

LUTENDO and the Customer (whose details appear on the attached statement of work /proposal/ quotation ('the Proposal/ or Quotation')) (hereinafter referred to as 'Party' and/ or 'Parties' as the context may indicate), agree as follows:

1. APPLICABILITY AND INTERPRETATION

These standard terms and conditions shall:

- 1.1. Govern all transactions between the Customer and LUTENDO together with any other agreement that the Parties may enter into;
- 1.2. Only be amended or varied or cancelled or replaced or waived to the extent expressly agreed to in writing and signed by authorised representatives of each Party.
- 1.3. Should the Customer elects to rent equipment from LUTENDO, the Customer will be obliged to complete a Master Rental Agreement and the terms of that agreement will take preference over this Agreement;
- 1.4. Expressly exclude all warranties implied by common law;
- 1.5. Anywhere in this Agreement where reference is made to the singular also mean the plural or vice versa as the case may be. Similarly, if the masculine is referred to it also means the feminine and neuter, or vice versa, as the case may be. Reference to natural persons includes artificial persons, or vice versa, as the case may be.
- 1.6. In this Agreement, unless the context otherwise indicates:
 - 1.6.1. clause, schedule and paragraph headings shall not affect the interpretation of this Agreement;
 - 1.6.2. reference to a person includes an individual, corporate or unincorporated body (whether or not having separate legal personality) [and that person's legal and personal representatives, successors or permitted assigns];
 - 1.6.3. reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established;
 - 1.6.4. words in the singular shall include the plural and vice versa;
 - 1.6.5. reference to one gender shall include a reference to the other genders;
 - 1.6.6. reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it;
 - 1.6.7. references to clauses and schedules are to the clauses and schedules of this Agreement; references to paragraphs are to paragraphs of the relevant schedule to this Agreement;
 - 1.6.8. when any number of days is prescribed, the number of days shall be calculated on the basis that the first day is excluded and the last day is included, provided that Saturdays, Sundays and South African public holidays shall be excluded from the calculation;
 - 1.6.9. the rule of construction that an agreement shall be interpreted against the Party responsible for the drafting or preparation of the Agreement, shall not apply;
 - 1.6.10. where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail;
 - 1.6.11. terms other than those defined within the Agreement will be given their plain English meaning, and those terms, acronyms, and phrases known in the information and communication technology industry will be interpreted in accordance with their generally accepted meanings;
 - 1.6.12. any substantive provision, notwithstanding that it is only in this clause 1, conferring rights or imposing obligations on a Party, shall be given effect to as if it were a substantive provision in the body of the Agreement;
 - 1.6.13. use of the words "includes" or "including" means 'includes without limitation' or 'including without limitation' and the use of these or similar words shall not be limited to the meaning of the general words;
 - 1.6.14. any reference to "days" shall be construed as being a reference to calendar days unless qualified by the word "business";
 - 1.6.15. reference to a Party shall include the permitted successors and assigns of that Party;

1.6.16.any notice required to be given by either Party to the other Party in terms of this Agreement shall, unless otherwise provided herein, be in writing;

1.6.17.any consent, approval and/or authorisation required to be obtained by one Party from the other Party shall not be unreasonably withheld or delayed; and

1.6.18.in the event of a conflict between the provisions of the Agreement and the provisions of any annexure or schedule hereto or any document incorporated by reference herein this Agreement shall prevail.

2. SERVICES

LUTENDO shall render the Services (hereinafter referred to as the "Services" which are activities carried out by LUTENDO) described in the Proposal/ Quotation to the Customer on these terms and conditions. The Proposal/ Quotation, read together with these terms and conditions constitute an agreement hereinafter referred to as the "Agreement".

3. DURATION

This Agreement shall commence on the date of signature by the Party last in time to do so and shall continue until terminated by either Party or on fulfilment of the order in accordance with clause 6.

4. ACCESS

With effect from the commencement date of this Agreement, the Customer shall allow LUTENDO and its staff unimpeded access to the Customer's premises for the purposes of fulfilling its obligations in terms of the Proposal/ or Quotation.

