

**Private
& Confidential**

IONETICS Pty Ltd

Reg No : 2015/094778/07

142 Fairway Drive Beachwood Durban North 4051
E-mail: sales@ionetics.co.za

AGREEMENT FOR THE PROVISION OF SERVICES

Mark whichever box is applicable. If other please specify here: _____

SOLE OWNER	PARTNERSHIP	(PTY) LIMITED	CLOSED CORP	TRUST	OTHER
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Please fill in the information required below.

Registered Name: (hereinafter **“the Customer”**)

Trading Name:

Registration No: VAT No:

Registered office/Physical address: Postal Address:

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.....

.....

.....

..... (hereinafter **“the Site”**)

Address at which Services are to be rendered:

..... Telephone No:

..... Cell phone No:

..... Email address:

..... FAX No:

..... (hereinafter **“the Site”**)

FOR THE CUSTOMER

I, THE UNDERSIGNED (PRINT NAME)....., IN MY CAPACITY AS OF THE CUSTOMER AND IN MY PERSONAL CAPACITY HEREBY WARRANT THAT:-

1. I AM DULY AUTHORISED BY THE CUSTOMER TO SIGN THIS AGREEMENT ON ITS BEHALF AND THAT THE ABOVE INFORMATION IS TRUE , CORRECT AND COMPLETE IN ALL RESPECTS;
2. I AGREE THAT ALL SERVICES RENDERED BY IONETICS TO THE CUSTOMER WILL BE SUBJECT TO THE IONETICS TERMS.
3. I ACKNOWLEDGE THAT IN TERMS OF SUBCLAUSE 6.2 OF THE IONETICS GENERAL TERMS AND CONDITIONS SET OUT BELOW, WHICH I ACKNOWLEDGE HAVING READ AND UNDERSTOOD, IONETICS MAY CHARGE THE CUSTOMER A FEE FOR DESIGN SERVICES AND I AGREE THAT SUCH FEE SHALL BE CALCULATED AT AN HOURLY RATE OF R350.00 ex vat PER HOUR OR PART THEREOF THAT IONETICS SPENDS RENDERING DESIGN SERVICES AS WELL AS ANY SERVICES WHICH IONETICS DETERMINES TO BE NECESSARY IN ORDER TO COMPLETE SUCH DESIGN SERVICES.

Dated at ON THE DAY OF 20.....

SIGNATURE

FOR IONETICS

I, THE UNDERSIGNED (PRINT NAME)....., IN MY CAPACITY AS OF IONETICS HEREBY ACCEPT, BY MY SIGNATURE HEREUNDER, THE CUSTOMER'S OFFER TO ENTER INTO AN AGREEMENT FOR THE PROVISION OF SERVICES IN ACCORDANCE WITH SUBCLAUSE 5.1 OF THE IONETICS GENERAL TERMS AND CONDITIONS SET OUT BELOW.

Dated at ON THE DAY OF 20.....
(the **“Commencement date”**)

SIGNATURE

IONETICS GENERAL TERMS & CONDITIONS

1 Interpretation

- 1.1 In the Ionetics Terms, unless a contrary intention appears –
 - 1.1.1 the clause headings in the Ionetics Terms have been inserted for purposes of convenience only and will not be taken into consideration in its interpretation;
 - 1.1.2 any reference to (i) the singular includes the plural and vice versa, (ii) any gender includes the other genders and (iii) a natural person includes a juristic person and vice versa;
 - 1.1.3 the rule of construction that a contract shall be interpreted against the party responsible for the drafting or preparation of the contract, shall not apply to this Agreement and the Parties waive any rights they have to rely on such rules;
 - 1.1.4 unless the context indicates a contrary intention, the words and expressions defined in clause 2 shall, throughout the Ionetics Terms, bear the meanings assigned to them in that clause and similar expressions shall bear corresponding meanings;
 - 1.1.5 any reference to "days" shall be construed as being a reference to calendar "days" unless qualified by the word "business" in which instance a "business day" shall be any day other than a Saturday and a Sunday and/or a public holiday as gazetted by the Government of the Republic of South Africa from time to time. Any reference to "business hours" shall be construed as being the hours between 08h00 and 17h00 on any business day;
 - 1.1.6 the word "include" and "including" means "include without limitation" and "including without limitation". 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;
 - 1.1.7 terms other than those defined within these General Terms will be given their plain English meaning,
 - 1.1.8 defined terms appearing in these General Terms in title case shall be given the meaning as defined, while the same terms appearing in lower case shall be interpreted in accordance with the ordinary meaning as qualified by clause 1.7 and shall, unless the context otherwise indicates, include the term as defined.

