

**SERVICE AGREEMENT**  
**STANDARD TERMS AND CONDITIONS**  
**(M4JAM STCv1.2021)**

entered into between: -

**M4JAM SOUTH AFRICA PROPRIETARY LIMITED**

(Hereinafter referred to as "**M4JAM**")

**And the Person whose particulars appear on the Sales Order that incorporates these terms by  
reference**

(Hereinafter referred to as the "**CLIENT**")

(Collectively referred to as the "**Parties**")

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## 1. PARTIES

The Parties to the Agreement are –

- 1.1. **M4JAM South Africa (Proprietary) Limited**, with registration number: 2004/013252/07, with its registered offices situated at 25 Commerce Crescent, Kramerville, Johannesburg, 2048 with postal address Post Net Suite 41, Private Bag X9, Benmore, 2010 and e-mail address legal@m4jam.com and telephone number: (011) 100 3800 (hereinafter referred to as “**M4JAM**”); and
- 1.2. **The Other Party, whose details appear on the Sales Order that includes these terms and conditions by reference.**

## 2. BACKGROUND

It is recorded between the Parties as follows -

- 2.1. M4JAM owns and operates the Digital Platform offering innovative, tailored products and related services enabling, amongst others, a jobber network to facilitate the provision of services to clients.
- 2.2. The products and services that the Digital Platform can provide includes Market Evaluation & Research, Brand Merchandising, Order Generation, Delivery Execution, Cash Collection, and Bulk Payment Services (Rebates to Spazas).
- 2.3. The CLIENT wishes for M4JAM to provide the Services (making use of the Digital Platform) as fully described in the specific Sales Order and subject to these Standard T&Cs.

### **3. DEFINITIONS AND INTERPRETATION**

#### **3.1. Definitions**

In these T&Cs, unless the context otherwise requires, the following capitalised terms shall have the meanings assigned to them below and cognate expressions shall have corresponding meanings:

**“Agreement”** means the agreement between the Parties being a Sales Order read together with these T&Cs, which are incorporated by reference;

**“Applicable Law”** means the following, as amended from time to time, to the extent it applies to a Party (including, as applicable, the Affiliates of a Party): any statute, regulation, notice, policy, directive, ruling or subordinate legislation (including treaties, multinational conventions and the like having the force of law); The common law; any binding court order, judgement or ruling; any applicable industry code, policy or standard enforceable by law, and any applicable direction, policy or order that is given by any regulator, competent authority or organ of state or industry body;

**“Authorised Purpose”** means the scope of the agreed use to which Digital Platform, products and services may be put, as agreed in the Sales Order;

**“Business Day”** means any day, except a Saturday, Sunday or a Public Holiday in the Republic of South Africa;

**“Campaign”** means a once off project-based set of services provided by M4JAM to the CLIENT as described in the Sales Order (if applicable);

**“CLIENT”** means, the client as defined in clause 1.1;

**“CLIENT Data”** means all data, information, text, drawings and other materials which are embodied in any medium including all electronic, optical, magnetic or tangible media and which are supplied to M4JAM by the CLIENT or which M4JAM and/or any sub-contractors

are required to generate, collect, process, store or transmit in connection with the Agreement and which are agreed in writing to belong to the CLIENT;

**“Commencement Date”**

means the date agreed upon by the CLIENT and M4JAM, for the commencement of delivery of products and services as set out in the Sales Order;

**“Confidential Information”**

means all information whether conveyed orally, in writing, in machine readable form or otherwise which relates to a Party’s or a third party’s business, equipment, services, developments, trade secrets, IP Rights, Know-How, personnel, suppliers and customers, (whether or not designated as “confidential information” by the disclosing party) together with all information derived from the above, the existence and terms of the Agreement and all information designated as confidential or which ought reasonably to be considered confidential;

**“Data Subject”**

means a person from whom Personal Information (as defined in POPI Act) is gleaned during the completion of a Job, who may or may not authorise the use thereof;

**“Data Processing”**

means (as defined in POPI Act) any activity relating to the collection, receipt, recording, organisation, collation, storage, updating or modification, retrieval, alteration, or use of Personal Information and includes dissemination by means of transmission, distribution or making available in any other form;

**“Digital Platform”**

means the online platform created, operated and managed by M4JAM and includes the System, software, associated technology (including website and mobile applications), business methods, IP Rights, Know-how and the application thereof;

**“Information Officer”**

means a person required to be appointed either in terms of section 55 of POPI Act and/or section 1 of PAI Act;

**“IP Rights”**

means patents, rights to inventions, copyright and related rights, trademarks, trade names and domain names, rights in get-up, goodwill and the right to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, rights to preserve the confidentiality of information (including Know-How and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

