Disclosing Party with prompt notice of such request or requirement in order to enable the Disclosing Party: (i) to seek an appropriate protective order or other remedy; (ii) to consult with the Receiving Party with respect to the Disclosing Party's taking steps to resist or narrow the scope of such request or legal process; or (iii) to waive compliance, in whole or in part, with the terms of this Agreement. In the event that such protective order or other remedy is not obtained, the Receiving Party or its Representatives shall use commercially reasonable efforts to disclose only that portion of the Confidential Information which is legally required to be disclosed and to require that all Confidential Information that is so disclosed will be accorded confidential treatment. Either Party's liability for any breach of the foregoing confidentiality undertakings shall not be subject to any liability limitation otherwise applicable under this Agreement.

## **9. Intellectual Property Rights**

- 9.1. The Software, the Licensor Materials, Modifications and all Intellectual Property Rights embodied in the foregoing, shall be the sole and exclusive property of the Licensor or its Affiliates, or their licensors. All rights not expressly granted in this Agreement are reserved by the Licensor.

- 9.2. The End User undertakes, while this Agreement is in force and at any time thereafter, not to challenge the right, title and interest (including the Intellectual Property Rights) of the Licensor and/or its Affiliates in respect of the Software, nor to assist any third party directly or indirectly to do so.
- 9.3. The End User shall promptly notify the Managed Service Provider if it becomes aware of any third party that has acquired or markets, sells or uses the Software or Licensor Materials without authorization. In such event, the End User must reasonably assist the Managed Service Provider or Licensor in the pursuance of its rights.

## 10. Indemnification

### 10.1. Third Party Intellectual Property Claims

- 10.1.1. The Managed Service Provider shall defend the End User against claims brought against the End User in the Territory to the extent that such claim: (i) is brought by a third-party owner of the intellectual property giving rise to the claim; and (ii) alleges that the End User's Use of the Software in accordance with the terms and conditions of this Agreement constitutes a direct infringement or misappropriation of a patent claim(s) or copyright.
- 10.1.2. The Managed Service Provider shall pay damages finally awarded against the End User (or the amount of any settlement the Managed Service Provider enters into) with respect to such claim. The Managed Service Provider's obligations under this clause 10.1.1 and clause 10.1.2 are conditioned upon:
- 10.1.2.1. the End User notifying the Managed Service Provider in writing of any such alleged claim without undue delay; and
- 10.1.2.2. the End User authorizing the Managed Service Provider and/or the Licensor to have sole control over the defence or settlement of any such claim; and
- 10.1.2.3. the End User cooperating fully in the defence of such claim and providing the Managed Service Provider with all relevant information and reasonable support; and
- 10.1.2.4. the End User not undertaking any action in response to any infringement, or alleged infringement, of the Software that is prejudicial to the rights of the Licensor and/or the Managed Service Provider.
- 10.1.3. The Managed Service Provider and/or the Licensor expressly reserve the right to cease such defence of any claim(s) in the event that the Software is no longer alleged to infringe or misappropriate or is held not to infringe or misappropriate the third party's rights.
- 10.1.4. The Managed Service Provider shall have no obligation under clause 10.1 if the claim results from (i) Software or Documentation that has been altered or Modified by anyone other than the Licensor; or (ii) failure to use a New Release promptly provided by the Licensor and/or the Managed Service Provider if such infringement or misappropriation could have been avoided by use of the New Release; or (iii) unlicensed activities by the End User; or (iv) failure to Use

the Software in accordance with the terms of this Agreement. Further, the Managed Service Provider shall have no obligation under clause 10.1 for a claim that could have been avoided if the End User had not used the Software or the Licensed Materials in combination or conjunction with any software, data or systems not provided by the Licensor or stipulated in the Documentation.

10.1.5. The Managed Service Provider will not indemnify End User for any infringement claim based on: (i) a patent that End User was aware of prior to the effective date of this Agreement; or (ii) the End User's actions prior to the effective date of this Agreement.

10.1.6. If an infringement or misappropriation of the intellectual property rights of a third party by the Software in accordance with clause 10.1 above is alleged or, in the reasonable opinion of the Managed Service Provider, an infringement or misappropriation of the intellectual property rights of a third party is likely to occur or be alleged, the Managed Service Provider may, at its discretion –

10.1.6.1. procure for the End User the continued right to Use the Software at no additional cost to the End User; or

10.1.6.2. modify the Software or substitute alternative substantially equivalent non-infringing programs and supporting Documentation for the Software; or

10.1.6.3. if none of the foregoing alternatives can be achieved at a reasonable cost, Managed Service Provider may terminate the Agreement and refund the prices paid by the End User less an appropriate amount covering the period of actual use of the Software by the End User.

