

1. DEFINITIONS

- 1.1 **"Africa Weather"** – means Weather Intelligence Systems Proprietary Limited, registration number 2004/005499/07, a private company incorporated in the Republic of South Africa trading as Africa Weather;
- 1.2 **"Agreement"** – means these terms and conditions of service, including all the Annexes, as amended from time to time, appended hereto;
- 1.3 **"Business Day"** – means any day other than a Saturday, Sunday or gazetted national public holiday in the Republic of South Africa;
- 1.4 **"Client"** – means the person (whether natural or juristic) identified in Annexure A;
- 1.5 **"Commencement Date"** - the date at which this Agreement takes effect as set out in Annexure B hereto, or such other date as agreed between the Parties in writing;
- 1.6 **"Duration"** – means the duration or term of the Agreement as set out in Annexure B hereto, or such other duration or term as agreed between the Parties in writing;
- 1.7 **"Parties"** – means the parties to this Agreement, being the Africa Weather and the Client;
- 1.8 **"POPI Act"** – means the Protection of Personal Information Act No. 4 of 2013, as may be amended from time to time; and
- 1.9 **"Services"** – means the services to be rendered by Africa Weather to the Client in terms of this Agreement, as more fully set out in Annexure B of this Agreement, and reviewable in terms of 4.2.

2. RECORDAL AND APPOINTMENT

The Client hereby appoints Weather Intelligence Systems (Pty) Ltd t/a Africa Weather to act as its service provider in rendering the detailed services set out in Annexure B of this Agreement ("**Services**"), subject to further terms and conditions recorded in this Agreement.

3. DURATION

- 3.1 This Agreement shall commence on the Commencement Date and endure for the Duration of this Agreement, unless terminated earlier in accordance with this Agreement.
- 3.2 The Parties agree that this Agreement shall automatically renew (on the same terms and conditions) upon the expiry of the Duration (including any renewal period) for successive periods equal to the initial period, unless either Party submits notice of their intention not to renew the Agreement in writing to the other Party within 14 (fourteen) Business Days prior to the expiry of such period.

- 3.3 Notwithstanding 3.1, either Party shall be entitled to terminate this Agreement by issuing 1 (one) month's written notice to the other Party. In this event, the Agreement shall terminate on the last calendar date from the date of notice and the Client shall be liable to any unsettled accrued fees or damages.
- 3.4 Without prejudice to any rights and remedies that may have accrued, either Party may terminate this Agreement with immediate effect upon written notice if the other Party –
- 3.4.1 ceases to trade (either in whole, or as to any part involved in the performance of this Agreement); or
- 3.4.2 has a court order issued against it placing it under final liquidation. For the avoidance of doubt, where a Party is undergoing business rescue in accordance with the Companies Act No. 71 of 2008, and for so long as that Party is still complying with its obligations under this Agreement, the other Party may not terminate the Agreement in accordance with this clause 3.4.2.

4. THE SERVICES

- 4.1 Africa Weather shall perform and render the Services to the Client in accordance with the terms and conditions of this Agreement, as further set out in Annexure B of this Agreement. Africa Weather shall not be required to perform or render any Services not set out in Annexure B of this Agreement, unless otherwise expressly agreed to in writing between the Parties.
- 4.2 If either of the Parties wishes to make a change, modification or adjustment to any element of the Services, the Party who requires the change will submit a written request to the other Party, setting out the details thereof and Africa Weather will investigate the feasibility, cost implications and impact of the change request on the Services and notify the Client of the results of this feasibility study.
- 4.3 Should the Client decide to proceed with the requested change after considering the feasibility study, the Client shall provide Africa Weather with a written instruction to proceed with that change on the basis set out in the feasibility study. Such instruction shall be incorporated into the Services Schedule in Annexure B of this Agreement, which is intended to supersede previous Services signed by the Parties for the Service/s in question.
- 4.4 No change will be implemented until such Services have been signed by both Parties. If the Parties cannot agree upon the necessary amendments, the change request will not be implemented.

5. PROHIBITION ON RESALE OF SERVICES

Unless agreed in writing between Africa Weather and the Client, the Client shall not resell any of the Services.

6. SUSPENSION OF SERVICES

6.1 Africa Weather may, on 7 (seven) Business Days prior written notice, lawfully suspend all or part of the Services until further notice to the Client if, in Africa Weather's reasonable discretion – the continued provision of the Services will cause Africa Weather to breach an applicable law; the Client is in breach of any material provision of this Agreement and such breach remains unremedied notwithstanding prior written notice of breach from Africa Weather; or any overdue Invoice for charges billed by Africa Weather to the Client remains unpaid.