2 Definitions

- 2.1 In the Ionetics Terms, unless inconsistent with or otherwise indicated by the context, the following terms will have the meanings assigned to them in this clause:
 - 2.1.1 "Agreement" means the contract entered into between Ionetics and the Customer consisting of, *inter alia*, the Ionetics Terms;
 - 2.1.2 "Commencement Date" means the date on which the Cover Page is signed by the Customer, and by an authorised representative of Ionetics;
 - 2.1.3 "Completion" means the date on which all Services, set out in the SOS, have been fully performed by Ionetics.
 - 2.1.4 "Cover Page" means the page titled "AGREEMENT FOR THE PROVISION OF SERVICES" which contains *inter alia* (among others) information relating to the Customer.
 - 2.1.5 "Customer" means the party identified on the Cover Page.
 - 2.1.6 "Equipment" means the equipment required by Ionetics in order to undertake/complete the installations, and may include certain: goods, tools, hardware, software, electrical components and/or building materials;
 - 2.1.7 "Fees" means any fees and/or charges and/or costs that the Customer is/may become liable to pay to Ionetics and which Ionetics may be entitled to charge the Customer in terms of the Ionetics Terms and/or in connection with the provision of Services, and may include: design Fees, Installation Fees, Service Fees, call out Fees, and delivery costs.
 - 2.1.8 "General Terms" means these terms and conditions as well as the Cover Page which shall be deemed to be included in these terms and conditions.
 - 2.1.9 "Installation" means those Services performed by Ionetics at the Site, including: infrastructure construction/alterations, wiring, assembling of equipment, installation of equipment and any services incidental thereto which are deemed necessary by Ionetics in order to complete the Services as provided for in the SOS.
 - 2.1.10 "Intellectual Property" includes all patents, trademarks, service marks, design rights, copyright, trade or business name, know-how, concepts, ideas, methods, procedures, processes, techniques, models, designs, reports, templates, software or any changes or additions thereto (if any) and other similar rights or obligations, whether or not registerable, registered or application for registration thereof has been made in any party of the world;
 - 2.1.11 "Ionetics Terms" includes the General Terms and the specific terms and conditions included in the Customer's SOS, or in any addendum thereto;
 - 2.1.12 "Marks" means any trademarks, logos, brand names, domain names or other marks of either of the Parties;
 - 2.1.13 "Party" and "Parties" means Ionetics and the Customer;
 - 2.1.14 "Services" means the services as set out under the Ionetics Terms and/or the SOS and performed by Ionetics at the direction of the Customer, and may include: design services, Installations, and all services incidental to the provision of such services which are deemed necessary by Ionetics in order to complete the Services as provided for in the SOS and/or the Ionetics Terms;

- 2.1.15 "Site" means the physical location specified on the Cover Page and/or in the SOS and/or in any communication received from the Customer, where *inter alia* Installations are to be undertaken by Ionetics.
- 2.1.16 "SOS" means the Scope of Service document and any addenda thereto, which may include: specific terms and conditions which supplement the General Terms, a description of the Services, designs drawn/created by Ionetics, certain Fees which the Customer will become liable for in connection with the Services, and the approximate costs of Equipment;
- 2.1.17 "SOS Date" means the date on which Ionetics acknowledges the Customers approval of the SOS in accordance with clause 6.4.