**“Job”**

means a task undertaken by a Jobber, using the Digital Platform, as defined and/or specified in the Sales Order;

**“Job Data”**

means the information and data submitted by a Jobber to satisfy the Sales Order requirements including (without limitation) photos, graphics, images, videos, voice recordings, location information, files, text data, works of authorship, Jobber Credentials, and Personal Information if consent was obtained from the Data Subject in terms of POPI for such disclosure (but excludes the Jobber Details unless otherwise agreed);

**“Jobber”**

means the natural person who is enrolled on the Digital Platform and who will complete a Job using the Digital Platform in accordance with the provisions of the Agreement;

**“Jobber Credentials”**

means the demographical information pertaining to a particular Jobber, inclusive of age, race, gender, marital status and area of residence (but excluding Jobber Details), being provided due to the requirements of a Job;

<b>“Jobber Details”</b>	means the Personal Information pertaining to a particular Jobber;
<b>“Know-How”</b>	means industrial and technical information and ideas, concepts, methodology and techniques in any form (including paper, electronically stored data, magnetic media, film and microfilm) concerning the performance of the micro jobs including (without limiting the foregoing) process maps, drawings, reports, spreadsheets, instruction and training manuals, tables of operating conditions, specifications, tables and procedures;
<b>“Losses”</b>	means all losses, liabilities, damages, costs, expenses (including management time and reasonable legal fees) and charges arising from or in connection with: (a) any act or omission of a Party under these T&Cs; (b) any breach by a Party of any provision of these T&Cs; or any Third party actions, proceedings, claims, allegations or demands;
<b>“Month”</b>	means a calendar month and “monthly” shall be interpreted accordingly;
<b>“Parties”</b>	means the CLIENT and M4JAM, and any reference to <b>“a Party”</b> shall refer to one of the relevant Parties as required by the context;
<b>“PAI Act”</b>	means the Promotion of Access to Information Act, 2 of 2000;
<b>“Personal Information”</b>	has the meaning ascribed thereto in POPI Act and shall refer, in these T&Cs, to Personal Information about User, User Groups, employees, Jobbers, independent contractors, sub-contractors and third parties;
<b>“POPI Act”</b>	means the Protection of Personal Information Act, 4 of 2013;
<b>“Public Holiday”</b>	means a day which has been designated and gazetted as such by the government of the Republic of South Africa;

<b>“Retainer”</b>	means an ongoing, month to month, provision of services and/or products by M4JAM to the CLIENT provided in terms of the Sales Order (if applicable);
<b>“Sales Order”</b>	means the statement of the specific services and/or products to be provided by M4JAM to the CLIENT, as prepared by M4JAM and approved by the CLIENT;
<b>“Signature Date”</b>	means in respect of any Sales Order, the date upon which the CLIENT accepts a Sales Order in writing;
<b>“Special Provision/s”</b>	means a provision included in a Sales Order which explicitly amends a provision of these T&Cs and is therefore binding upon the Parties to the extent stipulated in the Sales Order;
<b>“System”</b>	means telecommunication system, computer programs, software, computer and communications networks, hardware, firmware, servers, devices, cabling and related equipment, databases, the tangible media on which they are recorded and their supporting documentation, including input and output format, program listings, narrative descriptions, source code, executable code, operating instructions and user manuals;
<b>“VAT”</b>	means Value Added Tax imposed in terms of the Value Added Tax Act, No 89 of 1991 (as amended), including any similar tax which may be imposed in place thereof from time-to-time;
<b>“the/these T&amp;Cs”</b>	means, this these Standard Terms and Conditions.



**3.2. Interpretation**

These T&Cs shall be interpreted according to the following provisions, unless the context requires otherwise:

- 3.2.1. These T&Cs shall be interpreted according to the following provisions, unless the context requires otherwise:
- 3.2.2. References to the provisions of any law shall include such provisions as amended, re-enacted or consolidated from time to time in so far as such amendment, re-enactment or consolidation applies or is capable of applying to any transaction entered into under these T&Cs.
- 3.2.3. References to “Parties” shall include the Parties’ respective successors-in-title and, as permitted in these T&Cs, their respective cessionaries and assignees.
- 3.2.4. References to a “person” shall include an individual, firm, company, corporation, juristic person, Responsible Authority, and any trust, organisation, association or partnership, whether or not having separate legal personality.
- 3.2.5. References to any other contract or document shall include (subject to all approvals required to be given pursuant to these T&Cs for any amendment or variation to or novation or substitution of such contract or document) a reference to that contract or document as amended, varied, novated or substituted from time to time.
- 3.2.6. Words in parentheses and italics appearing after a clause reference or a reference to a Schedule are inserted for ease of reference only. If there is any discrepancy between the clause reference and the words in parentheses and italics, the latter shall prevail.
- 3.2.7. The headings of clauses, sub-clauses and annexures (if any) are included for convenience only and shall not affect the interpretation of these T&Cs.
- 3.2.8. Any Sales Order issued in conjunction with these T&Cs shall be read together with and interpreted in accordance with the provisions of these T&Cs. Where there is any conflict between these T&Cs and a Sales Order, the provisions of these T&Cs will prevail (unless a provision of the Sales Order expressly amends any provision of these T&Cs).
- 3.2.9. The Parties acknowledge that each of them has had the opportunity to take legal advice concerning these T&Cs, and agree that no provision or word used in these T&Cs shall be interpreted to the disadvantage of either Party because that Party

