

## **MASTER SERVICES AGREEMENT**

entered into between

**Syrex (Pty) Ltd**

**(Registration No. 2013/076869/07)**

**(“Syrex”)**

**Physical Address: Curzon Place, Turnberry Office Park,  
48 Grosvenor Road, Bryanston**

**Postal Address: Suite No 176, Private Bag X51, Bryanston 2021**

**Telefax: 086 127 9739**

**Email: info@syrex.cc**

**And**

**(Registration No.            )**

**(“Subscriber”)**

**Physical Address:**

**Postal Address:**

**Telefax:**

**Email:**

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### SCHEDULES

#### PRODUCT SCHEDULES

## 1. INTERPRETATION

In this Agreement:

- 1.1 In this Agreement, clause headings are for convenience and shall not be used in its interpretation and, unless the context clearly indicates a contrary intention:
- 1.2 an expression which denotes any gender includes the other gender; a natural person includes an artificial or juristic person and vice versa; the singular includes the plural and vice versa;
- 1.3 the following expressions shall bear the meanings assigned to them below and cognate expressions bear corresponding meanings:

<b>"this Agreement"</b>	this document together with all Schedules attached hereto, as may be amended from time to time
<b>"Business Day"</b>	any day other than a Saturday, Sunday or official public holiday as recognised in the Republic of South Africa
<b>"Commencement Date"</b>	in respect of each Schedule, the commencement date set out therein, or if there is no commencement date set out therein, or the date on which the product or support service is activated
<b>"Documentation"</b>	the user manuals and other technical and related material, supplied by Syrex to the Subscriber and which Documentation relates to the Products
<b>"EULA"</b>	an End User Licence Agreement, to be completed and signed by the Subscriber, in respect of the Subscriber's use of the Product, if applicable, which shall be attached to and form part of the relevant Schedule
<b>"Normal Business Hours"</b>	08:00 to 17:00 on a Business Day
<b>"Parties"</b>	Syrex and the Subscriber and <b>"Party"</b> shall be either one of them as the context may indicate
<b>"Product"</b>	any subscription services, computer hardware or software products that are provided, whether by way of a sale or rental, by Syrex to the Subscriber in terms of this Agreement, which shall be described in a Quotation or Schedule, whichever is applicable
<b>"Quotation"</b>	the quotation to be compiled by Syrex and signed by the Subscriber, where a Schedule is not applicable, which contains the specific details of the relevant Product
<b>"Schedule"</b>	the schedule to be compiled by Syrex and signed by the Subscriber, where applicable, which contains the specific details of the relevant Product, and the additional terms and conditions applicable thereto, which, as and when they are executed, shall be attached hereto and numbered as <b>Schedule 1, 2, 3</b> etc.

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<b>"SLA"</b>	a Service Level Agreement which shall, if applicable, be attached to the relevant Schedule and which shall contain details of the qualitative and quantitative levels of service to be provided by Syrex to the Subscriber in connection with the Product
<b>"Signature Date"</b>	the date of signature of this Agreement by the Party which signs it last in time
<b>"Specifications"</b>	the Specifications with which the Products are to comply, as agreed between the Parties and recorded in the relevant Schedule
<b>"Support Services"</b>	The general support services to be provided by Syrex to the Subscriber in respect of the relevant Product, as more fully described in this Agreement and the relevant Schedule, if applicable
<b>"VAT"</b>	value added tax levied in terms of the Value Added Tax Act, 89 of 1991, as amended
<b>"Vendor"</b>	the Vendor of the Product, as may be applicable in the context

- 1.4 any reference to any statute, regulation or other legislation shall be a reference to that statute, regulation or other legislation as at the Signature Date, and as amended or substituted from time to time;
- 1.5 if any provision in a definition is a substantive provision conferring a right or imposing an obligation on any Party then, notwithstanding that it is only in a definition, effect shall be given to that provision as if it were a substantive provision in the body of this Agreement;
- 1.6 where any term is defined within a particular clause other than this clause 1 that term shall bear the meaning ascribed to it in that clause wherever it is used in this Agreement;
- 1.7 where any number of days is to be calculated from a particular day, such number shall be calculated as excluding such particular day and commencing on the next day. If the last day of such number so calculated falls on a day which is not a Business Day, the last day shall be deemed to be the next succeeding day which is a Business Day any reference to days (other than a reference to Business Days), months or years shall be a reference to calendar days, months or years, as the case may be;
- 1.8 the use of the word "including" followed by a specific example/s shall not be construed as limiting the meaning of the general wording preceding it and the rule shall not be applied in the interpretation of such general wording or such specific example/s;

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1.9 the terms of this Agreement having been negotiated, the contra proferentem rule shall not be applied in the interpretation of this Agreement.

**2. INTRODUCTION**

2.1 Syrex is, inter alia, the provider of certain customised information technology products and services.

2.2 The Subscriber requires Syrex, and Syrex is willing, to provide to the Subscriber, the Products on the terms and conditions set out in this Agreement.