10.2. The provisions of clause 10.1 state the sole, exclusive and entire liability and obligation of the Managed Service Provider to the End User, and the End User's sole remedy with respect to any claims of infringement of third party Intellectual Property Rights that may arise or in any way related to the Software, Licensor Materials, or Documentation. The liability limitations contained in clause 11 shall apply to all claims made under clause 10.1. Any limitations to the liability and obligations of the Managed Service Provider and/or the Licensor shall also apply for the benefit of the Managed Service Provider and/or the Licensor's Affiliates and their respective licensors (if applicable).

## **11. Limitation of Liability and Exclusions**

11.1. Under no circumstances shall the Managed Service Provider or the Licensor be liable to the End User or any other entity or person for –

11.1.1. an amount of damages, in aggregate, in excess of (a) the Fees paid by the End User to the Managed Service Provider during the 12 (twelve) month period immediately preceding the date on which the claim was made;

11.1.2. loss of goodwill or business profits, work stoppage, data loss, computer failure or malfunction;



- 11.1.3. loss of the use or performance of hardware or products;
- 11.1.4. claims or damages arising from damage to data; or
- 11.1.5. special or incidental, consequential or indirect damages or exemplary or punitive damages.

11.2. It is expressly understood and agreed that each and every provision of this Agreement which provides for a limitation of liability, disclaimer, warranties or exclusion of damages is intended by the Parties to be severable and independent of any other provision and shall be enforced as such. This clause 11 shall apply even if an exclusive remedy of the End User under the Agreement has failed its essential purpose.

11.3. The limitations and exclusions set out in clause 11.1 shall not apply to (i) wilful misconduct, fraud, personal injury or death caused by negligence; (ii) unauthorized use or disclosure of Confidential Information; (iii) any other liability which cannot be excluded or limited by applicable law.

## **12. Data Masking**

The End User hereby warrants that any and all Data provided by the End User to the Managed Service Provider shall be transmitted to the Managed Service Provider in Masked format. The End User hereby indemnifies the Managed Service Provider, its Affiliates and/or the Licensor, including their officers, employees, agents and subcontractors, from and against any and all claims, liabilities, losses, damages and costs arising from or relating to Data that is shared by the End User with the Managed Service Provider in a format other than Masked format.

## **13. Data Protection**

Notwithstanding the conditions set out in clause 12, the Managed Service Provider and/or the Licensor expressly reserve the right to collect, process and store data relating to the End User's use of the Software, the Documentation and/or the Licensor Materials. For the avoidance of doubt the Parties record that it is not the intention under this Agreement for the Managed Service Provider and/or the Licensor to process Data of the End User. Rather, processing of End User Data will take place only in exceptional circumstances as an incidental effect of the Managed Service Provider and/or the Licensor's performance of its contractual duties. To the extent the Managed Service Provider and/or the Licensor do process Data of the End User, such processing shall maintain safeguards for protection of End User Data. Those safeguards will prevent access, use, modification and disclosure of End User Data (i) as compelled by law or (ii) as the End User expressly permits in writing

## **14. Non-Circumvention**

It is the intention of the End User to acquire the Managed Services from the Managed Service Provider. Accordingly, the End User hereby warrants that it shall not, during the term of this Agreement and, for a period of 30 (thirty) days after termination and/or expiry of this Agreement, (i) Circumvent the Managed Service Provider in the provision of the Managed Service; (ii) take any action which would adversely affect or otherwise hinder or frustrate the ability of the Managed Service Provider to provide the Managed Service; (iii) take any action to Circumvent the terms of this Agreement; or (iv) acquire the Managed Services and/or substantially similar software, services or solution from another supplier of such services.