was responsible for or participated in the preparation or drafting of these T&Cs or any part of it.

- 3.2.10. Words importing the singular number shall include the plural and vice versa, and words importing either gender or the neuter shall include both genders and the neuter.
- 3.2.11. References to “these T&Cs” shall include these T&Cs as amended, varied, novated or substituted in writing from time to time.
- 3.2.12. The number of days indicated to commit an act or indicated for any other purpose, is calculated by excluding the first day and including the last day, unless the last day falls on a Saturday, Sunday or public holiday in the Republic of South Africa, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday in the Republic of South Africa.
- 3.2.13. The expiration or termination of the Sales Order (read with these T&Cs) shall not affect those provisions of the Sales Order and these T&Cs which expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding the fact that the clauses themselves do not expressly provide this.
- 3.2.14. If any definition in clause 3.1 contains a substantive provision conferring rights or imposing obligations on any Party, effect shall be given to such provision as if it was a substantive provision in the body of these T&Cs.

#### **4. APPOINTMENT**

- 4.1. CLIENT appoints M4JAM as a supplier of products and/or services, which appointment M4JAM duly accepts, the details of which products or services are set out in the CLIENT approved Sales Order.
- 4.2. M4JAM shall have the right to subcontract any or all of its obligations the Agreement (unless otherwise agreed in writing); provided that M4JAM shall at all times remain obligated to the CLIENT in respect of the performance of such obligations.

#### **5. DURATION**

The Agreement, shall take effect on the Signature Date and will remain in force until the product or service is delivered as agreed in terms of the Sales Order, or unless otherwise terminated in terms of clause 11 of these T&Cs.

#### **6. GENERAL RIGHTS AND OBLIGATIONS OF M4JAM**

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- 6.1. M4JAM shall provide products and related services –
  - 6.1.1. in accordance with the provisions of the Agreement;
  - 6.1.2. in a manner that complies with and meets the requirements of Applicable Law; and
  - 6.1.3. ensuring that all persons employed by M4JAM, in connection with the execution of a Sales Order, have the necessary skills and experience in relation thereto.
- 6.2. M4JAM will maintain and supervise a suitable level of qualified support staff to ensure that its obligations under the Agreement are properly fulfilled.
- 6.3. M4JAM shall take reasonable steps to protect the integrity of all data stored and processed thereon; including but not limited to the Job Data, all Personal Information, all Confidential Data and the CLIENT Data.
- 6.4. M4JAM shall store, process and safeguard all CLIENT Data with at least the same level of diligence and care as it does its own Confidential Information.
- 6.5. M4JAM will provide CLIENT with detailed and accurate invoices, in a timely manner, as stipulated in clause 13 hereunder.
- 6.6. M4JAM shall own all data gathered on the Digital Platform (unless otherwise agreed in writing), except for the CLIENT Data (if any), and shall be entitled to make use of such data as it in its sole discretion shall determine, subject only to Applicable Law.
- 6.7. M4JAM shall not during the Agreement and for the period of 12 months following the termination thereof (for any reason whatsoever) directly or indirectly, solicit or recruit any employee of the CLIENT or any of its subsidiaries or affiliates for the purpose of being employed by M4JAM or any other entity.