**3. DURATION**

3.1 This Agreement shall commence on the Signature Date and shall continue in force until all Schedules executed hereunder have terminated.

3.2 Each Schedule shall commence on the Commencement Date and shall, subject to the other provisions of this Agreement, endure for the duration set out in such Schedule.

3.3 Subject to any provisions to the contrary which may be contained in a Schedule, either Party may terminate a Schedule by furnishing the other with not less than 3 (three) calendar months, prior to the anniversary of the initial period, written notice of such intention ("Notice of Termination"), provided that unless otherwise provided for in the Schedule, an early termination penalty shall immediately become due and payable by the Subscriber to Syrex ("Penalty"), which Penalty shall be equal to:

3.3.1 any amounts pre-paid by Syrex to the Vendor of the relevant Product to which the Schedule being terminated relates; and

3.3.2 any amounts which Syrex may become liable to pay to the Vendor of the relevant Product to which the Schedule being terminated relates.

**4. PROVISION OF PRODUCTS**

4.1 In the event that the Subscriber requires products, whether they are to be purchased or rented, which Syrex is able to provide, by way of a sale or rental, to the Subscriber in terms of this Agreement, Syrex shall provide the Subscriber with a Quotation therefore or, if applicable, compile a Schedule, and send same to the Subscriber for execution.

4.2 Unless otherwise specified in a Quotation or Schedule, a Quotation or Schedule, as applicable, shall remain open for acceptance by the Subscriber for a period of 7 (Seven) Business Days from the date of receipt thereof by the Subscriber, whereafter it shall expire and no longer be capable of acceptance by the Subscriber, unless otherwise agreed in writing by Syrex.

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- 4.3 Once signed by the Subscriber, the Quotation or Schedule shall only become binding on Syrex upon receipt thereof by Syrex, provided it is accepted within 7 (Seven) Business Days from the date of receipt thereof by the Subscriber, whereupon it shall be deemed to form an integral part of this Agreement.
- 4.4 To the extent that a Quotation or Schedule is executed:
- 4.4.1 the Product described therein shall be provided to the Subscriber on the terms and conditions set out in this Agreement and/or the relevant manufacturers warranty or Schedule;
- 4.4.2 a return credit will only be considered, in the sole and absolute discretion of Syrex, if the Product is returned complete and with the original packaging within 5 (five) days of delivery thereof by Syrex;
- 4.4.3 the Subscriber acknowledges and agrees that:
- 4.4.3.1 Syrex gives no warranties in respect of the Product other than those which may be provided by the Manufacturer, Quotation, Vendor or Schedule, if applicable;
- 4.4.3.2 it shall at all times use the Product in accordance with, and comply with the terms and conditions set out by the manufacturer or vendor, if any, and the Subscriber hereby indemnifies Syrex against all claims, losses, damages or expenses suffered or incurred by Syrex as a result of or attributable to the Subscriber's use of the Product and/or a breach by the Subscriber of the provisions of the manufacturer or vendor; and
- 4.4.3.3 nothing contained in this Agreement shall be construed as granting the Subscriber any right, title or interest to use the name, trade marks, copyright or intellectual property right used or embodied in or in connection with the Product, and the Subscriber undertakes not to perform any act which would injure the reputation or goodwill of Syrex or the Vendor attaching thereto, or which would prejudice the rights of Syrex or the Vendor in and to same;
- 4.4.4 in addition to the terms and conditions set out by the manufacturer or vendor the Subscriber shall not attempt to and shall not, whether as proprietor, partner, director, shareholder, natural or juristic person, association of persons, Employee, consultant, contractor, financier, agent, licensor,

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distributor, representative, assistant or in any other capacity whatsoever, whether directly or indirectly:

- 4.4.4.1 use the Product otherwise than as per the manufacturer's or vendor's policies ;
- 4.4.4.2 provide, disclose, divulge or in any other manner make available or permit use of the Product by any third party
- 4.4.4.3 use the Product in a manner which may jeopardise Syrex's ICASA license or in any manner which may be in contravention of the law.

## 5. **SUPPORT SERVICES**

5.1 In addition to any Support Services to be provided by Syrex to the Subscriber as may specifically be described in a Schedule, for all Products provided by Syrex to the Subscriber in terms of this Agreement, Syrex shall provide general support services to the Subscriber in order to assist the Subscriber with problem solving and workarounds in regard to the Subscribers use of the Products via Syrex and remote assistance which support shall be charged for by Syrex, at its then current rates, on a time and material basis. The applicable method of support to be provided will be in the sole discretion of Syrex, depending on the complexity and urgency of the problem, as assessed and decided upon by Syrex. For this purpose, Syrex shall maintain a telephonic and e-mail help desk, which help desk shall be available during Normal Business Hours only. The help desk can be contacted at the following numbers/email:

Tel: 08611 79739

Email: helpdesk@syrex.co.za

5.2 Syrex shall be entitled, at its sole discretion, to procure the provision of the Support Services by the relevant Vendor, or any contractor, subcontractor or affiliate appointed by Syrex for such purpose; provided that Syrex shall, subject to the other provisions of this Agreement, remain ultimately responsible to the Subscriber therefore.