3 Ionetics Terms

- 3.1 Ionetics provides the Services to its Customers subject to the terms and conditions of the Ionetics Terms which set forth the general terms and conditions governing the contractual relationship between the Parties, duly supplemented by the SOS and any addenda thereto.
- 3.2 Should either party in any way purport to attach any conditions which vary, amend or are in conflict with the conditions set forth herein, then, notwithstanding anything to the contrary stipulated by either party, the Ionetics Terms shall prevail and be of full force and effect unless specifically varied by Ionetics in writing with specific reference to the Customer's and/or Ionetics' contrary documentation.
- 3.3 No variation, addition or amendment reduced to writing by Ionetics shall be of any force or effect unless signed by both parties and/or their respective duly authorised representatives.
- 3.4 To the extent that: (i) any individual Service selected by the Customer is not dealt with in the SOS, such individual Service shall be governed by the General Terms; (ii) any Specific Terms are binding upon the Customer, those Specific Terms are deemed included in the Ionetics Terms.
- 3.5 Save as expressly provided to the contrary in the Ionetics Terms, in the event of a conflict between the provisions as stated in these General Terms and those stated in the SOS, and any addendum to the SOS, the following precedence ranking shall apply (from highest to lowest): (i) these General Terms; (ii) the SOS; (iii) the addenda to the SOS and; (iv) other documents incorporated in the Agreement.
- 3.6 No conduct, including any act, omission, and/or representation, which may amount or be deemed to amount to a relaxation or indulgence allowed or granted to the Customer by Ionetics, at any time, shall be deemed to be a waiver of any of Ionetics' rights in terms hereof, and any such relaxation or indulgence shall not be deemed as a novation or waiver of any of the terms and conditions set out herein, or create any estoppel against Ionetics.

4 Customer Status

- 4.1 It is recorded that the Customer may be an incorporated entity (such as a company or close corporation), trust, partnership or individual.
- 4.2 To the extent that a person enters into the Agreement in a representative capacity on behalf of a Customer who is an incorporated entity or on behalf of an unincorporated entity, or in any other representative capacity recognised in South African law, the Customer hereby warrants that:
- 4.2.1 such person is legally authorised to do so and indemnifies Ionetics against any loss or damage that Ionetics may sustain as a result of such person's lack of authority;
- 4.2.2 all the information relating to the entity, trust, partnership, association or other person who he/she represents and which he/she has supplied to Ionetics at any time will be true, accurate and complete.
- 4.3 If Ionetics discovers that the Customer has fraudulently contracted for the receipt of Services or that its representative has contracted without contractual capacity and/or authority to do so, Ionetics will be entitled to terminate the Ionetics Terms and/or Service/s immediately without any further liability to the Customer whatsoever and the Customer shall not be entitled to claim any restitution or refund of any amount already paid, except to the extent provided as per subclause 14.4, below.
- 4.4 The Customer shall, if requested by Ionetics, furnish Ionetics with sufficient evidence of the authority of the person who shall, on behalf of the Customer, take any action or execute any documents required or permitted to be taken or executed by such person under the Agreement.
- 4.5 In the event of a dispute between individuals or entities involved with the Customer (including partners, shareholders, trustees, employees and agents), Ionetics shall be entitled to act on the representation of a person claiming to be duly authorised to represent the Customer, without being obliged to obtain independent verification of such authority and the Customer hereby indemnifies Ionetics from any action or inaction based on such representation. However, should Ionetics, in its sole and absolute discretion, require independent verification of the authority of any individual, the Customer shall provide same in a format reasonably acceptable to Ionetics.

5 Commencement

- 5.1 The Cover Page once signed and submitted by the Customer to Ionetics will be treated as an offer by the Customer to enter into an agreement for the provision of Services.
- 5.2 The Ionetics Terms shall commence and become binding on the Customer with effect from the Commencement Date.

6 SOS

- 6.1 Within a reasonable time after the Commencement Date Ionetics shall determine the Equipment and Installation requirements necessary for the provision of the Services requested by the Customer. Such requirements shall be set out in the SOS and presented to the Customer for approval.
- 6.2 Ionetics may charge the Customer a Fee for design Services rendered in *inter alia* compiling the SOS which shall be calculated at an hourly rate, as set out on the Cover Page, per hour that Ionetics spends rendering design Services and the Customer shall be liable to Ionetics for payment of any such Fees charged regardless of whether or not the Customer approves the SOS as per sub-clause 6.4, below.
- 6.3 The Customer acknowledges that in order to compile the SOS Ionetics may require access to the proposed Site as well as other documentation, which the Customer undertakes to provide to Ionetics upon request.
- 6.4 The Customer or the Customer's duly authorised representative shall approve the SOS by affixing their signature thereto, whereafter Ionetics or its duly authorised representative shall acknowledge the Customer's approval by affixing their signature thereto.
- 6.5 Once the SOS is approved and signed by both parties it shall be deemed to be included in this Agreement.
- 6.6 The Customer shall be obliged to pay to Ionetics the approximate cost of the necessary Equipment, as set out in the SOS, within seven (7) days of the SOS Date.