6.2 Where Africa Weather has suspended the Services in terms of clause 6.1, and the Client has remedied the applicable breach to the reasonable satisfaction of Africa Weather, Africa Weather may not unreasonably refuse to reconnect the Services but may require the Client to pay a reconnection fee in advance as well as such other conditions that Africa Weather considers reasonable in the circumstances, as a pre-condition to making the Services available again.

7. RELATIONSHIP BETWEEN THE PARTIES

7.1 The Parties record that Africa Weather shall fulfil its obligations in terms of this Agreement to the Client as an independent service provider and nothing in this Agreement shall be construed as creating a relationship of employment, agency, partnership or joint-venture, between Africa Weather, or any of its employees from time to time, and the Client, and the Client shall not hold itself out as being an employee, agent or partner of Africa Weather or as being in a joint-venture with Africa Weather.

7.2 Neither Party shall be entitled to bind or attempt to bind the other Party, or to represent to any third Person that it has the authority to bind the other Party or to confer any obligation on the other Party, unless specifically mandated to do so in writing by the other Party.

8. SERVICE FEE AND PAYMENT

8.1 The Client shall pay Africa Weather a service fee one month in advance as set out in Annexure C of this Agreement in consideration for the Services rendered by Africa Weather to the Client ("**Service Fee**").

8.2 Africa Weather shall render to the Client a detailed valid tax invoice which sets out the total amount due to Africa Weather by the Client.

8.3 The Client agrees that the amount contained in an invoice or tax invoice issued by Company shall be

due unconditionally within 30 days from the date of an invoice or tax invoice being issued by Company.

8.4 Payment shall be free of manifest error, bank commission, any levies, surcharge, sales tax, withholding tax or any other taxes, duties, imposts levied, set-off or any other withholding or deduction.

8.5 Without prejudice to any of its rights or other remedies in law and/or this Agreement, any portion of the payments not paid on the due date for payment stipulated in the Invoice shall bear interest at the Prime Rate with effect from the due date until the outstanding payments and all the interest thereon has been paid.

9. INDEMNITY

9.1 The Client, without prejudice or limitation to any of the Service Provider's rights at law or in terms of any other provision of this Agreement, hereby indemnifies Africa Weather (including its Affiliates) its respected officers, directors, employees, agents, successors and assigns harmless against all costs, losses, claims, liabilities, expenses, damages, fines or injury of whatsoever nature suffered or incurred by Africa Weather or instituted against Africa Weather by any third party as a direct or indirect result of the Client's use of the Services, the Client's failure to comply with any of the terms and conditions of this Agreement, or any down time, outage, interruption in or unavailability of the Services arising from or in connection with or based on –

9.1.1 software or hardware Services, repairs, maintenance, upgrades, modification, alterations, replacement, or relocation of premises affecting any Services, and non-performance or unavailability, of whatever nature and howsoever arising of any of the Services provided by a public system used by Africa Weather or a third party;

9.1.2 the Client's subscription to or use of the Services; the breach of any term or condition of this Agreement;

9.1.3 any breach of security by any third party or any breach of confidentiality by a third party or otherwise arising from any access however obtained by a third party to the Client's information, data or content;

9.1.4 damage, contamination or corruption of any kind of the Client's data, material, information and or content however occasioned; and

9.1.5 without limiting the foregoing, any fact, cause, or circumstances whatsoever and howsoever arising if Africa Weather substantially performed its obligations under this Agreement.

