

STANDARD TERMS & CONDITIONS

AWCape and Applico

(Hereinafter referred to as “the Supplier”)

1. DEFINITIONS AND INTERPRETATION

The following terms and expressions shall bear the meanings assigned to them below:

“**Agreement**” means this document, together with any relevant Proposal, Agreement, Annexures or Addendums, as each may be amended from time to time;

“**Business Day**” means any day, except a Saturday, Sunday, or an official South African public holiday;

“**Confidential Information**” means any information or data which by its nature or content is identifiable as sensitive, confidential and/or proprietary and concerns or relates to the trade secrets, processes, operations, style of work, or to the production, sales, purchases, identification of customers, inventories or amount or source of any income, profits, losses or expenditures of any person, firm, partnership, corporation, or other organization, or other information of commercial value, the disclosure of which is likely to cause substantial harm to the competitive position of the person, firm, partnership, corporation or other organization from which the information was obtained;

“**Losses**” means all direct losses, liabilities, damages and claims, and related costs and expenses (including legal fees on the scale as between attorney and client, tracing and collection charges, costs of investigation, interest and penalties;

“**Notice**” means a written document;

“**Parties**” means AWCape, Applico and the Customer and “**Party**” means either AWCape, Applico or the Customer.

“**POPI**” means the Protection of Personal Information Act 4 of 2013, as amended.

“**Services**” means the Services that AWCape and Applico will provide to the Customer for purposes of the Agreement.

“**Supplier**” means AWCape (Pty) Ltd and/or Applico (Pty) Ltd.

Clause headings are used for convenience only and shall not be considered in the interpretation of this Agreement.

Any reference to “Days” shall be construed as being a reference to calendar days unless a “Business Day” is specified.

2. VALIDITY OF QUOTATIONS

All quotes shall remain valid for a period of 30 (thirty) days from date of issue. The validity of any price quoted is subject to any increases in the price charged by suppliers of the Supplier.

3. ORDERS

- 3.1. All written orders signed by a Manager of the Customer shall be binding and subject to this Agreement.
- 3.2. No order may be cancelled without the written consent of the Supplier. Should the Customer cancel any order for whatever reason, the Customer will be liable for all costs incurred by the Supplier in developing or preparing the product and/or Services ordered.

4. PAYMENT

- 4.1. The Customer agrees to pay the amount on the invoice to the Supplier –
 - 5.1.1 by cash on order for software or any equipment;
 - 5.1.2 by debit or stop order for the Supplier Services;
 - 5.1.3 by EFT for pre-paid Services;
 - 5.1.4 or in a manner otherwise agreed to in writing by the Supplier.
- 4.2. For Customers who are not on pre-paid Services, payment is to be made within 30 (thirty) days from date of invoice, unless otherwise agreed to by the Supplier. Should payment not be received within 30 days, the terms of payment will immediately change to pre-paid with relevant discounts as applicable to AWCape's pre-paid services discount.
- 4.3. Interest shall be levied against any overdue amounts at the rate prescribed in terms of the Prescribed Rate of Interest Act 55 of 1975, plus 5%, from due date of debt.
- 4.4. The Customer has no right to withhold payment for any reason whatsoever.
- 4.5. The Customer is not entitled to set-off.
- 4.6. The Customer agrees that if an account is not settled in full against order or within the periods agreed to above, the Supplier will be entitled, within 7 (seven) days after Notice has been given to –
 - 5.6.1 forthwith suspend all Services to the Customer without further Notice;
 - 5.6.2 cancel the Agreement; and
 - 5.6.3 institute action against the Customer for the recovery of losses the Supplier may have suffered resulting from such cancellation.
 - 5.6.4 The Customer will be held liable for all legal fees on a scale as between attorney and own client, inclusive of collection commission, and tracing fees incurred in collecting the indebtedness of the Customer to the Supplier.
 - 5.6.5 The Customer agrees that the amount due and payable to the Supplier for Services rendered shall be determined and proven by a time sheet issued by the Supplier and signed on its behalf by any authorized person, whose authority need not be proven. Such time sheet shall be binding and be *prima facie* proof of the indebtedness of the Customer. Such time sheet may be presented and signed digitally.
 - 5.6.6 Should the Customer cancel any scheduled bookings for services with less than 24 hours' notice, the Customer remains liable to pay the full fee for the time booked. A reduction of the fee may be considered at the Company's discretion.

