

STANDARD TERMS AND CONDITIONS REGULATING THE AGREEMENT OF SERVICE

as entered into by and between

Execmail cc

Registration No. 97/45703/23

("execmail")

and

"THE CUSTOMER"

## 1 PREAMBLE

WHEREAS Execmail is able to provide certain Internet Services to the Customer; AND WHEREAS the Customer requires the relevant Internet Services from Execmail.

NOW THEREFORE the terms and conditions regulating Execmail's provision and the Customer's utilisation of the relevant internet services shall be as set out herein below.

## 2 DEFINITIONS

2.1 "Execmail" shall mean: Execmail CC, a duly registered and incorporated Close Corporation with registration number 97/45703/23 and having its principal place of business situated at 26 Cormorant Street, Elspark, Germiston.

2.2 "The Customer" shall mean: the party who/which signs the "User Information Form" as supplied by Execmail to the Customer and which form shall record the acceptance by the Customer of these Standard Terms and Conditions by the Customer affixing his signature/its authorised representative's signature, in writing, at the bottom thereof. 2.3 "The Parties" shall mean: both Execmail and the Customer.

2.4 "Services" shall include any relevant equipment and/or hardware, software.

2.5 "The Commencement Date" shall mean: the date upon which Execmail's User Information Form is duly signed by the Customer.

## 3 INCORPORATED DOCUMENTS

3.1 The parties hereby agree that the terms and conditions as recorded below SHALL be read together with Execmail's User Information Form and/or any further written documents which are/will be required by Execmail to be completed by the Customer upon conclusion of this agreement or as required from time to time by Execmail in the future, including but not limited to:-

3.1.1 A Customer Credit Application Form;

3.1.2 The Customer's Authority for payment by way of debit order.

## 4 CLAUSE HEADINGS

The use of headings shall be for the purpose of reference only and shall not influence the proper interpretation of the subject matter to which they pertain.

## 5 THE AGREEMENT

5.1 The parties hereby agree that a valid agreement of service between Execmail and the Customer shall come into operation at the commencement date hereof.

5.2 Execmail hereby agrees to use all reasonable efforts, within its power, to make available to the Customer, a continuous, uninterrupted, expedient and error free service in accordance with the terms and conditions recorded herein below.

5.3 The Customer hereby agrees to make use of Execmail's services as referred to above and agrees to make payment of all charges due to Execmail in respect thereof. The Customer further agrees that NOTWITHSTANDING clause 5.2 above, it hereby acknowledges that temporary interruptions, during the normal course of Execmail's provision of the relevant services to it may occur for WHATEVER

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damages (economically or otherwise) as are incurred by the Customer as a result of such interruption/s.

5.4 The Customer hereby further agrees to be solely responsible, unless the contrary is stated herein, for the provisioning, configuration and maintenance of all equipment on its premises, including, but not limited to all computer hardware equipment, telecommunication equipment and modems as are necessary and required by it in order to make use of and exercise its rights to the services as provided by Execmail.

## **6 PAYMENT**

6.1 The Customer hereby agrees to make payment of all applicable charges, tariffs, fees and other amounts (hereinafter referred to as "charges") as may be charged by Execmail and recorded in Execmail's monthly statements to the Customer, in respect of the provision of the relevant services.

6.2 The "charges" referred to above may be varied by Execmail, from time to time, in the following circumstances:-

6.2.1 in the event of Execmail's operating costs in respect of the provision of the necessary services to the Customer being increased for WHATEVER REASON, then the "charges" to the Customer shall be increased in proportion to Execmail's increased operating costs; and

6.2.2 upon the annual anniversary of the commencement date of this agreement an automatic increase of the "charges" due to Execmail in respect of the relevant services provided, (the amount of the increase being within the discretion of Execmail), shall be effected.