## 15. Non-Solicitation

15.1. Each Party warrants, represents and undertakes that it shall not, and it warrants, represents and undertakes that it shall procure that its Representatives shall not, without the prior written approval of a duly authorised director of the other Party, at any time for the duration of this Agreement and for a period of 12 (twelve) months thereafter, whether as proprietor, partner, director, shareholder, member, employee, consultant, contractor, financier, agent, representative, assistant, trustee or beneficiary of a trust, controller of any entity or otherwise and whether for reward or not, directly or indirectly:

15.1.1. encourage or entice or incite or persuade or induce any employee of the other Party to terminate his employment with such Party; or

15.1.2. furnish any information or advice to any employee then employed by the other Party or use any other means which are, in the ordinary course of events, calculated to result in any such employee terminating his employment with such Party and/or becoming employed by, or directly or indirectly in any way interested in or associated with any other company, close corporation, firm, undertaking or concern;

or attempt to do so.

15.2. To the extent that an employee is successfully recruited by a Party during the period described in clause 15.1, and only if the other Party consents to such recruitment in writing, the recruiting Party shall pay the other Party a fee equal to 300% (three hundred percent) of the gross annual package (including any quantifiable bonuses or incentives and annualised if necessary) paid by the other Party to the employee concerned.

## 16. Termination

In addition to any other rights and/or remedies that a Party may have in terms of this Agreement, this Agreement may be terminated -

16.1. by the End User, if the Managed Service Provider commits a material breach of this Agreement and the Managed Service Provider fails to remedy such breach within 14 (fourteen) days of written notice thereof from the End User.

16.2. by the Managed Service Provider, if the End User commits a material breach of this Agreement and the End User fails to remedy such breach within 14 (fourteen) days of written notice thereof from the Manager Service Provider.

16.3. immediately by either Party if the other Party (i) is placed in provisional or final liquidation; (ii) passes a resolution for the voluntary winding up of the business; (iii) takes steps to wind up on the grounds of its inability to pay its debts; (iv) compromises with its creditors; (v) resolves voluntarily to begin business rescue proceedings or has an order granted placing it in business rescue; or (vi) makes an assignment for the benefit of its creditors.

- 16.4. immediately by the Managed Service Provider if the End User fails to (i) pay the Fees; (ii) comply with this Agreement; or (iii) undergoes a Change in Control.
- 16.5. by the Managed Service Provider on 30 (thirty) days written notice to the End User.

## **17. Effect of Termination**

- 17.1. In the event of termination of this Agreement in terms of clause 16.2, clause 16.3 or clause 16.4, the End User shall not be relieved of its obligation to pay Fees that remain unpaid. The Fees that would have, but for termination, become payable by the End User for the remainder of the Term shall become immediately due, owing and payable. The End User shall be required to make payment of the full amount owing to the Managed Service Provider within 30 (thirty) days of termination of this Agreement.
- 17.2. In the event of termination of this Agreement in terms of clause 16.1 or clause 16.5, the End User shall be entitled to receive a *pro rata* refund for the Managed Service that has not yet been delivered for the remainder of the Term.
- 17.3. In the event of termination of this Agreement, the End User shall immediately cease Use of the Software, the Licensor Materials and the Documentation and consequently, the Software shall be removed from the Hardware immediately;
- 17.4. Unless otherwise provided for in this Agreement, in the event of termination of this Agreement -
  - 17.4.1. the End User shall not longer be entitled to receive the Services;
  - 17.4.2. the End User shall permit the Managed Service Provider to conduct an audit in terms of clause 7;
  - 17.4.3. the End User shall immediately cease use of, uninstall and remove from the Hardware (where applicable): the Licensor Materials, the Software, the Managed Service Providers Intellectual Property and the Managed Service Provider's Confidential Information ("Uninstallation");
  - 17.4.4. the End User shall confirm in writing that the Uninstallation has been completed within 10 (ten) days of termination of this Agreement;
  - 17.4.5. within 10 (ten) days of termination or expiration of this Agreement, the End User shall (i) destroy or, upon the Managed Service Provider's request, deliver to the Managed Service Provider all copies of the Licensor Materials, Documentation, the Managed Service Providers Intellectual Property and the Managed Service Provider's Confidential Information; and (ii) provide the Managed Service Provider with written notice regarding its compliance with its obligations under this clause 17.

## **18. Representation on Authority of Parties/Signatories.**

Each person signing or accepting this Agreement represents and warrants that he or she is a duly authorized signatory, has legal capacity and the express or implied authority to execute this Agreement and, the performance

of such Party's obligations hereunder have been duly authorized and, that the Agreement is a valid and legal Agreement binding on such Party and enforceable in accordance with its terms.