- 9.2 The Client shall pay Africa Weather the amount of, all actual or contingent losses, liabilities, damages, costs (including legal costs on the scale as between attorney and own client and any additional legal costs) and expenses of any nature whatsoever which Africa Weather may suffer or incur as a result of or in connection the items listed in 9.1.
- 9.3 For the avoidance of doubt, Africa Weather shall not be liable for any damage or loss, whether direct, indirect, consequential or otherwise, suffered by Africa Weather and/or any third party arising from any act or omission by the Client, its agents and/or its employees in connection with this Agreement and/or in law, whether such damage or loss results from breach of the Agreement (whether material or otherwise), delict, negligence or any other cause whatsoever without limitation and whether or not the Agreement is still in force.
- 10. CONFIDENTIALITY**
- 10.1 The Client acknowledges that all information imparted to it by Africa Weather is of a confidential nature and is disclosed to the Client for the sole purpose of providing or rendering the Services to the Client.
- 10.2 The Client shall not, at any time after the Signature Date, notwithstanding any termination or cancellation of this Agreement, directly or indirectly disclose, or directly or indirectly use, whether for its own benefit or that of any other person (whether natural or juristic), any of this information to any third party for whatever reason without the prior written consent of Africa Weather.
- 11. DATA PROTECTION AND PRIVACY**
- 11.1 The Client hereby consents to the processing of its personal information (in accordance with the POPI Act) by Africa Weather and any other information that the Client may provide to Africa Weather for all purposes related to providing the Services.
- 11.2 Africa Weather may collect personal information from the Client and disclose personal information to other service providers of Africa Weather, including credit bureaux (in order to perform credit and background checks), banks (to process transactions), research companies (that assist Africa Weather to understand market trends or industry specifics), and collection agencies (for the collection of outstanding accounts). The Client consents to the collection and/or disclosure of its personal information for these purposes.
- 11.3 Africa Weather may, from time to time, store, transfer and process personal information in and to countries outside of the Republic of South Africa. Africa Weather shall take all reasonable steps necessary to ensure that any personal information transferred outside of the Republic of South Africa is protected and is processed as required by the POPI Act and the applicable data protection laws in that country. By submitting its personal information to Africa Weather, the Client consents to the transfer, processing or storage of its personal information outside of the Republic of South Africa.
- 11.4 Africa Weather shall –
- 11.4.1 use its best efforts to keep personal information confidential and shall not disclose any personal information to any other person except as required by law, save to the extent set out herein;
- 11.4.2 utilise reasonable technical and organisational measures in accordance with best industry practice for the purpose of complying with its obligations in terms of clause 11.4.1;
- 11.4.3 at all times strictly comply with the POPI Act and other applicable laws, regulation or code relating to data protection in South Africa, or other requirements enforced by any relevant industry or self-regulatory body within the Republic of South Africa in the provision of the Services; and
- 11.4.4 not, at any time copy, compile, collect, collate, Process, mine, store, transfer, alter, delete, interfere with or in any other manner use data for any purpose other than providing the Services to the Client other than with the express prior written consent of the Client.
- 11.5 The Parties record that all data, in whatever form, is the Client's intellectual property. Accordingly, the Client retains all right, title and interest in and to the data.
- 11.6 The Client acknowledges that it is primarily responsible for complying with any data protection obligations imposed in terms of any law, including the common law, and shall obtain any consents necessary for the disclosure of personal information to Africa Weather for the purposes of this Agreement.
- 11.7 The Client shall separate any personal information from any other data provided to Africa Weather for the purpose of providing the Services and shall designate the personal information as such before disclosing or otherwise making it available to Africa Weather.
- 11.8 The Client shall immediately notify Africa Weather if there is any change to its personal information, or to correct any errors in the Client's account or Client's information. The Client may at any time request access to, rectification or deletion of, the

personal information held by Africa Weather in relation to the Client.

11.9 The Client is entitled to withdraw its consent to the processing of its personal information by giving written notice to Africa Weather together with the grounds therefor; provided that the lawfulness of the processing of personal information before such withdrawal will not be affected or the withdrawal will not affect any processing that –

11.9.1 is necessary to carry out actions for the conclusion or performance of any agreement between Africa Weather and the Client;

11.9.2 complies with an obligation imposed by law on Africa Weather;

11.9.3 protects a legitimate interest of the Client; or

11.9.4 is necessary for pursuing the legitimate interests of Africa Weather or a third party to whom the personal information is supplied.

11.10 The Client is entitled to –

11.10.1 object, by written notice to Africa Weather, to the processing of its personal information on reasonable grounds, unless legislation provides for such processing; and

11.10.2 lodge a complaint to the Information Regulator, established or to be established in terms of the POPI Act, regarding the alleged unlawful processing of the Client's personal information by Africa Weather. The Information Regulator's contact details will be published in the Government Gazette and/or by the Information Regulator, once it is established.