5.3 It is specifically recorded and agreed between the parties that the Support Services to be provided in terms of this Agreement, as described in clause 5.1, are limited to workarounds and assistance in the use and/or operation of the Products and Syrex shall not be obliged to provide any other Support Services unless otherwise provided for in a Schedule. Syrex shall not be obliged to provide the following services, as well as any excluded services as may described in a Schedule, and same shall fall outside of the scope of the Support Services to be provided by Syrex in terms of this Agreement:

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- 5.3.1 services which may be required due to any malfunction of whatsoever nature in the Subscribers information technology system, including but not limited to power failure, loss of connectivity, faulty wiring and the like;
  - 5.3.2 installation, support, maintenance and configuration of any services, software, hardware, attachments, equipment, peripherals, systems, network devices or any other devices not supplied by Syrex to the Subscriber in terms of this Agreement;
  - 5.3.3 attending on faults or errors in the Products which are caused by the utilisation thereof outside of the Documentation and/or Syrex/Vendor's recommendations;
  - 5.3.4 installing, joining or configuring workstations, laptops, printers and/or email accounts, and the like; and
  - 5.3.5 reporting faulty telecommunication lines, where such lines do not form part of the Products.
- 5.4 To the extent that the Subscriber requires Syrex to provide any of the excluded services as described in clause 5.2 or any other services, same shall be provided by Syrex in accordance with the provisions of a Quotation or Schedule to be executed in accordance with the provisions of clause 4.

6. **EXCUSED PERFORMANCE**

Syrex shall, to the best of its abilities, perform in accordance with the provisions of this Agreement, but shall not be liable for any loss (including but not limited to loss of data, profits and goodwill), liability, damages (whether direct, indirect or consequential) or expense of whatsoever nature and howsoever arising where Syrex's failure, delay or inability to perform its obligations in terms of this Agreement is due to:

- 6.1 the Subscriber's failure to perform, or delay in performing its obligations in terms of this Agreement;
- 6.2 circumstances beyond Syrex's reasonable control or events that constitute an event of force majeure in terms of clause 23;
- 6.3 all telecommunications infrastructure and communication line faults;
- 6.4 power failure or power interruption at the Subscriber's premises;
- 6.5 failure or unreasonable delay by the Subscriber to report faults/problems to Syrex;
- 6.6 the Subscriber making changes to its information technology system or environment or any portion thereof;

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- 6.7 the failure of any hardware, software programme, applications/s or any other computer systems (or any component thereof) of any third party on whom the Subscriber relies (whether directly or indirectly) to use the Products, and/or on which Syrex relies to provide the Products; and
- 6.8 loss or damage caused directly or indirectly by the negligent and/or incorrect use of the Products by the Subscriber;
- 6.9 diagnosis and/or rectification of problems not associated with the Products;
- 6.10 the suspension of the Products for maintenance, repair and improvements; provided that, where possible, Syrex shall provide the Subscriber with at least 24 (twenty four) hour's notice of any such suspension.
- 6.11 Troubleshooting and support of third party software/applications will be provided with best effort first line support but any advanced troubleshooting is to be handled by the third party application vendor.

**7. CONSIDERATION AND PAYMENT**

- 7.1 In consideration for:
  - 7.1.1 the Products provided by Syrex to the Subscriber in terms of this Agreement, the Subscriber shall pay to Syrex the amounts set out in the relevant Quotation or Schedule, in accordance with the provisions and on the appropriate date or within the appropriate time, contained therein;
  - 7.1.2 general support services provided by Syrex to the Subscriber during the previous month, as per the provisions of clause 5.1, the Subscriber shall pay Syrex as per the terms of the invoice.
- 7.2 Syrex shall, at the appropriate times as per the provisions of the relevant Quotation or Schedule, provide the Subscriber with an invoice setting out -
  - 7.2.1 the itemised amounts due by the Subscriber to Syrex;
  - 7.2.2 VAT on all amounts due by the Subscriber to Syrex; and
  - 7.2.3 the net amount due and payable by the Subscriber to Syrex in respect of each such invoice.
- 7.3 While Syrex undertakes to send an itemised invoice for all amounts due by the Subscriber to it, its failure to do so shall in no way effect the Subscribers contractual obligation to pay the amount so due on or before the first day of each month/due date.