## **7. GENERAL RIGHTS AND OBLIGATIONS OF CLIENT**

### **7.1. CLIENT shall -**

- 7.1.1. Attend meetings and presentations from time to time with M4JAM on agreed upon dates and as M4JAM may deem necessary so as to facilitate the delivery of products and services under the Sales Order;
- 7.1.2. Where applicable and as agreed in the relevant Sales Order to provide M4JAM timeously with the agreed content in the agreed format for upload on the Digital Platform;
- 7.1.3. Assign, authorise and permit M4JAM the right to advertise the CLIENT's logo on its web site, Digital Platform and or other relevant media platforms, subject to prior approval from the CLIENT, which shall not be unreasonably withheld;
- 7.1.4. Use the Job Data for the Authorised Purpose only and then in accordance with and subject to all Applicable Laws, including but not limited to the POPI Act and applicable data and privacy regulations;
- 7.1.5. Not access and or permit access to the Digital Platform, and or Job Data, by any other means than those authorised and permitted by M4JAM and as permitted in terms of the Sales Order;
- 7.1.6. Be responsible for protecting and safeguarding any login, User and User Group details and Personal Information and will ensure compliance with all POPI Act, data and privacy regulations;
- 7.1.7. Not to engage in any conduct which is calculated or reasonably likely to bring or has the effect of bringing M4JAM's reputation, brand, image or trademarks into disrepute;
- 7.1.8. Not during the Agreement and for the period of 12 months following the termination thereof (for any reason whatsoever) directly or indirectly, solicit or recruit any employee of M4JAM or any of its subsidiaries or affiliates for the purpose of being employed by the CLIENT or any other entity; and
- 7.1.9. Make payment to M4JAM in accordance with clause 13 hereunder without set-off or any deduction for any reason whatsoever.

- 7.2. The CLIENT hereby indemnifies, defends and holds harmless M4JAM, it employees and/ or any affiliates from all Losses arising or resulting from, or in connection with, any actual or threatened claim, demand, charge, action, cause of action, or other proceeding by any third party, arising from or in connection with a breach by the CLIENT (or any of its Affiliates,

employees, contractors or agents) of any of the provisions of clause 7.1.

## **8. PERSONAL INFORMATION AND THE POPI ACT**

- 8.1. The Parties hereby acknowledge that the operation of the Digital Platform and the provision of the services and products related thereto are subject to the provisions of the POPI Act and the PAI Act and accordingly, both Parties warrant in favour of one another that they are familiar with the terms and provisions thereof.
- 8.2. The Parties recognise that at all times when the Digital Platform is in use, M4JAM shall be the Operator (as defined in the POPI Act).
- 8.3. In each Sales Order the Parties shall determine which Party is the Responsible Party (as defined in POPI Act). In general, it is agreed that where M4JAM owns the Job Data, M4JAM will be the Responsible Party, but where M4JAM is merely facilitating the collection and/or transfer of the Job Data for and on behalf of the CLIENT (the ownership of which Job Data belongs to the CLIENT) the CLIENT shall be the Responsible Party as defined in POPI Act.
- 8.4. Each Party shall appoint an Information Officer (and an alternate Information Officer) and advise the other Party of the name and contact details of that person in the Sales Order (or such other written document). Each Party shall ensure that the Information Officer (and their alternate) is adequately trained and equipped to fulfil the obligations of such a position.
- 8.5. The CLIENT shall not do anything, nor cause to anything to be done, that will jeopardise the Digital Platform's compliance with Applicable Law and the CLIENT hereby indemnifies and holds M4JAM harmless in respect of any damages arising from a breach by the CLIENT of this obligation.
- 8.6. M4JAM shall operate the Digital Platform in compliance with Applicable Law, including but not limited to POPI Act and PAI Act, and hereby indemnifies and holds the CLIENT harmless in respect of any claim that arises from a breach of Applicable Law, provided that such breach has not be caused by the acts or omissions of the CLIENT.
- 8.7. Where a third party makes a request to have access to their Personal Information, whether under POPI Act or PAI Act, the Party receiving the request shall notify the other Party immediately and the Parties shall, at the request of either Party, discuss the implications, impact and manner of meeting the request. Such consultation shall be undertaken expeditiously and within the time frames prescribed by Applicable Law. Nothing in this clause 8.7 shall prohibit any Party from meeting its obligations in terms of Applicable Law.
- 8.8. Each Party hereby irrevocably undertakes in favour of the other that, where that Party is the Responsible Party in terms of POPI Act, all Data Processing of Personal Information shall be in accordance with Applicable Law and that all consents by the relevant Data Subject shall be

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properly obtained and retained. Each Party indemnifies the other in respect of any harm caused to or claims raised by third parties relating to a breach by that Party of its obligations under Applicable Law.

- 8.9. Each Party shall ensure that prior to providing Personal Information to the other Party, it shall have obtained all consents (whether from natural or juristic persons – as applicable) that may be required in terms of the POPI Act or any other Applicable Laws to provide Personal Information to the other Party.
- 8.10. Each Party warrants to the other that in relation to the Agreement, it shall comply strictly with all requirements of the PAI Act and POPI Act, as amended from time to time.
- 8.11. Notwithstanding any other provision in these T&Cs, it is recorded that the Digital Platform may store or back-up data to servers and facilities outside the borders of South Africa and accordingly the CLIENT hereby irrevocable grants M4JAM consent to transfer data (including, but not limited to CLIENT Data, Confidential Information and Job Data) outside the borders of South Africa, provided that M4JAM in turn warrants that this shall be conducted in accordance with Applicable Law.