6.2.3 all access charges that entitle the Customer to obtain access to the services subscribed for, shall be payable in the manner as set out in this agreement and where such charge is indicated as:-

6.2.3.1 a monthly direct debit, the amount of the first month payment shall be payable by the Customer to Execmail on the commencement date, whereafter the relevant debit order shall apply;

6.2.3.2 in all other cases payment shall be made in advance and as specified in the agreement.

6.2.4 Any payment due, owing and payable to Execmail in terms hereof which is not made on the due date thereof shall bear interest at a rate of 2% (two per centum) above the prime bank overdraft rate as charged by Execmail's bankers from time to time, calculated from the date payment was due until the date of actual payment in full, capitalised monthly in arrears.

6.2.5 The Customer shall, on demand, pay to Execmail all costs and expenses incurred by Execmail in enforcing the terms and conditions of this agreement, including, without limitation, all legal costs on the scale as between attorney and own client.

6.2.6 Should the bank dishonour any payment offered by the Customer to Execmail, Execmail shall be entitled, over and above the dishonoured payment, as well as bank charges, to charge and the Customer shall be obliged to pay, a reasonable administration fee.

6.2.7 Should the Customer change from one product to another or add any service/s to an existing product, Execmail shall be entitled to charge and the Customer shall be obliged to pay, a reasonable administration fee.

## **7 INSTALLATION AND CONNECTION**

7.1 The Customer acknowledges that any installation date or connection date furnished by Execmail is only provisional and should installation or connection, as the case may be, not be effected by such provisional date:-

7.1.1 Execmail shall not be responsible for any consequences of such delay or be liable for any damages, costs or expenses whatsoever incurred or suffered by the Customer or any third party; and

7.1.2 the Customer shall not be entitled, as a result of such delay, to terminate this agreement with Execmail or to withhold any payment/s due to Execmail in respect hereof.

## **8 LIMITATION OF Execmail's LIABILITY**

8.1 Execmail shall not be liable, directly or indirectly and UNDER ANY CIRCUMSTANCES for any loss, damage or injury, the Customer, its Holding Company, affiliates and/or subsidiaries, its/their customers or employees or any other third party having any dealings with the Customer for whatever reason, may suffer **HOWSOEVER** arising including, inter alia, as a result of the Customer's access to or use of the services rendered by Execmail or any information or data obtained through such access or use, and specifically, but not limited to, any liability in respect of refunds of fees for loss of profits, financial losses, loss of contracts, loss of income, loss of anticipated/prospective business, the cost of replacement services, savings use, goodwill or any other form of consequential loss as a result of Execmail's provision of services to the Company.

8.2 Execmail does not provide any warranties or representations, either express or implied with regard to the services to be provided by it in terms hereof and shall not accept any responsibility or liability for any damage, loss or injury arising from the provision or interrupted provision of the services to the Customer, the Customers employee's, directors, agents and/or representatives and which may arise, inter alia, from a breach of Execmail's security measures, any misuse of Execmail's facilities and/or services and/or any act or omission of any Customer of Execmail.

8.3 Execmail shall, further, not be liable to ANY injured party for ANY/ALL amounts incurred by them/it as a result of, either directly or indirectly, the Customer's use or misuse of Execmail's services which:-

8.3.1 constitutes a violation of any law, regulation or tariff;

8.3.2 by its nature is defamatory, fraudulent and/or deceptive in any way;

8.3.3 is intended to threaten, harass or intimidate and/or;

8.3.4 interferes with the use and/or enjoyment of the services by other customers of Execmail.