7 Equipment

- 7.1 Following the SOS Date and once the approximate costs of the Equipment have been paid to Ionetics by the Customer, Ionetics shall, within a reasonable time thereafter, order and purchase all Equipment necessary for the provision of the Services.
- 7.2 The Customer acknowledges that: Equipment costs specified in the SOS are approximate only, the prices of Equipment are those ruling at the date of dispatch, and the aforementioned costs/prices may not include costs incurred in connection with the delivery of the Equipment. As such the Customer hereby agrees to reimburse to Ionetics any amount exceeding the Equipment cost specified in the SOS which Ionetics may pay, or become liable to pay, on the Customers behalf in connection with the purchase of the Equipment.
- 7.3 Once the ordered equipment is received by Ionetics and the Customer has paid the remainder of the costs of the Equipment to Ionetics the Equipment shall, within a reasonable time thereafter, then be delivered to the Site. Ionetics shall be entitled, but not obliged, to effect/allow delivery of the Equipment to the Site before receiving payment of the remainder of the costs of the Equipment.
- 7.4 Ownership in the Equipment delivered to the Site shall, notwithstanding delivery of the Equipment to the Site pass to the Customer only when the full purchase price of the Equipment has been paid by the Customer to Ionetics. Risk in and to the Equipment shall however pass to the Customer on delivery and delivery shall be deemed to have taken place:
 - 7.4.1 In the event that the Customer causes goods to be collected, by whatever means - as soon as loading of the goods onto the Customer's transport commences and regardless of whether Ionetics or the Customer, or their employees and/or agents affect the loading of the goods;
 - 7.4.2 In the event that the Ionetics effects delivery, by whatever means, at the Site or any other address at which the Customer may request delivery to take place - as soon as unloading of the goods from Ionetics', or its agents transport, commences and regardless of whether Ionetics or the Customer, or their respective employees and/or agents affect the unloading of the goods.
- 7.5 The Customer shall be liable for all costs incurred by Ionetics in connection with the delivery of the Equipment; including the costs of: transport, loading, unloading, and/or fuel; and such costs shall be deemed to be included in the purchase price of the Equipment as provided for in clause 7.4, above.
- 7.6 A signed delivery note and/or couriers note and/or invoice, and/or the equivalent of any of the aforementioned whereby the Customer acknowledges receipt of the Equipment, shall constitute *prima facie (at face value)* proof that the Equipment has been delivered to and received by the Customer in good condition, whether signed by the Customer, or any employee, agent, or representative of the Customer.
- 7.7 Time shall not be of the essence of the Agreement and delivery dates shall be treated as approximate only. Under no circumstances shall the Customer be entitled to withdraw from or terminate the Agreement on account of any delay in delivery or have any claim of any nature whatsoever against Ionetics arising from late delivery.
- 7.8 Should the Customer have any complaint of whatsoever nature, whether before or after Installation, concerning any Equipment which is not manufactured by Ionetics, it shall be entitled to require Ionetics to cede to it any rights, which Ionetics may have against the original manufacturer/supplier of those goods but shall have no other claim against

lonetics in respect of the matter complained of. The Customer shall not be entitled to withhold payment from lonetics in respect of such goods for any reason whatsoever.