5. FEES AND PAYMENT

5.1. The Customer shall be liable for and shall pay the fees in respect of Services or supplied pursuant to this Agreement on the basis set out in the Proposal/ or Quotation.

5.2. Unless otherwise agreed in terms of the Proposal / or Quotation:

5.2.1. All invoices, including those in respect of Services provided on a time and material charges basis shall be paid by the Customer within 30 (thirty) days of the date of LUTENDO's invoice therefor, unless otherwise agreed between the Parties;

5.2.2. The fees referred to in the Proposal/ or Quotation exclude value added tax, rates or other levies payable in respect of the Services or , all of which shall be payable by the Customer in addition to the fees stipulated in the Proposal / or Quotation;

5.2.3. Where payment of any amount due is not made on due date, LUTENDO shall be entitled to:

5.2.3.1. charge interest on the outstanding amount at a rate of 2% (two per centum) above the base rate charged by its then current bankers from time to time, as evidenced by any manager of such bank, whose authority it shall not be necessary to prove. Such interest shall be calculated from the due date of payment to the date of actual payment, both days inclusive, compounded monthly in arrears and the Customer agrees and undertakes to pay such interest which it hereby accepts as fair and reasonable, on demand; and

5.2.3.2. without prejudice to any other right or remedy it may have, to suspend the provision of Services or such portion thereof as LUTENDO in its sole discretion chooses until all payments in arrears have been paid in full;

5.2.4. All amounts due and payable by the Customer shall be paid to LUTENDO in South African Rand without deduction or set-off for whatever reason by way of electronic funds transfer to a location as selected by LUTENDO. The Customer will not be entitled to withhold payment of any amounts payable to LUTENDO in terms of this Agreement to satisfy any claim of the Customer arising from this or any other agreement.

6. ORDERS

6.1. The Customer hereby confirms that the Services on the tax invoice issued duly represent the Services ordered by the Customer at the prices agreed to by the Customer and where delivery has already taken place, that the Services were inspected and that the Customer is satisfied that these conform in all respects to the quality and quantity ordered and are free from any defects.

- 6.2. LUTENDO will only accept written orders. All such orders and any variations to orders will be binding, subject to these standard terms and conditions and may not be varied or cancelled without prior written consent from LUTENDO.
- 6.3. Orders shall constitute irrevocable offers to purchase the Services in question at the quoted prices of LUTENDO as per the Proposal/Quotation as at the date when the Customer places the order for Services, subject to clause 6.2 above.
- 6.4. The Customer shall provide LUTENDO with an order number when placing an order.

7. DELIVERY

- 7.1. Any delivery note (copy or original) signed by the Customer and/or its authorised representative and/or its nominated agent and held by LUTENDO, shall be prima facie proof that delivery of Services was made to the Customer.
- 7.2. LUTENDO shall be entitled to split the delivery of Services ordered in the quantities and on the dates it decides with the prior consent of the Customer, which consent shall not be unreasonably withheld.
- 7.3. In the event of the Customer choosing to engage its own third party to transport goods ordered, the Customer indemnifies LUTENDO against any claims of any nature whatsoever that may arise from such an agreement.
- 7.4. LUTENDO is entitled to engage a third party on its behalf to transport all goods purchased by the Customer to the delivery address stipulated by the Customer.
- 7.5. Should the Customer wish to receive delivery of the by a more expensive method of transportation than that normally used by LUTENDO, the Customer shall make such request in writing and, in the event that LUTENDO agrees to arrange such special delivery the additional charges shall be debited to the Customer's account and shall be payable by the Customer.
- 7.6. LUTENDO shall advise the Customer when the goods purchased will be dispatched and delivered.