5. CONFIDENTIALITY

- 5.1. The Parties agree that they will comply with POPI Act and Regulations and process all the information and/or personal data in respect of the services being rendered in accordance with the said Act and Regulations and only for the purpose of providing the Services set out in the Agreement to provide Services.
- 5.2. The Parties acknowledge the importance of any Confidential Information and recognise that the Parties and/or third-party proprietors may suffer irreparable harm or loss in the event of such information being disclosed or used otherwise than in accordance with this Agreement.
- 5.3. The Parties therefore agree, except as permitted by this Agreement, not to disclose or publish any Confidential Information in any manner, for any reason or purpose whatsoever without the prior written consent of the other Party and provided that in the event of Confidential Information being proprietary to a third party, it shall also be incumbent on the Receiving Party to obtain the consent of such third party.
- 5.4. The Parties furthermore agree to restrict the dissemination of the Confidential Information to only those of the staff who are actively involved in activities for which use of Confidential Information is authorised and then only on a “need to know” basis. Both Parties shall initiate, maintain, and monitor internal security procedures to prevent unauthorised disclosure.
- 5.5. The Supplier may retain Confidential Information to the extent required, and for the duration of any Services performed in terms of this Agreement, subject to the right of the Customer to recover the Confidential Information at any time.
- 5.6. The provisions of this clause shall survive the expiration or termination of this Agreement.

6. WARRANTIES

Each Party represents and warrants that the execution and performance of this Agreement have been duly authorised by the requisite corporate action on the part of such Party and that it has not violated any applicable laws, Regulations, or policies.

7. LIMITATION OF LIABILITY

Under no circumstances will either Party be liable for any indirect loss or damages of whatsoever nature and howsoever arising.

8. AWCCLOUD SERVICES (IF APPLICABLE)

- 8.1. AWCCloud services may include Private Dedicated Servers, Business Intelligence Services and off-site data backup Services comprising of a customer program installed on the Customer’s computer / server and an online storage platform where the Customer’s data is backed up on a scheduled basis.
- 8.2. Ownership and all rights to the equipment and software remain vested in AWCape and its suppliers. The Customer has the right to use the equipment and software provided the Customer has paid the required fees.
- 8.3. AWCape shall be entitled to amend the fees and charges from time to time with a 1 (one) month notice period.
- 8.4. A reactivation fee to restore Services will be charged should the Customer’s Services be terminated as a result of non-payment. This fee is in addition to any outstanding balance owing by the Customer.

- 8.5. The Customer will ensure that any software loaded onto the server is not pirated and conforms to the licensing agreements of the software manufacturer.
- 8.6. AWCape accepts no responsibility for unavailability of hosted virtual server, data loss of any kind where the Customer or one AWCape employees assisting the Customer does not select the correct data to back up.
- 8.7. The Customer is solely and exclusively responsible for the selection of data to backup and for verifying that the correct data is being backed up on an on-going basis. Any actions of AWCape employees in selecting data will be deemed to have been on instruction from the Customer and in assisting the Customer in setting up a valid back up selection.
- 8.8. During the registration process, a password and encryption key (for backups) will be automatically allocated to the AWCloud customer account, alternatively the customer may assign the required password and encryption key. The customer shall keep the password confidential and immediately notify AWCape if any unauthorized third party becomes aware of the password or if the customer becomes aware of any unauthorized use of the password and breach of security.
- 8.9. The customer certifies that any person to whom its password and encryption key is disclosed is authorized to act as its agent for purposes of using the service.
- 8.10. The customer is entirely responsible for any loss or damage it may suffer as a result of not maintaining confidentiality of access to its AWCloud account.
- 8.11. AWCape shall not be responsible for unauthorized access to or alteration of transmissions or data, any material or data sent or received or not sent or received, or any transactions or agreements entered through the use of the AWCloud Services.
- 8.12. The Customer specifically agrees that AWCape is not responsible for any content or data sent using and/or included in the AWCloud Services. AWCape shall back up and store the data uploaded to the AWCloud storage platform in the condition in which it is uploaded (encrypted and password protected). For the avoidance of doubt – any data which is incomplete, infected with a virus or has any other defect, will be encrypted with all defects, compressed, and transmitted to the AWCloud platform. In the event that data is required to be restored to the customer, the data will be restored in the same condition, i.e., any defective or corrupt data will be restored to the customer computer.
- 8.13. AWCape and/or its suppliers, shareholders, directors, and employees make no representations about the suitability, reliability, availability, timeliness, security, and accuracy of the AWCloud Services for any purpose, other than those specified in terms of “The AWCloud Service” as defined in this document.
- 8.14. Due to the nature of the AWCloud Services provided, AWCape does not represent or warrant, despite its best efforts, that the AWCloud Services or the Customer’s use thereof will be uninterrupted or error-free, that defects will be corrected, or that the AWCloud Services or the server that makes it available are free of viruses or other harmful components
- 8.15. The Customer warrants that it will have no action against AWCape or its shareholders, directors or employees arising either directly or indirectly out of the use of the AWCloud Services resulting from no fault or negligence of AWCape or its shareholders, directors, or employees and, to the extent necessary and the Customer hereby waives and abandons such claims.
- 8.16. Should AWCape terminate the AWCloud services for any reason other than breach by the Customer, AWCape will assist the Customer to transfer the data from the AWCloud hosted server to any other server designated by the Customer.
- 8.17. Should the Customer have any content in violation of any law (including the Films and Publications Act 64 of 1996) or of the Acceptable Use Policy, AWCape will request the Customer to remove, amend or modify the content. Should this not be adhered to, AWCape will terminate access to any Services or suspend or the Agreement without