## **9 THE CUSTOMER'S GUARANTEES AND WARRANTIES**

Notwithstanding clause 8 above and in addition thereto, the Customer hereby agrees and holds itself bound to the following terms and conditions which are deemed to be of a material nature and the compliance of which, inter alia, goes to the root of this agreement:-

9.1 It acknowledges that it is aware and will continue to remain aware of, and at all times comply with, all statutory or other regulatory provisions and/or rules applicable to the provision and use of Execmail's services from time to time;

9.2 It shall make use of the services in a responsible, prudent, lawful and honest manner;

9.3 It shall comply with any directions, instructions and/or limitations issued to it or notified of by Execmail from time to time in connection with the services;

9.4 It shall not use any service in a manner which:-

9.4.1 constitutes a violation of any law, regulation or tariff that may be in force in South Africa or as may be binding upon it in respect of applicable foreign laws. In particular the Customer undertakes to familiarise itself and ensure that it is kept continuously apprised of all such laws, regulations and tariffs in force from time to time which may have any bearing on the services rendered and products provided by Execmail and/or the Customer's access to or its use thereof;

9.4.2 constitutes an act or omission that is generally unacceptable or offensive to internet users in general, to the public at large or as same may be determined by Execmail from time to time in its sole and absolute discretion, specifically including (but not limited to) to hosting or pornographic material, spamming, hacking, unsolicited mailing and the like;

9.4.3 contravenes any Execmail policy, which may be contained in a document prepared by Execmail and which may be published, updated and amended by Execmail from time to time;

9.4.4 is defamatory, fraudulent or deceptive;

9.4.5 is intended to threaten, harass, nuke or intimidate;

9.4.6 tends to damage the name or reputation of Execmail, its holding company, affiliates and/or subsidiaries; or

9.4.7 interferes with the use and enjoyment of internet related services of customers of Execmail;

9.5 That the services to be rendered to it shall be as defined and subject to such limitations as

may be notified from time to time by Execmail;

9.6 That it is and will continue to be aware of the limitations of all the relevant services provided by Execmail and it accepts that service quality and coverage available shall be limited to that supported by the infrastructure of Execmail, its network providers and Telkom and that this service may, from time to time, be adversely effected by a number of different causes;

9.7 That it shall not commit any act or omission which may have an adverse technical effect on the integrity or functionality of the network infrastructure of Execmail or that provided or made available to the Customer by or through Execmail. If any act or omission of the Customer has such an adverse technical effect the Customer shall, on receiving notification to that effect from Execmail, forthwith take such steps as may be necessary to rectify the situation at its own cost and expense, failing which Execmail shall be entitled, without prejudice to any other rights it may be entitled to in terms hereof or in terms of any other Law, to forthwith suspend the service and/or terminate this agreement;

9.8 That unless otherwise agreed with Execmail, in writing, it shall not resell or make available to any third parties and in any manner whatsoever, whether directly or indirectly, the services provided to it by Execmail.

9.9 That it shall take whatever steps may be necessary to ensure the safe keeping and confidentiality of all identification codes and passwords furnished by Execmail for use by it and shall specifically not disclose same to any third party without Execmail's prior written consent;

9.10 To comply with the rules and regulations applicable to any network that is accessed through Execmail;

9.11 That where outside the Republic of South Africa it wishes to connect to the Internet, such connection may be subject to the terms and conditions of a Global Service Provider ("GSP"). The Customer has been informed of and acknowledges that the GSP is not affiliated to Execmail.

## **10 Execmail's SUSPENSION OF SERVICE**

Execmail may from time to time and without notice suspend the services to the Customer in any of the following circumstances:-

10.1 During any technical failure, modification or maintenance either of the service or equipment by means of which the service is provided; and/or

10.2 If the Customer:-

10.2.1 fails to comply with any of the terms and conditions of this agreement (including at its failure to pay any charges due to Execmail in respect hereof) and Execmail shall continue its suspension of same until the breach (if capable of remedy) is remedied by the Customer; or

10.2.2 does or allows anything to be done which, in Execmail's reasonable opinion, may have the effect of negatively affecting the operation of Execmail's network or the provision of services to the Customer or to any other Customer/s of Execmail.

10.3 Notwithstanding any suspension of the service as referred to in this clause 10, the Customer shall remain liable throughout the period of suspension, for all charges due hereunder unless, in its sole discretion, Execmail determines otherwise.