8 Installation

- 8.1 The Parties shall, immediately prior to the commencement of Installation and for the duration of the rendering of such Services, agree to a programme for the performance of the Services which shall, *inter alia*, include:
 - 8.1.1 the order and timing of the performance of Installations by lonetics and any actions required of the Customer and/or any employee, agent, or representative of the Customer;
 - 8.1.2 the dates by which lonetics plans to complete specific Installations to allow the Customer and/or any employee, agent, or representative of the Customer to undertake work required of them; and
 - 8.1.3 other information as required in terms of the SOS or in any addenda thereto.
- 8.2 The Customer shall pay to lonetics fifty percent (50%) of the Installation Fees specified in the SOS, at least seven (7) days prior to the date on which lonetics and the Customer have agreed that Installations will commence. lonetics may, but shall not be obliged to, commence Installations before receiving payment of such fees and may discontinue Installations at any time before receiving payment of such fees.
- 8.3 lonetics shall regularly inform the Customer of all progress and expected future progress of the Installations.
- 8.4 In the event that: the Customer or any employee, agent, or representative of the Customer requests lonetics to be present at the Site; and/or lonetics arrives at the Site to render services at a time agreed to as per clause 8.1, and it is determined by either party that the Site is not in a state/condition that would allow lonetics to render Services as per the aforementioned programme, then in such event the Customer shall be liable to lonetics for payment of a call out Fee which shall be calculated at an hourly rate, as provided for in the SOS, per hour that lonetics spends travelling to/from, and at the Site. The Customer acknowledges that it will be liable for payment of the aforementioned call out Fee to lonetics notwithstanding the fact that lonetics may not render any Services while present at the Site.
- 8.5 The Customer shall, at his own cost, unless otherwise agreed, take out and maintain in force such insurance policies in respect of his own risks in the provision of services by lonetics.
- 8.6 lonetics shall be exempted from and shall not be liable under any circumstances whatsoever for any damages including direct/indirect or consequential damages of any nature whatsoever or any loss of profit or special damages of any nature whatsoever and whether in the contemplation of the parties or not, which the Customer may suffer as a result of any delay in delivery of the Equipment and/or performance of the Services, and/or defect in the Equipment delivered or the Services rendered, and/or the rendering of the Services to the Customer.
- 8.7 Upon Completion the Customer shall immediately become liable to lonetics for payment of all outstanding Installation Fees, as specified in the SOS.
- 8.8 The Customer shall be precluded from raising any complaints or disputing liability to lonetics in any way unless it shall have notified lonetics of its complaints or grounds of dispute in writing within seven (7) days of Completion. Notwithstanding the timeous raising of a complaint or dispute of liability by the Customer, the Customer shall, under no circumstances, be entitled to withhold payment in respect of the Services performed by lonetics pending the resolution of such dispute or complaint. Subject to the foregoing, lonetics may, but shall not be obliged, to either remedy any failure in question, or refund the whole or part (as the case may be) of the Installation Fees paid to it by the Customer.

9 Intellectual Property Rights

- 9.1 The Customer is obliged to comply with all laws applicable to any Intellectual Property Rights in respect of any Intellectual Property provided to lonetics and/or generated at the Customer's direction by lonetics in providing Services to the Customer.
- 9.2 Ownership of all Intellectual Property generated by lonetics pursuant to the provision of design Services to the Customer shall, upon payment in full of all Fees charged in connection therewith and which are due to lonetics, vest in the Customer and unless the Customer expressly indicates otherwise, the Customer hereby grants to lonetics a non-exclusive license to use such Intellectual Property generated by lonetics in any manner and for any purpose which lonetics may choose.
- 9.3 All Intellectual Property, mentioned in sub-paragraph 9.2, shall not include any rights in respect of underlying or pre-existing Intellectual Property embodied or incorporated in the Intellectual Property generated by lonetics pursuant to the provision of Services to the Customer, and all rights in/to such Intellectual Property shall remain vested in lonetics.
- 9.4 The Customer is prohibited from using any of the lonetics Marks without the prior written approval of lonetics.
- 9.5 The Customer hereby grants lonetics a non-exclusive licence to use its Marks for the limited purposes of enabling lonetics to exercise its rights or to fulfil its obligations under the lonetics Terms.
- 9.6 Other than as specifically provided for under this clause, lonetics will wholly and exclusively retain all existing, and become the exclusive and unencumbered owner of all Intellectual Property Rights employed in or otherwise related to its business and the provision of any of the Services in terms of the lonetics Terms.

10 **Payment**

- 10.1 Ionetics will Invoice the Customer for any Fees payable by the Customer to Ionetics in connection with Services rendered by Ionetics within a reasonable time after the Customer becomes liable for payment thereof in terms of the Ionetic's Terms.
- 10.2 The Customer shall become liable to effect full payment of all invoiced amounts to Ionetics when such invoice is sent by Ionetics to the Customer's e-mail address and/or physical address as set out in the SOS, or other address submitted by the Customer or ascertained by Ionetics, and the Customer agrees to effect payment of such invoiced amounts to Ionetics within seven (7) days of the date reflected on the Invoice.
- 10.3 The Customer agrees that, in the event of any invoiced amount becoming overdue and remaining unpaid for 30 days past the original due date as per clause 10.2, Ionetics shall be entitled to charge the Customer interest on the overdue balance at the maximum rate permitted by law.
- 10.4 The Customer acknowledges that it is not entitled to withhold any payment of any Service Fees due to Ionetics by reason of any alleged breach of the Ionetics Terms by Ionetics or for any other reasons whatsoever. In addition, the Customer acknowledges that it is not permitted to apply set-off or demand any discount, refund or reduction in respect of any Fees owed to Ionetics.
- 10.5 The Customer acknowledges that the Service Fees stipulated by Ionetics are not inclusive of value added tax. Should any alterations to the Value Added Tax Act, 89 of 1991 be gazetted or promulgated during the duration of the Ionetics Terms, resulting in a high level of Value Added Tax being attracted to any payment due under the Ionetics Terms, such increased Value Added Tax shall be borne by the Customer.
- 10.6 In the event of a dispute arising between the parties, the Customer shall remain obliged to continue paying the Fees as and when they become due and payable in terms of the Ionetics Terms.