8. INTELLECTUAL PROPERTY

- 8.1. The intellectual property owned by the Parties, their vendors and/or suppliers will at all times remain the sole property of such Parties, their vendors or suppliers.
- 8.2. If in the course of performing the Services, LUTENDO develops processes and methods of work that can be re-used in subsequent Services, LUTENDO retains ownership of the intellectual property rights of all these developments and concepts, unless the Proposal expressly specifies otherwise.
- 8.3. In the event of any claim by a third party in respect of an infringement of any intellectual property rights, relating to any part of the Services (other than a part based on a design specified by the Customer) LUTENDO will at its expense and election either replace or modify such part with a non-infringing part or procure for the Customer the right to use such a part, provided that LUTENDO is given full opportunity to conduct all negotiations in respect of such claim. Such claim shall not be acknowledged or settled by the Customer without prior written consent of LUTENDO. The Customer shall forthwith have no other claims against LUTENDO in relation to such subject matter.
- 8.4. The Customer warrants that any design or instructions furnished or given by it shall not be such as to cause the Services to infringe any intellectual property rights of a third party.
- 8.5. Any other agreement which the Parties may enter into pursuant to this Agreement shall contain specific clauses that will regulate the intellectual property pertaining thereto.

9. SOFTWARE

- 9.1. LUTENDO grants the Customer a non-exclusive, non-transferable licence to use the software and related software documentation supplied in conjunction with the Services.
- 9.2. Except as stated above, the Customer is not granted any other right with regard to the software and the software documentation. In particular and without limitation the licence does not include the right to modify, create derivative works, disassemble, reverse engineer, decompile or otherwise use the software or software documentation.
- 9.3. The Customer shall maintain all copyright and other proprietary notices and legends placed on the software supplied by LUTENDO.

10. CONFIDENTIAL INFORMATION

- 10.1. Each Party ('the Receiving Party') must treat and hold as confidential all confidential information which it may receive from the other Party ('the Disclosing Party') or which becomes known to it during the currency of this Agreement.
- 10.2. The Receiving Party agrees that in order to protect the proprietary interests of the Disclosing Party in its confidential information:-
- 10.2.1. it will only make the confidential information available to those of its staff who are actively involved in the execution of its obligations under this Agreement and then only on a 'need to know' basis;
 - 10.2.2. it will initiate internal security procedures reasonably acceptable to the Disclosing Party to prevent unauthorised disclosure and will take all practical steps to impress upon those staff who need to be given access to confidential information, the secret and confidential nature thereof;
 - 10.2.3. subject to the right to make the confidential information available to their staff under the above sub-clause 10.2.1, they will not at any time, whether during this Agreement or thereafter, either use any confidential information of the Disclosing Party or directly or indirectly disclose any confidential information of the Disclosing Party to third parties; and
 - 10.2.4. all written instructions, drawings, notes, memoranda and records of whatever nature relating to the confidential information of the Disclosing Party which have or will come into the possession of the Receiving Party and its staff, will be, and will at all times remain, the sole and absolute property of such Party and shall promptly be handed over to such Party when no longer required for the purposes of this Agreement.
- 10.3. Upon termination or expiry of this Agreement, the Parties will deliver to each other or, at each Party's option, destroy all originals and copies of confidential information in their possession.
- 10.4. The foregoing obligations shall not apply to any information which:
- 10.4.1. is lawfully in the public domain at the time of disclosure; or
 - 10.4.2. subsequently and lawfully becomes part of the public domain by publication or otherwise; or
 - 10.4.3. subsequently becomes available to the Receiving Party from a source other than the Disclosing Party, which source is lawfully entitled without any restriction on disclosure to disclose such confidential information; or
 - 10.4.4. is disclosed pursuant to a requirement or request by operation of law, regulation or court order.
- 10.5. The Receiving Party hereby indemnifies the Disclosing Party against any loss or damage which the Disclosing Party may suffer as a result of a breach of this clause 10 by the Receiving Party or its staff.
- 10.6. This clause is severable from the remainder of the Agreement and shall remain valid and binding upon the Parties, notwithstanding any termination thereof, for a period of 3 (three) years after the effective date of termination.