## **9. DATA OWNERSHIP AND RIGHTS**

- 9.1. In addition to the management of Personal Information in terms of the POPI Act (dealt with in clause 8 above), the Sales Order shall contain agreement on the nature of the Job Data to be collected, processed and stored, and the ownership and use of such Job Data by the Parties; provided that if this is not the case then the provisions of clause 9.2 shall apply.
- 9.2. Notwithstanding clause 9.1, the following terms and conditions shall apply to the rights in and to data (unless otherwise agreed in writing):
  - 9.2.1. All CLIENT Data shall belong to the CLIENT and the CLIENT hereby grants M4JAM a non-exclusive license to make use of such CLIENT Data for the purposes of providing goods and services in terms hereof (which right shall include the right to retain such data where required by Applicable Law or where it is imbedded in the Job Data;
  - 9.2.2. All Job Data collected on the Digital Platform shall be owned by M4JAM and may be used by M4JAM for its own purposes (including the provision of product or services to the CLIENT and or third parties) as determined in its sole discretion, subject to Applicable Law;
  - 9.2.3. Any Job Data delivered by M4JAM to the CLIENT may only be used by the CLIENT for the purposes agreed to in the Sales Order and may not be re-sold; and

- 9.2.4. No Job Data delivered by M4JAM to the CLIENT may be transferred outside of the Republic of South Africa, without M4JAM's prior written permission, which permission shall not be unreasonably withheld.

## **10. INTELLECTUAL PROPERTY RIGHTS**

- 10.1. All IP Rights owned by either Party (whether before or after the Commencement Date) remain the sole and exclusive property of that Party. Where the CLIENT provides content for uploading on the Digital Platform, the ownership of such content shall remain with the CLIENT, which hereby grants M4JAM a non-exclusive license to use such content for the agreed purposes. Where M4JAM develops content for and on behalf of the CLIENT for uploading on the Digital Platform, the ownership and use of such content shall be agreed in writing; failing which the content shall be owned by M4JAM and is hereby licensed to the CLIENT for the duration and purposes set out in the relevant Sales Order.
- 10.2. The CLIENT acknowledges that ownership rights, copyright, patents or IP Rights of whatever nature related to the Digital Platform shall remain the sole property of M4JAM. The CLIENT shall not, at any time during or after the expiration or termination of the Agreement, assert or claim any interest in, or do anything that may adversely affect the validity of M4JAM's IP Rights in and to the Digital Platform. The acceptance of the Services hereunder and the use of the Digital Platform shall in no way grant the CLIENT any right to or interest in the Digital Platform. Furthermore, upon the lawful termination of the Agreement for any reason, the CLIENT shall no longer have the right to access or use the Digital Platform and shall have no claim against M4JAM for the loss of such access or use.
- 10.3. Any IP Rights arising out of the further development of the Digital Platform (whether developed by the CLIENT or for the CLIENT (by M4JAM or by a third party)), shall vest in and be owned by M4JAM and the CLIENT shall acquire no IP Rights in respect thereof. To the extent required by law, the CLIENT hereby cedes and assigns to M4JAM, for no charge, all rights to and interest in any additions, amendments, improvements or the like in respect of the Digital Platform and undertakes to sign all such documentation and undertake all such actions as are required from time to time to give effect to the cession and assignment.
- 10.4. The CLIENT warrants that it shall not –
- 10.4.1. decompile, reverse engineer or modify the Digital Platform, or otherwise attempt to obtain the related source code or other code proprietary thereto;
- 10.4.2. allow any other person to use the Digital Platform, except pursuant to the normal operation of the Digital Platform and then with the prior written consent of M4JAM, which consent shall not be unreasonably withheld or delayed;

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- 10.4.3. breach any third party intellectual property rights, including but not limited to copyright, in making use of the Digital Platform or when providing materials for uploading on the Digital Platform or otherwise when providing M4JAM with materials to be included in the provision of the products or services by M4JAM; and
- 10.4.4. use the Digital Platform for any purpose other than the Authorised Purpose as set out in the Sales Order/s.
- 10.5. M4JAM is entitled to suspend the provision of any product or services with immediate effect should the CLIENT be in breach of or should M4JAM have reason to believe that the CLIENT is in breach of the provisions of this clause<sup>10</sup>; provided that M4JAM shall as soon as reasonably practicable after the suspension M4JAM shall provide written notice to the CLIENT of the suspension and give reasons therefor.
- 10.6. The CLIENT hereby indemnifies, defends and holds harmless M4JAM, its employees and/ or any affiliates from all Losses arising or resulting from, or in connection with, any actual or threatened claim, demand, charge, action, cause of action, or other proceeding by any third party, arising from or in connection with a breach by the CLIENT (or any of its Affiliates) of any of the provisions of this clause 10.