## EXHIBIT A – DEFINITIONS, INTERPRETATION AND GENERAL

### 1. Definitions

The following terms shall have the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings, namely -

- 1.1. **“Addendum”** means the addendum executed by the Parties for the sale and purchase of the Managed Service;
- 1.2. **“Administration”** means administrative assistance for the Software by the Managed Service Provider to implement best practices and perform preventative maintenance;
- 1.3. **“Affiliate”** means, in regard to a party to this Agreement, any legal entity for so long as a party to this Agreement holds, directly or indirectly, more than 50% (fifty percent) of the shares or voting rights of such legal entity;
- 1.4. **“Agreement”** means this managed service agreement together with the License Information and the IPLA Program Terms (which includes certain software policies which can be found at [www.ibm.com/softwarepolicies](http://www.ibm.com/softwarepolicies)) in effect as of the Effective Date, including all exhibits, appendices, schedules, annexes, amendments, addenda and any other documents attached thereto, or incorporated by reference;
- 1.5. **“Change in Control”** means the occurrence of any of the following events: (i) any shareholder and its affiliates become the beneficial owners of more than 50% (fifty per cent) of the issued share capital of the End User; (ii) a merger or consolidation of the End User with or into another entity or the merger and consolidation of another entity into the End User, as a result of which the transaction or series of related transactions and shareholder and its affiliates become the beneficial owner of more than 50% (fifty per cent) of the issued share capital of the End User immediately after such transaction or transactions; (iii) the sale, transfer, lease or other disposition of all or the majority of the assets or issued share capital of the End User;
- 1.6. **“Circumvent”** means to circumvent, bypass, obviate or avoid, whether as proprietor, partner, director, shareholder, member, employee, consultant, contractor, financier, agent, representative, assistant, trustee or beneficiary of a trust, controller of any entity or otherwise and whether for reward or not, directly or indirectly;
- 1.7. **“Compliance Fees”** means the list price fees (calculated with reference to the Managed Service Providers published price list) payable by the End User to the Managed Service Provider for: (i) the Software in instances of non-compliance as set out in clause 7.3; or (ii) the acquisition of new Software to correctly license the End User’s deployment of the Software and/or remedy a Mixed Landscape;
- 1.8. **“Confidential Information”** means any and all information, oral or written, of a confidential or proprietary nature, disclosed by the Disclosing Party to the Receiving Party in connection with this Agreement, which information is designated as confidential at the time of the disclosure or should be reasonably understood to be confidential given the nature of the information and the nature of the circumstances surrounding the

disclosure including but not limited to all information which the Disclosing Party protects against unrestricted disclosure to others, the Software, the Documentation, the Licensor Materials and/or information related to the Software and/or Documentation;

- 1.9. **“Data”** means all data of whatsoever nature including –
- 1.9.1. all personal information as defined by the Protection of Personal Information Act 4 of 2013 and amplified by the definition thereof set out in the Electronic Communications and Transactions Act 25 of 2002;
  - 1.9.2. all personal data by and within the scope of the EU Data Protection Directive 95/46/EC and any national law implementing that directive;
- 1.10. **“Deployment Manager”** means the administrator responsible for Software license deployment compliance with Licensed Level;
- 1.11. **“Disclosing Party”** means the Party disclosing the Confidential Information;
- 1.12. **“Documentation”** means the Licensor documentation which is delivered or made available to the End User with the Software under this Agreement;
- 1.13. **“Effective Date”** shall have the meaning given to that term in the Order Form;
- 1.14. **“End User”** means the company purchasing the Managed Service, as identified in the Order Form;
- 1.15. **“Fees”** means the fees set out in the Order Form;
- 1.16. **“Health Checks”** means the periodic targeted review of a specific server in the Software environment to determine if there are any health concerns that need to be addressed using remedial action;
- 1.17. **“Initial Response”** means (i) an acknowledgement of receipt a Support Request; and (ii) (if necessary) a request for additional information i.e. additional logs, version information, business impact etc.;
- 1.18. **“Intellectual Property Rights”** means all intellectual property rights of whatever nature, including without limitation (i) all patents and other patent rights, including divisional and continuation patents and utility models; (ii) rights in inventions whether patentable or not; (iii) the trade marks, rights in trademarks and service marks, logos, slogans, corporate, business and trade names, trade dress, brand names and other indicia of origin; (iv) rights in designs, topography rights, rights in circuit layouts and maskworks; (v) all copyright of whatever nature and in whatever medium embodied, whether now known or later developed, for their full terms including any extensions and renewals, including the rights of reproduction, distribution, preparation of derivative works, public display, public performance, and making available; (vi) moral and economic rights of authors and inventors; (vii) rights in internet domain names, reservations for internet domain names, uniform resource locators and corresponding internet sites; (viii) rights in databases, data collections, scripts, platforms, applications and computer software (including source code); and (ix) know-how, show-how, trade secrets and confidential information, in each case whether or not registered and including applications for registration of any of these and the right to apply for the registration of any of these, all claims for past

infringements, and all rights or forms of protection of a similar nature or having equivalent or similar effect to any of these which may subsist anywhere in the world;