## **11 BREACH AND TERMINATION OF THE AGREEMENT**

11.1 Notwithstanding anything to the contrary contained herein, Execmail shall at any time during the existence of this agreement be entitled to terminate the agreement upon 30 (thirty) days written notice to the Customer and in the case of a month to month agreement, the Customer shall provide Execmail with at least 1 (one) calendar months written notice of its termination hereof.

11.2 Without prejudice to any other rights or remedies which Execmail may have in terms hereof or in Law, Execmail shall be entitled to forthwith cancel this agreement and discontinue its service to the Customer in the event of the Customer failing to comply with any one or all of the terms and conditions of this agreement or any other further agreements as entered into from time to time between Execmail and the Customer.

11.3 Upon termination of this agreement, Execmail shall immediately disconnect the Customer from all the networks of Execmail and all its network providers.

11.4 Upon disconnection of the Customer as a result of termination of this agreement, the Customer shall, on demand and within 7 (seven) days from the date of such written demand, pay all charges outstanding at the time of disconnection, including any disconnection fee, which may

be charged by Execmail.

11.5 Upon termination hereof due to any breach of this agreement by the Customer, Execmail shall, in addition to the foregoing remedies, be entitled to claim any damages it may suffer as a result of such breach.

## **12 Execmail's NON LIABILITY OF UNINTENTIONAL BREACH**

Execmail shall not be liable to the Customer for any breach of this agreement and/or any failure on its part to perform any obligation in terms hereof as a result of any circumstances outside its reasonable control including without limitation, technical problems relating to the networks of Execmail, Telkom or any network provider of Execmail, or any one or more of them, acts of God, government control, restrictions or prohibitions or any Government Act or omission, whether local, national or international, any act or default of any supplier, agent or sub-contractor, industrial disputes of any kind or any other cause.

## **13 ALTERATION**

13.1 Execmail reserves the right and shall be entitled to alter any name, code or number allocated by Execmail for use in connection with the services provided or to be provided to the Customer hereby indemnifies Execmail against any cost, loss or liability it may incur as a result of such alteration.

## **14 SUPPORT SERVICES**

14.1 Execmail shall, as and when specifically requested to do so by the Customer in writing, render such consultation and support services to the Customer pertaining to the identification and, if possible, solution of problems encountered by the Customer in respect of the services rendered to it by Execmail or in regard to any internet related services in general as the Customer may request, subject to the payment by the Customer of all hourly tariffs, distance charges and other related fees payable in respect thereof.

14.2 Execmail shall, as part of such service, identify the Customer's problem, but does not warrant, guarantee or undertake in any way that it will be able to rectify all or any of the problems so identified.

14.3 The Customer shall

14.3.1 supply all software, hardware and all related documentation as required by Execmail to identify and solve any problem encountered by the Customer. Failing to do so will result in Execmail not being able to assist the Customer any further, whereas the Customer shall remain liable at all times for payment of any and all amounts referred to in 14.1 above.

14.3.2 render to Execmail, its agents, representatives and employees all necessary assistance which Execmail may require to identify, locate and solve any problem encountered by the Customer; and

14.3.3 ensure the safety of all agents, representatives and employees of Execmail who are present at the Customer's premises and hereby assumes all responsibility and liability for any cost, expense, loss or damage incurred or suffered by Execmail or any of its representatives, agents or employees as a result of any injury to or the death of such person whilst present at the Customer's premises, from any cause howsoever arising.

14.4 Execmail shall not accept any responsibility or liability for any existing data on the Customer's equipment and specifically shall not be required to back-up any data before commencing any work. The Customer hereby indemnifies and holds Execmail harmless against any cost, liability, loss or damage incurred or suffered by the Customer or by Execmail as a result of the loss of any such data whether occasioned by any act or omission of Execmail, its representatives, agents or employees or otherwise.

14.5 Consultation time charged for will commence when the relevant Execmail agent, representative or employee leaves Execmail's offices and will end when he returns to Execmail's offices. The Customer will be charged should the consultant for any reason whatsoever not be able to obtain access to the Customer's premises or equipment.