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- 7.4 Unless otherwise clearly stipulated, all amounts payable by the Subscriber to Syrex in terms of this Agreement are inclusive of VAT and payable in advance. Any other statutory levies, taxes and imposts thereon from time to time shall be borne and paid by the Subscriber.
- 7.5 To the extent applicable, should the number of servers or devices such as workstations and laptops covered in this Agreement change, then Syrex shall be entitled to adjust the applicable costs accordingly, with immediate effect.
- 7.6 The Subscriber shall not under any circumstances be entitled to withhold payment of any amount due under this Agreement. In the event that the Subscriber fails to make due and timeous payment of any amount owing to Syrex under this Agreement:
- 7.6.1 Syrex shall be entitled to suspend, after 7 (seven) days of non payment, the availability of all or any of the Products or the provision of the Support Services, until such time as the Subscriber shall have paid to Syrex any outstanding amounts, including any interest which may have accrued thereon, in full; should payment not be effected within 14 (fourteen) days a full termination with penalties shall occur; and
- 7.6.2 such amount shall bear interest at the prime rate plus 2% calculated from the due date thereof until date of payment thereof has been received by Syrex in full. For the purposes of this clause 7, the prime rate shall mean the prime bank overdraft rate as charged by Syrex's bankers to its corporate customers in respect of overdraft facilities, calculated and compounded monthly in arrear, as certified by any manager of such bank whose appointment and designation it shall not be necessary to prove; and
- 7.6.3 Syrex shall be entitled to report such non-payment to a registered credit bureau and apply for the blacklisting of the Subscriber, and or the Subscriber's representatives where applicable, without giving notice thereof to the Subscriber.
- 7.7 Unless otherwise provided in a Schedule, Syrex shall be entitled, upon 1 (one) month's prior written notice to the Subscriber, to increase the fees payable by the Subscriber to it annually in accordance with the corresponding CPI increase (as published by Statistics SA) or in accordance with the increases applied by the Vendor, whichever is the higher, which increase shall be effective on 1 July each year, irrespective of the Commencement Date. In addition, Syrex shall be entitled, from time to time, to increase the fees payable by the Subscriber to it in accordance with exchange rate fluctuations upon prior written notice to the Subscriber.

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8. **SURETYSHIP**

- 8.1 It is recorded that the person who signs as Surety on the last page of this Agreement ("**Surety**"), by signing this Agreement simultaneously therewith binds himself as surety for and co-principal debtor with the Subscriber for the proper and punctual performance of all obligations which the Subscriber may owe to Syrex arising out of or in terms of this Agreement.
- 8.2 The Surety hereby renounces the benefits of the legal exceptions non numeratae pecuniae, exception non causa debiti, revision of accounts, errore calculi and all other legal exceptions which might or could be taken hereto and declares himself to be fully acquainted with the full meaning and effect of the same.
- 8.3 The provisions of this clause 8 shall remain of full force and effect notwithstanding the termination of this Agreement for whatsoever reason and however arising and the Surety's liability in terms of this suretyship shall only terminate on the date upon which the Subscriber's obligations in terms of this Agreement terminate.

9. **OBLIGATIONS OF THE SUBSCRIBER**

The Subscriber shall for the duration of this Agreement:

- 9.1 purchase its own hardware, software, server/s and all communications equipment required to use the Products, other than as may be agreed between the Parties and recorded in a Schedule;
- 9.2 ensure that its information technology environment conforms to any recommendation which may be provided to it by Syrex so as to ensure interoperability with the Products;
- 9.3 not modify or alter the Products without prior written notice to Syrex;
- 9.4 provide its own security policies, systems and procedures, so to ensure the integrity of its computer, accounting and other systems, including the Products, provided that same shall not affect or interfere with the functionality of the Product;
- 9.5 comply with any recommended security specifications, provided it is consistent with the Subscriber's security policy, required by Syrex from time to time and any other specifications reasonably required by Syrex from time to time so as to ensure the ongoing viability, security and integrity of the Products:
- 9.6 use the Products in accordance with the product's documentation and in the manner and in accordance with Syrex's recommendations from time to time;
- 9.7 use the Products solely for the purpose and in the manner for which they are designed or intended;

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- 9.8 designate an employee to request the required Support Services;
- 9.9 be responsible for the protection of its data, confidential and proprietary information;
- 9.10 ensure that its own equipment is insured and ensure that its data is suitably backed-up;
- 9.11 ensure that Products are used in compliance with the terms and conditions contained in this Agreement;
- 9.12 not make any warranty or representation in respect of the Products other than what has been specified by the vendor or manufacturer;
- 9.13 at reasonable times and on request, provide Syrex with access to its premises and information technology environment for the purposes of performing the Support Services, inspecting, testing, examining and/or correcting the Products and monitoring the performance by the Subscriber of its obligations hereunder;
- 9.14 at its own expense, comply with the provisions of any law, including but not limited to the ICASA Rules and other applicable legislation, which may be applicable to the possession and/or use of the Products and shall apply for and obtain any licenses, certificates, exemptions or the like which may be required in connection with the use or possession thereof and shall at all times comply with all the requirements of law in that regard;
- 9.15 take all necessary precautions to safeguard the Products from any loss, destruction or damage;
- 9.16 immediately notify Syrex of any defects or other faults in the Products and thereafter, if necessary, assist Syrex in tracing and locating such fault or defect;
- 9.17 not commit nor attempt to commit any act or omission which directly or indirectly:
  - 9.17.1 may damage in any way Syrex's technical infrastructure or any part thereof;
  - 9.17.2 may impair or preclude Syrex from being able to provide the Product in a reasonable and business like manner;
  - 9.17.3 constitutes an abuse or malicious misuse of the Products; and/or
- 9.18 unless otherwise agreed with Syrex, be responsible for all maintenance of the Products and/ or any equipment used in conjunction with the Products.