## **11. TERMINATION**

### **11.1. Non-default termination**

- 11.1.1. The Agreement will remain in force until the fulfilment of the Sales Order, provided that the CLIENT may terminate the engagement on [30] thirty calendar days' notice, which termination will not affect and or terminate the reciprocal duties and obligations of any incomplete Sales Order, including payment of any agreed termination fees.
- 11.1.2. The reciprocal duties and obligations of the Parties in respect of the Agreement will be terminated in accordance with the provisions as contained and set out therein.

### **11.2. Termination on Breach**

- 11.2.1. In addition to circumstances where M4JAM has the right to immediately suspend the provision of products and services, should the CLIENT commit a breach of the Agreement and fail or refuse to rectify that breach within [10] ten days after receipt of a written notice from M4JAM, calling upon the CLIENT to rectify that breach, M4JAM shall be entitled, without prejudice to any other of its rights in law, to



forthwith cancel the Agreement on [24] twenty four hours written notice to the CLIENT.

- 11.2.2. Should M4JAM commit a breach of the Agreement and fail or refuse to rectify that breach within [10] ten days after receipt of a written notice from the CLIENT calling upon M4JAM to rectify that breach, the CLIENT shall be entitled, without prejudice to any other of its rights, to forthwith cancel the Agreement on [24] twenty four hours written notice to M4JAM.

## **12. GENERAL WARRANTIES AND EXCLUSION OF LIABILITY**

- 12.1. The CLIENT acknowledges that the Digital Platform is provided on an “as is”, “as available” and on a “with all faults” basis and accordingly M4JAM shall not be liable for any shortfall in the performance of the Digital Platform other than is expressly agreed to in a Sale Order. In particular, M4JAM does not warrant that the Digital Platform is free of defects or of viruses and the CLIENT shall take reasonable precautions to mitigate the risk thereof.
- 12.2. Under no circumstances will any Party be liable to the other Party for any indirect, special or consequential damages or losses of any kind whatsoever and however caused even if that Party has been advised of their possibility.
- 12.3. CLIENT hereby indemnifies M4JAM and holds M4JAM harmless against any claim of whatsoever nature by any third party arising whether directly or indirectly out of the CLIENT’s use of the Job Data, CLIENT Data and Personal Information.
- 12.4. Notwithstanding any other provision of these T&Cs, M4JAM’s total liability to the CLIENT shall be limited to an amount equal to the value of the Sales Order.

## **13. PAYMENT**

- 13.1. The fees and charges payable by the CLIENT to M4JAM shall be as agreed to in the Sales Order; provided that if no such terms are agreed then:
  - 13.1.1. In the case of a Campaign, the CLIENT shall pay 50% of the contract value upfront before commencement of the Sales Order and the remaining 50% within 30 days of the completion of the Sales Order, both payments being made against receipt of a valid tax invoice prepared by M4JAM; or
  - 13.1.2. In the case of a Retainer or other general services, the Client shall pay M4JAM monthly in arrears with payments being made against receipt of a valid tax invoice prepared by M4JAM.
- 13.2. M4JAM shall include the following details on the Invoice, to enable the CLIENT to verify the accuracy of the Invoice:
  - 13.2.1. reference to the specific Sales Order to which the invoice relates; and
  - 13.2.2. a relevant purchase order number if so required and supplied by the CLIENT.
- 13.3. All amounts payable shall be paid free of any deduction, charge or set-off by bank transfer in South African Rand (ZAR) into the bank account nominated by M4JAM in writing.
- 13.4. For the avoidance of doubt, it is recorded and agreed that all considerations and prices

quoted or otherwise provided for in these T&Cs and/or any formulae for the determination thereof are quoted and provided for exclusive of VAT.