11 **Warranties**

- 11.1 Ionetics warrants that it has the facilities, infrastructure, expertise, capacity and capability to provide the Services.
- 11.2 Save for the a foregoing warranty, the Services are provided "as is" and "as available" and without any further warranty of any nature whatsoever, whether express or implied, including without limitation warranties of merchantability, fitness for purpose, title or non-infringement.
- 11.3 Under no circumstances shall any advice or information furnished by Ionetics, or any employee, agent, or representative of Ionetics be construed as a warranty of any kind.

12 **Customer Indemnities**

- 12.1 The Customer acknowledges that the Services are provided subject to all applicable laws and the Customer accordingly hereby indemnifies Ionetics from any liability attributable to any regulatory body or civil or criminal proceedings instituted against Ionetics or for any loss or damage suffered by the Customer or any third party as a consequence of any defect in, delay in provision or unavailability of the Services.
- 12.2 The Customer hereby unconditionally and irrevocably indemnifies Ionetics and agrees to hold Ionetics free from and harmless against all losses suffered or incurred by the Customer or Ionetics or instituted against Ionetics by any third party as a direct or indirect result of the Customer's: use of the Services and/or Equipment; the Customer's failure to comply with any of the Ionetics Terms; or any downtime, outage, network degradation, interruption in or unavailability of Equipment functionality. Included within the ambit of downtime, outage, network degradation, interruption in or unavailability of Equipment functionality is any of the following: (i) software or hardware service, repairs, maintenance, upgrades, modification, alterations, replacement or relocation of premises or Site affecting the Services, (ii) non-performance or unavailability, of whatever nature and howsoever arising, of any of the Equipment functionality provided by an electronic communications network or service provider, including, line failure whether in any remote mail servers or elsewhere, (iii) non-performance or unavailability, of whatever nature and howsoever rising, of external communications networks to which the Customer's or Ionetics' network infrastructure is connected and (iv) repairs, maintenance, upgrades, modifications, alterations or replacement of any hardware, whether performed by Ionetics, the customer or any third party, forming part of the Services/Equipment or any faults or defects of whatever nature in such hardware regardless of the cause of any such faults or defects.
- 12.3 The Customer shall defend Ionetics against any claim against which Ionetics is indemnified in terms of this Agreement ("indemnified claim") and pay any and all costs, damages and expenses (including attorneys fees on the attorney and own Client scale) finally awarded against Ionetics by a court of competent jurisdiction or agreed to in a written settlement agreement signed by the Customer directly arising out of such indemnified claim, provided that (i) Ionetics shall notify the Customer in writing as soon as Ionetics becomes aware of the indemnified claim to enable the Customer to take steps to contest it, (ii) the Customer may assume sole control of the defence of such claim and/or related settlement negotiations and (iii) Ionetics shall provide the Customer, at the Customer's expense, with the assistance, information and authority necessary to enable the Customer to perform its obligations under this clause.

12.4 The Customer shall pay to Lonetics the amount of an indemnified claim forthwith upon receipt of request for payment unless the Customer contests the indemnified claim in which case the Customer shall pay to Lonetics the amount of the indemnified claim forthwith after any judgment or order is granted, provided that in those circumstances where the Customer does not at any time proceed with the contest of the claim timeously and promptly, Lonetics shall be entitled to require the Customer either to pay the amount of the claim in question in trust to its attorneys pending the outcome of the proceedings, or Lonetics shall be entitled to require the Customer to give proper and adequate security therefore.