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10. **NO WARRANTY AND LIMITATION OF LIABILITY**

- 10.1 Syrex warrants to the Subscriber that the Products shall, on the Commencement Date, comply with the Documentation and/or Specifications, if applicable, and shall be fit for the purpose for which the Subscriber intends to use them.
- 10.2 Save as provided for in clause 10.1 or as may be expressly provided for in a Schedule, or otherwise, the Products and Support Services are provided by Syrex to the Subscriber on an "as is" basis. Syrex makes no further warranties whether express, implied in law or residual, including without limitation, the warranties of merchantability, all of which are excluded.
- 10.3 The Subscriber agrees and acknowledges the Products may be supplied with a Vendor's warranty and/or EULA, which warranty and/or EULA shall apply exclusively between the relevant Vendor and the Subscriber, and the Subscriber shall have no claim against Syrex in connection therewith. Syrex shall not be responsible for repair or replacement of any faulty or defective Products, save to the extent as may be agreed upon between the Parties in writing.
- 10.4 Each Party's maximum total liability for loss, liability or damage in terms of or arising out of this Agreement, howsoever arising or caused, shall be limited to direct damages proven, which amount shall not exceed the aggregate of the fees paid by the Subscriber to Syrex for the 6 (six) month period preceding that in which the cause of action arose.
- 10.5 In no event shall either Party be liable to the other for any incidental consequential, or any other indirect loss or damage (including but not limited to loss of profits or revenues and loss of data), nor for exemplary or punitive damages. These limitations of liability shall apply regardless of the form of action, whether in contract, delict or otherwise and regardless of whether either Party has been advised as to the possibility of such damages and/or losses occurring.

11. **RISK, OWNERSHIP AND INSURANCE**

- 11.1 The Subscriber shall bear the risk in respect of any equipment which Syrex may place at its premises pursuant to the implementation of this Agreement, and shall, if it so requested by Syrex, be responsible for the insurance thereof.
- 11.2 In the event that the Subscriber's equipment is located on Syrex's premises pursuant to the implementation of this Agreement, Syrex shall ensure that appropriate security measures are in force in order to safeguard such equipment, however all risk in respect thereof shall remain with the Subscriber and Syrex shall not be liable for any loss or damage thereto, irrespective of the manner in which such loss occurred. Physical access to such equipment will be granted to the Subscriber, upon no less than 24 (twenty four) hours prior notice to Syrex, during Normal Business Hours.

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11.3 Syrex shall retain right, title and ownership in and to the Products at all material times of the Agreement:

11.3.1 should the Products be leased/rented to the Subscriber by Syrex; and/ or

11.3.2 until all the amounts set out in the relevant Quotation or Schedule have been paid to Syrex by the Subscriber in full,

and Syrex shall be entitled to collect, on reasonable notice to the Subscriber, any such Products should the Subscriber be in breach of this Agreement or should it terminate for any reason whatsoever.

11.4 Notwithstanding clause 11.3, the Subscriber shall, at its own expense, maintain and effect such insurance policies over the Products, with a reputable third party insurance company, as it is required to hold under the applicable Quotation or Schedule, or as advised by Syrex from time to time.

## 12. **BOOKS AND RECORDS**

All information, data, books and records of either Party ("**Owner**") (irrespective of the medium upon which same are stored), and which come into the possession of or under the control of the other Party, pursuant to this Agreement shall be deemed to be and shall remain the exclusive property of the Owner. The other Party shall on termination of this Agreement for any reason whatsoever and in any event on demand the Owner, and at the Owner's election, either destroy or return same to the Owner and shall not retain any copies thereof or extracts there from.

## 13. **COPYRIGHT, INTELLECTUAL PROPERTY AND TRADEMARKS**

13.1 Neither Party shall acquire any right, title or interest (without the prior written consent of the other) entitling it to use the name, service marks, trademarks or logos of the other. The Parties undertake in favour of one another not to perform any act which would injure the reputation or goodwill attaching to their respective names and trademarks or which would prejudice their rights in and to such names and trademarks.

13.2 All copyright and other intellectual property rights vested in any information, data, books, records, and/or Documentation furnished by Syrex to the Subscriber, and/or developed or created by Syrex for the Subscriber pursuant to and in terms of this Agreement, shall, unless otherwise agreed between the Parties in writing, be the property of and remain vested in Syrex or the Vendor, as applicable, and the Subscriber shall only be entitled to utilise same for the purposes of the use and operation of the Products in terms of this Agreement, and shall not publish, circulate or copy same for use by any third party whomsoever.