further notice and notify the relevant authorities of the existence of such content. The Customer hereby waives its right take any claim or demand or to institute legal proceedings against AWCape should AWCape proceed in terms of this clause.

- 8.18. Should any security violation occur in connection with the Customer's account, AWCape will investigate and take the necessary steps to change the Customer access codes and password and notify Customer immediately.
- 8.19. The Customer agrees to indemnify AWCape against any claim arising from the Customer's disclosure of its data and the subsequent use of such data by a third party.
- 8.20. The Customer agrees to indemnify AWCape from any liability arising from civil or criminal proceedings instituted against AWCape or for any loss or damage the Customer or a third party may have suffered as a result of any interruption or unavailability of the Services.

9. PROHIBITION AGAINST SOLICITING STAFF

- 9.1. The Parties agree that they shall not during the term of this Agreement and for a period of 12 (twelve) months after termination or expiration of this Agreement in any capacity, whether directly or indirectly, without the written consent of the other Party offer employment to or cause employment to be offered to or cause to be employed any person employed or contracted by the other Party and engaged by the last-mentioned Party in the provision or receipt of the Services.
- 9.2. The Parties further agree that the aforesaid provisions are fair and reasonable and go no further than is necessary to protect the interests of the Parties in respect of their staff.
- 9.3. The provisions of this clause shall survive the cancellation or termination of this Agreement.

10. SUPPORT

- 10.1. The Supplier will supply services to support software licensed by Sage to the End-User, and such support services will be billable at the rate which is published annually by the Supplier.
- 10.2. Support is available Mon-Thu 08h00 to 17h00 and Fridays 08h00 – 15h30 unless prearranged and approved by AWCape management.
- 10.3. If service stand-by is required outside of normal office hours, overtime rates will be applicable as follows:
 - Weekdays & Saturdays – Standard rate x 1.5
 - Sundays & Public Holidays – Standard rate x 2.0
- 10.4. The company charges in intervals of 30 minutes (0.5hr), and 1-hour units for any telephonic/ remote or onsite support.
- 10.5. Travelling and accommodation costs are excluded from Proposals unless specifically itemized.
- 10.6. Travel time – local (Cape Town) travel time from leaving the Company offices is charged at the normal consulting rate for distances less than 10km and will normally not be indicated separately on time sheets. Distances travelled more than 10km is charged at 50% of the normal consulting rate and will be specified individually on time sheets. A minimum of 30 minutes is charged for travelling time per visit for distances more than 10km. Toll fees are recoverable.
- 10.7. Issues logged by the client will be responded to during office hours. The response does not necessarily include the solution.

10.8. The Supplier, as third party to the agreement between Sage and the End-User, has no responsibility towards the End-User in terms of the quality or technical functioning of the licensed software, and the Supplier will not be held responsible for any technical omissions or software bugs found in licensed software, nor will the Supplier be held responsible for any consequential loss or damage resulting from such omissions or bugs.

10.9. The role and responsibility of the Supplier will be to support the End-User in the application of licensed software and any technical issues found with licensed software will be escalated to Sage on behalf of customers and will be managed until resolved. Such support services will be provided as a billable service to the licensed End-User.

11. TRAINING

Applico is the only official Sage Training Centre in the Western Cape and is a Sage Authorized Learning Partner – Delivery Centre (SALP-DC) and formal training is therefore conducted by Applico. For Training Terms & Conditions, refer to <https://www.applico.co.za/pricing/>

12. GOOD FAITH

It is recorded that the successful and expeditious fulfilment of the obligations under this Agreement shall require that the Parties observe, at all material times, the principles of good faith towards each other and in their dealings with each other and their staff.