13 **Suspension of the Services**

13.1 Lonetics is entitled to temporarily suspend its obligations in terms of the Lonetics Terms (i) in order to service, repair, maintain, upgrade, modify, alter, replace or improve any of the Services (ii) in order to relocate its base of operations and/or (iii) where third parties have alleged that the Customer has engaged in unlawful activities arising from/connected to the Services.

13.2 Where circumstances permit, Lonetics will use its best endeavours to provide prior notice of any such suspension to the Customer and Lonetics shall not be liable for any loss or damage of whatever nature incurred or suffered by the Customer arising from or in connection with or from any cause whatsoever as a result of such suspension.

14 **Termination**

14.1 Except where provided for to the contrary elsewhere under the Lonetics Terms, either party may terminate the Lonetics Terms together with all Services on seven (7) days written notice to the other Party at their chosen *domicilium citandi et executandi* in terms of clause 16, and the date of termination shall be deemed to be the date on which the aforementioned seven (7) day period expires.

14.2 All purported terms of termination communicated to Lonetics in any manner other than as specified above may, at Lonetics's sole discretion, be deemed to have been invalidly given and without force and effect.

14.3 Should the Customer terminate the Agreement as per subclause 14.1 after Lonetics has commenced Installations but before Completion then in such event the Customer shall become liable to Lonetics for payment of a cancellation Fee, in addition to any Fees which the Customer has already become liable for payment of in terms of the Lonetic's terms at the date of termination, and such cancellation Fee shall be an amount which is ten percent (10%) of the remainder of the Installation Fees which the Customer would have been liable to pay Lonetics but for the Customer's termination.

14.4 In the event of, and notwithstanding, termination of the Agreement by either Party, the Customer shall remain liable to Lonetics for payment of all Fees charged by Lonetics in connection with, and relating to, Services already performed by Lonetics up to the date of termination, unless the Customer has paid Fees to Lonetics in advance in which case the Customer shall be entitled to a refund of the remainder of such Fees paid in advance, if any, after deduction of all Fees charged by Lonetics in connection with, and relating to, Services already performed by Lonetics up to and including the date of termination by the Customer. For the purposes of this subclause "Fees charged by Lonetics in connection with, and relating to, Services already performed by Lonetics up to the date of termination" shall include call out Fees, cancellation Fees, design Fees and Installation Fees.

15 **Breach**

15.1 Should the Customer breach any of the Lonetics Terms, then Lonetics shall be entitled, without prejudice to any other rights that Lonetics may have and without notice to the Customer, to: (i) forthwith claim immediate payment of all outstanding Fees due to Lonetics, (ii) terminate or suspend the provision of any and/or all of the Services, (iii) terminate its relationship with the Customer and/or (iv) list the Customer with any credit bureau and/or the South African Fraud Prevention Service which the Customer hereby expressly consents to. In all instances, Lonetics shall be entitled to retain all Services Fees already paid by the Customer and recover all of its costs associated with the Customer's breach, including legal costs, whether incurred prior to the institution of, or during legal proceedings, or if judgment has been granted, in connection with the satisfaction of such judgment.

15.2 In the event of Lonetics or its agents instructing attorneys to collect from the Customer any amount owing to the Lonetics, the Customer agrees to pay all costs on the scale as between attorney and own Client, including collection commission and tracing charges.

15.3 In the event of Lonetics or its agent instructing a Debt Collector to collect from the Customer an amount owing to the Lonetics, the Customer agrees to pay collection commission in accordance with the Debt Collectors Act (Act. 114 of 1998).

15.4 The Customer consents to the jurisdiction of the Magistrates' Court in terms of Section 45 of the Magistrates' Court Act, No. 32 of 1944, as amended, having jurisdiction under Section 28 of the said Act, for the purposes of any proceedings which may arise in connection herewith, notwithstanding that the claim may exceed the normal jurisdiction of such Magistrate's Court.

15.5 A certificate issued under the hand of any director or manager of Lonetics (whose appointment need not be proved) as to: (i) the existence and the amount of the Customer's indebtedness to the Lonetics given at any time; (ii) the fact that

such amount is due and payable; (iii) the amount of mora interest accrued thereon; and (iv) as to any other fact, matter or thing relating to the Customer's indebtedness to the Lonetics; shall be sufficient and satisfactory proof of the contents and correctness thereof for the purpose of provisional sentence, summary judgment or any other proceedings of whatsoever nature against the Customer in any competent court and shall be valid as a liquid document for such purpose.