#### **14. ARBITRATION**

- 14.1. Should any dispute arise between the parties in connection with the interpretation or application of the provisions of the Agreement, including its validity, enforcement and termination or the validity of any documents furnished by the parties pursuant to the provisions of the Agreement, unless resolved amongst the parties, this dispute will be referred to and be determined by arbitration in terms of this clause.
- 14.2. Any party to the Agreement may demand that a dispute be determined in terms of this clause 14 by written notice given to the other party.
- 14.3. This clause will not preclude any party from obtaining interim relief on an urgent basis from a court of competent jurisdiction pending the decision of the arbitrator.
- 14.4. The arbitration will be held:
  - 14.4.1. In Sandton;
  - 14.4.2. With only the legal and other representatives of the parties to the dispute present;
  - 14.4.3. In accordance with the formalities and procedures settled by the arbitrator, and may be held in an informal and summary manner, on the basis that it will not be necessary to observe or carry out the usual formalities or procedures, pleadings and discovery or the strict rules of evidence, it being the intention that the arbitration will be held and completed as soon as possible;
  - 14.4.4. On the basis that the arbitrator will be entitled to decide the dispute in accordance with what he/she considers to be just and equitable in the circumstances.
- 14.5. The following arbitrators will be acceptable to both parties, if the matter in dispute is principally:
  - 14.5.1. A legal matter, a practising attorney or advocate of the Johannesburg Bar of at least 10 (ten) year's standing;
  - 14.5.2. An accounting matter, a practising chartered accountant of Johannesburg of at least 10 (ten) year's standing;
  - 14.5.3. Any other matter, a practising attorney or advocate of the Johannesburg Bar of at least 10 (ten) year's standing or other independent person.

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- 14.6. Should the parties to the dispute fail to agree whether the dispute is principally a legal, accounting or other matter within 7 (seven) days after the arbitration was demanded, the matter will be deemed to be a legal matter.
- 14.7. Should the parties fail to agree on an arbitrator within 14 (fourteen) days after giving of notice in terms of clause 14.2 the arbitrator will be appointed at the request of any party to the dispute by the chairman for the time being of the Johannesburg Bar Council according to the provisions of clauses 14.5 and 14.6.
- 14.8. The decision of the arbitrator will be final and binding on the parties to the dispute and may be made an order of any court to whose jurisdiction the parties are subject at the instance of any of the parties to the dispute.
- 14.9. The arbitrator will be entitled to make such award, including an award for specific performance, an interdict, damages or a penalty or otherwise as he/she in his/her sole discretion may deem fit and appropriate and to deal as he/she deems fit with the question of costs, including if applicable, costs on the attorney and Affiliate scale, and his/her own fees.
- 14.10. The provisions of this clause:
- 14.10.1. Constitute an irrevocable consent by the parties to any proceedings in terms hereof and no party will be entitled to withdraw there from or claim at any such proceedings that it is not bound by such provisions;
- 14.10.2. Are severable from the rest of the Agreement and will remain in effect despite the termination of or invalidity for any reason of the Agreement.

## **15. GOVERNING LAW AND JURISDICTION**

- 15.1. The interpretation and enforcement of the provisions of the Agreement shall be governed by and construed in accordance with the laws of the Republic of South Africa.
- 15.2. The Parties consent to the non-exclusive jurisdiction of the High Court of South Africa, Gauteng Local Division, Johannesburg, with regard to any matter which may be referred to a court of law in terms of the Agreement.

## **16. CONFIDENTIALITY**

- 16.1. The Parties acknowledge that they may, in the course of the performance of the Agreement, gain access to and become acquainted with the other Party's Confidential Information.
- 16.2. The Parties accordingly undertake, for the duration of the Agreement as well as after the termination thereof, not to directly or indirectly, utilize, disclose or make public to any third party any Confidential Information of each other and to keep any Confidential Information

secret and confidential at all times, unless such disclosure takes place in the ordinary course of the rendering of the services in terms of the Sales Order. Neither shall any Party make use of the other Party's Confidential Information for any purpose other than the provision or acceptance of the services offered hereunder or in terms of the Agreement.

16.3. The Confidential Information shall not include-

- 16.3.1. information which was known to the Parties prior to entering into the Agreement;
- 16.3.2. information which is or lawfully becomes generally available to the public;
- 16.3.3. information which is lawfully acquired from third parties who have a right to disclose such information;
- 16.3.4. information which by mutual agreement is released from confidential status; and
- 16.3.5. information which is required to be disclosed in response to a valid order of court or other governmental agency or if disclosure is otherwise required by law, and the Parties will provide each other with prompt written notice if such disclosure is required and shall limit the disclosure to the minimum necessary to comply with the law.
- 16.3.6. is disclosed to a third party pursuant to the prior written authorisation from the party disclosing the Confidential Information;
- 16.3.7. is received from a third party in circumstances that do not result in a breach of the provisions of the Agreement.
- 16.3.8. is received by a Party from a third party who has the right to disseminate such Confidential Information;
- 16.3.9. is or had already been independently generated by a Party prior to receiving it from the other Party.
- 16.3.10. is furnished after the Commencement Date by the Party disclosing the Confidential Information to a third party without restriction;
- 16.3.11. has been received from a third party without any non-disclosure and/or confidentiality obligation.