- 1.19. **“Legacy Software”** means, if applicable, the legacy software or other software environment that is replaced by the Software;
- 1.20. **“License Keys”** means a software licencing management and security tool or other device that allows the End User to access the Software, which tool or other device may have an expiration date and forms part of the Software;
- 1.21. **“License Version Management”** means the generation of the License Keys to meet version requirements of the End User during the Term;
- 1.22. **“Licensed Level”** means the specified level at which the End User is authorized to execute or run the Software which level is specified in the Order Form;
- 1.23. **“Licensor”** means the licensor of the Software;
- 1.24. **“License Information”** means a document that provides information and any additional terms and conditions specific to the Software. The Software’s LI can be found at [www.ibm.com/software/sla](http://www.ibm.com/software/sla), in the Documentation, by way of use of a system command if required or in the read-me file accompanying the Software;
- 1.25. **“Licensor Materials”** means any software, programs, tools, systems, data, Licensor and/or Managed Service Provider Confidential Information or other materials made available by the Licensor and/or the Managed Service Provider to the End User in the course of the performance of this Agreement including, but not limited to, the Software, the License Keys, the Documentation, subscription services, Work Product and APIs, as well as any information, materials or feedback provided by the End User to the Managed Service Provider and/or Licensor relating to the Software, the License Keys, Documentation, subscription services, Work Product and APIs;
- 1.26. **“Managed Service”** means the managed service provided by the Managed Service Provider to the End User comprising the Software and the Services;
- 1.27. **“Managed Service Provider”** means the company providing the Managed Service, as identified in the Order Form;
- 1.28. **“Managed Service Provider Software”** means those items of Software that are designated DIAG software products in terms of the Order Form;
- 1.29. **“Masked”** means to render unusable, unreadable or indecipherable to an unauthorized person (which for the purposes of this Agreement shall include the Managed Service Provider) through a security technology or methodology generally accepted in the field of information security;
- 1.30. **“Mixed Landscape”** means a software landscape that comprises the Software, Legacy Software and/or software that is substantially similar in nature to the Software but was not purchased by the End User from the Managed Service Provider;

- 1.31. **“Modifications”** means (i) a change to the delivered source code or metadata; or (ii) any development, other than a change to the delivered source code or metadata, that customizes, enhances, or changes existing functionality of the Software, including, but not limited to, the creation of any new application program interfaces, alternative user interfaces or the extension of the Software data structures; (iii) any other change to the Software using or incorporating any Licensor Materials; or (iv) any creation, modification, enhancement or customization of the Software;
- 1.32. **“New Release”** means (i) a ‘major release’ that includes architectural changes and may be identified by a change of the release numeral to the left of the decimal point in the naming convention of the Software; (ii) a ‘minor release’ that includes improvements and bug corrections and may be identified by the release numeral to the right of the decimal point in the naming convention of the Software; and (iii) a ‘maintenance release’ indicating a bug correction or patch and may be identified by a change of the release numeral two digits to the right of the decimal point in the naming convention of the Software or otherwise designated as such by the Licensor;
- 1.33. **“Order Form”** means the order form, proposal, Addendum, quote and/or delivery note executed by the Parties for the sale and purchase of the Managed Services;
- 1.34. **“Parties”** means the Managed Services Provider and the End User, collectively, and “Party” means any one of them, as the context may indicate;
- 1.35. **“Performance Checks”** means the periodic targeted review of the performance of a specific server in the Software environment to ensure that it is meeting performance requirements;
- 1.36. **“Professional Services”** means professional consulting services for the delivery of defined deliverables set out in a scope of work document executed by the End User. Professional services do not form part of the Services and will be costed separately in a scope of work;
- 1.37. **“Receiving Party”** means the Party receiving the Confidential Information;
- 1.38. **“Representatives”** means (i) employees of Receiving Party and its Affiliates; (ii) attorneys, accountants, or other professional business advisors; and, (iii) employees of any entity who are directly involved in the performance of obligations under this Agreement;
- 1.39. **“Service Deliverables”** means the product or output of the Services (including without limitation all Software configurations, modifications, reports, manuals, and any custom code) delivered to the End User. Deliverables shall not include End User data or reports generated from the End User’s use of the Software which shall be the End User’s proprietary information and the sole property of the End User;
- 1.40. **“Service Hours”** means the number of hours spent by the Managed Service Provider delivering the Services to the End User;
- 1.41. **“Services”** means the services delivered by the Managed Service Provider to the End User; (i) which may include Administration, Health Checks; Performance Checks; License Version Management by the Deployment Manager and Support; or (ii) listed in the Order Form. Professional Services are excluded from the Services;