11. LIMITATION OF LIABILITY

- 11.1. Notwithstanding the form (whether in contract, delict, or otherwise) in which any legal action may be brought, LUTENDO's maximum liability to compensate the Customer for direct damages for any breach, penalty, act or omission arising out of the Proposal/ or Quotation shall not exceed 10% of the fees.
- 11.2. In no event shall either Party or its staff, agents of contractors be liable for any indirect, incidental, special or consequential damages or losses (whether foreseeable or unforeseeable) of any kind (including, without limitation, loss of profits, loss of goodwill, lost or damaged data or software, loss of use, downtime or costs of substitute products) arising from this Agreement.
- 11.3. The limitation contemplated in this clause 11 shall not apply to any breach by a Party of the other Party's intellectual property rights or confidential information.
- 11.4. LUTENDO shall not be liable for any loss or damage of whatsoever nature suffered by the Customer arising out of or in connection with any breach of this Agreement by the Customer or any act, misrepresentation, error or omission made by or on behalf of the Customer or its staff.

12. WARRANTIES

- 12.1. Warranties for any products used to carry out the Services shall be manufacturer warranties only. There shall be no additional warranties. All other guarantees and warranties including common law guarantees and warranties in relation to and Services are hereby specifically excluded by LUTENDO.

- 12.2. All guarantees are immediately null and void should any equipment be tampered with or should the "seals" on the equipment be broken by anyone other than LUTENDO or its appointed nominee, or should the be operated outside the manufacturer's specifications.
- 12.3. To be valid, guarantee claims must be supported by the original tax invoice and must be accompanied by all accessories and manuals must be intact.
- 12.4. No warranties whether express or implied shall apply, other than those provided in these standard terms of business. LUTENDO specifically disclaims the implied warranty of merchantability and fitness for a particular purpose. No representation or warranty, including but not limited to statements of capacity, suitability for use or performance made by employees of LUTENDO shall be considered to be a warranty by LUTENDO. Any such statements made shall not give rise to any liability or whatsoever nature on the part of LUTENDO, its employees, or subsidiaries.

13. 13. BREACH

- 13.1. Save as may be expressly provided to the contrary in the Proposal, either Party may terminate this Agreement on 30 (thirty) business days' written notice to the other in the event that the other Party:
 - 13.1.1. breaches any material term of this Agreement and such breach is incapable of remedy or, if the breach is remediable, the breach continues for a period of 30 (thirty) business days after written notice requiring the same to be remedied has been given to the Party in breach.
- 13.2. LUTENDO may terminate this Agreement should the Customer fail to make payment within seven (7) days as detailed in clause 5 above.
- 13.3. Either Party may terminate this Agreement on 30 (thirty) business days' written notice to the other in the event that in respect of the other Party:
 - 13.3.1. a winding-up order or resolution is made or passed;
 - 13.3.2. a provisional liquidator is appointed, an administration order is made, a receiver is appointed in respect of it or all or any of its assets, it is unable to pay any of its debts within the meaning of applicable insolvency laws, or any voluntary arrangement is proposed or in any situation which is the same as the foregoing;
 - 13.3.3. makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way; or
 - 13.3.4. ceases, or threatens to cease, to trade.
- 13.4. In the event that any third party licence agreement (between the Customer and third party licensor) for any software in respect of which the Services or are provided terminates for whatever reason, the Proposal/ or Quotation shall also terminate with immediate effect.

14. LEGAL PROCEEDINGS

- 14.1. This Agreement shall be governed and construed under and in accordance with the laws of the Republic of South Africa.
- 14.2. In the event of a dispute and should the Parties fail to resolve the matter amicably, the Parties shall refer the matter to a court of competent jurisdiction.
- 14.3. A certificate issued and signed by any director or manager of LUTENDO, whose authority need not be proved, in respect of any indebtedness of the Customer to LUTENDO or in respect of any other fact, including but without limiting the generality of the foregoing, the fact that such Services were delivered, shall be prima facie proof of the Customer's indebtedness to LUTENDO and prima facie proof of delivery of the Services in terms of this Agreement.
- 14.4. Any print out of computer evidence tendered by LUTENDO shall be admissible evidence and the Customer shall not be entitled to object to the admissibility of such evidence purely on the grounds that such evidence is computer evidence.
- 14.5. The Parties hereby choose as their *domicilium citandi et executandi* ("Domicilium") for all purposes under this Agreement the following addressed:

Xxxx (Project specifi)

- 14.6. In the event of the Customer being in breach, the Customer agrees to pay, and shall be liable to pay, all legal costs incurred by LUTENDO in enforcing its rights in terms of these terms and conditions as well as any other costs on the attorney/own client scale including but not limited to collection charges, tracing agent's fees, air fares and export fees.

14.7. Any document will be deemed duly received by the Customer :

14.7.1. within 3 (three) working days of pre-paid registered mail to any of the Customer's physical address as provided in the credit application or the *domicilium* address of the Customer; or;

14.7.2. within 24 (twenty four) hours of being faxed to the Customer's fax number; or

14.7.3. on the same day where the documents are hand delivered to the Customer's physical address; or

14.7.4. within 48 (forty eight) hours if sent by overnight courier.

14.8. The Customer agrees that neither LUTENDO nor any of its employees will be liable for any negligent or innocent misrepresentations made to the Customer, nor shall the Customer be entitled to rescind from this Agreement on those grounds.

15. FORCE MAJEURE

15.1. Neither Party shall be liable for any failure to fulfil its obligations under this Agreement if and to the extent such failure is caused by any circumstances beyond its reasonable control and not of its making, including but not limited to flood, fire, earthquake, war, tempest, hurricane, industrial action, government restrictions or acts of God.

15.2. Should any event of force majeure arise, the affected Party shall notify the other Party without delay and the Parties shall meet within 7 (seven) business days of such notice to negotiate in good faith alternative methods of fulfilling its obligations in terms of the Proposal. In addition LUTENDO shall continue to provide and the Customer shall continue to pay for those Services not affected by the event of force majeure.

15.3. Should either Party be unable to fulfil a material part of its obligations under the Proposal for a period in excess of 30 (thirty) consecutive calendar days due to circumstances of force majeure, the other Party may at its sole discretion cancel the Proposal and this Agreement forthwith by written notice.

16. GENERAL

16.1. This Agreement constitutes the entire agreement between the Customer and LUTENDO in respect of the subject matter hereof.

16.2. No amendment or modification to this Agreement, including this sub-clause 16, shall be effective unless in writing and signed by authorised signatories of both the Customer and LUTENDO.

16.3. No granting of time or forbearance shall be or be deemed to be a waiver of any term or condition of this Agreement and no waiver of any breach shall operate as a waiver of any continuing or subsequent breach.

16.4. If the whole or any part of a provision of the Agreement is void or voidable by either Party or unenforceable or illegal, the whole or that part (as the case may be) of that provision, shall be severed, and the remainder of the Agreement shall have full force and effect, provided such severance does not alter the nature of the Agreement between the Parties.

16.5. In the absence of another agreement to the contrary, these terms and conditions shall apply.

16.6. The Parties hereby consent and submit to the jurisdiction of the South Gauteng Division of the High Court of the Republic of South Africa, in any dispute arising from or in connection with this Agreement;

16.7. LUTENDO may sub-contract its obligations under this Agreement, provided that LUTENDO shall remain liable for performance of such subcontractor. LUTENDO shall not be required to disclose the terms or payment provisions of any sub-contract entered into with respect to the Services.

16.8. Each Party warrants that it is acting as principal and not agent for any other person, whether disclosed or otherwise.

16.9. If any conflict arises in respect of the provisions contained in this Agreement and the Proposal/ or Quotation, the provisions of this Agreement shall prevail.

16.10. Neither Party shall be entitled to cede, assign, delegate or otherwise transfer (other than an assignment by LUTENDO to any successor of all or substantially all of the business or assets of LUTENDO) the benefit or burden of all or any part of this Agreement without the prior written consent of the other Party.