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14. **TRADEMARK INFRINGEMENT**

14.1 The Subscriber shall forthwith notify Syrex if any claim or demand is made or action brought against it for infringement or alleged infringement of any intellectual property vested in the Products.

14.2 In the event that Syrex owns the intellectual property in the relevant Product:

14.2.1 Syrex shall, at its own expense, conduct any litigation arising from any such claim, demand or action brought and all negotiations for settlement and the Subscriber hereby agrees to grant to Syrex the exclusive control of any such litigation or negotiations for settlement;

14.2.2 the Subscriber shall afford to Syrex all reasonable assistance for the purpose of contesting any claim or demand made or action brought for infringement or alleged infringement of any intellectual property rights vested in and to the Products;

14.2.3 Syrex may, at its own expense:

14.2.3.1 modify any or all of the intellectual property so as to avoid the infringement or the alleged infringement; or

14.2.3.2 take such other action as Syrex deems reasonable to avoid or settle such claim, demand or action,

and same shall be the sole and exclusive remedy available to the Subscriber in the event of such claim, demand or action being made.

14.3 In the event that the intellectual property in the relevant Product is owned by a Vendor, Syrex undertakes, to the extent that it has been granted such protection in terms of its agreement with the Vendor, to do all such things as may be necessary to enforce the intellectual property infringement indemnity and/or to protect or enforce its rights and/or the Subscribers rights in respect thereof.

15. **CONFIDENTIALITY**

Notwithstanding the cancellation or termination of this Agreement for any reason whatsoever, the Parties ("**Receiving Party**") shall not at any time after the conclusion of this Agreement, and without the other Party's ("**Disclosing Party**") prior consent thereto, disclose to any person or use in any manner whatsoever the Disclosing Party's confidential information, provided that the Receiving Party may disclose the Disclosing Party's confidential information:

15.1 to the extent required by law (other than in terms of a contractual obligation of the Disclosing Party);

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- 15.2 to, and permit the use thereof by its Employees, representatives and professional advisers to the extent strictly necessary for the purposes of implementing or enforcing this Agreement, or obtaining professional advice or conducting its business, it being specifically agreed that any disclosure or use by any such Employee, representative or adviser of such confidential information for any other purpose shall constitute a breach of this clause 15 by the Receiving Party; and
- 15.3 the provisions of this clause 15 cease to apply to any confidential information of a Party which:
- 15.3.1 is or becomes generally available to the public other than as a result of a breach by the Receiving Party of its obligations in terms of this clause 15;
- 15.3.2 is also received by the Receiving Party from a third party who did not acquire such confidential information subject to any duty of confidentiality in favour of the Disclosing Party.
- 15.4 For the purposes of this clause 15, “confidential information” shall mean any information disclosed by either Party to the Receiving Party prior to the conclusion of this Agreement, in terms of this Agreement or otherwise in connection with this Agreement and which is not available to the public or competitors of the Disclosing Party during the ordinary course of business.

16. **NON SOLICITATION**

The Subscriber shall not at any time, during this Agreement, nor for a period of 2 (two) years after termination of this Agreement for any reason whatsoever, either for itself or as the agent of anyone else, persuade, induce, solicit, encourage or procure any Employee or authorised representative of Syrex to:

- 16.1 become employed by or interested in any manner whatever in any business, firm, undertaking or company, directly or indirectly in competition with the business carried on by Syrex;
- 16.2 terminate his employment with Syrex.

17. **MANAGEMENT LIAISON**

- 17.1 The Parties shall at all times co-operate with one another to facilitate the implementation of this Agreement.
- 17.2 Each Party shall nominate in writing one representative who will be responsible for overseeing the day-to-day practical implementation of this Agreement, provided that such representative shall not have the authority to bind the Party appointing him. The representative of each Party as at the Signature Date is set out in the Schedule.

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17.3 The representatives appointed in terms of clause 17.2 shall liaise with one another and in the event of problems arising in relation to the implementation of this Agreement, shall meet with each other, with a view to achieving a mutually acceptable solution to such problem.

**18. REFERRAL OF SERVICE DISPUTES**

18.1 Any dispute which arises under this Agreement in connection with the implementation of this Agreement shall, if so required by either Party by giving written notice to the other, be submitted and referred to the representatives appointed in terms of clause 17.2 for consideration and resolution.

18.2 Should:

18.2.1 the representatives resolve the dispute within five days after it being referred to them, such resolution shall, subject to the remaining provisions of this clause 18, be deemed to be the resolutions of the Parties in resolving that dispute; or

18.2.2 the representatives fail to resolve such dispute as envisaged in 17.2 or, should any Party dispute the resolution of the service dispute reached by the representatives, that dispute shall, if so required by any Party by giving written notice to the other, be submitted and referred to a manager/director of Syrex and a manager/director of the Subscriber for consideration and resolution.