- 1.42. **“Software”** means the software listed in the Order Form (in object code form only) together with the License Keys, the Licensor Materials, the Managed Service Provider’s Intellectual Property and Work Product;
- 1.43. **“Support”** shall have the meaning given to that term in clause 1.1.1.2 of **Exhibit B**;
- 1.44. **“Support Services”** shall have the meaning given to that term in clause 1.1.1 of **Exhibit B**;
- 1.45. **“Term”** shall have the meaning given to that term in the Order Form, and shall include, if applicable, any Renewal Term;
- 1.46. **“Territory”** means the country in which the End User has its registered address;
- 1.47. **“Third Party Products”** means any software product (including without limitation, address directories) licensed under the Agreement in which proprietary rights are held by someone else other than the Managed Service Provider and/or the Licensor and/or their respective Affiliates;
- 1.48. **“Third Party Software”** means those items of Software that are not Managed Service Provider Software as described in the Order Form;
- 1.49. **“Use”** means to (i) install or activate the processing capabilities of the Software using the License Keys or otherwise; (ii) load, execute, access, employ the Software or display the information resulting from such capabilities; and (iii) make back up copies of the Software for recovery and cold stand by purposes only; and
- 1.50. **“Work Product”** means any and all deliverables, Service Deliverables, scripts, information, documentation, modifications or enhancements to the Software and other materials created, developed, reduced to practice, or otherwise or produced hereunder (whether as individual items and/or a combination of components and whether or not the applicable services are completed) by the Managed Service Provider and/or the Licensor, and all rights of patent, copyright, trademark, trade secret and other proprietary rights therein and thereto.

## 2. Interpretation

If any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party effect shall be given to it as if it were a substantive provision in the body of the Agreement. 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, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or Public Holiday. 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. 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.

## 3. General

Neither this Agreement nor the Licensor Materials may be assigned, delegated, pledged or otherwise transferred by the End User to any party whether voluntarily or by operation of law including by way of sale of assets, merger or consolidation. The Managed Services Provider shall be entitled to assign, delegate, pledge or otherwise transfer its

rights and/or obligations in terms of this Agreement to any related company as defined in the Companies Act, 2008 whether voluntarily or by operation of law including by way of sale of assets, merger or consolidation without prior written notice to the End User. This Agreement constitutes the entire, conclusive and complete statement of agreement between the Parties in respect of the subject matter hereof. Save for the Order Form, all other representations, discussions and written communications (whether such be master services agreements, statements of work, purchase orders, terms and conditions attaching to orders for goods or services and/or other agreements or documents) are superseded by this Agreement and the Parties disclaim any reliance on such representations, discussion and/or written communications. This Agreement may not be amended or modified and any term or obligation may not be waived except in writing signed by a duly authorized representative of each Party. Save for payment obligations, neither Party shall be liable to the other for its failure to perform any of its obligations hereunder during any period in which such performance is delayed due to circumstances beyond its reasonable control. This Agreement shall be governed by the laws applicable to the jurisdiction in which the Managed Service Provider is domiciled . The exclusive place of jurisdiction for all disputes arising from or in connection with this Agreement is the applicable place of jurisdiction in which the Managed Service Provider is domiciled. All notices or reports which are required to be given under and in terms of this Agreement will be in writing and will be deemed to be duly given when delivered to the address set out in the Order Form. The End User agrees to comply with all applicable export and import laws and regulations, including U.S. embargo and sanctions regulations and prohibitions on export for certain end uses or to certain users. End User represents that it is not named on any US government denied-party list. End User authorises the Managed Service Provider and its Affiliates to store and use End User's business contact information wherever it does business, in connection with Managed Service Providers products and services or in furtherance of the Managed Service Providers business relationship with the End User. If there is a conflict between the provisions of this Agreement and the Order Form, the Order Form shall prevail. If any provision of the Agreement is held by a court to be invalid, void or unenforceable by a court of competent jurisdiction, such provision will be deemed modified to the least degree necessary to remedy such invalidity (as long as such modification does not materially adversely affect either Party's rights or obligations under the Agreement), the remainder of the Agreement will not be impaired or affected thereby, and each other term, provision and part will continue in full force and effect, and will be valid and enforceable to the fullest extent permitted by law