13. BREACH AND TERMINATION

12.1 Should either Party (“the Defaulting Party”) –

- 12.1.1 be in breach of any material term of this Agreement and fail to remedy such breach within 30 (thirty) Business Days after receipt of a Notice that it be remedied;
- 12.1.2 repeatedly or continuously breach any term of this Agreement;
- 12.1.3 commit an act allowing for the winding up of a company in terms of the Companies Act, 71 of 2008;
- 12.1.4 be placed under an order of provisional or final liquidation;
- 12.1.5 be affected by *force majeure* as contemplated in clause 13 which lasts more than 20 (twenty) Business Days;
- 12.1.6 infringe a copyright, trade secret or patent of the other Party or of any third party in order to meet all or some of its obligations under this Agreement;

12.2. Then and in any of such events, the other Party (“the Innocent Party”) shall, without prejudice to any claim, rights, or remedies of any nature whatsoever which it might have in law against the Defaulting Party, including its right to claim such damages as it may have suffered resulting from the breach of contract, be entitled to forthwith terminate this Agreement on Notice with immediate effect.

12.3. The provisions of this clause shall not affect or prejudice any other rights / remedies which the Parties may have by law.

14. FORCE MAJEURE

14.1. If either Party is affected by a Force Majeure Event, the affected Party will notify the other of them of the nature and extent thereof.

- 14.2. Other than the obligation to pay any amounts owed in terms of this Agreement, neither Party will be deemed to be in breach of this Agreement, or otherwise liable to the other, by reason of any delay in performance or failure to perform any of its obligations hereunder to the extent that such delay or non-performance is due to a Force Majeure Event of which it has notified the other Party; and the time for performance of that obligation will be extended accordingly.
- 14.3. Should a Force Majeure Event arise, the affected Party will notify the other Party without delay and the Parties will meet within 7 (seven) days of such notice to negotiate in good faith alternative methods of fulfilling its obligations in terms of this Agreement. The relief-seeking Party shall use all reasonable endeavours to bring the Force Majeure Event to a close or to find a solution by which this Agreement may be performed despite the continuance of the Force Majeure Event.
- 14.4. If a Force Majeure Event in question prevails for a continuous period in excess of 2 (two) months, the Parties will enter into bona fide discussions with a view to alleviating the effects of the Force Majeure Event, or to agreeing on such alternative arrangements as may be fair and reasonable in the circumstances.
- 14.5. For purposes of clauses 13, *force majeure* shall include but not be limited to an act of God, fire, strike, flood, riot, war, pandemic of whatsoever nature, non-availability or rationing of electricity, inability to secure materials, labour or supplies, embargoes and restrictions by any governmental authority or other similar causes beyond the Parties' control and for which it is not responsible.

15. NOTICES

- 15.1. Any Notice to any Party shall be addressed to it at its *domicilium* and either sent by pre-paid registered post, email or delivered by hand. In the case of any Notice –
 - 14.1.1 Sent by pre-paid registered post, it shall be deemed to have been received, unless the contrary is proved, on the third business day after posting;
 - 14.1.2 sent by email, it shall be deemed to have been received on the 1st (first) Business Day following the date of sending thereof, in the absence of any administrator or mail server error messages;
 - 14.1.3 delivered by hand, it shall be deemed to have been received, unless the contrary is proved, on the date of delivery, provided such date is a Business day or otherwise on the next following Business day.
- 15.2. Any Party shall be entitled, by Notice in writing to the other, to change its *domicilium* to any other address within the Republic of South Africa, provided that the change shall only become effective fourteen (14) days after delivery of the Notice in question.

16. ENTIRE AGREEMENT

This Agreement, together with any proposal or Service Level Agreement which have been agreed to accepted between the Parties, comprises the entire agreement between the Parties pertaining to the subject matter hereof and shall supersede and replace any other documents, letters, or representations, promises or the like not recorded herein.

17. AMENDMENT / VARIATIONS

No amendment, variation, or addition to or deletion from this Agreement, including this clause shall be of any force or effect, unless recorded in writing and signed by both Parties to this Agreement or their duly authorised representatives.

18. WAIVER

No indulgence, which either Party may grant to the other, shall constitute a waiver of or prejudice the right of the Party granting the indulgence.

19. SEVERABILITY

If any part of this Agreement is found to be invalid or unenforceable, it shall be severed from the remainder of this Agreement, which shall remain valid and enforceable.