18.3 Should any dispute be referred to a manager/director of Syrex and a manager/director of the Subscriber in terms of clause 18.2.2, then neither Party shall institute any formal dispute resolution proceedings, regarding that dispute unless and until:

18.3.1 the relevant manager/director of Syrex and manager/director of the Subscriber as aforesaid have reached agreement, in writing, that continued negotiations are unlikely to resolve the dispute concerned;

18.3.2 a period of 15 (Fifteen) days have expired after the date on which that dispute was so referred as aforesaid; or 15 (Fifteen) days prior to the date on which the relevant claim forming the subject matter of that dispute is to prescribe.

**19. ARBITRATION**

19.1 After fully complying with the dispute resolution procedure set out in clause 18, in respect of any dispute (if applicable), any disputes arising from or in connection with this Agreement shall if so required by either Party by giving written notice to that effect to the other be finally resolved in accordance with the rules of the Arbitration Foundation of Southern Africa (“**AFSA**”) by an arbitrator or arbitrators

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appointed by AFSA. There shall be no right of appeal as provided for in article 22 of the aforesaid rules.

19.2 Each Party to this Agreement:

19.2.1 expressly consents to any arbitration in terms of the aforesaid rules being conducted as a matter of urgency; and

19.2.2 irrevocably authorises the other to apply, on behalf of all Parties to such dispute, in writing, to the secretariat of AFSA in terms of article 23(1) of the aforesaid rules for any such arbitration to be conducted on an urgent basis.

## 20. **EXCLUSIVITY**

It is recorded that Syrex supplies the Products to third parties that may carry on the same or substantially similar business to that carried on by the Subscriber from time to time. The Subscriber acknowledges and agrees that Syrex, in its sole and absolute discretion, may continue to supply the Products to such third parties.

## 21. **BREACH**

21.1 Should either Party ("**the Defaulting Party**"):

21.1.1 commit a material breach of any provision of this Agreement which is incapable of being remedied by the payment of money;

21.1.2 commit a breach of any provision of this Agreement and fail to remedy such breach within 7 (Seven) days of receiving written notice from the other Party ("**Aggrieved Party**") requiring it to do so;

21.1.3 be sequestrated or placed in liquidation or under judicial management, whether provisionally or finally and whether voluntarily or compulsorily;

21.1.4 commit any act of insolvency;

21.1.5 have a judgement taken against it and fail to take steps to satisfy or rescind such judgement within thirty days after the granting of such judgement;

21.1.6 then and in any of those events the Aggrieved Party shall be entitled, without prejudice to its other rights in law, to cancel this Agreement, or the Schedule to which the breach specifically relates, or to claim immediate specific performance of all of the Defaulting Party's obligations whether or not due for performance, in either event without prejudice to the Aggrieved Party's right to claim damages, provided that in the event of a breach by the Subscriber, Syrex shall be entitled to the additional remedies set forth in clause 7.6.

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21.2 For the avoidance of doubt it is recorded that a breach of an SLA shall not constitute a material breach of this Agreement as contemplated in clause 21.1.1, unless otherwise provided for in the applicable Schedule.

## 22. RIGHTS ON TERMINATION

Notwithstanding any other provision of this Agreement, on termination of this Agreement for any reason whatsoever ("**Termination Date**"):

22.1 any amounts due to Syrex shall immediately become payable to Syrex and the Subscriber shall forthwith make payment of same to Syrex by not later than 7 (Seven) days from the Termination Date;

22.2 the Subscriber shall discontinue its use of the Products with effect from the Termination Date, and immediately return all Products owned by Syrex and/ or any Products that are not fully paid for by the Subscriber to Syrex, in good working condition, to Syrex;

22.3 the Subscriber shall, at the election of Syrex, either return to Syrex or destroy all Documentation provided to it by Syrex.

## 23. FORCE MAJEURE

23.1 Should a Party ("**Affected Party**") be prevented from fulfilling any of its obligations in terms of this Agreement as a result of an Event of Force Majeure, then:

23.1.1 those obligations shall be deemed to have been suspended to the extent that and for so long as the Affected Party is so prevented from fulfilling them and the corresponding obligations of the other Party ("**Unaffected Party**") shall be suspended to the corresponding extent;

23.1.2 the Affected Party shall promptly notify the unaffected Party in writing of such event of force majeure and such notice shall include an estimation of the approximate period for which the suspension in terms of clause 23.1.1 will endure. Such estimate shall not be binding on the Affected Party; and

23.1.3 the duration of this Agreement, or the relevant Schedule, as well as each period within which and each date by which any obligation is required to be performed in terms of this Agreement shall be extended or postponed, as the case may be, by the period of suspension in terms of clause 23.1.1.

23.2 Should the Affected Party partially or completely cease to be prevented from fulfilling its obligations by the Event of Force Majeure, the Affected Party shall immediately give written notice to the unaffected Party of such cessation and the Affected Party shall, as soon as possible, fulfil its obligations which were previously suspended; provided that in the event and to the extent that fulfilment is no longer

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possible or the other Party has given written notice that it no longer requires such fulfilment, the Affected Party shall not be obliged to fulfil its suspended obligations and the Unaffected Party shall not be obliged to fulfil its corresponding obligations.