## EXHIBIT B – SUPPORT SERVICES

1.1 The terms and conditions set out below govern the support of the Software by the Managed Service Provider. Such support may only be provided by the Managed Service Provider to the End User where the End User has paid the Fees. By contracting with the Managed Service Provider, the End User is lawfully regarded as having agreed to the terms and conditions set out below:

### General

- 1.1.1 The Managed Service Provider shall, during the Term, provide the End User with –
- 1.1.1.1 access to New Releases of the Software, as well as tools and procedures for upgrades licensed to the End User (the “Maintenance”); and
  - 1.1.1.2 technical and onsite support for the Software (“Support”).
- (“Support Services”)
- 1.1.2 the End User will not have direct access to Support Services from the Licensor. Accordingly, all requests for Support Services will be logged directly with the Managed Service Provider in accordance with this Exhibit E;
- 1.1.3 for the avoidance of doubt, the Managed Service Provider and/or Licensor will not support: (i) software which has been altered or modified by anyone other than the Managed Service Provider; (ii) a release of the Software that has not been approved for general availability; (iii) problems caused by the End User’s negligence, misuse, or hardware malfunction; or (iv) use of Software inconsistent with the Documentation (e.g., Software not installed on supported systems in accordance with the Documentation). Support Services do not include information or assistance on technical issues related to the debugging, installation, administration, and use of the End User’s computer systems and enabling technologies including, but not limited to, databases, computer networks, communications, hardware, hard disks, networks, and printers;
- 1.1.4 to assist the End User in isolating the cause of a problem with the Software, the Managed Service Provider may request that the End User (i) allow the Managed Service Provider and/or Licensor to remotely access the system; and (ii) send End User information and data to the Managed Service Provider and/or Licensor;
- 1.1.5 the Managed Service Provider and/or the Licensor shall have the sole and exclusive right, title and ownership of any Work Product and all ideas, concepts or other intellectual property rights related in any way to the Work Product, techniques, knowledge or processes of the Support Services and deliverables, whether or not developed for the End User;
- 1.1.6 save for what is set out in the Agreement, the Managed Service Provider disclaims all warranties express or implied in respect of the Support Services, including without limitation, any implied warranties of merchantability, fitness for a particular purpose or non-infringement except to the extent that any warranties implied by law cannot be validly waived;
- 1.1.7 the End User accepts any additional and/or different terms that may be applicable to Maintenance provided by the Managed Service Provider to it, which terms may be specified in the License Information. If Software is replaced by Maintenance, the End User hereby agrees to promptly discontinue use of the replaced Software.

- 1.1.8 provision of the Support Services is subject to: (i) payment of the Fees; (ii) the End User providing an adequate description of any Support Service problem as contemplated in clause 1.1.12.2 below; (iii) the End User using supported versions of the Software as provided by the Managed Service Provider; (iv) the End User providing reasonable cooperation to the Managed Service Provider; and (v) any Support Service problem being reproduced in the Software on a standalone basis.

#### Support Services

- 1.1.9 Support Services shall address (i) any technical questions that the End User may have regarding the use and operation of the Software; as well as (ii) any problems that the End User may experience when using or operating the Software (the "Support Objectives").

1.1.10 Technical support

The Managed Service Provider shall provide a telephone support desk staffed by support personnel who shall be available on Business Days during the hours of 08h30 to 17h00 Central African Time to address the Support Objectives.

Office hours: 08h30 – 17h00

+2711 804 3740

After hours: 17h01 – 08h29

+31 6 29470079

Emergency Escalation: Adriaan van der Walt

+31 6 29470079

Email: help@thinkdglobal.com

1.1.11 Onsite support

The End User shall only be entitled to request onsite support for a problem that has very serious consequences for normal business transactions and urgent, business critical work cannot be performed. This is generally caused by the following circumstances: complete system outage, malfunctions of central functions in the production system or other top issues as may be identified by the Licensor (if any) ("Priority 1 Support Incidents" or "Priority 1").