## **15 ACCEPTANCE OF OTHER EXECMAIL SERVICES AND/OR PRODUCTS**

In the event of the Customer purchasing any other products and/or further services offered by Execmail, either upon conclusion hereof or in the future, the Customer shall be bound by the terms and conditions relating specifically to those products and/or further services and specifically with regard to the purchase of any course/s offered by Execmail, the Customer; in the event of any breach of the conditions contained herein or as otherwise recorded in any other written agreement with FFG; shall **IMMEDIATELY** be liable to Execmail for payment of the full purchase price of such course/s.

## **16 SURETYSHIP**

In the event of the Customer being a Company (private or public), Close Corporation, partnership, association, trust and/or any other juristic person, then Execmail requires that all the directors, members, partners, associates or trustees (as may be applicable) of the juristic entity shall, in addition to the User Information Form, complete in full the Agreement of Suretyship as attached to the User Information Form.

## **17 GENERAL**

17.1 The Customer shall not cede, assign, transfer, encumber or delegate any of its rights or obligations in terms of this agreement to any third party. Notwithstanding anything to the contrary contained herein, Execmail shall be entitled to cede its rights and delegate its obligations in terms of this agreement to any of its affiliated companies, provided that reasonable guarantees will be given to the Customer.

17.2 The terms and conditions as set out herein, constitute the entire agreement between Execmail and the Customer and supersedes all previous representations made to the Customer, all amendments effected by the Customer to any application form or other similar document submitted by it and all communications between Execmail and the Customer relating to the subject matter hereof, unless reduced to writing and signed by both parties.

17.3 The Customer chooses its domicilium citandi et executandi at the address as recorded disclosed on the User Information Form, and which address shall be a physical address.

17.4 Execmail reserves the right to amend these terms and conditions from time to time and shall notify the Customer of such amendments, in writing.

17.5 This agreement shall be governed by and construed and interpreted in accordance with the Laws of the Republic of South Africa.

17.6 Unless inconsistent with or where a contrary intention clearly appears from the context, words importing any reference to a gender includes the other gender, any reference to the singular includes the plural and vice versa and any reference to natural persons includes legal persona and vice versa.

17.7 If any clause or clauses of the terms and condition of this agreement is found by any Court of competent jurisdiction to be invalid or unenforceable, they shall be capable of being severed from the remainder of the terms and conditions of this agreement which shall remain valid and enforceable.

17.8 The parties hereby consent to the jurisdiction of the Magistrates' Court irrespective of the value of any claim either party may have against the other.

17.9 The duration of our domain and web hosting is 24 months. If the contract is not cancelled in writing by the client, the contract will automatically renew itself for the next 24 month cycle.

## **10 INTELLECTUAL PROPERTY RIGHTS**

10.1 The intellectual property rights including (without limitation) copyrights and the trade and service marks utilised by Execmail during the term of this agreement, shall remain the property of Execmail or Execmail's licensors and, save as provided herein, nothing contained in this Agreement shall be construed to confer on the Customer any rights or licences in such intellectual property rights.

10.2 Should Execmail be required to develop any computer code, data, documents, presentations, solutions design, web site or any application ("the work"), then all intellectual property rights in and to such work shall vest exclusively in Execmail. To the extent that intellectual property rights in the work vests, for whatever reason, in the Customer, the Customer hereby agrees to assign all such intellectual property rights to Execmail, which hereby accepts such assignment.

10.3 Save as provided for in this agreement, any license granted to the Customer in terms of this agreement shall be for singular user only. The Customer shall be obliged to pay a license fee for multiple use.

10.4 The Customer shall not modify or use any software, computer code, data, documents, presentations, solutions design, web site or any application licensed to it in terms of this agreement, to create a derivative work without Execmail's prior written consent.

## **11 DURATION OF THIS AGREEMENT**

The agreement as contained hereinabove shall commence on the commencement date and shall continue for a period as determined in the User Information Form as completed by the Customer.