12. INTELLECTUAL PROPERTY

Nothing contained in this Agreement shall be construed to confer or be deemed to confer on either Party the intellectual property rights of the other Party. Each Party indemnifies the other Party against all claims, actions, damages, liabilities, costs and expenses, including reasonable attorney's fees and expenses, arising out of any claims of infringement, passing-off and/or unlawful competition in relation to any patent, trade secret, copyright, trademark, service mark, trade name or similar proprietary right of any third party, which claim arises directly or indirectly out of the unlawful and/or unauthorised use by a Party of the intellectual property rights of the other Party

13. BREACH

Should either Party breach any provision of this Agreement and fail to remedy such breach within 14 (fourteen) days after receiving written notice requiring it to do so from the Party aggrieved thereby, then the Party giving such notice shall be entitled, without prejudice to its other rights in law, including any right to claim damages, to suspend the Services, to claim immediate specific performance of all of the defaulting Party's obligations, whether or not otherwise then due for performance, or, in the case of a material breach of a provision going to the root of this Agreement, to cancel this Agreement by giving written notice to that effect to the defaulting Party.

14. DISPUTES

14.1 Any disputes arising from or in connection with this Agreement or the termination thereof shall be finally resolved in accordance with the rules of the Arbitration Foundation of Southern Africa (or its successor in title) ("**AFSA**") by an arbitrator appointed by AFSA. There shall be a right of appeal as provided for in article 22 of such rules. Either Party shall be entitled to apply on behalf of all the Parties to such dispute for arbitration to be conducted on an urgent basis.

14.2 If AFSA no longer exists then the arbitrator shall be appointed by the Chairperson for the time being of the Legal Practice Council and the arbitration shall be conducted in accordance with the Arbitration Act No. 42 of 1965.

14.3 Notwithstanding anything to the contrary contained in this 14, either Party shall be entitled to apply for an interdict from any competent court having jurisdiction.

14.4 For the purposes of 14.3 and for the purposes of having any award made by the arbitrator being made an order of court, each of the Parties hereby submits itself to the non-exclusive jurisdiction of the High Court of South Africa, Gauteng Local Division, Johannesburg.

15. FORCE MAJEURE

15.1 Neither Party shall be considered in breach of its obligations under this Agreement or be responsible for any delay in the carrying out of such obligations, if the performance thereof is prevented or delayed wholly or in part as a consequence, whether direct or indirect, of war (whether declared or not), emergency, strike, industrial dispute, accident, fire, earthquake, flood, storm, tempest, pandemic (including the regulations imposed by Government in response to the coronavirus pandemic), any act of God or any other cause beyond the reasonable control affected Party.

- 15.2 If the performance of a particular Party's obligations under this Agreement is in the opinion of that Party likely to be hindered, delayed or affected by a reason falling within clause 15.1, then the Party so affected shall promptly notify the other Party in writing.
- 15.3 In this Agreement, without in any way limiting the scope thereof, the expression "*force majeure*" includes the application of any statute, regulation, or order of a government or any other authoritative power, labour disturbance or dispute, strike, lock-out, riot, explosion, war, incursion, inability to obtain materials, equipment, supplies, power, fuel, labour, intervention by civil or military authority or any force of nature or any natural disaster.
- 15.4 If the achievement of any objective or the performance of any obligation in terms of this agreement is inhibited or impeded by *force majeure* which is beyond the control of a Party to this Agreement, that Party shall be relieved of any duty to achieve that objective or perform that obligation to the extent that, and for as long as, such hindrance or impediment makes the achievement of that objective or performance of that obligation impossible: provided that the Party thus inhibited or impeded shall always be obliged to do its utmost to avoid or to overcome such hindrance or impediment and: -
- 15.4.1 shall immediately advise the other Party in writing of the *force majeure* which has resulted in the hindrance or impediment; and
- 15.4.2 shall pursue the achievement of the objective in question and the performance of the obligation in question as soon as such hindrance or impediment can be avoided or overcome.
- 15.5 If an objective must be achieved or an obligation performed within a limited time in terms of this Agreement, then that time limit shall be extended for the time that the *force majeure* renders such performance or achievement impossible in terms of clause 15.4.
- 15.6 A Party whose achievements or performances in terms of this Agreement are hindered or impeded by *force majeure* shall not be entitled to claim any loss, damages or costs from any other Party to this Agreement which is caused by the resultant delay; and no Party to this Agreement shall be entitled to benefit in any way from any such delay at the expense of any other Party to this Agreement so that any such benefits shall accrue for the benefit of all the Parties to this Agreement.
- 16. DOMICILIUM AND NOTICES**
- 16.1 The Parties choose *domicilium citandi et executandi* ("**Domicilium**") for the purposes of the giving of any notice, the payment of any sum, the serving of any process and for any other purpose arising from this Agreement, as set out in Annexure A. Either Party shall be entitled from time to time, by giving written notice to the others, to vary its physical Domicilium to any other physical address (not being a post office box or poste restante) within South Africa and to vary its facsimile and/or e-mail Domicilium to any other facsimile number and/or e-mail address.
- 16.2 Any notice given or payment made by any Party to another ("**Addressee**") which is 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.
- 16.3 Any notice given by either Party to the other which is successfully transmitted by e-mail or facsimile to the Addressee's e-mail or facsimile Domicilium for the time being shall be deemed (unless the contrary is proved by the Addressee) to have been received by the Addressee at the time of successful transmission thereof.
- 16.4 Any notice actually received by either Party will constitute adequate notice notwithstanding that it is not sent or delivered to the Domicilium of such Party.
- 17. MISCELLANEOUS**
- 17.1 The Parties further agree and record that the Parties undertake to execute all and/or any acts necessary or ancillary to execute properly the terms of this Agreement.
- 17.2 This Agreement contains all the provisions agreed on by the Parties with regard to the subject matter of the Agreement and supersedes and novates in its entirety any previous agreements, commitments, understandings, undertakings, or representations among the Parties in respect thereof; and the Parties waive the right to rely on any alleged provision not expressly contained in this Agreement.
- 17.3 A Party may not rely on any representation (whether or not made innocently, negligently or deliberately) which allegedly induced that Party to enter into this Agreement, unless the representation is recorded in this Agreement.
- 17.4 No contract varying, adding to or deleting from this Agreement, and no waiver of any right under this Agreement, shall be effective unless reduced to writing and signed by or on behalf of the Parties.