1.1.12 Process to follow when logging a call for Support Services:

1.1.12.1 Should an End User experience any problems relating to the Software and require Support Services, the End User shall follow the procedure set out in this clause 1.1.12;

1.1.12.2 A Designated Contact (as defined below) shall forward a detailed problem description (in English) to the email address described in clause 1.1.10 above and shall include available information to best describe the issue. The following information shall, where possible, be included in the problem description –

1.1.12.2.1 the impact the problem has on the End User's environment and business;

- 1.1.12.2.2 relevant database or system logs where possible;
- 1.1.12.2.3 product version information;
- 1.1.12.2.4 screen prints of error messages displayed or any other attachments that could help to process the support message such as trace files or reports;
- 1.1.12.2.5 system and product configuration including configuration files;
- 1.1.12.2.6 hardware specifications, operating system version and patch levels;
- 1.1.12.2.7 complete and accurate environmental and technical details pertaining to the issue;
- 1.1.12.2.8 if necessary, core dumps, trace analyses, system logs and stack traces;
- 1.1.12.2.9 any recent changes that may have contributed to the problem.

("Support Request")

- 1.1.12.3 Should the End User require urgent assistance, the Designated Contact (as defined below) may, depending on the time of day, call the Office hours contact number or the After hours contact number described in clause 1.1.10 above.
- 1.1.12.4 Upon receiving a Support Request, the Managed Service Provider shall (i) log the Support Request with the call logging system; (ii) assign a priority in accordance with clause 1.1.12.5; and (iii) assign appropriate personnel to the Support Request for resolution ("Support personnel"). Such Support personnel will call the End User within the timeframe allocated to the priority of the End User's case.
- 1.1.12.5 Priorities are assigned based on problem urgency and the effect the situation has on the End User's business as determined by the Managed Service Provider with reference to the problem description recorded in the Support Request. The priorities are as follows:

| Priority               | Type               | Initial Response within | End User Update |
|------------------------|--------------------|-------------------------|-----------------|
| Priority 1 – Very High | Enterprise Failure | 30 minutes              | 2 hours         |
| Priority 2 – High      | Urgent             | 1 hour                  | 3 hours         |
| Priority 3 – Medium    | High Priority      | 4 hours                 | 6 hours         |
| Priority 4 – Low       | Pending Service    | Same day                | As needed       |

- 1.1.12.6 The End User hereby undertakes:

- 1.1.12.7 not to contact the Licensor and/or any technical engineers directly; and
- 1.1.12.8 to follow the agreed procedures set out herein in order to allow for correct issue recording and management of client feedback.

- 1.1.13 The priority of the case will determine the targeted initial response time as described in the table above. The Support Request must record the impact the problem has on the End User's environment. The

problem description in the Support Request will allow the Support personnel to best address the problem for the End User's business.

#### 1.1.14 Maintenance upgrades and installations

1.1.14.1 Maintenance and Documentation shall be made available by the Managed Service Provider to the End User for the Term. The Managed Service Provider shall provide the End User with telephonic support for Maintenance upgrades or installations.

1.1.14.2 Onsite support and/or training services for Maintenance upgrades and/or installation (if applicable) does not form part of the Fees and, if required by the End User, shall be quoted for separately.

#### 1.1.15 Responsibilities

1.1.15.1 The End User shall furnish the Managed Service Provider with contact details for three designated contacts ("Designated Contacts"). The Designated Contacts shall be persons properly trained in the operation and Use of the Software. Only Designated Contacts are entitled to submit Support Requests to the Managed Service Provider in accordance with this Exhibit E.

#### 1.1.16 Exclusions

Support Services do not include any third party software or hardware support services, nor support of any enhancements to any of the foregoing. Upon request and if available, the Managed Service Provider shall provide the End User with contact information for applicable third party support service suppliers. The Managed Service Provider will not be responsible for correcting any errors not reproducible by it on the unmodified Software or errors caused by: (a) use of the Software in a manner for which it was not designed or approved by the Managed Service Provider or the Licensor; or (b) accident, negligence, or misuse of the Software. The Support Services do not include usage, integration, interoperability and operations questions or issues.