16 Force Majeure

- 16.1 On the happening of a Force Majeure Event, any delay or failure in performance or breach by Lonetics occasioned therewith or resulting therefrom will not be deemed to be a breach of the Lonetics Terms by Lonetics, nor shall it subject Lonetics to any liability whatsoever.
- 16.2 For purposes of clause 14.1, a "Force Majeure Event" means any act of God, of public enemy, fire, explosion, earthquake, perils of the sea, flood, storm or other adverse weather conditions, war declared or undeclared, civil war, revolution, civil commotion or other civil strike, riot, blockage, embargo, sanctions, epidemics, act of any Government or other authority, compliance with Government orders, failure of any supplier of electricity, including Eskom, and telecommunications infrastructure and/or telecommunications lines provided by any third party, including the Telkom Limited group of companies, or any circumstances of like or different nature beyond Lonetics' reasonable control.

17 Exclusion and Limitation of Liability

- 17.1 Neither Lonetics, nor its members, employees, agents, consultants and advisers shall be liable for any direct, indirect, extrinsic, special, penal, punitive, exemplary or consequential loss or damage of any kind whatsoever or howsoever caused (whether arising or which may arise: as a consequence of the provision of Services and/or the use of any Equipment; under the law of contract or delict; as a result of conduct which is intentional and/or negligent, including gross negligence and/or otherwise), sustained by the Customer, its directors, employees, agents, or representatives and/or servants, including, any damage to property, injury, any loss of profits, loss of operation time, corruption or loss of information and/or loss of contracts and/or loss of profits.
- 17.2 The exclusion of liability under clauses 15.1 shall apply notwithstanding the fact that Lonetics may have been advised of the possibility of such loss or damage being incurred prior to its occurrence.

18 Domicilium Citandi Et Executandi

- 18.1 The Parties choose as their domicilia citandi et executandi for all purposes under this Agreement, whether in respect of court process, notices or other documents or communications of whatsoever nature (including the exercise of any option), the following addresses:
- 18.2.1 Lonetics – 142 Fairway Drive Beachwood Durban North 4051
- 18.2.2 The Customer: The physical address furnished to Lonetics on the Cover Page when the Customer first entered into the Agreement for the provision of Services, as amended in writing pursuant to any change of address, which the Customer is hereby required to furnish to Lonetics within ten (10) days of the change of such address.
- 18.3 Notice or communication to be in writing: Any notice or communication required or permitted to be given in terms of this Agreement shall be valid and effective only if in writing.
- 18.4 Requirements for notices: Any notice to a Party (i) sent by prepaid registered post in a correctly addressed envelope to it at an address chosen as its domicilium citandi et executandi to which post is delivered shall be deemed to have been received on the 5th (fifth) business day after posting, (ii) delivered by hand to a responsible person during ordinary business hours at the physical address chosen as its *domicilium citandi et executandi* shall be deemed to have been received on the day of delivery.

19 General

- 19.1 Whole Agreement: The Agreement, together with the other documents making up the Lonetics Terms constitutes the entire agreement between the Parties in respect of the subject matter hereof and neither Party shall be bound by any undertakings, representations, warranties or promises not recorded in the Agreement.
- 19.2 Waiver: No waiver of any of the terms and conditions of the Agreement will be binding or effectual for any purpose unless expressed in writing and signed by the Party hereto giving the same, and any such waiver will be effective only in the specific instance and for the purpose given. No failure or delay on the part of either Party hereto in exercising any right, power or privilege hereunder will operate as a waiver thereof, nor will any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.
- 19.3 Severability: Should any of the terms and conditions of the Agreement be held to be invalid, unlawful or unenforceable, such terms and conditions will be severable from the remaining terms and conditions, which will continue to be valid and enforceable. If any term or condition held to be invalid is capable of an interpretation which is valid, the Parties agree that such interpretation is to be effectual, provided that such interpretation is in the interests of Lonetics.

- 19.4 Applicable Law: The Agreement will be governed by and construed in accordance with the law of the Republic of South Africa and all disputes, actions and other matters relating thereto will be determined in accordance with such law.
- 19.5 Survival: Notwithstanding termination of the Agreement, any clause, which, from the context, contemplates ongoing rights and obligations of the Parties, shall survive such termination and continue to be of full force and effect.