## **17. FORCE MAJEURE**

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- 17.1. M4JAM shall not be liable for damages or termination to the extent that the delay in performance or other failure to perform its obligation under the Agreement is the result of an event of force majeure.
- 17.2. For purposes of this clause "force majeure" means an event beyond the control of M4JAM and not involving M4JAM' fault or negligence. Such events may include but are not restricted to, wars, terrorist attacks, civil unrest, pandemics, fires, strikes, floods, power and utility outages, cyberattacks and freight embargoes.
- 17.3. If a force majeure situation arises M4JAM shall notify CLIENT in writing of such condition within 24 hours of becoming aware of a force majeure situation. This notification must describe the nature of the circumstances that have emerged and if possible an estimated effect of the inability of M4JAM to discharge its obligation under the Agreement, unless otherwise directed by CLIENT in writing M4JAM shall continue to perform its obligations under the Agreement as far as is reasonably practical and shall seek all reasonable alternative means for performance not prevented by the force majeure.
- 17.4. If an event of force majeure continues for a period of seven days or more, M4JAM may terminate the Agreement without either party incurring any further liabilities towards the other with respect to the contract other than to effect payment for Services already performed.

## **18. MISCELLANEOUS**

- 18.1. Save as expressly permitted hereunder, a Party shall not, without the prior written approval of the other Party, which shall not be unreasonably withheld, assign, cede, delegate, transfer or otherwise dispose of any right or obligation under the Agreement to any other person; provided that M4JAM shall be entitled to subcontract the provision of services to third parties (however M4JAM shall at all times remain liable for the performance by any of its subcontractors).
- 18.2. No provision of the Agreement, including, without limitation, the provisions of this clause, may be amended, substituted or otherwise varied, and no provision may be added to or incorporated into the Agreement, except (in any such case) by an agreement in writing signed by the duly authorised representatives of the Parties.
- 18.3. Any relaxation, indulgence or delay (together "Indulgence") by either Party in exercising, or any failure by either Party to exercise, any right under the Agreement shall not be construed as a waiver of that right and shall not affect the ability of that Party subsequently to exercise that right or to pursue any remedy, nor shall any Indulgence constitute a waiver of any other right (whether against that Party or any other person).
- 18.4. The Sales Order read with these T&Cs) constitutes the entire agreement between the Parties in connection with its subject matter and supersedes all prior representations,

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communications, negotiations and understandings concerning the subject matter of the Agreement.

- 18.5. The Sales Order may be executed in any number of identical counterparts, all of which when taken together shall constitute one agreement. Any single counterpart or a set of counterparts taken together which, in either case, are executed by the Parties shall constitute a full original of the Agreement for all purposes.
- 18.6. All notices and any other communications whatsoever (including, without limitation, any approval, consent, demand, query or request) by either Party in terms of the Agreement or relating to it shall be given in writing and sent by registered post, or delivered by hand, or transmitted by facsimile or electronic mail to the recipient Party at its relevant address set out in clause 1 of these T&Cs in respect of M4JAM and in the Sales Order in respect of the CLIENT.
- 18.7. Either Party may, by written notice to the other Party, change any of the addresses at which, or the designated person for whose attention those notices or other communications are to be given.
- 18.8. The person signing on behalf of the Party they represent expressly warrants his/her authority to do so and that they have obtained all relevant resolutions and/or authorisations.
- 18.9. Termination or expiry of the Agreement for any cause does not release any Party from any liability which at the time of termination or expiry has already accrued to such Party or which thereafter may accrue in respect of any act or omission prior to such termination or expiry.
- 18.10. Any notice or other communication given by any Party to the other Party which –
  - 18.10.1. is sent by registered post to the addressee at its specified address shall be rebuttably presumed to have been received by the addressee on the 7th (seventh) day after the date of posting; or
  - 18.10.2. is delivered by hand during the normal business hours of the addressee at its specified address shall be rebuttably presumed to have been received by the addressee at the time of delivery; or
  - 18.10.3. is transmitted by facsimile copier to the addressee at the addressee's specified facsimile number shall be rebuttably presumed to have been received by the addressee on the date of transmission as indicated on the sender's facsimile transmission report; or
  - 18.10.4. is transmitted by electronic mail to the addressee at the addressee's specified electronic mail address shall be rebuttably presumed to have received by the

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addressee on the date of transmission as reflected on the sender's electronic mail records.

18.11. Each Party shall be responsible for paying its own costs and expenses incurred in connection with the negotiation, preparation and execution of the Agreement.

**-END-**