- 17.5 The grant of any indulgence, extension of any time or relaxation of any provision by a Party under this Agreement (or under any other agreement or document issued or executed pursuant to this Agreement) shall not constitute a waiver of, whether by estoppel or otherwise, any right by the grantor or prevent or adversely affect the exercise by the grantor of any existing or future right of the grantor, save in the event and to the extent that the grantor has signed a written document expressly waiving or limiting such right.
- 17.6 Each provision of this Agreement is, notwithstanding the grammatical relationship between that provision and the other provisions of this Agreement, severable from the other provisions of this Agreement.
- 17.7 Any provision of this Agreement which is or becomes invalid, unenforceable or unlawful in any jurisdiction shall, in such jurisdiction only, be treated as *pro non scripto* to the extent that it is so invalid, unenforceable or unlawful, without invalidating or affecting the remaining provisions of this Agreement which shall remain of full force and effect.
- 17.8 The Parties declare that it is their intention that this Agreement would be executed without such invalid, unenforceable or unlawful provision if they were aware of such invalidity, unenforceability or unlawfulness at the time of execution of this Agreement.
- 17.9 Without prejudice to any other provision of this Agreement, any successor-in-title, including any executor, heir, liquidator, business rescue practitioner, curator or trustee, of a Party shall be bound by this Agreement.
- 17.10 This Agreement is to be governed, interpreted and implemented in accordance with the laws of South Africa. The Parties consent to the jurisdiction of the High Court of South Africa, Gauteng Local Division, Johannesburg for the adjudication of disputes.

18. COSTS

- 18.1 Save as otherwise provided, each party shall bear and pay its own costs in respect of the negotiation, preparation, settling, signing and implementation of this Agreement.
- 18.2 If any action at law is brought to enforce or interpret the provisions of this Agreement, the prevailing Party will be entitled to reasonable attorneys' fees in addition to any other relief to which that Party may be entitled, on an attorney-own-client scale.

19. SIGNATURE IN COUNTERPART

This Agreement may be executed in any number of counterparts and once each Party has signed a counterpart, each such counterpart shall be considered an original and all such counterparts together shall constitute one and the same instrument. Any such counterpart may be an e-mail transmission copy thereof.

20. INDEPENDENT ADVICE

- 20.1 Each of the Parties hereby respectively agrees and acknowledges that –
- 20.1.1 it has been free to secure independent legal advice as to the nature and effect of each provision of this Agreement and that it has either taken such independent legal advice or has dispensed with the necessity of doing so; and
- 20.1.2 each of the provisions of this Agreement (and of each of the Annexes) is fair and reasonable in all the circumstances and is part of the overall intention of the parties in connection with this Agreement.