23.3 Should an Event of Force Majeure continue for more than 30 (Thirty) consecutive days after the date of the notice referred to in clause 23.1.2 and notice of cessation in terms of clause 23.2 not have been given, then the Unaffected Party shall be entitled (but not obliged) to terminate this Agreement by giving not less than 30 (Thirty) days written notice to the Affected Party to that effect; provided that any such notice of termination shall be deemed not to have been given if a notice of cessation in terms of clause 23.2 is received by the Unaffected Party prior to the expiry of such 30 (Thirty) day period.

23.4 An "Event of Force Majeure" shall mean any event or circumstance whatsoever which is not within the reasonable control of the Affected Party including *vis major*, *casus fortuitus*, any act of God, strike, theft, fire, explosion, riot, insurrection or other civil disorder, war (whether declared or not) or military operations, international restrictions, any requirement of any international authority, any requirement of any government or other competent local authority, any court order, export control and shortage of transport facilities.

## 24. NOTICES

24.1 The Parties choose *domicilium citandi et executandi* ("**domicilium**") for all purposes relating to this Agreement, including the giving of any notice, the payment of any sum, the serving of any process, the addresses as set out on the cover page of this Agreement.

24.2 Either Party shall be entitled from time to time, by giving written notice to the other, to vary its physical domicilium to any other physical address (not being a post office box or *poste restante*) within the Republic of South Africa, to vary its postal domicilium to any other postal address within the Republic of South Africa and to vary its facsimile domicilium or email domicilium to any other facsimile number.

24.3 Any notice given or payment made by either Party to the other ("**Addressee**") which is:

24.3.1 delivered by hand between the hours of 09:00 and 17:00 on any Business Day to the Addressee's physical domicilium for the time being shall be deemed to have been received by the Addressee at the time of delivery;

24.3.2 posted by prepaid registered post to the Addressee's postal domicilium for the time being shall be deemed (unless the contrary is proved by the Addressee) to have been received by the Addressee on the fourteenth day after the date of posting.

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24.3.3 successfully transmitted by facsimile or email to the Addressee's facsimile domicile or email domicile for the time being shall be deemed (unless the contrary is proved by the Addressee) to have been received by the Addressee on the day immediately succeeding the date of successful transmission thereof.

24.4 This clause 24 shall not operate so as to invalidate the giving or receipt of any written notice which is actually received by the Addressee other than by a method referred to in this clause 24.

24.5 Any notice or communication required or permitted to be given in terms of this Agreement will be valid and effective only if it is in writing, the term "writing" to include communications by facsimile and e-mail.

## 25. ORDER OF PRECEDENTS

In the event that there is a conflict between the provisions of this Agreement and any Schedule, the provisions of the relevant schedule shall take precedence.

## 26. GENERAL

26.1 This Agreement constitutes the sole record of the Agreement between the Parties in regard to the subject matter thereof.

26.2 The Subscriber shall not be entitled to cede, assign or transfer all or any of its rights and/or obligations in terms of this Agreement, without the prior written consent of Syrex, which consent shall not be unreasonably withheld.

26.3 Syrex shall be entitled to cede, assign or transfer all or any of its rights and/or obligations in terms of this Agreement, upon 1 (One) month's prior written notice to the Subscriber.

26.4 If any provision hereof is held to be illegal, invalid or unenforceable for any reason, such provision shall be deemed to be *pro non scripto*, but without affecting, impairing or invalidation any of the remaining provisions of this Agreement which shall continue to be of full force and effect.

26.5 Neither Party shall be bound by any representation, express nor implied term, warranty, promise or the like not recorded herein or reduced to writing and signed by the Parties or their representatives.

26.6 No addition to, variation, or agreed cancellation of this Agreement shall be of any force or effect unless in writing and signed by or on behalf of the Parties.

26.7 No indulgence which either Party may grant to the other shall constitute a waiver of any of the rights of the grantor, unless reduced to writing and signed by both Parties.

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26.8 The Subscriber hereby warrants that it has the capacity to and is authorised to conclude this Agreement and that upon signature this Agreement will, and will continue to, bind it in all respects.

26.9 This agreement may be entered into in any number of counterparts, each of which when executed and delivered shall be an original, but all the counterparts shall together constitute one and the same instrument.

SIGNED at \_\_\_\_\_ on \_\_\_\_\_ 2015

For and on behalf of

1. Witness

Signature

2. Witness

Name of Signatory

Designation of Signatory

SIGNED at \_\_\_\_\_ on \_\_\_\_\_ 2015

By my signature hereunder, I agree to be bound by the provision of clause 8.

Name of Surety \_\_\_\_\_

Signature \_\_\_\_\_

Capacity: \_\_\_\_\_

SIGNED at \_\_\_\_\_ on \_\_\_\_\_ 2015

For and on behalf of

Syrex (Pty) Ltd

3. Witness

Signature

4. Witness

Name of Signatory

Designation of Signatory

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