20. CESSION AND DELEGATION

Neither Party may cede its rights or delegate its obligations in terms of this Agreement, without the prior written consent of the other Party, which consent shall not be unreasonably withheld.

21. SURVIVAL

Any provision of this Agreement, which contemplates performance or observance subsequent to a termination or expiration of this Agreement, shall survive any termination or expiration of this Agreement and continue in full force and effect.

22. DISPUTES

22.1. The Parties shall attempt in good faith to promptly resolve any dispute or claim arising out of or relating to this Agreement through negotiations between their respective liaison Representatives by way of mediation.

22.2. In the event of the mediation not resulting in an agreement signed by the Parties and thereby resolving the dispute within 15 (fifteen) Business Days of the Notification, the Parties must refer the Dispute for resolution by way of arbitration in accordance with the then current rules of the Arbitration Foundation of South Africa, or its successor in title ("AFSA").

22.3. The mediation will be held in Cape Town and the Parties may agree on the mediation procedure and the mediator, and failing such agreement, the mediator will be appointed on their behalf by the AFSA, or its successor in title.

22.4. The Parties agree that:

22.4.1.1. the periods for negotiation may be shortened or lengthened by written agreement between the Parties;

22.4.1.2. the Parties will participate in good faith in the mediation;

22.4.1.3. the Parties will share equally in the costs and expenses of the mediation, such costs not including costs or expenses incurred by a Party for an expert opinion in connection with the mediation;

22.4.1.4. an expert may be appointed by either Party on the condition that any Party appointing an expert must give sufficient notice to the other Party to allow them to appoint their own expert; and

22.4.1.5. copies of any expert opinion must be provided to the mediator and all other Parties before the mediation process begins.

22.4.1.6. all mediation proceedings, communications, statements and offers, whether oral or written, made in the course of the mediation by any of the Parties or their respective agents, employees, experts and attorneys, are confidential and inadmissible in any arbitration or other legal proceeding involving the Parties; provided, however, that evidence which is otherwise admissible or discoverable for the purposes of arbitration will not be rendered inadmissible or non-discoverable as a result of its use for arbitration; and

- 22.4.1.7. any and all agreements reached during the course of mediation and reduced to writing and signed by the Parties will be binding upon all the Parties.

22.5. Arbitration

- 22.5.1. Mediation is a precondition to having the Dispute resolved by way of arbitration.
- 22.5.2. In the event of the mediation in terms of clauses 21.1 to 21.4 failing within a further 30 (thirty) days from the date of Notification, the Dispute must, within 5 (five) Business Days thereafter, be referred to arbitration as contemplated in the clauses below.
- 22.5.3. Each Party agrees that the arbitration will be held in Cape Town as an expedited arbitration in accordance with the then current rules of expedited arbitration of AFSA by 1 (one) arbitrator appointed by agreement between the Parties. If the Parties cannot agree on the arbitrator within a period of 5 (five) Business Days after the referral of the Dispute to arbitration, the arbitrator will be appointed by the Secretariat of AFSA.
- 22.5.4. The Parties agree to participate in good faith in the arbitration.
- 22.5.5. The arbitrator will be entitled to:
- 22.5.5.1. investigate any matter, fact or thing which he considers necessary or desirable in connection with the Dispute;
 - 22.5.5.2. interview and question under oath Representatives of either of the Parties;
 - 22.5.5.3. decide the dispute according to what he considers just and equitable in the circumstances;
 - 22.5.5.4. make such award, including an award for specific performance, damages, and penalty and/or otherwise as he/she in his discretion may deem fit and appropriate;
- make a ruling on the costs of arbitration.
- 22.5.6. The decision of the arbitrator will, failing manifest error, be final and binding on the Parties to the Dispute and may be made an order of a competent court at the instance of any of the Parties to the Dispute.
- 22.6. Nothing contained in this clause will prohibit a Party from approaching any court of competent jurisdiction for urgent interim relief pending determination of the Dispute by arbitration.
- 22.7. The Parties agree that the demand by a Party to submit a Dispute to mediation or arbitration will be deemed to be the required legal process to interrupt prescription in terms of the Prescription Act 68 of 1969.
- 22.8. Should the Parties not resolve the dispute after such referral, the matter shall be referred to the High Court, Cape Town.
- 22.9. This clause shall survive the expiration, cancellation, or termination of this Agreement.

23. APPLICABLE LAW

This Agreement shall be governed by and construed in accordance with South African Law.